

1979 WL 42981 (S.C.A.G.)  
Office of the Attorney General  
State of South Carolina  
May 4, 1979

**\*1 Re: Opinion Concerning the Administrative Procedure Act**

Ms. Joy R. Mann  
General Counsel  
The South Carolina Protection  
& Advocacy System for the  
Handicapped, Inc.  
2360-A Two Notch Road  
Columbia, S. C. 29204

Dear Ms. Mann:

You have asked whether the State Administrative Procedure Act ([§§ 1-23-10 et seq. of the 1976 Code](#), hereinafter the 'Act' or 'APA') applies to due process hearings held at the local educational agency level under Public Law 94-142 ([20 USC §§ 1401 et seq.](#)) It is the opinion of this Office that the APA does not apply to such hearings.

The administrative procedures outlines in Article 3 of Chapter 23 of Title 1 of the 1976 Code only apply to 'contested cases' as defined in the Article. [§ 1-23-310\(2\) of the Code](#) defines 'contested case' as '. . . a proceeding, including but not restricted to rate making, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.' Thus, if a hearing is conducted by an entity which is not an 'agency,' the case is not a 'contested case' and the administrative procedures of the APA do not apply

The term 'agency' is defined in [§ 1-23-310\(1\)](#) as '. . . each state board, commission, department, or officer, other than the legislature or the courts, authorized by law to make rules or to determine contested cases.' In an opinion dated May 1, 1979, this Office ruled that the terms 'agency' and 'state agency' as used in the APA only embrace those governmental entities involved in statewide, as opposed to local, concerns. A copy of said opinion is enclosed herewith.

Public Law 94-142 specifically distinguishes between 'state educational agencies' [[20 USC § 1401\(7\)](#)] and 'local educational agencies' [[20 USC § 1401\(8\)](#)]. Even a casual reading of the definition of 'local educational agency' shows that the term includes only those educational organizations whose jurisdiction and functions are restricted to local, as opposed to statewide, programs. It is therefore the opinion of this Office that 'local educational agencies' as envisioned in Public Law 94-142 are not 'agencies' within the meaning of the Administrative Procedure Act. Hence, the administrative procedures outlined in that Act do not apply to hearings before such bodies.

This is not to say that parties to hearings before local educational agencies do not enjoy many of the rights afforded by the Administrative Procedure Act. Among the rights found in [20 USC § 1415\(d\)](#) are the right to present evidence, the right to cross examine opposing witnesses, the right to compel the attendance of witnesses and the right to written findings of fact. These are rights which are provided in the APA, and therefore it is not necessary that the Act apply in order to afford a party their protection.

Very truly yours,

L. Kennedy Boggs  
Assistant Attorney General

1979 WL 42981 (S.C.A.G.)

---

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.