

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



0 CT 2 9 1999

Mr. Douglas Gill  
State Director  
Special Education Section  
Office of Superintendent of Public Instruction  
Old Capitol Building  
P.O. Box 47200  
Olympia, Washington 98504-7200  
Dear Mr. Gill:

This is in response to an email communication from Leslie Weaver of your staff dated June 30, 1999. During a subsequent telephone conversation, in which informal advice was provided on this matter, it was determined that a written response was needed to assist the Washington Office of the Superintendent of Public Instruction (WOSPI) in addressing the matter resulting in Ms. Weaver's inquiry and any future complaints raising similar issues. The following explanation of the requirements of Part B of the Individuals with Disabilities Education Act (Part B) is provided for your consideration.

This inquiry concerns the application of the State complaint procedures when a party to a complaint has been involved in a prior due process hearing, presumably on the same issues raised in the State complaint. In the specific case prompting your inquiry, it is our understanding that a complaint was filed with WOSPI in April of 1999, alleging in two of its three allegations some of the same issues that had been the subject of a prior due process hearing. We understand that the hearing officer dismissed the complainant's due process request with prejudice in the due process action, effectively barring the complainant from returning to the due process forum to raise those issues in the future. The question raised was whether the doctrine of res judicata would bar WOSPI's review of those allegations in a citizen's complaint in accordance with the State complaint procedures.

Under 34 CFR §300.660(a)(1), the SEA must have written procedures for resolving any complaint that meets the requirements of 34 CFR §300.662. However, the regulation at 34 CFR §300.661(c) provides two specific exceptions to this requirement. Under 34 CFR §300.661(c)(1), an SEA need not resolve an issue in a complaint if a due process hearing is pending on the same issue, and "must set aside any part of the complaint that is being

addressed in the due process hearing, until the conclusion of the hearing." Paragraph (c)(1) further provides:

However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

34 CFR §300.661(c)(1 ).

Paragraph (c)(2) further provides that the hearing decision is binding on an issue raised in a complaint "that has previously been decided in a due process hearing involving the same parties." 34 CFR §300.661(c)(2)(i). In that circumstance, the SEA would not be required to resolve the complaint and must inform the complainant that the hearing decision is binding. 34 CFR §300.661(c)(2)(ii).

We interpret 34 CFR §300.661(c)(2) of the Part B regulations to mean that an SEA is not relieved of its obligation to resolve an issue raised in a complaint if the **merits of the issue**, also the subject of a prior due process hearing involving the same parties, were not decided in that hearing. This is because under 34 CFR § 300.660(a), an SEA is required to have procedures for resolving any complaint that meets the requirements of 34 CFR § 300.662. This obligation is modified only in the two circumstances specified in 34 CFR §300.661(c)(1)-(2) of the Part B regulations, both of which are intended to avoid conflicting decisions **on the merits**. We believe that a decision that dismisses a due process hearing complaint with prejudice, based upon the procedures of the hearing, is not a decision on the merits of the underlying issues of that complaint.

We hope that you find this explanation helpful. If you would like further assistance, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss in the Office of Special Education Programs (OSEP) at (202) 205-5507, or (202) 205-9053, respectively.

Sincerely,

Patricia J. Guard  
Acting Director  
Office of Special Education Programs

