



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

DEC 10 2003

[REDACTED]

This letter is in response to your September 4, 2003 e-mail and your numerous e-mails sent thereafter to the Office of Special Education Programs (OSEP), U.S. Department of Education regarding allegations against the State of New Hampshire's Department of Education (NHDOE) in its administration of the Individuals with Disabilities Education Act (IDEA). In your September 4, 2003 e-mail, you allege that NHDOE has failed to provide [REDACTED] with a free appropriate public education (FAPE) and that there is a lack of accountability from the State agencies that oversee education in New Hampshire. In a letter dated September 25, 2003, sent via e-mail on or about October 2, 2003, you allege that NHDOE violated the requirements under 34 CFR §300.508(c) by failing to maintain a copy of the hearing officer qualifications on file. In that same letter, you ask OSEP to investigate NHDOE's failure to provide a properly qualified hearing officer, failure to hold [REDACTED] School District accountable for carrying out [REDACTED] IEP, and you ask OSEP to investigate a pattern of harassment by the School District and the District's attorney and failure to conform [REDACTED] individualized education plan (IEP) with the January due process hearing decision. In a letter dated September 30, 2003, sent via e-mail on or about October 2, 2003, you allege that the "NHDOE is violating the terms of its agreement with the U.S. Department of Education, 34 CFR §300.2 by failing to: 1) exercise general supervisory authority, 20 U.S.C. 1412(a)(11) and 34 CFR §300.600; and 2) enforce the complaint provisions at 20 U.S.C. 1221(e)(3) and 34 CFR §§300.660-300.662." I will address your concerns below.

OSEP is responsible for administering Part B of the IDEA, which provides financial assistance to State educational agencies (SEAs) and, through the SEA, to local educational agencies to assist them in making available a FAPE to eligible children and youth with disabilities. An SEA is responsible for ensuring that the requirements of Part B are carried out and that each educational program administered in the state meets the requirements of Part B. (34 CFR §300.141).

Under the Part B regulations, the State is required to have a dispute resolution system that includes: 1) State complaint procedures (34 CFR §§300.660-300.662); and 2) due process procedures (34 CFR §§300.500-300.513). Under the due process procedures, each public agency is required to have mediation available, at a minimum, when a due process hearing is requested. (34 CFR §300.506.) Under the state complaint resolution system, each SEA is required to have written procedures to resolve any complaint, including a complaint filed by an organization or

individual from another State. (34 CFR §300.660.) An organization or individual must file a signed, written complaint alleging that a public agency violated a requirement under Part B not more than one year prior to the date the complaint is received. The complaint must also include a statement of facts on which the allegation is based. (34 CFR §300.662.) The regulations do not include a provision for OSEP's review of the State's decision. I have enclosed a memorandum on complaint resolution procedures under Part B for your reference.

Under the due process hearing system, a parent of a child with a disability or the public agency may initiate a hearing on any matters relating to the identification, evaluation or educational placement of a child with a disability, or the provisions of FAPE to the child. (34 CFR §300.507.) Under the Part B regulations, an impartial hearing officer must conduct the due process hearing. (34 CFR §300.508.) The hearing officer cannot be an employee of the public agency that is involved with the education or care of the child, nor can the hearing officer have a personal or professional interest that would conflict with his or her objectivity in the hearing. (34 CFR §300.508(a).) Each public agency is required to keep a list of persons who serve as hearing officers that includes a statement of each person's qualifications. (34 CFR §300.508(c).)

A decision made in a due process hearing is final, except that any party involved may appeal the decision to the SEA, if the hearing was conducted by a public agency other than the SEA. (34 CFR §300.510(b).) Additionally, any party aggrieved by the findings and decision made by a due process hearing officer and who does not have the right to appeal to the SEA, and any party aggrieved by the findings and decision under 34 CFR §300.510(b), has a right to bring a civil action with respect to the complaint in a state court of competent jurisdiction or in a district court of the United States. (34 CFR §300.512.)

According to your e-mails, you have exercised your rights to both the state complaint process and the due process hearing process in an attempt to resolve your concerns. As stated above, the Part B regulations do not provide for OSEP's review of state complaint decisions and therefore, we cannot review NHDOE's decision regarding your complaint. With regard to the other issues that you asked OSEP to investigate, i.e., violations of 34 CFR §300.508 and NHDOE's failure to hold the school district accountable, you may avail yourself of the state complaint process to address these allegations. Further, if you continue to have specific concerns about [REDACTED] education, you may use the due process procedures, including mediation, to address your concerns.

To the extent that your allegation of a pattern of harassment is based on [REDACTED] disability, this may be a violation of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans With Disabilities Act of 1990 (Title II). The Department's Office for Civil Rights (OCR) enforces Section 504 and Title II. Section 504 and Title II prohibit discrimination on the basis of disability. Specifically, Section 504 requires that a FAPE be provided to qualified persons with disabilities in a school district's jurisdiction, regardless of the severity of the person's disability. 34 CFR §104.4, 28 CFR §35.130 and 34 CFR §104.33-104.36. For more information about Section 504 and Title II or to file a complaint, you should contact the OCR enforcement office serving New Hampshire, which is located at:

Boston Office
Office for Civil Rights
U.S. Department of Education
J.W. McCormack Post Office and Courthouse
Room 701,01-0061
Boston, MA 02109-4557
Telephone: 617-223-9662
FAX: 617-223-9669
Email: OCR_Boston@ed.gov

With regard to the SEA's general supervision requirements, as Mr. Rex Shipp indicated to you during a telephone conversation, OSEP is currently working with the State of New Hampshire, through the Continuous Improvement and Focused Monitoring System (CIFMS), to improve the State's provision of services under Part B. Specifically, in April 2001 during the self-assessment phase of CIFMS the State of New Hampshire self-identified its Dispute Resolution System as being an area of non-compliance. This area of non-compliance was placed in the State's Improvement Plan. Since April 2001, OSEP has consistently worked with the SEA staff to help bring this area into compliance. For more information in regard to the State's ongoing improvement planning in this area, please contact:

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I hope this information is helpful. Thank you for sharing your concerns with us.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

Enclosure

cc: Dr. Mary J. Ford