



LINDA LINGLE
Governor

JAMES R. AIONA, JR.
Lt. Governor

LAWRENCE M. REIFURTH
Director

RONALD BOYER
Deputy Director

RODNEY A. MAILE
Senior Hearings Officer

SHERYL LEE A. NAGATA
Hearings Officer

CRAIG H. UYEHARA
Hearings Officer

HAUNANI H. ALM
Hearings Officer

RICHARD A. YOUNG
Hearings Officer

**OFFICE OF ADMINISTRATIVE
HEARINGS**

335 Merchant Street
Suite 100
Honolulu, Hawai'i 96813

Tel.: 586-2828
Fax: 586-3097

MAILING ADDRESS:

**OFFICE OF ADMINISTRATIVE
HEARINGS**

P.O. Box 541
Honolulu, Hawai'i 96809

E-MAIL ADDRESSES:
oah@dcca.hawaii.gov

**OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS
STATE OF HAWAII**

POLICY TITLE: OAH Policy Regarding Scheduling of Hearings and Requests for Extensions of the 45-Day Period to Complete the Due Process Hearings

DATE ISSUED: October 1, 2008

EFFECTIVE DATE: October 15, 2008

Introduction

This policy provides guidance regarding the scheduling of due process hearings and the granting of extensions of the 45-day period to complete Due Process hearings under the provisions of Title 34, Code of Federal Regulations ("CRF") §300.515(a), as implementing the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"). This policy supersedes all previous policies on these matters issued by the Office of Administrative Hearings ("OAH"), Department of Commerce and Consumer Affairs, State of Hawai'i.

Background

The IDEA reflects a clear focus on resolving all cases as expeditiously as possible. Moreover, the provisions of 34 CRF §300.515(a) specifically state that, "The public agency must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in §300.510(c), a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties."

A. Scheduling of Hearings

With the passage of Act 179, effective July 1, 2008, Hawai'i Revised Statutes §302A-443 currently provides the following timeframes for filing requests for impartial hearing:

§302A-443 Administrative hearing procedures and subpoena power relating to the education of children with a disability. (a) An impartial hearing may be requested by any parent or guardian of a child with a disability, or by the department, on any matter relating to the identification, evaluation, program, or placement of a child with a disability; provided that the hearing is requested:

- (1) Within two years of the date the parent, guardian, or department knew or should have known about the alleged action that formed the basis of the request for a hearing; and
- (2) Notwithstanding paragraph (1), within **one hundred and eighty calendar** days of a unilateral special education placement, where the request is for reimbursement of the costs of the placement. [Emphasis added]

In order to fully comply with the requirements of 34 CFR 300.515(a), and in order to protect the rights of children with disabilities and their parents under the IDEA, commencing on October 15, 2008, all due process complaints (requests for impartial due process hearings) will be scheduled for hearing so that the hearing will be completed, and a written decision issued, within 45 days after the expiration of the 30-day resolution period provided under 34 CFR §300.510(b).

Accordingly, any person filing a due process complaint should fully expect that the due process hearing will be convened and completed within 45 to 65 days from the **date the request for hearing is filed**, and that an extension of the 45-day period will only be granted in exceptionally compelling situations.

The only exception to this policy is in regards to due process complaints that must be filed prior to the expiration of the applicable statute of limitations as provided by HRS §302A-443. In cases where the applicable statute of limitations would act as a bar to the pursuit of the due process complaint, any requests or motions to reschedule the hearing and to concomitantly extend the 45-day period, would be considered on a case-by-case basis.

B. Requests for Extensions

The provisions of 34 CFR §300.515(c) state, "A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party." Consequently, the bases for any request for an extension of the 45-day period must be balanced against the needs of the student to have the case determined as expeditiously as possible.

In order to comply with the requirements of 34 CFR 300.515(a) and (c), and Hawai'i Administrative Rules ("HAR") §8-56-77(a) and (b), any party requesting an initial extension of the 45-day period specified by 34 CFR 300.515(a), and HAR §8-56-77(a), must do so in writing, and must specify the reasons for the requested extension.

Furthermore, **every** request for an extension must either: 1) include specific dates stipulated by the parties for the completion of the hearing, **or** 2) be accompanied by a Motion to Reschedule Hearing. Requests for extensions that do not include dates for the rescheduled hearing to be completed will not be approved until after a hearing on the Motion to Reschedule Hearing is decided. The Office of Administrative Hearings ("OAH") has developed forms to assist the parties in this regard. It should be emphasized that "the agreement of the parties," or unilateral scheduling conflicts, do not in and of themselves constitute "good cause" upon which to grant a request for extensions.

Requests for extensions in order to allow the parties to complete settlement discussions are not exempted from the requirement of having to provide specific dates stipulated by the parties for the completion of the hearing. In the event an extension is granted, if the settlement process is not finalized five (5) business days prior to the stipulated hearing dates, the parties may be required to proceed to hearing as stipulated.

C. Subsequent Requests for Extensions

Requests for subsequent extensions of the 45-day period will be critically scrutinized by all OAH hearings officers. Parties should assume that subsequent extensions will not be granted based upon the same reasons that the initial request to extend the 45-day period was granted.

Subsequent extensions of the 45-day period will only be granted under exceptional circumstances that warrant multiple extensions.

Consequently, parties should be circumspect in selecting the time period for their request for an extension of the 45-day period, in order to provide a sufficient amount of time to complete the matters that need to be accomplished, without having to request a subsequent extension of the 45-day period.

RODNEY A. MAILE
Senior Hearings Officer