



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

April 19, 2001

Judith A. Douglas  
Director, Due Process and Complaints  
Virginia Department of Education  
P.O. Box 2120  
Richmond, VA 23218-2120

Dear Ms. Douglas:

This is a response to your letter dated January 5, 2001, requesting clarification of the requirements to convene a due process hearing under the Individuals with Disabilities Education Act (IDEA). In addition to your letter, additional documentation, including copies of the eleven separate complaints referenced in your letter, was provided to the Office of Special Education Programs. Specifically, you ask whether a State educational agency (SEA) is required to convene a due process hearing when a parent challenges the result of a special education State complaint finding that does not concern that parent's child and when a parent is not representing a specific child with a disability. Your letter also states that the complainant, X, filed these eleven complaints with the SEA, and now requests a due process hearing as an appeal to the findings of each complaint.

The parent of a child with a disability or a public agency may initiate a due process hearing on any matter relating to the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. See 34 CFR §§300.503(a)(1), 300.507. In other words, only the parent of a child with a disability or the public agency is entitled to initiate a due process hearing under the matters in section 300.503(a)(1) with respect to the specific child in question.


For purposes of clarification, however, not only a child's parent, but any organization or individual, may file a signed written complaint with the SEA. Such a complaint must include: (1) a statement that a public agency has violated a requirement of Part B of the IDEA or its implementing regulations; (2) the fact(s) on which the statement is based; and (3) an allegation of a violation that did not occur more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received. See 34 CFR §300.662. The State complaint procedures must be available for resolving any complaint that meets the requirements of section 300.662, including: (1) complaints that raise systemic issues, and (2) individual child complaints.

Parents may use (but are not required to use) the State complaint procedures, in addition to the due process hearing system, to resolve disagreements with public agencies over any matter concerning the identification, evaluation, or educational placement of their child, or the provision of FAPE to their child, as well as any other allegation that a public agency has violated Part B of the IDEA.

Moreover, it is our understanding that X is a resident of X County, Virginia, where his child attends public school. However, none of the eleven complaints filed by X regarding his child nor allege violations of the IDEA by the County School District where his child attends school. In addition, we find nothing in the information provided to indicate that X had authorization or parental consent to advocate or represent individual children with disabilities with respect to the eleven complaints. Although the IDEA provides the opportunity for anyone to file a written complaint against a public agency that raises systemic issues, among other issues, under the complaint provisions of the IDEA consistent with section 300.662, due process is not available unless it relates to the child's identification, evaluation, or educational placement or the provision of FAPE to the parent's child. Based on the information reviewed by this office, it appears that the Virginia Department of Education would have a basis for denying X's request for a due process hearing. However, in situations where there is any doubt about whether to convene a due process hearing, the public agency should appoint the hearing officer and the hearing officer should make a determination regarding the disposition of the matter.

We hope that this information is helpful. If you need further information regarding this matter, you may contact Claudia Brewster at 202-205-5578, Troy Justesen at 202-205-9053, or JoLeta Reynolds at 202-205-5507.

Sincerely,



Patricia J. Guard  
Acting Director  
Office of Special Education Programs

cc: Douglas Cox  
Virginia State Director of Special Education