



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN - 4 2002

Ms. Marcia Harding
Associate Director, Special Education
Arkansas Department of Education
#4 Capitol Mall, Room 105-C
Little Rock, Arkansas 72201-1071

Dear Ms. Harding:

Although the Office of Special Education Programs approved your eligibility documents for funding under Part B of the Individuals with Disabilities Education Act (IDEA), there is one issue that has not been resolved in the approval process. Section 10.01.38 of Arkansas Procedural Safeguards contains a 30-day time limit for filing in State court an appeal of a due process hearing officer's decision under the IDEA. A 30-day limit for filing a civil action under the IDEA is inconsistent with applicable law of the U.S. Court of Appeals for the Eighth Circuit, and we request that Arkansas change its time period to be consistent with Eighth Circuit case law.

The Eighth Circuit has specifically held that a 30-day limit for judicial review of IDEA claims is inconsistent with the policies of the IDEA. *See, Birmingham v. Omaha School Dist. et al*, 220 F.3d 850 (8th Cir. 2000). In *Birmingham*, the Eighth Circuit specifically rejected application of a 30-day limit under Arkansas' Administrative Procedures Act (APA) to judicial review of IDEA claims because it would conflict with IDEA's two primary policies: (1) to provide disabled children with a free appropriate public education and to encourage parents and school officials to resolve disputes cooperatively "so that the child is not needlessly deprived of the education mandated by law." It applied instead the three-year period contained in Arkansas' personal injury statute of limitations.

"Thirty days does not allow parents sufficient time to work with school officials to resolve educational disputes. Useful discourse that may resolve such disputes is foreclosed because parents are forced to immediately litigate." 220 F.3d at 855. "[T]hirty days ... is insufficient for an IDEA claim because review is de novo and may expand beyond the record." *Id.* The *Birmingham* court further noted the realities faced by parents of a child with a disability. A "truncated limitations period does not take into account the realities of raising a disabled child. ... , which leaves parents limited time to prepare a lawsuit." In rejecting the Arkansas APA 30-day limit, the Eighth Circuit applied a three-year statute of limitations applicable to Arkansas general personal injury claims. "A three year statute of limitations encourages parents to work with school officials to resolve disputes over the disabled child's education. It also allows parents time to prepare a federal lawsuit, and account for the time constraints faced by parents of disabled children." 220 F.3d at 856.

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Please delete from Arkansas' Procedural Safeguards section and any other Arkansas Part B eligibility documents the 30-day limit on filing a civil action under the IDEA in Arkansas. Kindly resubmit these eligibility documents to OSEP for approval and also confirm in writing to OSEP the methods that Arkansas Department of Education will use to provide notice of this time limit change to school districts and parents. You should provide us within 10 days the timeline for accomplishing each of these steps.

If you have any questions, please contact Dr. JoLeta Reynolds at 202-205-5507.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie S. Lee".

Stephanie S. Lee
Director
Office of Special Education Programs