



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG 13 1998

Candy Von Ruden
Consultant/Advocate
2970 Idlewild Drive
Reno, Nevada 89509

Dear Ms. Von Ruden:

This is in response to your letter written to the office of Special Education Programs (OSEP) in which you ask several questions about the reporting of outcomes of due process hearings conducted pursuant to Part B of the Individuals with Disabilities Education Act (Part B).

In particular, you ask about procedures that govern reporting of decisions in Part B due process hearings to the public, and whether State educational agencies (SEAs) are the only entities with standing to report these decisions. You also ask whether settlements arrived at before or during due process hearings are subject to any reporting requirements.

Section 615(h)(4) of the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17, (IDEA '97) affords the parent of a child with a disability who is a party to a due process hearing the right to obtain "written, or, at the option of the parents, electronic findings of fact and decisions". IDEA '97 also continues the requirement in prior law that ". . . findings and decisions shall be made available to the public consistent with the requirements of section 617(c) (relating to the confidentiality of data, information, and records)." *Id.* As under prior law, IDEA '97 also requires that such findings and decisions "be transmitted to the advisory panel established pursuant to section 612(a)(21)." *Id.* While IDEA '97 requires the reporting, in a non-personally identifiable manner, of findings of fact and decisions to the State advisory panel and to the public, IDEA '97 does not otherwise specify how a State educational agency (SEA) reports due process hearing decisions.

In a particular State, whether findings and decisions in due process hearings are reported to the public by the SEA or by the public agency conducting the hearing, if other than the SEA, is a matter left to a State's discretion. While there is nothing in IDEA '97 that specifies that States report hearing decisions to the publication you noted in your letter or any other commercial reporting service, we believe it is reasonable for States to publish hearing decisions using commercial reporting services that address issues relating to the education of students with disabilities, provided the hearing decisions are reported in a manner that does not violate the confidentiality requirements of the Act.

There is no Federal requirement, as your inquiry suggests, for States or school districts to report "the actual number of due process requests and the actual results of these findings in their local plans". Rather, the statutory requirements applicable to disclosure of due process hearing decisions address the reporting to the public in a non-personally identifiable manner of the findings and decisions in due process hearings. OSEP does not construe §615(h)(4) of IDEA '97 as requiring the reporting of the results of settlement agreements arrived at in connection with requests for due process hearings. As you may know, IDEA '97 also provides that when a parent requests a due process hearing, the SEA or other responsible public agency must make mediation available to parties to disputes relating to the identification, evaluation, or educational placement, or the provision of a free appropriate public education. §615(e)(1) of IDEA '97. Any agreement reached by the parties to the mediation process "shall be set forth in a written mediation agreement". §615(e)(2)(F). While the statute is specific as to the procedures that must be in place to govern the mediation process, it does not require that the written agreement reached in the mediation be made available to the public. Further, the statute explicitly provides that "(d)iscussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings" §615(e)(2)(G). Therefore, we believe that the IDEA '97 does not require States or school districts to release to the public settlement agreements arrived at either through mediation or through agreement of the parties to a due process hearing prior to the issuance of a final hearing decision.

We hope that you find this explanation helpful. If we can be of further assistance, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss of OSEP at (202)205-5507, or (202)205-9053, respectively.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

cc: Ms. Gloria Dopf
Nevada Department
of Education