



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

FEB 26 1999

David Anderson
Chief Counsel
Texas Education Agency
1701 North Congress Ave.
Austin, TX 78701-1494

Re: Implementation of State Educational Agency Due Process Hearing Decisions

Dear Mr. Anderson:

We received your letter, dated December 1, 1998 (copy attached), that was sent in response to our letter, dated September 18, 1998, regarding 19 T.A.C. §89.1185. We appreciate your following up with our inquiry and are encouraged that the Texas Education Agency will propose amendments to §89.1185 to clarify that final due process hearing decisions must take immediate effect and be implemented in a timely manner. .

As we stated in our earlier letter; it is our understanding that in Texas the state educational agency (SEA) conducts due process hearings, therefore such decisions are final and there is no interim level of appeal prior to appeal to a court of competent jurisdiction. In the Fifth Circuit, if the SEA renders a decision in a due process hearing against a school district and in favor of the parents, the child's placement must, from that point forward, comply with the hearing decision, unless the parents and the State agree otherwise, and until overturned by court order if appealed. *See St. Tammany Parish School Board v. Louisiana, 141 F. 3d 776 (5th Cir. 1998), cert. dismissed (US. December 1. 1998).* Section 89.1185(m), as drafted, appears to allow a 90 day window for implementation of SEA due process hearing decisions in all circumstances.

We also wish to reiterate that there is a possibility that §89.1185(o), as currently drafted, could be implemented in a manner that delays the immediate effect and timely implementation of due process hearing decisions. We request again that TEA clarify the purpose of §89.1185(o) and how it is implemented.

We understand that it takes some time to change state regulations, however, Texas remains obligated to ensure that actual practices do not conflict with federal law while the regulations are being amended. We request that TEA inform us of the interim steps it will take to ensure that its due process system is implemented consistent with Federal requirements. We greatly appreciate your efforts to ensure that your regulations, as drafted and, more importantly, as implemented, do not conflict with federal law.

Sincerely,

Thomas Hehir
Director
Office of Special
Programs

cc: Mr. Mark Berry