



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

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Dear Dr. Zirkel:

This letter is in response to your electronic mail (email) addressed to Lisa Pagano of the Office of Special Education Programs (OSEP), U.S. Department of Education (Department), regarding the State educational agency's (SEA's) complaint procedures process. In that email, you asked a series of questions about enforcement actions and resolution of State complaints. Each of your questions is answered below. We regret the delay in responding.

We note that section 607(d) of the Individuals with Disabilities Education Act (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.

Question 1: Must the SEA's complaint resolution for enforcement of a corrective action ordered in a previous complaint resolution be "of the same rigor" as the original (or any other directive as compared with enforcement) investigation?

Answer: The IDEA regulations do not address the "rigor" of a SEA's resolution of a complaint. Nevertheless, in resolving any complaint that meets the requirements in 34 C.F.R. § 300.153, the SEA must comply with the requirements in 34 C.F.R. § 300.152(a)–(b). This includes the resolution of a complaint alleging that a public agency has failed to implement the corrective actions ordered in the SEA's decision on a prior complaint. The SEA must give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint and provide the public agency an opportunity to respond to the complaint. Further, the public agency must review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or the IDEA Part B regulations. 34 C.F.R. § 300.152(a)(2)–(4). Ultimately, the SEA must issue a written decision to the complainant that addresses each allegation in the complaint and contains, findings of fact and conclusions, and the reasons for the SEA's final decision. 34 C.F.R. § 300.152(a)(5).

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Question 2: Does such enforcement action require a complaint or is the SEA's obligation to monitor and where necessary, investigate enforcement of complaint corrective action orders *sua sponte*?

Answer: The SEA must ensure that the public agency involved in the complaint implements the 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 C.F.R. § 300.152(b)(2). To ensure corrective action and pursuant to its general supervisory and monitoring responsibilities in 34 C.F.R. §§ 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 and 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 C.F.R. § 300.600.

Question 3: If an IDEA complaint is directed specifically at the SEA for failure to fulfill its supervisory obligations but incidentally mentions in its factual basis alleged violations by one or more local educational agencies (LEAs) that the SEA purportedly failed to correct, must the SEA investigate the identified LEAs for these alleged violations, even though the complaint was directly against the SEA, not the LEAs?

Answer: The IDEA regulations do not address this specific issue. OSEP, however, has addressed the issue of how a SEA resolves a complaint against itself, which states that "the SEA must ensure that all of the procedures in 34 C.F.R. § 300.151–300.153 are followed...the SEA must ensure that all relevant information is reviewed and that an independent determination is made as to whether the public agency (in this case the SEA) has violated a requirement of Part B or the Part B regulations with respect to the complaint." See Question B-12 of [Questions and Answers on IDEA Part B Dispute Resolution](#) Procedures (July 23, 2013) available at: <https://sites.ed.gov/idea/idea-files/osep-memo-and-qa-on-dispute-resolution/>. In addition, the SEA must resolve any complaint that alleges that the SEA or one of its LEAs has violated a requirement of Part B of the Act or the IDEA regulations and that meets the requirements of 34 C.F.R. § 300.153. Even if a complaint was not expressly written for the purpose of asking the SEA to review the alleged noncompliance by the LEA, the SEA, pursuant to its general supervisory responsibilities, is obligated to make an independent determination as to whether it finds that there is noncompliance as a result of the complaint allegation, and if so, determine any necessary actions to remedy the noncompliance.

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

Sincerely,

/s/

Laurie VanderPloeg

Director

Office of Special Education Programs