



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

JUN 11, 1997

Dear

This letter sets out my decision concerning allegations you made against Public Schools that I agreed to review in my letter dated I apologize for the delay in issuing my decision.

Your allegations were the subject of an investigation conducted by the Maryland State Department of Education (MSDE). MSDE issued its final decision on . I agreed to review the portion of MSDE's decision that addressed refusal to compel non-agency employees to appear as witnesses in a due process hearing.

In letters dated , I invited you and MSDE to submit within 30 days additional information or documentation regarding MSDE's decision in this matter. Both parties submitted additional information.

In your request for Secretarial review, you alleged that you were improperly denied the opportunity to confront, cross-examine, and compel the attendance of necessary witnesses at a due process hearing in violation of Part B of the Individuals with Disabilities Education Act (Part B) and its implementing regulations. In response, MSDE concluded that: " is not required by any [S]tate or [F]ederal statute or regulation to compel the attendance of non employees at a due process hearing, has no authority to effectuate such a request. (See MSDE Letter of Findings,

Part B establishes specific hearing rights' that must be available to the parties to a due process hearing, including the right to present evidence, confront, cross-examine, and compel the attendance of witnesses (see §615(d)(2) of IDEA; 34 CFR §§300.508(a)(2)). Generally, it is the responsibility of the impartial hearing officer to accord each party a meaningful opportunity to exercise these rights during the course of a

hearing. Consequently, impartial hearing officers must be provided the necessary means to ensure that parties to a due process hearing can confront, cross-examine, and compel witnesses whose testimony is needed to resolve disputes concerning the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education to the child. (See 34 CFR §§300.506-300.508.)

Impartial hearing officers who conduct Part B due process hearings are required to exercise their authority in accordance with Part B and applicable State law. At the time of the due process hearing that you initiated, Maryland special education rules provided that "procedures shall be adopted affording the parent (to a local level due process hearing) the opportunity to require the attendance and testimony of the public agency and witnesses who may have direct knowledge pertinent to the subject to the inquiry." (See COMAR 13A.05.01.14(H)(3).) Because this rule was part of Maryland's approved Part B State plan in effect at the time of the hearing, _____ was specifically authorized to follow procedures enabling you to compel the attendance of witnesses, including witnesses who are not representatives of the public agency and whose testimony may be pertinent to the dispute.¹ (See State plan requirements at 34 CFR §§300.110 and 300.131.) Therefore, I have concluded that MSDE's 1995 decision that the right to compel non-_____ employees is not required to be available at due process hearings is inconsistent with Part B and Maryland's approved State plan.

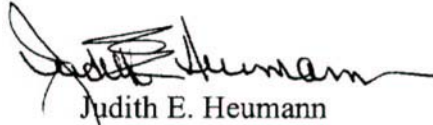
I understand that since the time of your due process hearing, MSDE has adopted a one-tier State-administered hearing system under which all Part B due process hearings are conducted at the State level. According to MSDE, parties to due process hearings under MSDE's prior two-tier system were authorized to subpoena witnesses; including witnesses who were not employed by the public education agency, during a State-level appeal of a local hearing decision. In light of my decision outlined above, I have asked MSDE to forward to you and this office within 30 days information identifying the procedures established under MSDE's new one-tier due process system (i.e., subpoenas or other means) that enable parties to a hearing to confront, cross-examine, and compel the attendance of witnesses consistent with 34 CFR §300.508(a)(2).

¹COMAR 13A.05.01.14(h)(3) also obligated MSDE to implement the necessary mechanism (e.g., subpoena) that would enable MCPS to comply with the State rule (i.e., afford parties the opportunity to require the attendance and testimony of appropriate non-agency witnesses).

Page 3 -

A copy of this letter has been sent to Mr. Richard Steinke.
Thank you for bringing this matter to our attention.

. Sincerely,


Judith E. Heumann
Assistant Secretary

cc: Mr. Richard Steinke