



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

April 19, 2018

Ms. Marcie Lipsitt
27260 Willowgreen Court
Franklin, Michigan 48025

Dear Ms. Lipsitt:

This letter responds to your correspondence addressed to Melody Musgrove, former Director, Office of Special Education Programs (OSEP), U.S. Department of Education (Department), and Daniel Schreier, OSEP's State Lead for Michigan. We regret the delay in responding to your request.

In your initial and follow-up communications with this Office, you shared information about a specific State complaint filed with the Michigan State educational agency (SEA), and asked whether the noncompliance identified by the SEA through its resolution of the complaint would "rise to the standard to be considered for compensatory education." You requested that OSEP provide written guidance to clarify the circumstances under which it would be appropriate for an SEA to consider compensatory services to redress violations it identifies through the State complaint procedures in the regulations implementing the Individuals with Disabilities Education Act (IDEA).

We note that section 607(d) of IDEA prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented, and does not establish a policy or rule that would apply in all circumstances.

Generally, it is not OSEP's practice to comment on the merits or factual accuracy of a State complaint filed with an SEA or on the SEA's resolution of the complaint. As such, our response is limited to your general question about the requirements in 34 CFR §300.151(b) that address an SEA's authority to order compensatory services as a remedy for the failure to provide appropriate services to a child or group of children with disabilities and we are not making any judgement concerning the State's resolution of this specific complaint.

The IDEA regulations require each SEA to adopt procedures for resolving complaints filed by an organization or individual, including those from another State, alleging that a public agency has violated a requirement of Part B of the Act or the Part B regulations. 34 CFR §300.151(a)(1). In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B, must address: (1) the failure to

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provide appropriate services, including corrective action 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. 34 CFR §300.151(b)(1) and (2). In resolving State complaints, the SEA is responsible for ensuring that all public agencies within its jurisdiction meet IDEA requirements, and appropriate implementation of the State complaint procedures is critical to the SEA's exercise of its general supervision responsibilities. An SEA, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children.

The purpose of a compensatory services award is to remedy the public agency's failure to provide a child with a disability with "appropriate services" during the time that the child is (or was) entitled to a free appropriate public education and was denied appropriate services. An SEA has broad discretion in determining a suitable remedy when it concludes that a violation of an IDEA requirement has resulted in a failure to provide appropriate services to a particular child or group of children. There is nothing in the IDEA or its implementing regulations that would limit an SEA's authority in resolving a State complaint to award compensatory services, or require such an award, based on a specific set of facts and circumstances, or a particular finding of noncompliance.

If you have any questions, please do not hesitate to contact Lisa Pagano at 202-245-7413 or by email Lisa.Pagano@ed.gov.

Sincerely,

/s/

Ruth E. Ryder
Acting Director
Office of Special Education Programs