



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

AUG 12 2004

This is in reply to your letter to the Office of Special Education Programs (OSEP) in which you continue to express your dissatisfaction with OSEP's response to your concerns. In OSEP's December 10, 2003, September 25, 2002, and April 2, 2002 letters, and in our previous communications with you over the past nine years, OSEP has carefully examined the questions you raised regarding State sovereign immunity, the State's program of Scholarships to Public or Private Schools of Choice for Students with Disabilities and whether Florida has a one-tier or two-tier due process system. As we have stated in previous correspondence to you, we believe we have fully addressed these questions and, therefore, have no additional response.

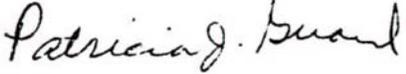
In your letter you continue to raise a question regarding the Florida Second District Court of Appeals being unable to accept additional evidence and do a *de novo* review. In our December 10, 2003 letter to you we replied that, under section 615(i)(2) of the Individuals with Disabilities Education Act (IDEA), any party aggrieved by the findings and decisions of the hearing officer in a one-tier system has the right to bring a civil action in any State court of competent jurisdiction or in a district court of the United States without regard to the amount of controversy. The court must receive the records of the administrative proceedings and hear additional evidence at the request of a party.

Upon further review of Florida's Eligibility Documents for federal fiscal year (FFY) 2004, including the Eligibility Documents submitted to OSEP on April 13, 2000, OSEP notified Florida that the provisions in the Florida statute and regulations under which a party aggrieved by the final decision can choose to appeal to a State court that does not have authority to hear additional evidence at the request of a party are inconsistent with sections 615(i)(1) and (2) of the IDEA. OSEP is currently working with the Florida Department of Education as it seeks to revise its statute and regulations to be consistent with section 615(i)(1) and (2) of the IDEA and 34 CFR §300.512(a) and (b) of the final regulations implementing the IDEA. In the meantime, as a part of Florida's Eligibility Documents for FFY 2004, Florida has made an assurance, under 34 CFR §80.11(c), that it will comply with all applicable federal statutes and regulations in effect with respect to the periods for which it receives grant funding.

Page 2

We hope you find this information helpful.

Sincerely,

 for

Stephanie Smith Lee

Director

Office of Special Education Programs

cc: Michele Polland
Florida Department of Education