



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

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Dear Mr. Blessing:

This letter responds to your May 10, 2018 letter to Ruth Ryder, then Acting Director for the Office of Special Education Programs (OSEP), U.S. Department of Education (Department). In your letter, you ask whether Indiana Code Chapter 34-13-3.5, which includes additional notice requirements before initiating a civil action or administrative proceeding against a public school, is consistent with the Individuals with Disabilities Education Act (IDEA) dispute resolution procedures. The purpose of this response is to provide information related to the IDEA's due process procedures and clarify our reading of the State's notice provision with respect to the IDEA. We regret the delay in responding.

The recently enacted Indiana Code Chapter 34-13-3.5 Section 1 (which took effect July 1, 2018) requires that, before initiating a civil action or administrative proceeding against a public school, an individual must submit written notice to the school of the alleged violation and a proposed remedy. Not later than 15 days after the notice, the public school may remedy the violation or make a written offer to resolve the dispute. If an individual does not submit the required notice before initiating a civil action or administrative proceeding, a court, administrative law judge or hearing officer shall dismiss the complaint without prejudice. Indiana Code Chapter 34-13-3.5 Section 2 (Section 2) states: "This chapter may not be construed to restrict or limit the rights, procedures, or remedies available to an individual or entity under: (1) the [F]ederal or [S]tate Constitution; or (2) another [F]ederal law."

While the Department generally does not interpret State law, we note that on its face, Section 2 excludes the application of this notice requirement in certain circumstances. A plain reading of Section 2 suggests that the Indiana State legislature contemplated that the notice provision would not be applied if doing so would restrict or limit the rights, procedures, or remedies available to an individual or entity under the various Federal laws (such as the IDEA).

The IDEA already includes specific statutory and regulatory notice and timeline requirements when parties file a due process complaint to request a due process hearing. In general, placing additional restrictive notice and timeline requirements on parents when they file a due process complaint to request a due process hearing is inconsistent with the IDEA. Under the IDEA, there are already a number of preliminary actions that precede a formal due process hearing. As a first step, a parent or a public agency may file a due process complaint on any of the matters relating to the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education to the child, and certain disciplinary matters, and

the complaint must include the content required in 34 CFR §300.508(b) and must meet all other requirements in 34 CFR §§300.507-300.508. Either the party or the attorney representing a party must provide the other party a copy of the due process complaint (which must remain confidential), and the filing party must forward a copy of the complaint to the State educational agency (SEA). 20 U.S.C. 1415(b)(6)-(7) and (k)(3); 34 CFR §§300.507-300.508 and 300.532. Among the information that the complaint must include is “a proposed resolution of the problem *to the extent known and available to the party at the time.*” 20 U.S.C. 1415(b)(7)(A)(ii)(IV) and 34 CFR §300.508(b)(6) (emphasis added).

IDEA also requires that within 15 days of receiving notice of the parent’s due process complaint, and prior to the initiation of a due process hearing, that the local educational agency (LEA) convenes a resolution meeting to give the parent the opportunity to discuss with the LEA the due process complaint and the facts giving rise to the complaint. This meeting need not occur if the parties agree in writing to waive the meeting or to use the mediation process in 34 CFR §300.506. 20 U.S.C. 1415(f)(1)(B) and 34 CFR §300.510(a). If the resolution process is not successful in resolving the parent’s due process complaint, the due process hearing may occur (34 CFR §300.510(b)(1)), and the 45-day timeline commences at the conclusion of the 30-day resolution period or the adjusted resolution period (34 CFR §300.515(a)). Therefore, the IDEA already includes procedures for resolving the parent’s underlying dispute with the school district without resort to a formal due process hearing.

Questions regarding the implementation of Indiana Code Chapter 34-13-3.5 and the steps the SEA is taking to provide training to its IDEA due process hearing officers in this matter are best addressed by the Indiana Department of Education. By copy of this letter, we are notifying the SEA of your inquiry and our response.

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

Sincerely,



Laurie VanderPloeg
Director
Office of Special Education Programs

Cc: Jennifer McCormick, Superintendent
Nancy Holsapple, Director of Special Education