



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

F E B 1 0 2000

Mr. Lawrence M. Siegel, Esq.  
300 Drake's Landing Road  
Greenbrae, California 94904

Dear Mr. Siegel:

Thank you for your letter of August 24, 1999, written to the U.S. Department (Department) of Education's Office of Special Education Programs (OSEP). You express concern regarding a position taken by the Compliance Unit at the California Department of Education. You allege that the State violated the complaint procedure at 34 CFR §§300.660-661 when it refused to investigate a complaint filed on June 22, 1999, that a school district unilaterally and clearly stated that it would not follow a student's IEP during the school year beginning September, 1999.

Your letter indicates that your clients and the [REDACTED] School District ("SD") reached an agreement at an IEP meeting on April 29, 1999, that your clients' [REDACTED] would be provided a Non-Public Agency ("NPA") 1:1 aide for the 1999-2000 school year. Subsequent to that IEP meeting, the SD school board voted to end a contractual relationship with the NPA. SD then informed your clients that the NPA aide would not be provided when school would start in September, 1999.

When your clients filed a complaint on June 22, 1999, with the Complaints Management and Mediation Unit (Unit) at the California Department of Education, the Unit determined that the June 22, 1999 complaint did not allege violations of special education laws and/or regulations and was, therefore, not a matter for investigation. You request clarification not to the substantive dispute but to whether the allegation should have triggered resolution by the Unit.

Under the State complaint procedures applicable to complaints involving Part B, at 34 CFR §§300.660-300.662, a State must adopt procedures for resolving complaints filed by an organization or individual alleging that a public agency has violated a requirement of the Part B statute or regulations. The State complaint procedures are available for resolving any, complaint that meets the requirements of §300.662, including (1) complaints that raise systemic issues, and (2) individual child complaints that are filed by parents. Section 300.662 specifies that each complaint must be written and signed, and it must include "a statement that the public agency has violated a requirement of Part B of the Act" and "the facts on which the statement is based." In particular, the complaint "must allege *a violation that occurred* not more than one year prior to the date that the complaint is received." (emphasis added)

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According to your letter, the SD did not give effect to the April 29, 1999 IEP when it refused to provide Steven with a NPA 1:1 aide in the beginning of the 1999-2000 school year. Your letter asks the Department to take the view that under §300.342(b) and §§300.660-662, a violation could occur when the LEA notifies the parents it will not provide agreed-upon services stated in the IEP and does not reconvene the IEP team for a follow-up IEP meeting to address alternative services. You also urge that we interpret §§300.660-662 as not specifically stating that the school year must commence before a violation can occur. In our view, the Unit's conclusion in the August 18, 1999 letter that the complaint did "not allege violations of special education laws and/or regulations" was valid. We agree with the Unit's determination that "the complaint pertains to special education services the District may or may not provide during the 1999/2000 school year." Since the complaint was filed in June, 1999, but the new school year did not begin until September, 1999, the Unit could not "investigate an allegation that the District *has already failed* to provide services delineated in the student's individualized education program." (emphasis added) Therefore, based on the information provided by your letter to our office and telephone conversation with Ms. Camellia Wang, we are unable to determine that there was a violation of the regulations for IDEA.

We thank you for your patience in awaiting our response, and we hope that you find the above explanation helpful. If you would like further assistance, please contact the Office of Special Education Programs and speak with Ms. Camellia Wang at (202) 401-1891 or Dr. JoLeta Reynolds at (202) 205-5507, or you may reach Ms. Ellen Safranek, the California State contact in the Monitoring and State Improvement Planning Division, at (202) 205-9131.

Sincerely,

Kenneth R Warlick  
Director  
Office of Special Education Programs

cc: Barry Zolotar, Legal Department, CA Department of Education  
Michael P. Warych, Complaints Management and Mediation Unit, CA  
Department of