



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL - 9 - 2008

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]:

This letter is in response to your letter dated February 15, 2008 to Dr. Deborah J. Morrow of my staff. You raised concerns with regard to the [REDACTED] Department of Education (DOE) and its investigation of your complaint. Specifically, you asked a series of questions regarding the relationship between the DOE and the individual with whom the DOE contracted to investigate your complaint against the DOE. You also questioned why the Office of Special Education Programs (OSEP) did not select an independent contractor to investigate your complaint against the DOE, and raised concerns about the time limit for resolving State complaints.

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. A State's responsibility to resolve State complaints is derived from the requirement that a State is responsible for ensuring that the requirements of Part B of the Individuals with Disabilities Education Act (IDEA) and the Part B regulations are carried out. 34 CFR §300.149(a)(1) and 20 U.S.C. 1412(a)(11). States are responsible for resolving any complaint, 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. The OSEP routinely refers complaints regarding provisions of the IDEA to the relevant State educational agency (SEA), as we did in the case of your complaint. As we understand it, the DOE elected to contract with a third party to handle the investigation of your complaint. Part B does not require States to engage an independent contractor to conduct an investigation when a complaint contains allegations against the State, although there is nothing in Part B that prohibits a State from doing so. Prior to the IDEA Amendments of 1997, the Part B regulations, at 34 CFR §300.661(d), allowed a party to a complaint the right to request that the Secretary of Education review the SEA's final decision on that complaint. That provision was removed in the Part B regulations as of May 11, 1999 and OSEP no longer reviews an SEA's final complaint decisions. Accordingly, OSEP does not have the information you request concerning the details of the contractual relationship between the DOE and the individual who investigated your complaint.

With respect to your concerns related to the time limit for resolving your complaint, as a matter of law, an SEA has 60 days after a complaint is filed under 34 CFR §300.153 to issue a written

OSEP received a letter from [REDACTED] and you dated March 12, 2008, in which you expressed concerns related to the handling by the [REDACTED] Department of Education and by the Office of Special Education Programs of complaints filed with DOE. Since that letter did not request a response, OSEP is only responding to your letter dated February 15, 2008.

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decision, unless the SEA has granted an extension pursuant to 34 CFR §300.152(b). 34 CFR §300.152(a). The Department's longstanding position is that the 60-day timeline for complaint resolution begins on the date that the complaint is received by the State. A State's complaint procedures must permit an extension of the 60-day time limit if exceptional circumstances exist with respect to a particular complaint or 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 or to engage in other alternative means of dispute resolution, if available in the State. 34 CFR §300.152(b)(1). (Whether mediation is available in [REDACTED] to resolve a State complaint between the SEA and a party other than a parent is controlled by State procedures.) While OSEP does not review the [REDACTED] DOE's final complaint decisions, OSEP is responsible for ensuring that States appropriately implement the requirements of 34 CFR §§300.151-300.153. Based on the information provided by the [REDACTED] DOE to OSEP, we believe that the [REDACTED] DOE issued a proper extension of the time limit pursuant to 34 CFR §300.152(b) and met the requirements of 34 CFR §§300.151-300.153 in the case of your complaint.

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 addresses your concerns.

Sincerely,

William Knudsen
Acting Director
Office of Special Education Programs

cc: [REDACTED]
[REDACTED]