

August 9, 2017

Ruth Ryder, Director
Office of Special Education Programs
Office of Special Education and Rehabilitative Services
U.S. Department of Education
400 Maryland Ave., S.W.
Washington, DC 20202-7100

Re: Complaint of Louisiana Department of Education regarding non-compliance with maintaining the Special Education Advisory Panel

Dear Ms. Ryder:

This letter serves as an official complaint and request for assistance related to the Louisiana Department of Education's (LDOE) failure in complying with the establishment and maintenance of an advisory panel for the purposes of providing policy guidance with respect to special education and related services for children with disabilities pursuant to 34 CFR 300.167-169.

Specifically, Louisiana is not in compliance with Federal Law 34 CFR 300.168 (b). Federal law contains a special rule stipulating the majority of members on the state advisory panel for special education must be individuals with disabilities or parents of children with disabilities (ages birth through 26). Based on information provided at the most recent Louisiana Special Education Advisory Panel (SEAP) meeting on July 12th, 2017, only six of the eighteen or nineteen individuals listed as SEAP members meet the requirements in 34 CFR 300.168 (b).

Two lists of SEAP members provided by LDOE at the July 12th, 2017 SEAP meeting have a discrepancy in member names. The SEAP Agenda and a PowerPoint slide each contained lists of SEAP members' names; however, each list omitted a member contained in the other list. Regardless of the discrepancies in these lists, the members appointed to SEAP and the LDOE representatives acknowledged there were only six SEAP members who were individuals with disabilities or parents of children with disabilities. At most, only a third of the SEAP members fulfill the requirement in 34 CFR 300.168 (b).

At the July 12th, 2017 SEAP meeting, following public comments from two audience participants regarding the violation in SEAP membership, SEAP passed a motion to have LDOE bring back recommendations for SEAP to consider changing its bylaws related to SEAP membership. The Council's concerns related to this action are three-fold.

First, a motion to change SEAP bylaws will not be considered until the next SEAP meeting, scheduled for September 27, 2017. This plan would leave SEAP and LDOE out of compliance with federal law until, at the earliest, the following SEAP meeting, scheduled for November 15, 2017. It is not clear how long LDOE and SEAP are

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allowed to be out of compliance with federal law and fail to meet assurances listed in the annual IDEA budget and plan.

The second concern over the SEAP plan to change its bylaws to meet the requirement in federal law is the vote to change the SEAP bylaws would not be conducted with adequate representation of individuals with disabilities and parents of children with disabilities according to federal membership requirements. It is unclear if a group that does not meet the federal requirements for membership can legitimately change bylaws to the state advisory panel.

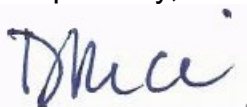
Finally, the SEAP bylaws solution to this violation of federal law suggests federal law has been superseded by a SEAP bylaw. Hence, the solution taken by LDOE seems to violate the Supremacy Clause of the United States Constitution (Article VI, Clause 2). It is not clear why LDOE would decide to continue violating federal law and not meet the assurance in the IDEA annual application out of concern any action to address the violation of federal law would possibly cause it to be out of compliance with SEAP bylaws.

The Council's concerns over the lack of stakeholder input in the development of Louisiana policies impacting students with disabilities have been ongoing for some time and were the reason the Council sent a previous letter of concern to OSEP in January 2013. Some of the issues detailed in the January 2013 letter persist and are directly related to ensuring adequate stakeholder input; however, these latest concerns of stakeholders having a voice in policy making is magnified by the possibility of Louisiana risking access to hundreds of millions of federal dollars for educating students with disabilities due to this violation.

The Council appreciates any clarity and guidance the U.S. DOE can provide to LDOE on meeting the requirements of federal law regarding membership on the state advisory panel related to the special rule contained in 34 CFR 168 (b) and ensuring appropriate opportunities for individuals with disabilities and parents of children with disabilities to have input into policies and procedures related to special education in Louisiana.

Please direct correspondence to this request to Shawn Fleming, Deputy Director at the Louisiana Developmental Disabilities Council at shawn.fleming@la.gov.

Respectfully,



Delery Rice
Chairperson

DR:SF

cc: Governor John Bel Edwards
Louisiana Board of Elementary and Secondary Education
Superintendent John White

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Attachment 1: LDOE Special Education Advisory Panel Meeting Agenda, July 12, 2017. (2017, July 5). Retrieved from <http://www.louisianabelieves.com/docs/default-source/academics/seap-meeting-july-12-2017.pdf?sfvrsn=4>

Attachment 2: Roles and Individuals on SEAP on slide number thirteen of LDOE SEAP July 12, 2017 meeting Powerpoint presentation. (2017, July 11) Retrieved from: <http://www.louisianabelieves.com/docs/default-source/academics/seap-meeting-july-12-2017-materials.pdf?sfvrsn=6>

Attachment 3: Louisiana Developmental Disabilities Council letter of complaint issued on January 13, 2017 to Melody Musgrove, Direction of the U.S. Department of Education, Office of Special Education Programs and Office of Special Education and Rehabilitative Services regarding Non-Compliance with Maintaining the Special Education Advisory Panel