



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

12/11/08

XXXXXX XXXXXXXX
XXXX XXXXXXX XXXXXXX
XXXXX, XXXXX XXXX

Dear XX XXXXX:

This is in response to your letter to me, dated July 23, 2008, in which you asked whether a parent or local educational agency (LEA) may file a due process complaint regarding an individualized education program (IEP) that is not the most recent IEP or is one to which the parent has agreed.

Under 34 CFR §300.507(a) of the regulations for Part B of the Individuals with Disabilities Education Act (IDEA), a parent or a public agency may file a due process complaint on any of the matters described in 34 CFR §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child). FAPE includes special education and related services that are provided in conformity with an IEP that meets the requirements of 34 CFR §300.320 through 300.324. 34 CFR §300.17(d). Therefore, issues related to an IEP are intrinsically related to the provision of FAPE.

Under 34 CFR §300.507(a)(2), a due process complaint generally must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint or, if the State has an explicit time limitation for filing a due process complaint under Part B, in the time allowed by that State law. This timeline does not apply to a parent if the parent was prevented from filing a due process complaint due to specific misrepresentations by the local educational agency (LEA) that it had resolved the problem forming the basis of the due process complaint; or if the LEA withheld information from the parent that was required under Part B to be provided to the parent (34 CFR §300.511(f)).

Based on the above regulations, nothing in Part B would prevent a parent or public agency from filing a due process complaint regarding an IEP that is not the most recent IEP, provided that the alleged action forming the basis of the due process complaint occurred not more than two years before the parent or public agency knew, or should have known, about the alleged action (or within a State-established time limitation for filing a due process complaint), unless one of the exceptions in 34 CFR §300.511(f) is present.

You also ask whether a parent has the right to file a due process complaint regarding an IEP to which the parent has agreed. There is no provision in the IDEA or its implementing regulations requiring that a parent agree to an IEP. Therefore, the analysis set out above also would apply in the case of a due process complaint regarding an IEP to which the parent agreed.

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.

If you have further questions, please do not hesitate to contact Dr. Al Jones at 202-245-7394 or Dr. Deborah Morrow at 202-245-7456.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Knudsen". The signature is fluid and cursive, with a long horizontal stroke at the end.

William W. Knudsen
Acting Director
Office of Special Education Programs

cc: XXXXXXXX