



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

March 6, 2002

Mr. Eugene Lenz  
Senior Director  
Division of Special Education  
Texas Education Agency  
1701 N. Congress Avenue  
Austin, Texas 78701-1494

Dear Mr. Lenz:

This letter is in response to your February, 8, 2002 facsimile transmission to the U.S. Department of Education, Office of Special Education Programs (OSEP), requesting OSEP's analysis of Texas proposed rule, Section 89.1152, as it relates to compliance under the Individuals with Disabilities Education Act (IDEA).

The Texas proposed rule at Section 89.1152 specifically states:

89.1152 Presentment

- (a) This section will take effect on August 1, 2003.
- (b) Pursuant to the policy to encourage and support the resolution of any dispute at the lowest level possible, and in a prompt, efficient and effective manner, no issue may be raised at a due process hearing unless it was first raised at an admission, review and dismissal (ARD) committee meeting. Hearing officers shall dismiss any hearing request upon satisfactory proof that the issues raised in the hearing were not first presented to the ARD committee.

The Texas proposed rule impermissibly imposes additional prior notice requirements on parties. Parents and school districts do not have the right under IDEA to limit issues raised in a hearing to only the issues that were previously raised as part of an ARD committee meeting.

The IDEA identifies with great specificity the circumstances under which a parent or a school district is required to provide prior notice. Parents are obligated to provide advance notice to school districts in certain instances to maximize their ability to receive reimbursement for placing their child in a private school. *See* 20 U.S.C. §§1412(a)(10)(C)(iii). This notice provision enables a hearing officer to limit the amount of the reimbursement in certain instances and does not preclude parents from proceeding with a due process hearing for failure to provide requisite notice. For school districts, the major prior written notice provisions are set forth at 20 U.S.C. §§1415(b)(3), (c) and (d).

The IDEA's due process hearing right applies to "any matter relating to the identification, evaluation or educational placement of the child, or the provision of a free appropriate public education to such child" (20 U.S.C. §1415(b)(6)) and certain disciplinary matters. 20 U.S.C. §1415(f)(1). Other than the notice provisions expressly contained in the IDEA, no other notice provisions can be applied to limit the statutory right to a due process hearing.

Texas' imposition of any additional notice requirements on either party (in a manner that restricts the issues that may be heard) is inconsistent with IDEA. Application of Texas' proposed rule would impose additional procedural hurdles on the right to a due process hearing that are not contemplated by the IDEA, would in many cases delay access to a due process hearing, and would bar any review of a school district's actions if a district refused to conduct an ARD committee meeting.

If you have any further questions, please contact Dr. JoLeta Reynolds at (202) 205-5507 or Paul Steenen at (202) 205-9908.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephanie S. Lee".

for

Stephanie S. Lee

Director

Office of Special Education Programs