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

April 15, 2015

Dear Colleague:

Improving results and achieving better outcomes for children with disabilities is an important goal for all of us. However, even where informal attempts to resolve differences are made, parents and public agencies may be unable to reach agreement on important matters when determining how to provide a free appropriate public education (FAPE) to children with disabilities. The Individuals with Disabilities Education Act (IDEA or the Act) and its implementing regulations[1] provide specific options for resolving disputes, which should be used in a manner consistent with our shared goals of providing FAPE to, and achieving better outcomes for, children with disabilities. It has come to our attention that some public agencies may be filing due process complaints concerning the same issue that is the subject of an ongoing State complaint resolution, ostensibly to delay the State complaint process and force parents to participate in, or ignore at considerable risk, due process complaints and hearings. Increased costs and a potentially more adversarial and lengthy dispute resolution process are not in the best interest of children with disabilities and their families. Therefore, the Office of Special Education and Rehabilitative Services in the U.S. Department of Education (Department) issues this letter to provide guidance that States, hearing officers, school districts, school staff, parents, and other stakeholders may find helpful in determining how to follow the IDEA dispute resolution procedures.

Requirements

The IDEA Part B regulations and *Questions and Answers on IDEA Part B Dispute Resolution Procedures,* revised July 2013 (OSEP Memo 13-08) (http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf) explain in detail the Part B dispute resolution procedures. We cite to these documents throughout this letter, as appropriate.

Due process complaint procedures

A parent or a public agency may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child. 34 CFR §300.507(a).[2] The parent or public agency is entitled to have an

[1] 20 U.S.C. 1400 et seq. (IDEA) and 34 CFR part 300 (Part B of IDEA regulations).

[2] A parent or a public agency may request a hearing to appeal a decision regarding a disciplinary matter, as described in 34 CFR §300.532(a). An impartial due process hearing on a disciplinary matter must be conducted on

opportunity for an impartial due process hearing. 34 CFR §300.511(a). Within 15 days of receiving notice of the parent's due process complaint, and prior to initiating a due process hearing, the public agency must convene a resolution meeting with the parent and the relevant member or members of the Individualized Education Program (IEP) Team to discuss the issues in the parent's due process complaint, and the facts that form the basis of the due process complaint, so that the public agency has the opportunity to resolve the dispute, unless the parent and the public agency agree in writing to waive the meeting or the parties agree to use mediation under 34 CFR §300.506. 34 CFR §300.510(a). If the public agency does not resolve the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur. 34 CFR §300.510(b)(1). Although there is no corresponding requirement for a resolution process when a public agency, rather than a parent, files a due process complaint (OSEP Memo 13-08, D-2), public agencies should strive to resolve disputes informally.

Under 34 CFR §300.510(b)(4), a public agency may request that a hearing officer dismiss a parent's due process complaint at the conclusion of the 30-day resolution period when the public agency has been unable to obtain the participation of the parent in a resolution meeting despite making reasonable efforts to do so and documenting those efforts. Under 34 CFR §300.510(b)(5), if a public agency fails to hold a resolution meeting within the required timelines or fails to participate in a resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. The appropriate party must seek the hearing officer's intervention to either dismiss the complaint or to initiate the hearing timeline, depending on the circumstances (OSEP Memo 13-08, D-13).

Under IDEA, a court, in its discretion, may award a parent of a child with a disability who is the prevailing party in any action or proceeding brought under section 615 of the IDEA reasonable attorney's fees. 34 CFR §300.517(a)(1)(i). While 34 CFR §300.517(c)(4) allows that the court may reduce the payment of attorney's fees under certain circumstances, the provision does not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act. 34 CFR §300.517(c)(5). Additionally, IDEA Part B funds may not be used to pay attorney's fees or costs of a party related to any action or proceeding under Section 615 of the Act or Subpart E of 34 CFR part 300. 34 CFR §300.517(b)(1).

Mediation process

Another important method for resolving disputes available under the IDEA is the mediation process described in 34 CFR §300.506. The mediation process, which must be voluntary, offers a less complex opportunity for parents and public agencies to resolve disputes about any matter under 34 CFR part 300, including matters arising prior to the filing of a due process complaint.

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an expedited basis, which means that the overall hearing timeline is shorter. For example, unless the parties agree in writing to waive the resolution meeting or to use mediation, the resolution meeting must occur within 7 days of receiving notice of the parent's due process complaint. 34 CFR §300.532(c). More information about expedited due process hearings is contained in Section E. of OSEP Memo 13-08.

34 CFR §300.506(a). This includes matters regarding the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to a child with a disability, and any other matters arising under 34 CFR part 300 that may not be the subject of a due process complaint (OSEP Memo 13-08, A-6).

State complaint procedures

States are also required to establish and implement their own State complaint procedures, separate from their due process procedures, for resolving any complaint that meets the requirements of 34 CFR §300.153. 34 CFR §300.151(a)(1). Any organization or individual, including one from another State, may file a signed written State complaint alleging that a public agency has violated a requirement of either Part B of the Act or the Part B regulations.[3] 34 CFR §300.151(a). If the State complaint otherwise meets the requirements in 34 CFR §300.153, a party may raise an issue in a *State complaint* even though it is also the subject of a *due process complaint*. However, if a *State complaint* is filed on an issue that is also the subject of a *due process hearing*, the State must set aside any part of the *State complaint* that is being addressed in the *due process hearing* until the conclusion of the hearing. 34 CFR §300.152(c). If the hearing officer dismisses the due process complaint or does not rule on the substance of the due process complaint, the State must resolve the issue using the 60-day time limit and procedures described in 34 CFR §300.152(a) and (b). 34 CFR §300.152(c)(1).

Analysis

As noted above, a State must have procedures for resolving any complaint alleging that a public agency has violated a requirement of Part B of the IDEA or the Part B regulations. A parent may file a State complaint challenging, for example, a public agency's eligibility determination or alleging a denial of FAPE by a public agency. While these same issues could be the subject of a due process complaint, it is the Department's long-standing position that a State may not refuse to resolve a parent's State complaint challenging a public agency's eligibility determination or a State complaint alleging a denial of FAPE through its complaint resolution procedures even if the State complaint concerns a matter that could also be the subject of a due process complaint. This is true even if the State believes that the parent should file a due process complaint against the local educational agency or that a due process hearing is a more appropriate mechanism to resolve such disputes (OSEP Memo 13-08, B-7).

If a complaint is received that is also the subject of a due process hearing, the State must set aside any part of the State complaint that is being addressed in the due process hearing until the

[3] Under 34 CFR §300.153, a State complaint must include a statement that a public agency has violated a requirement of Part B of the Act or the Part B regulations, the facts on which the statement is based, and the signature and contact information for the complainant. If the State complaint alleges a violation with respect to a specific child, the State complaint also must include the name and address of the residence of the child; the name of the school the child is attending; in the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending; a description of the problem of the child, including facts relating to the problem; and a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

hearing officer issues a final decision or dismisses the due process complaint. 34 CFR §300.152(c)(1). While a public agency has the right to file a due process complaint, we believe that in some situations, a public agency's filing of a due process complaint after a parent has filed a State complaint on the same issues may unreasonably deny a parent the right to use the State complaint process. We question why a public agency would seek a due process hearing when there is already an active State complaint on the same issue or issues and where other opportunities for dispute resolution are available, such as mediation or informal or alternative dispute resolution procedures. It appears that in some instances, public agencies may have filed due process complaints against parents in an effort to prevent the State complaint process from moving forward.

This type of action by a public agency increases the costs of dispute resolution for both parties and lengthens the time period for dispute resolution, including the time for resolving the State complaint. Furthermore, it may unreasonably limit parents' dispute resolution options, and force parents either to participate in a potentially more adversarial, lengthy, and costly due process complaint and hearing, or to fail to participate in the due process complaint and hearing and thereby risk the hearing official's ruling in favor of the public agency. Indeed, some parents may have opted to file a State complaint rather than a due process complaint precisely because of the time, expense, and complexity associated with the latter. Based on this, the Department strongly believes that it is in the best interest of parents and school districts to respect parents' choice of forum for resolution of their disputes. A public agency's filing of a due process complaint while a parent's State complaint resolution is ongoing could result in preventing the parent, who may not have the resources to participate in a due process hearing, from exercising his or her right to engage in dispute resolution through the State complaint process.

Conclusion

Public agencies that seek to force parents who have already exercised their right to file a State complaint into a potentially more adversarial due process hearing harm the "cooperative process" that should be the goal of all stakeholders. Moreover, diverting resources into adversarial processes between parents and public agencies is contrary to Congressional intent in the 2004 amendments to IDEA's dispute resolution procedures to give parents and schools expanded opportunities to resolve their disagreements in positive and constructive ways. 20 U.S.C. 1400(c)(8). We strongly encourage public agencies to respect parents' reasonable choice to use the State complaint process rather than a due process complaint hearing. Likewise, before pursuing a due process hearing, a public agency should attempt to engage parents in mediation or other informal dispute resolution procedures, as appropriate.

As stated earlier in this letter, we remind public agencies that a court may choose to award a parent who is the prevailing party in a due process hearing brought by a public agency reasonable attorney's fees to be paid by the public agency that filed the due process complaint. If a court authorizes an award of attorneys' fees against the public agency, under 34 CFR §300.517(b)(1), funds under Part B of the Act may not be used to pay those attorneys' fees.

We ask you to share this information with your hearing officers and local school districts to help ensure that Part B's dispute resolution procedures are used to facilitate the provision of timely and appropriate special education and related services for children with disabilities.

Thank you for your continued interest in improving results for children with disabilities.

Sincerely,

Sue Swenson
Acting Assistant Secretary

Melody Musgrove, Ed. D.
Director
Office of Special Education Programs