



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Dated March 17, 2008

Dr. John Copenhaver
Director
Mountain Plains Regional Resource Center
Utah State University
1780 North Research Parkway, Suite 112
Logan, Utah 84341

Dear Dr. Copenhaver:

This letter is in response to your November 14, 2007 memorandum to the Office of Special Education Programs (OSEP), in which you request clarification regarding the provisions of 34 CFR §§300.153(b)(1)-(4) and 300.508(b)(1)-(6). Specifically, you ask the following: (1) if a parent files a complaint or due process request by electronic mail (email), would this meet the "in writing" and "signature" standards of 34 CFR §300.153(b)(3); and (2) if the answer to question 1 is yes, when would the 60-day timeline begin? When the email is registered on the State educational agency (SEA) computer, or when the email is actually opened by the SEA?

With regard to your first question, the Individuals with Disabilities Education Act (IDEA) does not address whether States can accept email submissions of State complaints or due process complaints and whether States can therefore accept digital or electronic signatures on such complaints. While this is a matter of State discretion, the Department's position is that States electing to accept electronic complaint submissions with digital or electronic signatures "would need to take the necessary steps to ensure that there are appropriate safeguards to protect the integrity of the process." See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46629 (Aug. 14, 2006).

With regard to your second question, the determinant factor is when a State considers a complaint to be received. With respect to State complaints, each SEA must include in its complaint procedures a time limit of 60 days after the complaint is filed under 34 CFR §300.153 to initiate and complete the activities listed in 34 CFR §300.152(a)(1) through (5) (34 CFR §300.152(a)), unless the time limit is extended because exceptional circumstances exist with respect to a particular complaint (34 CFR §300.152(b)(1)(i)), or the parties agree to engage in mediation or other alternative dispute resolution, if available in the State (34 CFR §300.152(b)(1)(ii)). The Department's longstanding position is that States must ensure that the 60-day timeline for complaint resolution begins on the date that a

complaint is received. Under 34 CFR §300.151(a)(2), the State must adopt procedures for widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under 34 CFR §§300.151 through 300.153. This would include the criteria the State uses for determining when the State considers a complaint that an organization or individual files

under 34 CFR §300.153 to be received. While a State has some discretion in this regard, a State must ensure that its procedures allow for the timely resolution of complaints and are uniformly applied, consistent with 34 CFR §300.152(a) and (b).

With respect to due process complaints, either a parent or a public agency may file a due process complaint regarding the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education to the child. 34 CFR §300.507(a). Under 34 CFR §300.508(a), the public agency must have procedures that require either party, or the attorney representing the party, to provide to the other party a due process complaint, which shall remain confidential. Section 300.508(b)(1)-(6) of the final Part B regulations, specifies the information that this complaint notice must contain. Section 300.508(c) of the final Part B regulations specifies that a party may not have a due process hearing on a due process complaint until the party or the attorney representing the party files a due process complaint notice that meets the requirements of 34 CFR §300.508(b). Under 34 CFR §300.508(d)(1), the receiving party may notify the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint notice, that the receiving party believes that the due process complaint does not meet the requirements in 34 CFR §300.508(b). Also, under 34 CFR §300.508(d)(2), within five days of receipt of notification under paragraph (d)(1), the hearing officer must make a determination regarding the sufficiency of the complaint. Further, under 34 CFR §300.510(a), the local educational agency must convene a resolution meeting within 15 days of receipt of the parent's due process complaint, and the parties generally have a 30-day resolution period to resolve the matter before a due process hearing request can be initiated. Thus, the due process complaint procedures impose certain obligations on parents and public agencies filing due process complaints once a proper due process complaint notice is received. As noted previously with regard to State complaints, States must establish and implement uniform procedures for determining when due process complaints are considered received to ensure adherence to appropriate due process timelines. 34 CFR §300.500.

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.

We hope this response provides you with the information you need. If you have any further questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456.

Sincerely,



William W. Knudsen
Acting Director
Office of Special Education
Programs