



Office of the



State Superintendent of Education

NOTICE OF CHANGES TO THE STANDARD OPERATING PROCEDURES

Pursuant to Section 54 of the Blackman/Jones Consent Decree, the Office of the State Superintendent of Education (OSSE) is hereby providing notice of changes to the Student Hearing Office Standard Operating Procedures Manual (SOP). OSSE has provided notice of these changes to the attorneys for the Blackman/Jones plaintiffs' class, as required by the Consent Decree.

By letter dated February 6, 2009, the United States Department of Education, Office of Special Education Programs (OSEP) notified OSSE that the reconsideration process set forth in Section 1005 of the SOP was inconsistent with the Individuals with Disabilities Education Act (IDEA: 20 U.S.C. §1415(i)(1)(A); 34 C.F.R. §300.514(a)) in that a decision made in a hearing is final except that a party may appeal the decision by filing a civil action in a state court of competent jurisdiction or in a district court of the United States. OSEP directed OSSE to revise this Section of the SOP to ensure consistency with the IDEA.

OSSE commenced a review of OSEP's request that Section 1005 be revised and, pending the review, instructed all Hearing Officers by memorandum dated March 20, 2009 to deny Motions for Reconsideration consistent with the OSEP directive. By letter dated October 20, 2010, OSEP informed OSSE that it maintains the position that once a final decision has been issued, no motion for reconsideration of the findings of fact and conclusions of law is permissible under the IDEA. This prohibition, however, does not prevent a party from seeking administrative correction of typographical errors in a final hearing officer decision.

EFFECTIVE DATE

The SOP expressly states that if there is any conflict between the SOP and the IDEA, the provisions in the IDEA will govern. Therefore, based on the OSEP directive, the reconsideration provision in the SOP was inconsistent with the IDEA and motions for reconsideration must be denied. The repeal of Section 1005 of the SOP effectuates the memorandum previously issued by OSSE to all Hearing Officers and is effective upon the date of this Notice.

CHANGES

~~§ 1005 RECONSIDERATION OF HEARING DECISION~~

~~Reconsideration of a hearing decision may be granted on the timely filing of a motion for reconsideration.~~

~~Any motion for reconsideration must be filed within ten (10) days of the date of the Order is issued. The hearing officer shall afford the opposing party or parties an opportunity to respond prior to granting the motion. No response to a motion for~~

~~reconsideration is required unless ordered by the Hearing Officer, which order shall specify the deadline for filing of a response.~~

~~Unless otherwise ordered by the hearing officer, the filing of a motion for reconsideration shall not stay the effectiveness of the order. The filing of a motion for reconsideration on a final order, if such motion is timely filed, the order shall not be deemed final for purposes of judicial review until the motion is ruled upon by the Hearing Officer or is denied by operation of law.~~

~~A motion for reconsideration shall be deemed denied by operation of law if the Hearing Officer has not ruled upon the motion within thirty (30) days of the date that the motion is filed with the Student Hearing Office.~~

~~If a motion for reconsideration is granted, the Hearing Officer may reopen the record in the matter, amend the findings of fact and conclusions of law, correct errors or mistakes, or make new findings of fact, conclusions of law, and issue a new order.~~