



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

[REDACTED]
[REDACTED]
[REDACTED]

MAR 30 2001

Dear [REDACTED]

This is a response concerning your on-going complaint against the Oklahoma State Department of Education (OKSDE) and the [REDACTED] Public School District of Oklahoma County. Specifically, this letter is in response to your November 28, 2000, request that the Office of Special Education Programs (OSEP) require the OKSDE to conduct a complaint investigation and issue a written complaint decision regarding the OKSDE system and procedures for scheduling and conducting due process hearings. The OKSDE is now holding this complaint in abeyance pending a federal court decision in the suit filed by you. For clarification purposes, this letter includes our understanding of the actions taken, based on documentation provided by you and the OKSDE since our last written correspondence sent to you and OKSDE on August 22, 2000.

As you know, OSEP issued a written directive to the OKSDE dated August 22, 2000, requesting that the OKSDE conduct an independent determination as to whether the OKSDE violated or continues to violate the due process hearing procedures under the Individuals with Disabilities Education Act (IDEA). This letter was issued in response to your letters to OSEP alleging that the OKSDE system and procedures for scheduling and conducting due process hearings effectively denied you an impartial due process hearing. You also alleged that the structure of the OKSDE due process system prevented you from receiving a final decision within 45 days after the receipt of a request for a hearing as required by §300.511 of the regulations implementing the IDEA. In this letter, OSEP requested that the OKSDE conduct an investigation, if OKSDE determined such an investigation was necessary; give you the opportunity to submit additional information about the allegations; review all relevant information and make an independent determination as to whether the public agency violated a requirement of Part B of the IDEA; and provide a written decision to you and to OSEP within 60 days of the date of the letter. See 34 CFR §§300.660 through 300.662.

Subsequent to the August 22, 2000, letter, you filed a lawsuit in the Western District of Oklahoma Federal court on October 5, 2000, that alleges, among other allegations, that the Edmond Public School District failed to comply with the procedural safeguards requirements of an impartial due process hearing. The OKSDE, in response to the lawsuit, wrote you a letter dated November 10, 2000, that states the OKSDE will hold in abeyance, pending the decision of the court, the complaint issues forwarded to OKSDE by OSEP on your behalf because the OKSDE determined that the issues you raise under the State complaint procedures are inherent to the action you filed in federal court.

As stated earlier, your letter dated November 28, 2000, requests that OSEP intervene and direct the OKSDE to proceed immediately with the August 22, 2000, directive issued by OSEP to the OKSDE. It is your position that because the OKSDE is not a named party to the action, it must comply with the directive immediately and may not hold your State complaint in abeyance pending the federal court decision.

Based on OKSDE's November 10, 2000, letter, the OKSDE has determined that all of the issues raised in your lawsuit are the same issues raised in the State complaint. Our review of the allegations made in your lawsuit, which you provided as part of the November 28, 2000, letter, leads to the conclusion that the issues in your lawsuit appear to be substantially the same issues brought to our attention and referred to the OKSDE in our letter dated August 22, 2000. In both your court action and your OSEP complaint, you raise allegations about OKSDE's method of assigning hearing officers and conducting hearings. Therefore, investigation of the issues in your OSEP complaint would necessarily implicate the issues raised in your court action. The portions of a hearing officer's decision that are appealed to State or Federal court are not final until completion of the judicial proceedings. 34 CFR §§ 300.510, 300.512. The judicial proceedings may include the court's review of the complaint as well as an appeal of the court's decision. Therefore, if a party appeals portions of the final due process decision to State or Federal court or appeals the State or Federal court decision, the State must continue to hold those portions of the complaint being appealed in abeyance pending conclusion of the judicial proceedings. 34 CFR §300.661(c). This is to avoid the possibility of conflicting decisions.

The State may only hold in abeyance those issues in the complaint that are currently being appealed in court. See 34 CFR §300.661(c). The State cannot refuse to investigate all issues in a complaint because the parent is seeking judicial review of some of those issues. However, it appears that the OKSDE has determined that all of the issues raised in your complaint are the same issues raised in your lawsuit and is awaiting the conclusion of the judicial proceedings. Since all of the issues raised in your State complaint are substantially the same issues raised in your lawsuit, the OKSDE must hold your State complaint in abeyance pending the court's final determination of your lawsuit.

We hope that you find this explanation helpful. If you need further assistance, please call Mr. Troy Justesen at 202-205-9053, or Ms. Maral Taylor at 202-205-9181.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

c.c.: Oklahoma State Department of Education