



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

April 12, 2007

Mary D. Watson
Director
Exceptional Children Division
6356 Mail Service Center
Raleigh, NC 27699-6356

Dear Ms. Watson:

This is in response to your letter dated February 8, 2007, in which you seek clarification of the requirements of Part B of the Individuals with Disabilities Education Act (Part B) regarding annual review of a child's individualized education program (IEP) while administrative or judicial proceedings regarding a complaint are pending.

In your letter, you indicate that your office has received a formal complaint from a parent alleging a local educational agency's (LEA's) violations of 34 CFR §§300.323(a) and 300.324(b)(1) because of that agency's refusal to conduct an annual review of the child's IEP while administrative and judicial proceedings regarding a complaint are pending. Specifically, your letter asks:

Does the IDEA require the IEP team to review and revise a student's present levels of academic achievement and functional performance and develop new goals during the pendency of a judicial proceeding?

Section 300.518(a) provides that "[e]xcept as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under §300.507, unless the State or local educational agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement" 34 CFR §300.518(a). The State and its public agencies must ensure that a free appropriate public education is made available to a child while administrative or judicial proceedings regarding a due process complaint are pending. 34 CFR §§300.101 and 300.17. There is nothing in the regulation at 34 CFR §300.518 that relieves a public agency of its responsibility under 34 CFR §300.324(b)(1) to convene a meeting of the IEP Team, periodically, but not less than annually, to review, and if appropriate, revise, an IEP for a child with a disability, even if the public agency is required to maintain the child's current educational placement while administrative or judicial proceedings are pending. This could include, among other matters, review and revision of the child's present levels of academic achievement and functional performance and modification of the child's annual goals, if appropriate. If the new IEP that the IEP Team develops for the child for the current school year is different from the IEP developed for the child when pendency attached to the child's current educational placement, the public agency must ensure that the child receives the complete program of special education and


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related services contained in the IEP developed for the child when pendency attached, unless the parents and the public agency agree otherwise.

Based on section 607(e) of the IEA, 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.

I hope that this information is helpful. If you have any questions regarding this letter, please contact Delores Barber at 202-245-7263 or Larry Ringer at 202-245-7496.

Sincerely,

 for

Alexa Posny, Ph.D.
Director
Office of Special Education Programs