

SWEET | STEVENS | KATZ | WILLIAMS

Lawyers for education.

CIRCUMSTANCES WARRANTING EXPEDITED DUE PROCESS HEARINGS UNDER THE IDEA

School districts and parents often send in due process hearing requests asking that the hearing be “expedited” because they want it to take place as soon as possible. The Individuals with Disabilities Education Act (IDEA), however, provides only limited circumstances under which a school district or parent may request an expedited hearing. Specifically, the 2004 amendments to the IDEA (IDEA '04) continue to allow for expedited due process hearing in relation to discipline procedures and extended school year (ESY) programming.

A school district may request an expedited due process hearing, involving discipline procedures, if the district is seeking a change of the student’s current placement where the District believes maintaining the student’s current educational placement is substantially likely to result in injury to the child or to others. At the expedited hearing, a hearing officer will determine whether the district has shown that maintaining the student’s current placement is substantially likely to result in injury to the student or others and whether the proposed interim alternative setting is appropriate. 20 U.S.C §1415(k)(2)(A).

In the alternative, parents may request an expedited due process hearing in two instances, both involving discipline procedures. First, parents may request an expedited hearing if they disagree with the IEP team’s determination that their child’s behavior was not a manifestation of a child’s disability. Thus, if parents request a hearing challenging a manifestation determination, the hearing must be expedited. Parents also may request an expedited hearing when they are challenging any proposed disciplinary change in placement.

Unlike the 1997 amendments, IDEA '04 provides specific timelines for expedited due process hearing involving disciplinary actions. Specifically, the an expedited due process hearing must occur within 20 days of the request, with a resolution meeting to take place within 7 days, and a hearing officer’s decision issued within 10 after the hearing. 20 U.S.C. §1415(k)(4)(A).

In addressing ESY programming, all such determinations must be made in a timely manner and in accordance with state and federal regulations. If the parents disagree with the IEP team’s ESY recommendation, the parents must be afforded an expedited due process hearing. *Armstrong v. Kline*, 476 F. Supp. 583 (E.D. Pa. 1979). While specific timelines for expedited due process hearing involving ESY issues are not specified in IDEA '04, in Pennsylvania, hearing officers with guidance from the Office of Dispute Resolution apply the same timelines as with expedited disciplinary hearings.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.