



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 11 1997

Mr. Richard Steinke
State-Director
c/o Jerry White
Maryland State Department of Education
Division of Special Education
200 West Baltimore Street.
Baltimore, Maryland 21201-2595

Dear Mr. Steinke:

This letter sets out my decision concerning allegations made by
(the Complainant) against
Public Schools () that I agreed to review in a letter to
dated I apologize for the delay
in issuing my decision:

The Complainant's 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 the Complainant
and MSDE to submit within 30 days additional information or
documentation regarding MSDE's decision in this matter. Both the
Complainant and MSDE submitted additional information.

The Complainant alleges that was 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 hearing initiated by the Complainant, 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 the Complainant 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 January 18, 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.²

I understand that since the time of the Complainant's due process hearing, MSDE has adopted a one-tier State-administered due process hearing system under Part B. Previously, you stated that under MSDE's prior two-tier system, parties were authorized to subpoena witnesses, including witnesses who were not employed by the public educational agency, during a State-level appeal of a local hearing decision. (See MSDE letter dated October 13, 1995.) In light of my decision outlined above, I ask that you forward to the Complainant 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

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., of ford parties the opportunity to require the attendance and testimony of appropriate non-agency witnesses).


²In your October 13, 1995 letter, you stated that local-level hearing officers can employ a variety of methods to obtain the testimony of witnesses "unable to actually attend a hearing." The relevant issue in this case, however, is whether the hearing officer can "require the attendance and testimony" of witnesses as described in the State rule. MSDE incorrectly concluded that hearing officers have no such authority.

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parties to a hearing to confront, cross-examine, and compel the attendance of witnesses consistent with 34 CFR §300.508(a)(2).

A copy of this letter has been sent to
Thank you for your assistance in resolving this matter.

Sincerely,



Judith E. Heumann

Assistant Secretary

cc: