



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

May 19, 2015

Heather S. Deaton
Special Assistant Attorney General
Mississippi Department of Education
P.O. Box 771
Jackson, Mississippi 39205-0771

Dear Ms. Deaton:

This is in response to two of your electronic inquiries to the Office of Special Education Programs (OSEP), and follow-up phone conversations with Jennifer Finch and Jennifer Wolfsheimer, Education Program Specialists, seeking guidance related to corrective actions by the State arising from State complaints. I apologize for the delay in responding.

First, you seek guidance regarding a State educational agency's (SEA) duty to ensure the correction of noncompliance when the SEA has issued findings related to a State complaint and subsequently the same issues are part of a due process hearing request. Specifically, you ask whether the SEA remains obligated to require the school district to submit the improvement plan or must the SEA set aside its findings of noncompliance pending the outcome of the due process hearing. You describe a situation in which the Mississippi Department of Education (MDE) investigated a parent's complaint and issued a "Findings and Decision" which identified noncompliance and required the school district to file an improvement plan. Before the school district filed the improvement plan, the parent requested a due process hearing. The parent's hearing request raised new issues, in addition to the same issues contained in the State complaint which were addressed in MDE's Findings and Decision.

Under the Individuals with Disabilities Education Act (IDEA), each SEA has an independent obligation to ensure that its local educational agencies (LEAs) are in compliance with State and Federal requirements that apply to the education of children with disabilities. See 20 U.S.C. 1232d(b)(3)(E) and 34 CFR §§300.149 and 300.600(e). The State complaint process is one method used by States to ensure compliance with IDEA by requiring LEAs to correct any identified noncompliance. Accordingly, the SEA must ensure that the public agency involved in the complaint implements the SEA's written decision on the complaint in a timely manner. The State's complaint procedures must include procedures for effective implementation of the SEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance. 34 CFR §300.152(b)(2). To ensure corrective action, and pursuant to its general supervisory responsibilities in 34 CFR §§300.149 and 300.600, the SEA must inform the public agency that is involved in the complaint of any findings of noncompliance and the required corrective action, and ensure that the corrective action is completed as soon as possible, within the timeframe specified in the SEA's written decision, and in no case later than one year of the State's identification of the noncompliance. 34 CFR

400 MARYLAND AVE., SW, WASHINGTON, DC 20202
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

§300.600(e); *See also* Question B-31 of the Questions and Answers on IDEA Part B Dispute Resolution Procedures

<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/accombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>.

In the situation you pose, pursuant to its general supervisory responsibility, the SEA may not permit the school district to delay implementation of any corrective action related to the issue(s) addressed in the State complaint decision, pending the outcome of the due process hearing. Therefore, under these circumstances, it is OSEP's view that the SEA would be obligated to require the school district to submit the improvement plan, regardless of whether that plan addresses matters that are also the subject of a pending due process hearing. As explained above, the SEA must ensure that the corrective actions are completed as soon as possible within the timeframe specified in the SEA's written decision, and not later than one year from the State's identification of the noncompliance.

The second issue you raise concerns the types of corrective actions the SEA may order to remedy a State complaint finding that a public agency has failed to provide appropriate services. Specifically, you ask whether the SEA may order child specific services that must be provided in order to ensure that a child with a disability receives a free appropriate public education (FAPE). In resolving a State complaint in which there is a finding that a public agency has not provided appropriate services, the regulation in 34 CFR §300.151(b) requires an SEA, through its general supervisory authority under Part B, to address: (1) the failure to provide appropriate services, including corrective actions appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) appropriate future provision of services for all children with disabilities.

Each SEA is responsible for ensuring that all public agencies within its jurisdiction meet the requirements of the IDEA and its implementing regulations, and this responsibility includes ensuring the correction of any identified noncompliance, whether child-specific or systemic. See 20 U.S.C. 1412(a)(11) and 34 CFR §300.149. In light of the SEA's general supervisory authority and responsibility under those provisions, SEAs have broad flexibility to determine the appropriate remedy or corrective action necessary to resolve a State complaint in which the SEA has found that the public agency has failed to provide appropriate services to children with disabilities, including awarding monetary reimbursement and compensatory services. See Question B-10 of the Questions and Answers on IDEA Part B Dispute Resolution Procedures. See also, 71 Fed. Reg. 46540, 46602 (Aug. 14, 2006). Therefore, an SEA may order child-specific services that must be provided in order to ensure that a child with a disability receives FAPE.

The nature of corrective actions will differ based on the specifics of a particular State complaint. For example, an SEA that has found that an IEP did not include the special education and related services needed to provide FAPE to a particular child with a disability might order an individualized education program (IEP) Team to reconvene to develop a program that ensures the provision of FAPE for that child or order compensatory services. See Questions B-8 and B-10 of the Questions and Answers on IDEA Part B Dispute Resolution Procedures. An SEA might order a public agency to ensure the child's IEP is modified or amended in accordance

with 34 CFR §300.324(a)(4) to include the direct services the State has determined are appropriate for that child consistent with the resolution of that State complaint. However, because the IDEA contemplates that the IEP Team, which includes the child's parent, is best equipped to make informed decisions regarding the specific special education and related services necessary to provide FAPE to the child, an SEA should carefully consider whether ordering the provision of services not previously in the IEP is appropriate and necessary to ensure the provision of FAPE.

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.

If you have questions, please do not hesitate to contact Jennifer Wolfsheimer at 202-245-6090 or by email at Jennifer.Wolfsheimer@ed.gov.

Sincerely,

/s/ Melody Musgrove

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