



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT 25 2007

Robert Jacobs, J.D., Psy.D.
Education Team Manager
Advocacy Center for Persons with Disabilities, Inc.
1000 N. Ashley Drive, Suite 640
Tampa, FL 33602

Dear Dr. Jacobs:

This letter is in response to your electronic mail (email) correspondence to Elizabeth Newton, dated September 17, 2007. You request clarification pertaining to State educational agency (SEA) responsibilities pursuant to 34 CFR §300.514(b). You state that, in Florida, due process hearings are conducted by the Division of Administrative Hearings (DOAH), yet there is no right of appeal to the SEA. You ask, "Under what circumstances is it permissible for an SEA to have another agency conduct the hearings but not provide appeals?"

The SEA, or the public agency directly responsible for the education of the child, as determined by State statute, must conduct the due process hearing required by 34 CFR §300.511. 34 CFR §300.511(b). In carrying out this responsibility, the SEA may retain impartial hearing officers under contract to conduct hearings, provided that the hearing officers meet the requirements of 34 CFR §300.511(c). Thus, although the DOAH holds the due process hearings, it does so at the request of, and under contract with, the Florida Department of Education (FLDE). In fact, it is our office's understanding that the DOAH submits a recommended order to the FLDE, and the FLDE must decide whether to proceed with a final order. Therefore, the FLDE is considered the agency that conducts the due process hearings, and is responsible for ensuring that all requirements related to due process hearings are met.

Moreover, 34 CFR §300.514(b)(1) states that, if the hearing required by 34 CFR §300.511 is conducted by a **public agency other than the SEA**, any party aggrieved by the findings and decision in the hearing may appeal to the SEA (*emphasis added*). As noted above, the FLDE is considered the public agency that is conducting due process hearings. Indeed, the DOAH does not meet the definition of public agency, as that term is used in IDEA. A public agency is defined as "the SEA, LEAs, ESAs, nonprofit charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities." 34 CFR §300.33.

Since the FLDE is the public agency that is conducting the due process hearings, and the DOAH does not meet the definition of a "public agency" for these purposes, there is no appeal from the decision of the DOAH to the SEA. Rather, appeals are governed by 34 CFR §300.516(a), which provides that any party aggrieved by the findings and decisions may bring an action in any State

court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

We hope this information is helpful. If you have additional questions, please do not hesitate to contact Sheila Friedman, the OSEP State contact for Florida, at 202-245-7349.

Sincerely,

A handwritten signature in cursive script that reads "Patricia J. Guard".

Patricia J. Guard
Acting Director
Office of Special Education
Programs

cc: Bambi Lockman