



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

DEC 12 2007

Mr. David C. Shaw
Attorney at Law
34 Jerome Avenue, Suite 210
Bloomfield, Connecticut 06002-2463

Dear Mr. Shaw:

This is in response to your letter sent on behalf of your clients requesting that the Office of Special Education Programs (OSEP) provide an opinion on the validity of the policies and practices of the Connecticut State Department of Education (CSDE) as they pertain to oversight of special education programs under the Individuals with Disabilities Education Act (IDEA). We apologize for the delay in this response. In your letter, you inquire about two issues: (1) whether the CSDE may change its practice and policy of allowing hearing officers to "review the appropriateness and order the implementation of settlement agreements;" and (2) whether CSDE may refuse to investigate and resolve complaints alleging that settlement agreements have not been implemented unless the terms of the agreement "are incorporated into the child's IEP [Individualized Education Program]."

You explain in your letter that your clients negotiated settlement agreements with the Stamford Board of Education in which they agreed to a process to determine regular class placement with appropriate supplementary aids and supports for your clients' children. Subsequently, your clients filed a complaint with the CSDE pursuant to the State complaint procedures alleging that the Stamford Board of Education was not implementing the settlement agreements reached by the parties. You state the CSDE responded through three different letters that it would not investigate or enforce the settlement agreements negotiated on behalf of your clients, but only provided two of those letters with your inquiry.

The IDEA¹ contemplates various means of resolving disputes with a local educational agency (LEA) relating to the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) -- primarily: (1) mediation, as set out at 34 CFR §300.506; (2) the impartial due process hearing system under 34 CFR §§300.507-300.517, that includes a new requirement for a pre-hearing resolution process at 34 CFR §300.510; and (3) the State complaint resolution system required in 34 CFR §§300.151-300.153. In general, mediation involves the parents and school officials voluntarily meeting with an impartial third-party mediator to discuss and resolve any differences, including matters arising prior to the filing of a due process complaint. A written, signed mediation agreement is legally

¹Because, subsequent to your letter, the final Part B regulations were published on August 14, 2006, our answers to your questions are based on the final regulations.

binding and enforceable in any State court of competent jurisdiction or in a district court of the United States. 20 U.S.C. 1415(e)(2)(F); 34 CFR §300.506(b)(7). As noted above, the 2004 Amendments to the IDEA added a resolution process when the parents request a due process hearing, providing the parties an opportunity for a pre-hearing meeting to resolve the dispute and, like mediation, providing for a written, signed agreement that is legally binding and enforceable in any State court of competent jurisdiction or in a district court of the United States. 20 U.S.C. §1415(f)(1)(B); 34 CFR §300.510. Thirdly, as a part of its general supervisory responsibility, the State educational agency (SEA) must adopt and implement complaint resolution procedures consistent with the requirements of 34 CFR §§300.151-300.153. The State complaint procedures must be available for resolving any complaint that contains an allegation that a public agency has violated Part B and that meets the other requirements of 34 CFR §300.153.

You ask whether a State may change its practice of permitting hearing officers under Part B of the IDEA to review and approve settlement agreements and require hearing officers to automatically dismiss with prejudice, any hearing in which a settlement has been reported. Under 34 CFR §300.507, although the parties have a right to initiate a hearing on any matter described in 34 CFR §§300.503(a)(1) and (2), relating to the identification, evaluation or educational placement of a child with a disability or the provision of FAPE to the child, neither the Act nor the final regulations specifically address the authority of hearing officers to review or approve settlement agreements. Also, unlike settlement agreements reached through the mediation or resolution processes that provide for review in State or Federal court, the IDEA does not specifically address enforcement by hearing officers of settlement agreements reached by the parties. Therefore, a State may have uniform rules relating to a hearing officer's authority or lack of authority to review and/or enforce settlement agreements reached outside of the mediation or resolution processes contained in the Act. However, such rules must have general application and may not be limited to proceedings involving children with disabilities and their parents.

You also ask whether the State may refuse to consider a State complaint, filed under 34 CFR §§300.151-300.153, alleging a violation based on the public agency's failure to implement a settlement agreement. As noted above, under 34 CFR §300.153, a complaint must, among other things, contain a statement alleging that the LEA violated a requirement of Part B of the IDEA. Therefore, a failure to implement an IEP that is based on a settlement agreement would be the basis for a complaint allegation that an LEA is in violation of Part B. Settlement agreements may include an agreement by the parties on the special education and related services and/or the educational placement that would provide FAPE to the child. Settlement agreements also may include an agreement on the specific procedures required to reach a decision on the needed special education and related services and/or placement that would provide FAPE to the child. Therefore, to the extent that a State complaint alleges that the failure to provide the services or placement called for in a settlement agreement constitutes a denial of FAPE, the Department believes that the Part B regulations, at 34 CFR §§300.151-300.153, would require the State to investigate and resolve such complaints.

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.

I hope you find this explanation helpful. If you would like further assistance, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in cursive script that reads "Patricia J. Guard". The signature is written in dark ink on a light-colored background.

Patricia J. Guard
Acting Director
Office of Special Education
Programs

cc: Mr. Brian J. Cunnane, Acting Bureau Chief
Connecticut State Department of Education