



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

JUN 4, 2002

Dr. Norena A. Hale
Director, Division of Special Education
Minnesota Department of Children, Families
and Learning
1500 Highway 36 West
Roseville, Minnesota 55113-4266

Dear Dr. Hale:

Minnesota's 30-day limit for State court review of IDEA claims appears to be inconsistent with applicable law of the U.S. Court of Appeals for the Eighth Circuit. Minnesota submitted a 30-day time limit for filing a court action as part of its eligibility documents for funding under Part B of the Individuals with Disabilities Education Act (IDEA). Specifically, Minnesota's policies and procedures on file with the Secretary of Education provide that "State judicial review must be in accordance with chapter 14." Minn. Stat. 125A.09, subd. 10 and Minnesota's Due Process/Parent Involvement Manual, page 8-22. Under Minnesota Statute Chapter 14, "[a] petition ... for judicial review ... must be filed ... not more than 30 days after the party receives the final decision and order of the agency." Minn. Stat. §14.63. Thus, under current Minnesota law, parties who wish to file an IDEA action in court are subject to a 30-day time limit.

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."

"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 of 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

Page 2 - Dr. Norena A. Hale

time to prepare a federal lawsuit, and account for the time constraints faced by parents of disabled children.” 220 F.3d at 856.

If you believe that *Birmingham* Eighth Circuit decision is not applicable to Minnesota law, please provide for our review a detailed explanation no later than 10 days from the date of this letter. Otherwise, please revise the following documents and resubmit them to OSEP for approval. Specifically, delete from Minn. Stat. 125A.09, subd. 10 and Minnesota’s Due Process/Parent Involvement Manual, page 8-22 any references to Minn. Chapter 14 and further delete from any other Minnesota Part B eligibility documents any requirement that would impose a 30-day limit on filing a civil action under the IDEA. Kindly also confirm in writing to OSEP the methods that Minnesota will use to provide notice of the change in the time limit 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 black ink that reads "Stephanie S. Lee". The signature is written in a cursive style with a large, prominent 'S' at the beginning.

Stephanie S. Lee
Director
Office of Special Education Programs