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THE BUREAU OF SPECIAL EDUCATION COMPLAINT PROCESS: A REFRESHER COURSE

Thomas C. Warner

twarner@sweetstevens.com

Though due process hearings often receive top billing, an oft-overlooked dispute resolution option appears to be increasing in popularity: the Bureau of Special Education (BSE) complaint process. In this article, we examine the statutory authority behind BSE complaints, Pennsylvania's procedures, and our advice as to how to prepare for and defend such complaints.

The Individuals with Disabilities Education Act (IDEA) and its implementing regulations require all state education agencies to implement complaint resolution procedures. The BSE is the arm of the Pennsylvania Department of Education responsible for the handling and oversight of such complaints. The IDEA calls for the following minimum state complaint procedures, which are applicable to the BSE process in Pennsylvania:

- A 60-day deadline for issuing a written decision – referred to as a Complaint Investigation Report (CIR) in Pennsylvania – addressing each allegation in the complaint.
- Extensions of the 60-day deadline are only permitted if “exceptional circumstances” exist or the parties agree to engage in mediation or some “other alternative means of dispute resolution.”
- The BSE must ensure that there are procedures in place for effective implementation of its final decision.
- If there is a simultaneous due process complaint regarding one or more of the issues raised in the BSE complaint, BSE may not address any of those overlapping issues until the due process hearing has concluded.
- If a due process hearing has already decided an issue raised in a BSE complaint, the BSE must treat the hearing decision as binding, and the BSE must inform the complainant of that fact.
- The BSE *must* resolve complaints alleging the failure to implement a due process hearing decision.

Unlike due process complaints, BSE complaints need not be filed by the parents of the student in question. Any “organization or individual” can file a complaint, and the complaint need not be child-specific. For example, a BSE complainant may permissibly raise “failure to employ any appropriately-trained special education personnel in instructing students with reading disabilities” without naming any specific student(s), and in that case, the BSE would have an obligation to investigate the complaint.

The content of the complaint itself is subject to several basic threshold requirements under the IDEA as well:

- The complainant must allege a violation of the IDEA and the facts upon which that allegation is based;
- The complaint must include the signature and the contact information of the complainant;

SOUTHEAST REGION OFFICE

331 East Butler Avenue, New Britain, PA 18901

PHONE 215 345 9111 | FAX 215 348 1147

CENTRAL REGION OFFICE

P.O. Box 956, Hershey, PA 17033

PHONE 717 641 9025 | FAX 717 641 9026

NORTHEAST REGION OFFICE

2 South Main Street, Suite 303, Pittston, PA 18640

PHONE 570 654 2210 | FAX 570 655 1875

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- If allegations are raised with respect to a specific child, the complaint must include the child's name, address, the school the child is attending, a description of the nature of the problem (including facts relating to the problem), and a proposed resolution (to the extent known and available);
- The allegations are limited to the time period dating back one year from the date the complaint is received by the BSE; and
- The complainant must forward a copy of the complaint to the public agency serving the child simultaneously with the BSE filing.

Regardless of whether the Local Educational Agency (LEA) involves counsel in the defense process, we recommend that LEAs take the following steps when faced with a BSE complaint:

1. Ensure that the LEA has a copy of the complaint, not just notice from the BSE that it has received a complaint.
2. Ensure that the BSE is immediately provided with the appropriate contact information for the person(s) who will be cooperating with and responding to the BSE investigator. If counsel will be involved, tell the BSE right away.
3. Analyze the complaint to ensure that it complies with the minimum requirements noted above.
4. If the complaint is deficient, contact the assigned BSE investigator in writing to raise the deficiencies and seek dismissal of the complaint in part or in its entirety, depending upon the nature and extent of the deficiencies.
5. Once the BSE sends its letter summarizing the issues, ensure that the issues are accurately stated. If not, raise your concerns with the investigator in writing.
6. Prepare a written response to the allegations, complete with supporting documents, if the complaint's allegations are untrue.
7. Cooperate with the BSE's request for an on-site visit.
8. Come prepared to the on-site visit with knowledge of: (a) the allegations in the complaint; (b) whether the allegations are true; and (c) to the extent any allegations are untrue, an explanation of the actual version of events *along with any and all supporting documents*.
9. If any of the allegations raised in the complaint are true, come prepared with a proposal as to how the matter can be resolved.

Once the CIR has been issued, review it quickly. The LEA has the right to submit additional information that was either not considered or not available at the time of the investigation, but that information must be submitted within 10 calendar days of the date of the CIR. The BSE will then determine whether it will reconsider its findings.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

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