

74 IDELR 171

119 LRP 19543

Letter to Zirkel

Office of Special Education Programs

N/A

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Related Index Numbers

125.030 Tuition Reimbursement

150.025 Relationship between Misconduct and Disability

100.005 In General

20.015 Matters Subject to Appeal

160.045 Scope of Hearing Officer's Authority

Judge / Administrative Officer

Laurie VanderPloeg, Director

Ruling

The IDEA's express authorization of hearing officers to hear parents' appeals of decisions regarding disciplinary changes of placement under 34 CFR 300.530 and 34 CFR 300.531, and manifestation determination reviews under 34 CFR 300.530(e), does not limit a state educational agency's authority to resolve the same issues under state complaint procedures.

Meaning

State complaint procedures are available to a parent who alleges a violation of the IDEA, including a violation of the IDEA's disciplinary provisions. Thus, a parent who disagrees with a disciplinary change of placement or MDR may seek relief through a state complaint instead of pursuing a due process hearing. When parents utilize state complaint procedures to challenge an MDR or disciplinary change of placement, districts need to be ready either to resolve the complaint or to provide the state information justifying their decisions within the 60-day state complaint timeline.

Case Summary

Parents seeking to challenge a disciplinary

change of placement or MDR do not necessarily have to go through a due process hearing. According to OSEP's letter to an education law professor, states may hear parents' appeals as part of the state complaint process. The professor asked whether the specific express authorization in 34 CFR 300.532(a) and 34 CFR 300.532(b) for hearing officers to address issues arising from disciplinary changes of placement exclude those issues from the jurisdiction of the state complaint process. Under the IDEA's implementing regulations, a parent who disagrees with any decision regarding placement under 34 CFR 300.530 and 34 CFR 300.531, or the MDR under 34 CFR 300.530(e), or a district that believes that maintaining a child's current placement is substantially likely to result in injury to the child or others, may appeal the decision by requesting a due process hearing. Further, the IDEA states that a hearing officer makes a determination regarding such appeals and may: 1) return the child to his IEP placement; or 2) order a change of placement to an interim alternative educational agency for up to 45 school days if the impartial hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury. 34 CFR 300.532(b)(2). OSEP stated that these regulations, although they reference the authority of hearing officers, would not limit the state's authority to resolve the same issues as part of a state complaint. "Specifically, the State complaint procedures are available to a parent who alleges that a public agency has violated a requirement of Part B of IDEA or the Part B regulations, and these include the disciplinary provisions in 34 CFR 300.530 through 34 CFR 300.536," OSEP Director Laurie VanderPloeg wrote. Addressing additional questions posed by the professor, OSEP stated that SEAs have authority to award tuition reimbursement as part of the state complaint process. Turning to the professor's questions about due process hearings, OSEP explained that SEAs are obligated to ensure hearing officers' decisions are in a timely manner implemented even if there is no child-specific action

ordered. Finally, OSEP stated that a hearing officer may order compensatory education and other appropriate relief when a district violates IDEA change of placement rules. IHOs are not limited to the remedies cited in 34 CFR 300.352(b)(2) (restoring the child's IEP placement or removing the child to an IAES), OSEP observed.

Full Text

Dear Dr. Zirkel:

This letter is in response to your electronic mail (email) addressed to Lisa Pagano of the U.S. Department of Education (Department), Office of Special Education Programs (OSEP). In that correspondence, you asked a series of questions regarding the implementation of the Individuals with Disabilities Education Act (IDEA) State complaint and due process hearing procedures. Each of your questions are answered below. We apologize for the delay in providing this response.

We note that section 607(d) of IDEA prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented and does not establish a policy or rule that would apply in all circumstances.

Question 1: Does the State complaint process have jurisdiction and remedial authority for tuition reimbursement claims? If not, what is the specific scope of the express authorization for "monetary reimbursement" in 34 C.F.R. § 300.151(b)(1)?

Response: Yes. There is nothing in the IDEA regulations that limits a State educational agency's (SEA's) authority to award tuition reimbursement if the SEA determines it is an appropriate remedy in

resolving an IDEA complaint in which the SEA found the denial of appropriate services. In Question B-10 of its Questions and Answers on IDEA Part B Dispute Resolution Procedures,¹ (hereinafter, "Q&A"), OSEP states that if there is a finding in a State complaint that a child or group of children has been denied a free appropriate public education (FAPE), "an SEA, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children." Accordingly, the resolution of each State complaint is based on the specific facts and circumstances of the complaint and an SEA has broad discretion when determining the appropriate remedy. We also note that there is nothing in the Part B regulations that either requires or prohibits an SEA from awarding tuition reimbursement as a remedy for a State complaint where the SEA determines it is necessary to address the denial of appropriate services consistent with IDEA requirements. An SEA could order tuition reimbursement in resolving an IDEA State complaint to address the denial of appropriate services notwithstanding the requirements in 20 U.S.C. § 1412(a)(10)(C)(ii) and 34 C.F.R. § 300.148(c) (reimbursement for private school placement).

Question 2: Does the specific express authorization for hearing officers to address issues arising from disciplinary changes in placement (34 C.F.R. § 300.532(a)-(b)) exclude these issues from the jurisdiction of the State complaint process?

Response: No. The express authorization for hearing officers to hear appeals from parents of decisions regarding disciplinary changes of placement under 34 C.F.R. §§ 300.530 and 300.531 and the manifestation determination under 34 C.F.R. § 300.530(e) would not limit an SEA's authority to resolve the same issues under the State complaint procedures. We also find no other provision in IDEA and its implementing regulations that would limit the State's authority in resolving an IDEA State complaint on these matters. Specifically, the State complaint procedures are available to a parent who alleges that a

public agency has violated a requirement of Part B of IDEA or the Part B regulations, and these include the disciplinary provisions in 34 C.F.R. 300.530-300.536.

Question 3: Do the two specifically authorized hearing officer remedies for disciplinary changes in placement at 34 C.F.R. § 300.532(b)(2) preclude the hearing officer from alternatively, or additionally, ordering other remedies, such as compensatory education services, for these particular issues?

Response: No. IDEA does not preclude hearing officers conducting due process hearings under 34 C.F.R. § 300.511(a) on expedited due process complaints filed under 34 C.F.R. § 300.532(a) from ordering relief that is appropriate to remedy the alleged violations based on the facts and circumstances of each individual complaint. This is so even though 34 C.F.R. § 300.532(b)(2) identifies the specific actions that a hearing officer may take in resolving an expedited due process complaint. We note that a hearing on an expedited due process complaint is treated as an impartial due process hearing, which is subject to the hearing decision requirements in 34 C.F.R. § 300.513. Specifically, in matters alleging a violation (an improper manifestation determination), a hearing officer may find that a child did not receive FAPE if the action caused a deprivation of educational benefit. See 34 C.F.R. § 300.513(a)(2)(iii). For example, as a result of an expedited due process complaint under 34 C.F.R. § 300.532(a), a hearing officer could conclude that a local educational agency (LEA) improperly determined that the child's behavior was not a manifestation of his or her disability. The hearing officer could further conclude that the child should not have been subjected to the disciplinary removal resulting from the improper manifestation determination and that as a result, was denied required instruction and services. In such circumstances, to remedy the violation, the hearing officer, in addition to returning the child to the placement from which she or he was removed consistent with 34 C.F.R. § 300.532(b)(2)(i), could order the public agency to provide compensatory

services to remedy the loss of instruction and services to the child.

Question 4: Does the State's required complaint procedures system have the obligation to enforce a hearing officer's decision that finds the district committed procedural violations that did not result in a denial [of] FAPE and the hearing decision orders only procedural compliance under 34 C.F.R. § 300.513(a)(3)?

Response: Yes. Under 34 C.F.R. § 300.152(c)(3), a complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA. Further, in its Q&A, OSEP addressed the SEA's responsibility after a due process hearing is issued. See Question C-26. The SEA, pursuant to its general supervisory responsibility under 34 C.F.R. §§ 300.149 and 300.600 must ensure that a hearing officer's decision is implemented in a timely manner, unless either party appeals the decision. This is true even if the hearing officer's decision includes only actions to ensure procedural violations do not recur and no child-specific action is ordered. An SEA should review hearing officer determinations as part of its oversight of the State's IDEA due process system. Such a review can help the SEA identify hearing officer training needs, inform the State's monitoring of its LEAs, and detect LEA training and technical assistance needs.

If you have any further questions, please do not hesitate to contact Ms. Pagano at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

¹A copy of this document is available at: <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/>

Statutes Cited

20 USC 1412(a)(10)(C)(ii)

Cases Cited

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