

October 3, 2011

ADDENDUM TO LOF CP-0130-2011

Julie Martin, Esq.
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Dear Ms. Martin:

This letter is a response to concerns you raised in e-mail correspondence addressed to the Office of Special Education programs (OSEP) on September 9, 2011. While there is no formal appeal process of a complaint letter of findings, the Ohio Department of Education (ODE) Office for Exceptional Children (OEC) does respond to the best of its ability to concerns raised by either party of that process. In response to the concerns raised, which are outlined below, I offer the following:

- 1) *OEC should not have made any findings about Student A. The parents of Student A brought a due process request about the same issues identified in the complaint. See Due Process Complaint #2602-2011. 34 C.F.R. 300.152(c) provides that the state must set aside that portion of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.*

The allegation raised in Complaint #CP-0130-2011 regarding Student A and the issues raised in the due process request concerning this student were not viewed as the same issue. Complaint #CP-0130-2011 alleged non-compliance with identification and evaluation while the Due Process Complaint SE #2602-2011 alleged non-compliance with providing a free and appropriate public education (FAPE).

- 2) *OEC should not have made any findings going back before June 7, 2010. 34 C.F.R. 300.153 provides that a complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received 34 C.F.R. 300.153(c).*

Although attorneys for the complainants alleged a history of systemic violations of the requirements related to evaluating and providing interventions for the students with suspected disabilities, dating back more than three years, per the requirements of the IDEA at 34 C.F.R. §300.153, the complaint was limited to one year prior to the date that the complaint was received by the ODE OEC. Since the complaint was received in this office on June 7, 2011, the timeframe of the complaint investigation was from June 7, 2010 through the date of the receipt of the complaint. As stated in the letter of findings, citations were not based on historical data but that data was reviewed only for the purpose of understanding the scope of the problem.

- 3) *OEC's decision conflicts with other decisions it has made.*

First and foremost, each complaint investigation and letter of findings is based upon the materials presented to the consultant in connection with that complaint. Thus, apparent inconsistencies can

often be explained by differences in timing or the scope of the investigation. For example, in Complaint #CP-0249-2010, OEC found that the District had child find policies and procedures that are consistent with state and federal law and that it followed those policies and procedures with respect to Student C.

Based upon the information reviewed in connection with Complaint #CP-0249-2010, OEC concluded that the district had policies and procedures that included child find procedures. The most recent complaint filed on behalf of multiple students resulted in a more in-depth examination of how the district is implementing its child find policies. Thus the two findings are not inconsistent, but simply the function of two different investigations, with differing scopes, at different times. In fact, Complaint #CP-0249-2011 led to a finding that the district had violated Ohio Administrative Code 3301-51-06(A) (4), and the district evaluated the student and determined the student was eligible as a child with a disability per IDEA.

- 3) continued: *Similarly, OEC found that the District was in compliance with child find and evaluation obligations for Student F in Complaint #CP-0239-2010 and again in Complaint #CP-0118-2011.*

Complaint #CP-0239-2011 was filed concerning a student who had been evaluated a number of different times. Thus, based on a review of this student's file, at the time of this complaint, the conclusion was reached that the facts did not demonstrate a violation of child find and evaluation requirements. In addition, at the time that this complaint was filed the student was enrolled in a private school located in another public school district.

Complaint #CP-0118-2011 found that the district was in compliance with child find and evaluation procedures but violated parental participation based on the district's scheduling a meeting with the intervention team to determine whether the student should be evaluated under the IDEA and after the parent informed the district that she was not available to attend the meeting because of work obligations, the district held the meeting without her participation.

- 3) continued: *OEC also found that the District was not in violation of any child find or evaluation regulations for Students J and L in Complaint #CP-0090-2011 and Complaint #CP-0072-2011.*

The investigation into Complaint #CP-0090-2011 found no violations of child find procedures because the students involved were attending a private school located in another school district. Thus, during the relevant time period of that complaint, Upper Arlington did not have child find obligations. Thus, failure to find a violation of child find at the time of this letter of findings, as related to these specific children, is not inconsistent with the recent findings.

The letter of findings in #CP-0072-2011 cited the district for a violation of child find related to its failure to properly implement its child find policies procedures, and is thus consistent, rather than inconsistent, with the most recent letter of findings.

- 4) *OEC should not have stated that the District admitted or acknowledged errors or that it submitted a corrective action plan. The District has never admitted error. As the District's response indicates, the District does not believe it has violated the law in any way. The District also did not submit a corrective action plan. The Associate Superintendent did provide OEC with a memorandum on August 25, 2011 detailing the District's recent accomplishments in professional development and continuous improvement. The District's commitment to continuous improvement should not be confused with an admission of error.*

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In the course of the investigation of complaint #CP-0130-2011 the OEC investigator reviewed information submitted by parents, the school district and interviewed parents and district administrators. The investigator's review and the district's presentation of the district's 2011-2012 professional development plan submitted to OEC during the investigation was interpreted as the district acknowledging concerns with their intervention process; however, OEC acknowledges that Upper Arlington made no formal written admission of non-compliance with IDEA requirements for child find or evaluation.

OEC hopes that its explanation will assist the district with a better understanding of the complaint process, and the reasons for the differing results in the various complaints filed over the past couple of years. Per the Corrective Action specified in the August 29, 2011 letter of findings, the OEC expects to receive periodic progress reports from the district by September 30, 2011 and December 30, 2011 and January 12, 2012. Please do not hesitate to contact me if there is any way in which OEC can further assist you during the corrective action period.

Sincerely,



Thomas Lather, Interim Director
Office for Exceptional Children

c: Kerry Agins, Esq., Siegel & Agins
Dr. Jeffrey Weaver, Superintendent, Upper Arlington Schools