



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

February 27, 2017

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Dear :

This letter responds to your electronic mail correspondence to this office concerning the applicable Federal time period for which the New York State educational agency (SEA) must retain and make available to the general public, findings and decisions issued in due process hearings and State-level reviews conducted pursuant to the Individuals with Disabilities Education Act (IDEA). This letter does not address other record retention requirements under State statutes of limitations or other laws. We apologize for the delayed response.

Under 34 CFR §300.513(d)(2), the public agency, and under §300.514(c)(2), the SEA, after deleting any personally identifiable information, must make the findings and decisions issued in due process hearings and State-level reviews conducted pursuant to the IDEA available to the public. You asked about the minimal time period that the SEA must make the findings and decisions available to the public. Below we describe the minimal time period that an SEA awarded a grant under Part B of the IDEA must maintain grant records.

The SEA must ensure that records under Part B of the IDEA are retained under the three-year period set forth in the record retention requirements in 2 CFR §200.333. Under that provision:

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report.

Under 2 CFR §200.343(a), the three-year period runs from when the final expenditure report is submitted on a grant (and it is due 90 days from the end of the performance period, which is typically when specific Federal fiscal year (FFY) funds are no longer available for obligation under a grant). Under 34 CFR §76.709, if an SEA does not obligate all of its IDEA Part B grant funds by the end of the fiscal year for which Congress appropriated the funds, it may obligate those funds during a carryover period of one additional year. For example, under an IDEA Part B grant for FFY 2014 awarded on July 1, 2014, a State could obligate such FFY 2014 funds during the period July 1, 2014 through September 30, 2016. The final expenditure report for that FFY 2014 award is due and generally submitted on December 30, 2016. Thus, all records created during that period pertinent to that FFY 2014 grant would need to be retained until December 30, 2019, regardless of whether the record pertains to an obligation entered into on the first or the last day those funds are available for obligation.

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Given that the State generally submits its final expenditure report two and a half years after it receives its IDEA Part B grant, the record retention period can extend to five and a half years from the date the record was created. We view that five and a half year time period as the most reasonable *minimum* time period during which States must make due process and State-level review findings and decisions available to the public under 34 CFR §§300.513(d)(2) and 300.514(c)(2). We encourage States to establish longer required time periods in which to make these findings and decisions available to the public, in order to promote the public policies underlying the requirement to make these decisions available, namely accessibility in the future by parties to these documents to help resolve potential future disputes. The SEA, of course, has the discretion to keep the records longer than the required retention period if necessary to meet State record retention requirements (subject to the parent's right in 34 CFR §300.624 under the IDEA to request destruction of records ).

It is important to note that if any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. 2 CFR §200.333(a). See also *Questions and Answers on IDEA Part B Dispute Resolution Procedures*, Question C-24.<sup>1</sup>

Also, we note that a State cannot have a policy that limits the public's access to due process hearing and State-level review findings and decisions by making the information available only when requested through the mechanism set up under the State's Freedom of Information Act. Such a policy does not meet the requirement under 34 CFR §§300.513(d)(2) and 300.514(c)(2) to make the findings and decisions available to the public. If a member of the public wishes to obtain a personal copy of the decisions, the State may charge a fee for copies but may not charge a fee to search for, or to retrieve the information. See 34 CFR §300.617(b).

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have any further questions, you may contact Rebecca Walawender of my staff, at 202-245-7399 or by email at [Rebecca.Walawender@ed.gov](mailto:Rebecca.Walawender@ed.gov).

Sincerely,

/s/

Ruth E. Ryder  
Acting Director  
Office of Special Education Programs

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<sup>1</sup> *Questions and Answers on IDEA Part B Dispute Resolution Procedures* can be found at: <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>.