



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

March 3, 2023

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Dear Dr. Zirkel:

This correspondence responds to your multiple inquiries<sup>1</sup> to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), regarding implementation of the State complaint, due process complaint, and due process hearing procedures required under the Individuals with Disabilities Education Act (IDEA). We have consolidated the questions you raised, and our responses are provided below. We regret the delay in responding. Please note that OSEP responds to these matters, generally, and not in the context of any specific due process complaint or State complaint that may be pending or resolved.

**Question #1:** May a State educational agency's (SEA) final decision on a State complaint be *appealed* by filing a due process complaint to request a due process hearing? (Emphasis added).

**OSEP Response:** No. OSEP has advised previously that, if, after the SEA issues its decision on a State complaint and the issue is still in dispute, the parent or public agency may, if they have not already done so, use mediation or file a due process complaint to request a due process hearing, in accordance with 34 C.F.R. §§ 300.506-300.508, subject to any applicable exceptions (e.g., the complainant is not a parent).<sup>2</sup>

OSEP addressed the question of appeals of SEA State complaint decisions in its 1995 Letter to Lieberman. 23 IDELR 351 (Jul. 28, 1995). In that letter, OSEP explained:

Under Part B, the due process and the State complaint procedures are separate, distinct, and independent remedies available to children with disabilities and their parents to resolve issues of disagreement with local school districts. The State complaint process enables SEAs to address potential violations of Part B committed by public agencies under the SEA's supervision, whereas a due process hearing is an impartial review of matters relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to that child. Because both dispute resolution methods are often

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<sup>1</sup> January 25, 2022, March 7, 2022 and July 13, 2022.

<sup>2</sup> See Question B-32 in OSEP's [Questions and Answers on IDEA Part B Dispute Resolution Procedures](#) (Jul. 23, 2013).

triggered by similar circumstances, a party aggrieved by an SEA decision following a complaint investigation is permitted to pursue due process on the same issues so long as those issues concern identification, evaluation, placement, or the provision of FAPE.

OSEP further explained that IDEA’s due process procedures “afford each party the opportunity to seek an *impartial* review (§ 300.507), to exercise specific hearing rights (e.g., be accompanied and advised by counsel, present evidence and confront witnesses (§ 300.508)), and to seek judicial review of an adverse decision (§ 300.511) whenever a dispute regarding the identification, evaluation, or placement of a child with a disability, or the provision of FAPE to that child arises.” OSEP clarified that the due process procedures *are not a level of appeal for the complainant*, but rather, separate procedures that protect the parties’ (the parent’s and public agency’s) right to a “comprehensive and impartial review of individual disputes.” (Emphasis added). OSEP noted that a hearing officer decision “will prevail over a conflicting result of a SEA complaint investigation that addresses the same matter, although the results of the complaint investigation may be introduced as evidence during the hearing.”<sup>3</sup>

**Question #2:** Does an impartial hearing officer and/or review official have the authority to enforce the order(s) in their decision, assuming that it is the final decision on the merits (as compared to an interim order for an interlocutory issue, such as stay-put)?

**OSEP Response:**

The IDEA Part B regulations make the SEA responsible for ensuring that the Part B requirements are carried out. 34 C.F.R. § 300.149(a)(1). OSEP has advised that the SEA, pursuant to its general supervisory responsibility under 34 C.F.R. §§ 300.149 and 300.600, must ensure that the public agency involved in the due process hearing implements the hearing officer’s decision in a timely manner, unless either party appeals the decision. If necessary to achieve compliance from the LEA, the SEA may use appropriate enforcement actions consistent with its general supervisory responsibility under 34 C.F.R. §§ 300.600 and 300.608.<sup>4</sup> In addition, an SEA must resolve a complaint alleging a public agency’s failure to implement a due process hearing decision. 34 C.F.R. § 300.152(c).

**Question #3:** In your correspondence you report that some States have laws that explicitly authorize summary dispositions in a manner that is inconsistent with the guidance provided in [OSEP’s April 15, 2022 letter to you](#). You state that most of the States that have these laws have incorporated the Federal Rules of Civil Procedure or other rules that give the State’s hearing officers broad jurisdiction without “customization for IDEA cases.” You asked whether such practices are permissible, given the information provided in OSEP’s April 15, 2022, letter to you.

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<sup>3</sup> Although not part of your inquiry, we note OSEP’s Letter to Lieberman clarifies the “stay put” provisions in 34 C.F.R. § 300.518 apply whenever a party initiates a due process hearing, including when the issues in the due process hearing have been previously addressed in the SEA’s complaint decision.

<sup>4</sup> See Question C-26 in [Questions and Answers on IDEA Part B Dispute Resolution Procedures](#) (Jul. 23, 2013)

**OSEP Response:**

As noted in our April 15, 2022, letter, a State’s policies, procedures, or practices may not deny the parties their right to an impartial hearing to resolve disputes related to the identification, evaluation, educational placement, or provision of FAPE to a child with a disability. Although States have discretion to establish procedures for implementing IDEA’s due process provisions, a State may not have a procedure that is inconsistent with IDEA.

OSEP has identified noncompliance through its monitoring activities when States implement general hearing procedures when adjudicating IDEA due process complaints, without regard to the applicable IDEA requirements. For example, a State procedure that permits the hearing officer to initiate an extension of the 45-day hearing decision timeline, rather than at the request of either party, would be inconsistent with 34 C.F.R. § 300.515(c).

OSEP will continue to monitor implementation of IDEA’s dispute resolution requirements and provide technical assistance to ensure that any State-established due process procedures provide parties with an opportunity for an impartial hearing consistent with the requirements in 34 C.F.R. §§ 300.507-300.516.

We hope that this addresses the questions that you have raised. If you have additional questions, please feel free to contact Justin Arner at [Justin.Arner@ed.gov](mailto:Justin.Arner@ed.gov) or Gbenimah Slopadoe at [Gbenimah.Slopadoe@ed.gov](mailto:Gbenimah.Slopadoe@ed.gov).

Sincerely,



Gregory R. Corr, Ed.D.

Director

Monitoring and State Improvement Division