



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

10/31/08

Dr. John Copenhaver
Director, Mountain Plains Regional Resource Center 1780
North Research Parkway No. 112
Logan, UT 84341

Dear Dr. Copenhaver:

This is in response to your questions sent by electronic mail (email) to the Office of Special Education Programs (OSEP) on March 19, 2008. You are requesting clarification regarding OSEP's authority to require States to ensure that their local educational agencies (LEAs) correct all identified noncompliance' with the requirements of the Individuals with Disabilities Education Act (IDEA). The questions in your email communication are restated below and are followed by OSEP's responses.

I. What legal authority under IDEA [Individuals with Disabilities Education Act]

does OSEP have to compel an SEA [State educational agency] to take corrective actions on behalf of an individual student?

OSEP's Response: The IDEA specifies that the Act's monitoring and enforcement responsibilities are applicable to the Secretary as well as to State educational agencies (SEAs). Section 616(a) of the IDEA provides, in relevant part (Sec 20 U.S.C. 1416(a)):

- (a) Federal and State monitoring.
 - (I) In general. The Secretary shall--
 - (A) monitor implementation of this part through--
 - (i) oversight of the exercise of general supervision by the States, as required in section 1412(a)(11); and
 - (ii) the State performance plans, described in subsection (b);
 - (B) enforce this part in accordance with subsection (e);
 - (C) require States to--
 - (i) monitor implementation of this part by local educational agencies; and
 - (ii) enforce this part in accordance with paragraph (3) and subsection (e).

OSEP is the principal program office in the U.S. Department of Education responsible for administering and carrying out the IDEA and other programs and activities concerning the education of children with disabilities. 20 U.S.C. 1402.

Consistent with the above monitoring and oversight responsibilities, OSEP must ensure that an SEA requires its LEAs to correct any noncompliance with Part B that the SEA identifies through LEA monitoring. This includes both individual and systemic noncompliance. An SEA's failure to require its LEAs to correct individual noncompliance could result in denying a child with a

disability, and his or her parents, the rights and protections available under Part B of IDEA and its implementing regulations in 34 CFR Part 300. In addition to SEA monitoring of LEAs, individual noncompliance can be identified through State complaint resolutions under 34 CFR §§300.151 through 300.153 or due process hearing decisions under 34 CFR §§300.511 through 300.515. It is not OSEP's practice to investigate individual complaints or to review State complaint or due process hearing decisions. However, if noncompliance is identified that requires corrective action, the SEA must ensure that the corrective action is implemented, and OSEP monitors to ensure that this occurs. If an LEA fails to correct the noncompliance in a timely manner, OSEP's monitoring responsibility includes ensuring that the SEA takes appropriate enforcement action.

2. What is the legal authority under the IDEA for an SEA to require an LEA to correct individual student IEPs [individualized education programs] that the SEA has determined are noncompliant during monitoring activities such as student record reviews or to require that the IEP team for an individual student be reconvened when it is determined that the procedures for convening the IEP were not followed (e.g., failure by the LEA to provide timely written notice of an IEP team meeting)? Assume that the purpose of the SEA's monitoring activities is to determine whether the LEA is in compliance and/or whether the LEA has areas of systemic noncompliance.

OSEP's Response: Under Part B of IDEA, each SEA must exercise general supervision over all educational programs for children with disabilities administered within the State, including programs administered by any other State or local agency to ensure that all such programs meet State educational standards and the requirements of 34 CFR Part 300. 34 CFR § 300.149(a). The legal authority for an SEA to require its LEAs to correct individual noncompliance is the same as the legal authority for an SEA to require its LEAs to correct systemic noncompliance--its general supervisory responsibility over all educational programs for children with disabilities administered within the State.

Each State and its public agencies must ensure that a free appropriate public education (FAPE) is available to all children with disabilities residing in the State in mandatory age ranges. 34 CFR §§300.101, 300.201, and 300.17. Each child who is eligible to receive FAPE must have an IEP that meets the requirements of 34 CFR §§300.320 through 300.324. 34 CFR §300.112. Note also that the parents of a child aged three through five may choose to have their child served through an individualized family services plan (IFSP) that is developed under the IEP procedures. 34 CFR §300.323(b). Based on the example you have provided, if an SEA identifies noncompliance with individual student IEPs when it monitors an LEA, the SEA must require the LEA to correct the individual noncompliance as well as systemic practices that gave rise to the individual noncompliance. Of course, an SEA would need to consider the particular facts and circumstances that gave rise to the noncompliance in framing an appropriate corrective action.

3. Are there FERPA [Family Educational Rights and Privacy Act] issues when an SEA requires an LEA to correct noncompliance involving particular students, especially when parents object to reconvening the IEP Team or to particular required changes in an IEP, such as those implicated by Indicator 13?

OSERs Response: SEAs are responsible for ensuring compliance with Part B of the IDEA and its implementing regulations in 34 CFR Part 300. This includes SEA monitoring to ensure that LEAs comply with these Federal legal requirements. 34 CFR §§300.149 and 300.600. If an LEA

determines that it is necessary to convene an IEP Team meeting to address noncompliance that the SEA identified when it monitored the LEA, the LEA must convene the meeting consistent with 34 CFR §§300.321 through 300.324. If the parent, who is a member of the IEP Team under 34 CFR §300.321(a)(1), objects to the public agency's directive to reconvene the IEP Team and the public agency is unable to convince the parent to attend, the public agency may conduct the meeting without the parent in attendance if it documents its attempts to contact parents consistent with 34 CFR §300.322(d). We are unable to identify any issues regarding Part B's confidentiality of information requirements in 34 CFR §§300.611 through 300.626 that would prohibit an LEA from reconvening an IEP Team over the parent's objections. Because this Office does not administer FERPA and cannot address the FERPA question you are raising, you may wish to contact the Department's Family Policy Compliance Office (FPCO) directly for further clarification of FERPA requirements in this regard. Contact information for FPCO can be found at <http://www.ed.gov/policy/gen/guid/fpc/index.html>.

4. Do these questions depend on whether the noncompliance is procedural/technical in nature only and, thus, not implicating FAPE for the individual students as compared to noncompliance, which implicates FAPE?

OSEP's Response: As explained above, in exercising its general supervisory responsibility, an SEA is required to ensure that all educational programs for children with disabilities administered by public agencies in the State are in compliance with State educational standards and Part B requirements. An SEA's responsibility to ensure that LEA noncompliance is identified and corrected in a timely manner is not altered because the noncompliance is procedural. Even if the LEA believes that procedural noncompliance does not result in the denial of FAPE to an individual child at present, we believe that an SEA must require the LEA to correct the procedural noncompliance because it could affect the LEA's ability to ensure the future provision of FAPE to eligible children. Of course, the SEA could consider factors such as the nature and extent of the procedural noncompliance in framing an appropriate corrective action.

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

If you have further questions, please do not hesitate to contact Ruth Ryder at 202-245-7629 or Dr. Deborah Marrow at 202-245-7456.

Sincerely,



William W. Knudsen
Acting Director
Office of Special Education Programs