



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

SEP 21 2001

Ms. Holly B. Nann
President
New York State SAFE
P.O. Box 192
Schuylerville, New York 12871

Dear Ms. Nann:

This is a response to your letter to former Assistant Secretary Judith E. Heumann, in which you allege that the State of New York has failed to consider complaints filed by your advocacy organization, Schools are for Everyone (SAFE), as required by the Individuals with Disabilities Education Act (IDEA). Specifically, your letter requests clarification of regulations governing the State complaint process, and whether a complaint that alleges that statistical data show system-wide failures to provide children with disabilities a free appropriate public education (FAPE) in the least restrictive environment (LRE) may constitute a basis for filing a complaint. Set forth below is an explanation of the requirements for filing a complaint with a State educational agency (SEA) and the obligations the State has in responding to a filed complaint.

With respect to filing a complaint, an SEA must consider a signed written complaint by an organization or individual that includes a statement that a public agency has violated a requirement of Part B of the IDEA. The complaint must include the facts on which the statement is based. In addition, the complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with the State's complaint procedures unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received. See 34 CFR §300.662. Further, each SEA shall have a written complaint procedure for resolving any complaint, including a complaint filed by an organization or individual from another State, including conducting an on-site investigation if the SEA determines it necessary. See 34 CFR §§300.660-300.661. In other words, an SEA is required to resolve *any* [emphasis added] complaint, but not necessarily investigate, that meets the requirements of §300.662, including a systemic complaint alleging that a public agency has failed to provide FAPE to a group of children with disabilities. Thus, the SEA would be required to follow the State complaint procedures outlined in §300.661 as it would any other case where a violation of Part B of the IDEA is alleged. However, although an SEA is required to resolve any complaint that meets the requirements of §300.662, it may be that the SEA's findings of fact and conclusions do not necessarily satisfy the complainant.

The IDEA regulations do not contain a mechanism for review of a State's decision when a complainant is dissatisfied with the SEA's resolution of a complaint. Although we have no specific knowledge of New York State law, we note that in a number of final State agency actions, that action may be appealed under the State's administrative procedures law.

It is our understanding that the State of New York uses data as a mechanism that may trigger monitoring activities, including on-site visits, to local educational agencies (LEAs). The use of data alone as a method of triggering closer scrutiny and monitoring is consistent with the Office of Special Education Programs' views of State level monitoring triggered by performance or outcome measures. In this type of monitoring system, local sites for further investigation may be chosen based on appropriate key performance data indicators used by the State. For example, one LEA's data that indicate a lower percentage of children with disabilities that receive some or all of their education in settings other than the regular education classroom as compared to other LEAs in the same State, may be a consideration for additional monitoring activities. Such data, however, does not in itself constitute a violation of Part B of the IDEA.

Further, because of the time limits for filing a complaint mentioned above, if data are used as the basis for a complaint to the SEA, then the results of that data used must be not more than three years prior to the date the complaint is received by the SEA (see 34 CFR §300.662).

We hope this information is helpful to you. If you have additional questions about this matter, you may call Dr. JoLeta Reynolds or Mr. Troy Justesen of the OSEP at (202) 205-5507 or (202) 205-9053, respectively.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

Attachments: Complaint Resolution Procedures Memos

cc: Mr. Lawrence C. Gloeckler
New York State Education Department