



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

JUN 20

The Honorable Charles W. Stenholm United  
States Congress Room 1211, Longworth  
House Office Building Washington, DC 20515

Dear Congressman Stenholm:

Thank you for your letter to Secretary Riley dated December 8, 1999, expressing the concerns of a number of your constituents from DeLeon, Texas. You stated that they were concerned that "federal regulations administered by the U.S. Department of Education were causing the DeLeon Independent School District (ISD) undue cost in defending lawsuits at the state level that could best be remedied at the local level." You specifically inquired about the flexibility federal regulations provide to states and school districts in complying with the Individuals with Disabilities Education Act (IDEA) and the adjudication of IDEA claims in due process hearings.

As you know, Part B of the IDEA is a Federal program administered by the Office of Special Education Programs. Part B authorizes the Federal government to provide funds to States, and through the States, to local school districts to meet the unique educational needs of eligible children with one or more of the specified disabilities. If a child qualifies for services under Part B, the school district must develop an individualized education program (IEP) for the child.

Under Part B, a child's educational placement and services to be received must be based on the child's IEP. When a local school district conducts an IEP meeting, the child's parents must be invited to attend and to play a key role, along with school personnel, in developing the IEP. At that time, the IEP team is responsible for developing, reviewing and revising, if necessary, a child's IEP, to determine the child's specific needs and the educational placement. Through the IEP process, a parent should have the opportunity to discuss with school officials different approaches that would appropriately meet their child's needs.

There are dispute resolution mechanisms to assist school districts and parents if there are disputes between them regarding a child's identification, evaluation, or educational placement or the provision of a free appropriate public education for the child. Federal regulations provide states flexibility in establishing these mechanisms. First, if the parent and the local school district staff cannot agree on the content of the IEP, the parent may request a due process hearing, and an impartial hearing officer is then required to render an independent decision in order to resolve any disagreements. 34 CFR §§300.500-300.517. The Part B regulations specifically provide that a due process hearing "must be conducted by the State Educational Agency (SEA) or the public agency directly responsible for the education of the child, as determined under State statute, State regulation or a written policy of the SEA." (Emphasis added.) 34 CFR §300.507(b). Thus, states may choose to allow public agencies (including school districts) to conduct due process hearings locally as long as the due process procedures comply with the provisions of the IDEA.

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In addition, the IDEA Amendments of 1997 added a provision to "ensure that procedures are established . . . to allow parties to . . . resolve such disputes through a mediation process which, at a minimum, shall be available whenever a [due process] hearing is requested. 20 U.S.C. § 1615(e); 34 CFR §300.506. Stags may wish to expand the availability of mediation to parties prior to a hearing being requested to enable alternative dispute resolution. Many States, including Texas, have found the mediation process to be an effective, timely, and less expensive way of resolving disagreements for the parents and the school personnel involved. While mediation is a viable and cost-saving alternative to expensive due process hearings, it must be a voluntary choice by both of the parties involved. States may wish to encourage school districts to adopt policies encouraging participation in mediation. The DeLeon ISD may wish to promote the use of the mediation process as a successful, cost-saving method of resolving disputes at the local level.

Finally, the DeLeon ISD may wish to review the issues raised in parent complaints that have resulted in the numerous due process hearings for the district. Such proactive research may result in an in-depth review of the district's policies and procedures in regard to their special education program, and further help identify possible enhancements to decrease the potential of future litigation.

Hopefully, the above information has been helpful to you. If we can be of further assistance to you, please feel free to contact Ms. Diane DeMaio, the Texas State Part B Contact, at (202) 2055716.

Sincerely,

Kenneth R. Warlick  
Director,  
Office of Special Education Programs