



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

SEP - 9 2003

Mr. Robert Rutten  
Director of Special Education  
Department of Public Instruction  
600 E. Boulevard Ave., Dept. 201  
Bismarck, North Dakota 58505-0440

Dear Mr. Rutten:

This is in response to your letter requesting clarification on the IDEA Part B complaint investigation procedures. You presented a situation that occurred during a recent complaint investigation in which (1) an employee of the State Protection and Advocacy Project was present with a parent during an interview by the complaint investigator and (2) the complaint investigator sent copies of the statement of issues to be investigated to employees of the State Protection and Advocacy Project for their review. You clarified that the parent (who is the complainant) chose to involve the State Protection and Advocacy Project and asked that correspondence be directed to that agency. You also indicated that if a complainant does not choose to involve an advocate or other outside counsel, the North Dakota Department of Public Instruction does not share correspondence with them or include them in complaint investigation interviews. A local special education administrator objected to any outside agency being directly involved in the State complaint process believing that involvement of outside parties “places bias into what is to be a non-biased investigation...”

The State complaint procedures are set out at 34 CFR §§300.660-300.662 of the Part B regulations, published in the Federal Register on March 12, 1999. Generally, §300.660 requires each SEA to adopt written procedures for resolving any complaint, including any complaint filed by any organization or individual from another State, that meets the requirements of §300.662 (see next paragraph). Under §300.660(a), these procedures must:

- (1) provide for the filing of a complaint with the SEA;
- (2) at the SEA's discretion, provide for the filing of a complaint with a public agency, and the right to have the SEA review the public agency's decision on the complaint; and
- (3) provide for wide dissemination of these procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

Page 2 – Mr. Robert Rutten

It is not inconsistent with the State complaint procedures set out at 34 CFR §§300.660-300.662 of the Part B regulations for a complainant to have an advocate present during an interview or for the complaint investigator to send a copy of the issues to be investigated to an advocate if requested to do so by the complainant.

I hope this information answers your questions. If you have any further questions, please do not hesitate to contact Dr. Wendy Tada at (202) 205-9094

Sincerely,

A handwritten signature in black ink that reads "Patricia J. Swand". The signature is written in a cursive style with a large initial "P".

for Stephanie Smith Lee  
Director  
Office of Special Education Programs