

OVERVIEW OF RECENTLY RELEASED OSEP GUIDANCE

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Reminder

- ▶ *This presentation provides general information and does not represent a complete recitation of the applicable law and policy in these areas. It does not address specific issues of compliance because determinations of compliance depend on specific facts and are made on a case-by-case basis. The language used in these slides is approved for the purposes of this presentation only and should not be used for other purposes.*

Overview of Presentation

- ▶ Update on OSEP Policy Letters
- ▶ Letter to Zirkel
- ▶ Questions Answered in Letter to Zirkel
- ▶ Takeaway from each Question
- ▶ Discipline Guidance
- ▶ Final Questions

Where Can I Find Policy Guidance?

- <https://sites.ed.gov/idea/policy-letters-policy-support-documents/>

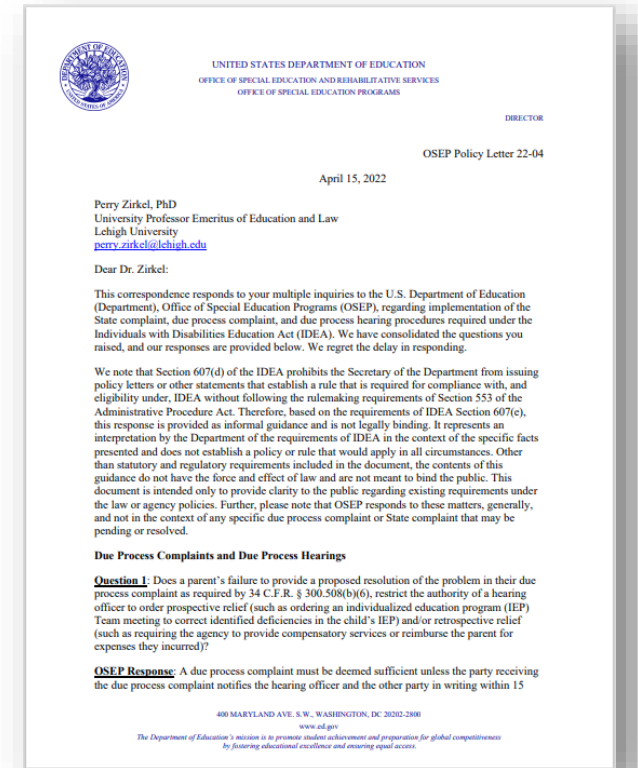


The screenshot shows the IDEA website's "Policy Letters and Policy Support Documents" page. The header features the IDEA logo (Individuals with Disabilities Education Act) and a search bar. A navigation menu includes Home, About, Law and Policy, Reports, Grants and Funding, Resources, and News and Media. The main content area is titled "Policy Letters and Policy Support Documents" and includes a breadcrumb trail: Home » Policy Letters and Policy Support Documents. The text explains that the U.S. Department of Education's Office of Special Education Programs (OSEP) issues written guidance to support the implementation of the IDEA. A sub-section titled "Policy Letters" states that OSEP's policy letters provide written guidance and clarification regarding implementation of the IDEA, typically issued in response to specific questions raised by parents, educators, and other interested parties. On the right side, there is a vertical list of links: U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Office of Special Education Programs (OSEP), OSERS Blog, and IDEA by State.

POLICY LETTER 22-04: April 15, 2022 to Zirkel

Addresses requirements related to IDEA's due process and State complaint procedures including:

- Certain required content for a due process complaint
- Due process hearing timeliness, including expedited due process hearings
- Authority of hearing officers to order certain remedies
- Authority of hearing officers to issue “summary judgment” on an IDEA due process complaint
- Consideration of State guidance and applicable case law in the SEA's resolution of an IDEA State complaint



Is the Information Applicable to Part C?

- Parts of the letter apply to **both** Part B and Part C State administration of the IDEA's due process and State complaint procedures.
- Some parts of the letter will **only** apply to Part C if the State has **adopted** Part B due process hearing procedures.

Question 1

Does a parent's failure to provide a proposed resolution of the problem in their due process complaint as required by 34 C.F.R. § 300.508(b)(6), restrict the authority of a hearing officer to order prospective relief (such as ordering an individualized education program (IEP) Team meeting to correct identified deficiencies in the child's IEP) and/or retrospective relief (such as requiring the agency to provide compensatory services or reimburse the parent for expenses they incurred)?

IDEA Regulatory Citations Question 1

34 C.F.R. § 300.508(b)(6)

- ▶ requires the filing party to propose a resolution to the complaint only to the extent known and available to the party at the time the complaint is filed

IDEA Section 615(c)(2)(D)

- ▶ the final decision regarding the sufficiency of a due process complaint is left to the discretion of the hearing officer

Key Takeaway from Question 1

A parent's failure to propose a resolution to the problem in their due process complaint “**should not** be read to create a conflict with, or limitation upon, an impartial hearing officer's authority and ability to formulate an appropriate equitable remedy.”

Question 1 Application to IDEA Part C Programs

Part C Program
Implements Part C
Due Process
Procedures

NO- The IDEA is silent on required content of due process complaints filed in States that follow Part C procedures.

Part C Program
has Adopted Part
B Due Process
Procedures

YES- The requirements for filing a due process complaint in States that have adopted Part B procedures are applicable. 34 C.F.R. § 303.441

Question 2

What is the outer limit for the number of calendar days for an expedited hearing from the date of filing to the date of the hearing officer's decision?

IDEA Regulatory Citations Question 2

34 C.F.R. § 300.11(c)

- ▶ School day means any day, including a partial day that children are in attendance at school for instructional purposes.
- ▶ School day has the same meaning for all children in school, including children with and without disabilities.

34 C.F.R § 300.532(c)(2)

- ▶ The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

Key Takeaway from Question 2

Because of the variability in school calendars, “the Department declines to speculate on the maximum number of calendar days between the date an expedited due process complaint is filed and the date the hearing officer must issue a decision.”

Key Takeaway Question 2

The timeline for issuing a final decision in a non-expedited due process hearing may be shorter or longer than 75 calendar days after receipt of the due process complaint. Thus, it is not appropriate for the Department “to speculate on the maximum number of calendar days in which a final decision must be issued in a non-expedited due process hearing.”

Question 2 Application to IDEA Part C Programs

Part C Program Implements Part C Due Process Procedures

NO- The required processes and timelines are different for States that follow Part C due process procedures.

Part C Program has Adopted Part B Due Process Procedures

NO- With respect to the expedited hearing timelines as those relate to discipline.

YES- As to the information related to “non-expedited due process hearings” in Question 2.

Question 3

Some States engage in practices that dismiss a due process complaint and/or issue summary judgment on the matter without holding a hearing. Are such practices (other than when a hearing officer rules that a due process complaint is insufficient) violate the parties' right to a hearing under IDEA and/or arguably Fourteenth Amendment procedural due process rights?

IDEA Regulatory Citations Question 3

34 C.F.R. §§ 300.507 through 300.513

34 C.F.R. §§ 300.530 through 300.534

34 C.F.R. § 300.512(a)(2)

- ▶ Present evidence and confront, cross examine, and compel the attendance of witnesses

Key Takeaway Question 3

“To the extent summary proceedings in a hearing on a due process complaint – other than a sufficiency determination – limit, or conflict with either party’s rights, including the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, we believe such proceedings can be used only when both parties consent to use the summary process (e.g., cross-motions for summary judgment.)”

Question 3 Application to IDEA Part C Programs

Part C Program
Implements Part C
Due Process
Procedures

YES- The requirements in 34 C.F.R. § 303.436 related to the parties' hearing rights mirror those in IDEA Part B.

Part C Program
has Adopted Part
B Due Process
Procedures

YES- The requirements in 34 C.F.R. § 303.444 related to the parties' hearing rights mirror those in IDEA Part B.

Question 4 State Complaint Procedures

When resolving a State complaint filed under IDEA, must the State educational agency's (SEA's) written decision on alleged violations take into consideration consistency with (1) State guidance documents; and (2) applicable case law?

Specifically, do the requirements in 34 C.F.R. § 300.153(b)(1) extend to State guidance documents; and whether the requirements in 34 C.F.R. § 300.152(a)(5) include case law as applicable standards for any conclusions of law contained in State complaint decisions?

IDEA Regulatory Citations Question 4

34 C.F.R. § 300.152(a)(4)

- ▶ Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part

34 C.F.R. § 300.152(a)(5)

- ▶ Issue a written decision to the complainant that addresses each allegation in the complaint and contains
 - Findings of fact and conclusion
 - The reasons for the final decision

Key Takeaway Question 4

We interpret the term “guidance” to include restatements of the requirements of IDEA, its implementing regulations, and related State law, policies, and procedures; but also, to include interpretations and suggested or best practices and procedures.

One or more State guidance documents may be relevant if they are intended to address the IDEA requirements at issue, or a State-imposed mandate needed to implement that IDEA requirement.

The SEA also should ensure that it makes clear the purpose of any guidance document that it issues, including any mandates related to proper implementation of Part B of IDEA.

Key Takeaway Question 4 Continued

The IDEA regulations do not specifically address whether and to what extent case law must be reviewed and considered as part of a SEA's resolution of a State complaint. However, there may be times when the SEA **must** consider a public agency's compliance with a binding court ruling or consent decree.

Question 4 Application to IDEA Part C Programs

Part C Program
Implements Part C
Due Process
Procedures

YES- The requirements in 34 C.F.R. § 303.433 mirror those in IDEA Part B.

Part C Program
has Adopted Part
B Due Process
Procedures

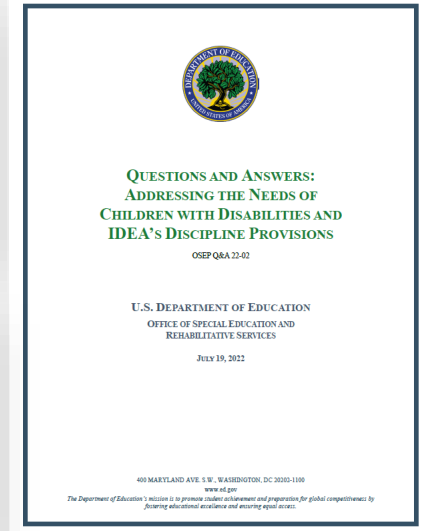
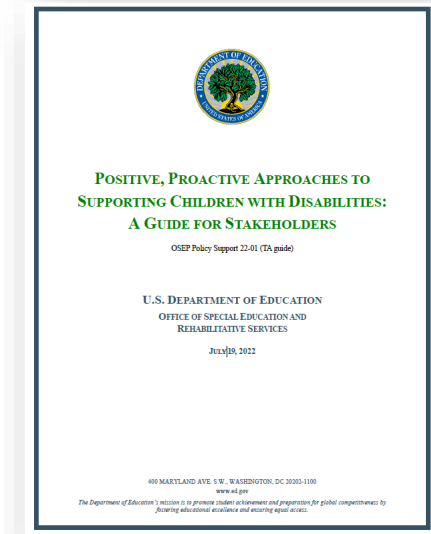
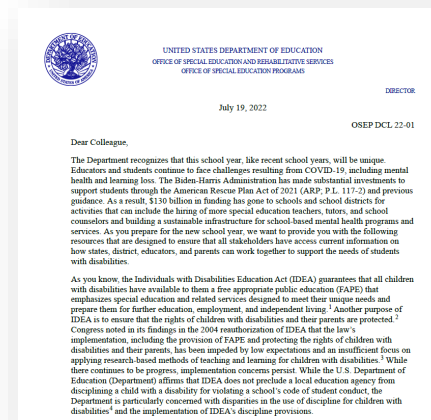
YES- The requirements in 34 C.F.R. § 303.433 mirror those in IDEA Part B

OSEP Discipline Guidance and Dispute Resolution

- ▶ **NEW!** Guidance to Help Schools Support Students with Disabilities and Avoid Disparities In the Use of Discipline
- ▶ Released July 19, 2022
- ▶ Clarifies existing IDEA discipline requirements
- ▶ Section K: Resolving Disagreements

OSEP Discipline Guidance

- [OSEP Dear Colleague Letter on Implementation of IDEA Discipline Provisions](#)
- [Questions and Answers Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions](#)
 - Section K: Resolving Disagreements
- [Positive, Proactive Approaches to Supporting the Needs of Children with Disabilities: A Guide for Stakeholders](#)



Resolving Disagreements: Discipline

▶ Section K: Resolving Disagreements

- A parent may appeal through an expedited due process hearing any discipline-related decision regarding their child's placement or a determination that their child's behavior was not a manifestation of the child's disability. (K-1)
- An LEA may challenge the requirement to maintain the current placement of a child with a disability who has violated the schools code of student conduct if the LEA believes that maintaining the current placement is substantially likely to result in injury to the child or others. (K-2)
- Other issues addressed: use of State complaint procedures and mediation (K-3, K-4), exhausting administrative remedies under IDEA before filing a civil lawsuit in Federal or State court (K-5), authority of hearing officers to order remedies in an expedited due process complaint (K-6)

Implementation Considerations

- ▶ How often is the dispute resolution system examined and evaluated to determine consistency with the IDEA?
- ▶ How often is the dispute resolution system examined and evaluated for effectiveness?
- ▶ Is there a process for ensuring hearing officers are aware of recently released guidance from the State or OSEP?
- ▶ Is there a mechanism for tracking timelines for State Complaints and due process hearings?
- ▶ Is there an expectation or process for reviewing due process hearing decisions?
- ▶ Are there internal or external processes or procedures that provide barriers for timely resolution of disputes?
- ▶ Is there a process for ensuring implementation of State complaint and due process hearing decisions?

Questions?



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