



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL - 1 2008

Mr. Jonathan A. Zimring, Esq.  
Zimring and Associates, LLC  
Suite K-1, 114 New Street  
Decatur, Georgia 30030

Dear Mr. Zimring:

This letter is in response to your January 21, 2008 letter to Ms. Melanie Byrd, of my staff, regarding the complaint resolution provided to you by the Georgia Department of Education (GaDOE) by letter dated December 21, 2007. The issues addressed in GaDOE's December 21, 2007 complaint resolution were: (1) the duty of the State Advisory Panel to advise GaDOE on rules and regulations (34 CFR §300.169); and (2) the duty of GaDOE to transmit the findings and decisions of due process hearings to the State Advisory Panel (34 CFR §300.513). In your letter, you express your concern about the nature and accuracy of GaDOE's investigation, object that GaDOE is permitted to investigate its own compliance with the requirements of Part B of the Individuals with Disabilities Education Act (IDEA), and inquire about an appeal or whether "OSEP [Office of Special Education Programs] will conduct an independent and fair investigation of Georgia violation of Federal law." As explained below, OSEP does not review a State's resolution of Part B State complaints.

In your January 21, 2008 letter, you allege that GaDOE failed to consider, in its December 21, 2007 complaint resolution, the supplemental allegations made in your letter of November 1, 2007 written to Patricia J. Guard. In that letter, you allege that rules promulgated by GaDOE in June and September of 2007 are invalid and unenforceable because GaDOE failed to obtain proper input from the State Advisory Panel on these proposed rules. You also assert that GaDOE, the entity that you allege has violated Part B, has no authority to investigate its own alleged noncompliance with Part B. Under 34 CFR §§300.151 through 300.153, States are responsible for adopting and implementing procedures for resolving any complaint that meets the requirements of 34 CFR §300.153, alleging that a public agency has violated a requirement of Part B of the Act or the Part B regulations. States are responsible for resolving any complaint, including complaints containing allegations of a statewide, systemic nature, regardless of whether the complaint alleges that the State itself or one of the public agencies in the State has violated a requirement of Part B of the Act or the Part B regulations. This responsibility remains fully applicable even when a complaint contains allegations that require the State to investigate issues regarding its own noncompliance with Part B. A State's responsibility to resolve State complaints is derived from the requirement that a State must exercise general supervision over all educational programs for children with disabilities administered in the State and must ensure

that all such programs meet the education standards of the State educational agency (SEA) and Part B requirements. 34 CFR §300.149 and 20 U.S.C. 1412(a)(11). Accordingly, consistent with this general supervision responsibility, it is OSEP's practice to refer correspondence received from organizations and individuals containing allegations regarding a State's or public agency's noncompliance with Part B to the relevant SEA for resolution as a Part B State complaint. In such instances, the SEA is responsible for resolving the allegations of noncompliance, including allegations that the SEA has violated a requirement of Part B of the Act or the Part B regulations, in accordance with 34 CFR §§300.151 through 300.153.

Under a prior regulation at 34 CFR §300.661(d), a party to a complaint had the right to request that the Secretary of Education review the State's final decision on the complaint. The prior regulation providing for Secretarial review was removed as of May 11, 1999. Even when Secretarial review was in effect, most requests were denied because they raised factual matters in individual cases that were unsuitable for the Department to evaluate. The removal of Secretarial review was intended to strengthen SEAs' responsibilities for their complaint resolution systems. Therefore, we suggest that you communicate the concerns you raised with us with GaDOE directly. You may wish to file a complaint with GaDOE pursuant to 34 CFR §§300.151 through 300.153 and request that GaDOE address your concerns about the nature and accuracy of GaDOE's investigation of the substantive allegations in your complaint, as well as the manner in which GaDOE conducted its investigation and GaDOE's alleged failure to address the supplemental allegations set out in your November 1, 2007 letter to Patricia Guard, which you also communicated to GaDOE.

You also raise a number of procedural concerns regarding the nature of GaDOE's December 21, 2007 complaint resolution. Specifically, you allege that GaDOE did not handle your complaint in a timely manner after OSEP referred the complaint to GaDOE for resolution, as required by Part B. Under 34 CFR §300.152(a) and (b)(1), a State's procedures must provide for a 60-day time limit after the complaint is filed, except that the procedures must permit an extension of the time limit only if (i) exceptional circumstances exist with respect to a particular complaint or (ii) the parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to 34 CFR §300.152(a)(3)(ii), or to engage in other alternative means of dispute resolution, if available in the State. The Department's longstanding position is that the 60-day timeline for complaint resolution begins on the date that the complaint is received. This is a factual matter that we are unable to determine. From the limited information provided to us, it appears that GaDOE's resolution of the allegations set out in your letter of September 13, 2007 was completed in a timely manner, but if you believe otherwise, we suggest you request that GaDOE clarify the date on which it received OSEP's letter requesting that it handle your correspondence of September 13, 2007 as a State complaint. As you may know, States are required to report their compliance with the timely complaint resolution requirements in their State Performance Plans and Annual Performance Reports under Indicator 16. In its Federal fiscal Year (FFY) 2006 APR, GaDOE reported 100% compliance for this indicator. GaDOE will be reporting to OSEP on its compliance with the timely complaint resolution requirements during FFY 2007 (July 1, 2007 through June 30, 2008) in its FFY 2007 APR, due to OSEP on February 1, 2009.

You also express concern that GaDOE failed to address its December 21, 2007 letter of complaint resolution to you directly, but instead addressed this letter to OSEP with copy to you. We agree that 34 CFR §300.152(a)(5) requires the SEA to issue a written decision to the complainant that addresses each allegation in the complaint. GaDOE apparently misunderstood that once OSEP referred the matter for action consistent with 34 CFR §§300.151 through 300.153, it was to send all further communications regarding the complaint resolution directly to you. However, you were copied on the GaDOE complaint resolution letter and were informed of its contents. Therefore, we regard this as a technical matter that does not violate Part B's complaint procedures.

Another issue you raise in your January 21, 2008 letter to OSEP is that you asked GaDOE to engage in voluntary mediation, consistent with 34 CFR §300.506 and §300.152(a)(3)(ii), by letter of November 6, 2007, written to Ms. Nancy O'Hara of GaDOE. The Part B regulation at 34 CFR §300.152(b)(1)(ii) provides that the 60-day timeline for complaint resolution can be extended if mediation or other alternative means of dispute resolution are available to the individual or organization under State procedures. This Part B regulation clarifies that GaDOE may offer an individual or organization that has filed a State complaint the opportunity to engage in mediation with the public agency involved in the complaint, as an alternative to complaint resolution, but GaDOE is under no obligation to do so. States are required to provide an opportunity to engage in mediation with the public agency involved in the complaint only when a parent files a State complaint pursuant to 34 CFR §§300.151 through 300.153.

You also express your concern that GaDOE failed to conduct an independent on-site investigation of the allegations in your September 13, 2007 letter to OSEP. Under 34 CFR §300.152(a)(1), a State must include in its complaint procedures a time limit of 60 days after a complaint is filed to carry out an independent, on-site investigation, if the SEA determines that an investigation is necessary. Thus, the decision whether to conduct an on-site investigation is left to the State's discretion. Further, there is no requirement that a State contract with an independent entity to conduct an investigation when a State deems it necessary to conduct an investigation, even if the State complaint involves its own alleged noncompliance with a requirement of Part B. So long as States adhere to the State complaint procedures set out in the Part B regulation, States have discretion in the manner in which they conduct complaint resolutions.

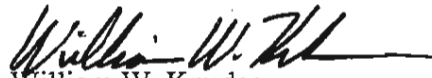
Your remaining allegations concern GaDOE's alleged failure to properly implement its State complaint procedures, consistent with 34 CFR §300.152 and Georgia law, in its resolution of your complaint. You have the right to file a complaint with GaDOE pursuant to 34 CFR §§300.151 through 300.153 and request that it resolve allegations concerning GaDOE's implementation of the Part B State complaint procedures. In your January 21, 2008 letter, you also assert that GaDOE failed to follow its own procedures, which are not explicitly required by Federal law, in its resolution of your complaint. If you believe that GaDOE failed to properly implement its State procedures for resolving State complaints in this regard, we suggest that you also raise these matters directly with GaDOE.

Page 4 - Mr. Jonathan A. Zimring, Esq.

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 that you find this explanation helpful.

Sincerely,



William W. Knudsen  
Acting Director  
Office of Special Education  
Programs

cc: Ms. Nancy O'Hara  
Ms. Kim Hartsell