



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

November 3, 2014

Atlee Reilly
Staff Attorney
Disability Rights Center
24 Stone Street, Suite 204
Augusta, Maine 04330

Dear Mr. Reilly:

This is in response to your letter to me regarding a State educational agency's (SEA) authority to assign the burden of proof to complainants filing a State complaint under 34 CFR §§300.151-300.153 of the Individuals with Disabilities Education Act (IDEA). Specifically, you ask whether the assignment of burden of proof to the complainant in an IDEA complaint investigation is consistent with the responsibilities of the SEA under 34 CFR §§300.151-300.153.

The Part B State complaint procedures are a powerful tool used to address noncompliance with Part B of the IDEA and its implementing regulations in a manner that both supports and protects the interests of children with disabilities and their parents, and facilitates ongoing compliance by the State and its public agencies with the IDEA and its implementing regulations. 71 Fed. Reg. 46540, 46601 (Aug. 14, 2006). After a State complaint is filed, it is the SEA's responsibility to review all relevant information and make an independent determination under 34 CFR §300.152(a)(4) as to whether the public agency has violated the IDEA. Within 60 days of the date that the complaint was filed, subject to allowable extensions, an SEA is required to issue a written decision to the complainant that addresses each allegation in the complaint and contains: (1) findings of fact and conclusions; and (2) the reasons for the SEA's final decision. 34 CFR §300.152(a)(5). In addition, under 34 CFR §300.152(b)(2), the SEA must have procedures for effective implementation of its final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance. Question B-30 in *Questions and Answers on IDEA Part B Dispute Resolution Procedures*, revised July 2013. This document is available at: <http://idea.ed.gov/explore/home>.

The State complaint process is intended to be less adversarial than the more formal filing of a due process complaint and possible due process hearing. The State complaint procedures in 34 CFR §§300.151-300.153 do not provide the parties with the extensive procedural rights provided to parties in a due process hearing. For example, the State complaint process does not require parties to provide evidence, nor do they require that a State allow parties to review the submissions of the other party or to cross-examine witnesses. 71 Fed. Reg. 46540, 46605 (Aug. 14, 2006).

In *Schaffer v. Weast*, 564 U.S. 49 (2005), the Supreme Court held that the party seeking relief in an impartial due process hearing under IDEA section 1415(f)-(j) and 34 CFR §§300.511-300.518 has the burden of proof. However, in the Department’s view, that case is not applicable to State complaints because both the legal authority and the purpose for State complaints is separate and broader than for due process hearings. The legal authority for requiring State complaints is 20 U.S.C. § 1221e-3, which is the Secretary’s general authority to implement Department programs. Like due process hearings, State complaints can address disputes between parents and school districts regarding the provision of FAPE. Unlike due process hearings, State complaints are investigative in nature, rather than adversarial, and do not include the same procedural rights accorded to parties in an impartial due process hearing. Therefore, the Department believes that it is not consistent with the IDEA regulation for an SEA to treat a State complaint like a due process complaint and assign the burden of proof to either party. Under 34 CFR §300.152, once a State complaint is properly filed, it is solely the SEA’s duty to investigate the complaint, gather evidence, and make a determination as to whether a public agency violated the IDEA. It is not the burden of the complainant – or any other party – to produce sufficient evidence to persuade the SEA to make a determination one way or another. Rather, the SEA must independently review and weigh the evidence, generally by reviewing student and school records, data and other relevant information, and come to a determination supported by relevant facts. It would not be inconsistent with the IDEA, however, for a State to use a “preponderance of the evidence” standard in making independent determinations as to whether a public agency violated a requirement of Part B of the IDEA, pursuant to 34 CFR §300.152(a)(4), as this is the generally recognized standard for civil matters.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have questions, please do not hesitate to contact Jennifer Wolfsheimer at 202-245-6090 or by email at Jennifer.Wolfsheimer@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is fluid and cursive, with a long horizontal line extending to the right.

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs