



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 11, 1997

Mr. Mike Armstrong
Kentucky Department of Education
Capital Plaza Tower
500 Metro Street.
Frankfort, Kentucky 40601

Dear Mr. Armstrong:

This is in response to your letter to the Office of Special Education Programs (OSEP) dated January 22, 1997, in which you request OSEP's views concerning the authority of due process hearing officers and appeals board members in Kentucky to order and enforce certain remedies. Although a member of my staff has previously provided you some information informally, OSEP's response to the issues raised in your letter follows.

Specifically, your three areas of inquiry are (1) whether a hearing officer or the appeals board can impose financial or other penalties on local school districts, such as a \$1000 per day fine for every day that the LEA refuses to serve the student once the hearing officer has made a finding regarding FAPE; (2) whether a hearing officer or appeals board can issue an order to the State Educational Agency (SEA), even though the SEA was not a party to the hearing; and (3) whether, if the hearing officer finds that the student involved in the hearing is being denied services, he or she can order the school district to invoke stay put and place the student in the then current educational placement, when the issue is not raised by the parties.

Under Part B of the Individuals with Disabilities Education Act (Part B), it is the responsibility of the SEA. to ensure that each public agency establishes and implements procedural safeguards that meet the requirements concerning impartial due process hearing by hearing officers, hearing rights, hearing decisions, appeal rights, and stay put, set forth in §§300.506-300.513 and §300.515. See 34 CFR §300.501. In addition to meeting the requirements of the Part B regulations referenced above, the due process hearing system established by a State must provide a hearing officer with the authority to grant the relief necessary, under the particular facts and circumstances of each case, to ensure that a child receives the FAPE to which the child is entitled. See Letter to Margaret Kohn, published at 17 EHLR 522 (hearing officer has authority to award compensatory education where finding is made that a public agency has failed to provide FAPE to a particular student).

Part B does not specify what particular remedies, including penalties or sanctions, are available to due process hearing officers or to decision makers in State-level appeals. The specific authority of hearing officers and appeal boards, including the types of sanctions that are available to them, generally will be set forth in State law or regulation. Part B provides that each SEA must exercise general supervision over all educational programs for children with disabilities within the State and must ensure that such programs are administered in accordance with State education standards and Part B requirements. 34 CFR §300.600. Therefore, it is ultimately the SEA's responsibility to ensure that hearing officers are provided the authority they need to grant relief necessary to the resolution of Part B complaints, that a hearing officer's orders are implemented, and that any actions necessary to enforce those orders are taken.

In response to your second inquiry regarding the authority of a hearing officer or appeals board member to instruct the SEA to take some action, OSEP has previously advised that such a consideration is a State matter. See EHLR 211:126.¹ However, as noted above, if a hearing officer finds that FAPE is not being provided to many students in the district, the SEA's general supervisory responsibility to ensure that programs are administered in accordance with State education standards and Part B requirements may be implicated, even if the SEA is not a party to the hearing. 34 CFR 5300.600.

The final issue raised in your letter concerns stay put and the hearing officer's authority to enforce it against the school district. Under 20 U.S.C. §1415(e)(3), the child involved in the complaint has the right to remain in his or her current educational placement during the pendency of administrative or judicial proceedings, unless the parents and the public agency can agree to another placement for the child. See also 34 CFR §300.513(a). If the parties cannot agree on the current educational placement, or an interim placement for the child, OSEP-believes that the decision of what constitutes the "current

¹ The SEA control over and payment of hearing officers and appeals board members referred to in your letter should not be relevant considerations unless the individuals are employees of the SEA and the SEA is the agency providing services. The hearing officer or appeals board member cannot have a personal or professional interest that would conflict with his or her objectivity in the hearing. 34 CFR §300.507(a). Part B provides that "a person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer." 34CFR §300.507(b).

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educational placement" generally must be made by a hearing officer or by an appropriate court.

We hope that you find this explanation helpful. If you have further questions, please feel free to contact or. JoLeta Reynolds at (202) 205-5507, Ms. Rhonda Weiss at (202) 205-9053, or Ms. Maral Taylor, your State contact at (202) 205-9181.

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas Hehir", with a stylized flourish at the end.

Thomas Hehir
Director
Office of Special Education
Programs