



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

JUN 25 2002

By Fax and U.S. Mail

Ms. Melodie Friedebach
Coordinator of Special Education Services
Division of Special Education
Missouri Department of Elementary & Special Education
P.O. Box 480
Jefferson City, Missouri 65102-0580

Dear Ms. Friedebach:

Thank you for your June 11, 2002 e-mail responding to OSEP's June 4, 2002 letter, which requested that Missouri revise its 30-day limit for appealing due process hearing decisions to state court under Missouri Chapter 536, RSMo. OSEP's request is based on applicable law in the U.S. Court of Appeals for the Eighth Circuit, which specifically rejected a 30-day limit because it conflicted with the policies and purposes of the Individuals with Disabilities Education Act (IDEA). *Birmingham v. Omaha School Dist. et al*, 220 F.3d 850 (8th Cir. 2000).

Missouri responded that it has revised other conflicting time periods in its eligibility documents and distinguishes the 30-day limit of Chapter 536, RSMo. as applying to "judicial review of a due process hearing decision" and not to the school district's decision (as was the case in *Birmingham*). However, the Eighth Circuit in *Birmingham* specifically rejected as too short 30 days to file in court and made no distinction between an appeal of a due process hearing decision and a school district's decision.

In *Birmingham*, the Eighth Circuit specifically reviewed the Arkansas APA and rejected it not only because its 30-day limit was too short and undermined the IDEA but also because the nature of the review provided for under the Arkansas APA was not analogous to the judicial review rights of parties under the IDEA. The Arkansas APA differed from judicial review under the IDEA because (1) it did not provide for independent review but rather for affirmance, reversal or modification; (2) the scope of review was more limited (reversal only for one of six stated conditions) and not "an independent decision of the issues based on a preponderance of the evidence"; and (3) the standard for admitting additional evidence was different under the Arkansas APA and the IDEA.

Similarly, as we noted on the original issues chart, Missouri's APA is limited in that it limits both the scope of review to one of seven stated conditions (see RSMo.536.140.2 (1)-(7)) and when evidence can be admissible (see RSMo.536.140.4 which allows a court to "hear and consider additional evidence if the court finds that such evidence in the

exercise of reasonable diligence could not have been produced or was improperly excluded at the hearing before the agency”). It is also unclear if Missouri courts have authority to make an independent decision given RSMo. 536.140.2 and 5. While we appreciate that Missouri has in its most recent eligibility document submission added the language of 34 CFR §300.512(b) to page 54 of its Procedural Safeguards policies and procedures, it is unclear whether Missouri can through its Procedural Safeguards document modify the standards set forth in Missouri’s APA.

We take no position on what other Missouri statute might be considered analogous to the appeal of a due process hearing under the IDEA. Rather, we are requiring that you conform your time period to the holding of the Eighth Circuit that a 30-day limit for filing a civil action in court under the IDEA is too short.

Thus, please provide to us by no later than close of business June 27, 2002:

- (1) confirmation that (a) Missouri will either revise or delete its 30-day limit from its Part B eligibility documents and (b) p. 54 of the revised Procedural Safeguards document which contains the language of §615 of the IDEA and 34 CFR §300.512(b) will be followed as a matter of Missouri law by courts over Subsections 2, 4, and 5 of Missouri’s APA at RSMo. 536;
- (2) the timeline by which (1)(a) above will be accomplished no later than June 30, 2003; and
- (3) the methods Missouri will use to provide notice of its 30-day time limit change and judicial review to school districts and parents.

Kindly fax a courtesy copy of your response to Dr. Joleta Reynolds at 202-260-0416. If you have any questions, please contact Dr. Reynolds at 202-205-5507.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Lee". The signature is written in a cursive, flowing style.

Stephanie Lee,
Director,
Office of Special Education Programs