



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAR 20 2000

Dr. Gordon M. Riffel
Special Assistant to the Superintendent
Special Education Coordination
Illinois State Board of Education
100 North First Street
Springfield, Illinois 62777-0001

Dear Dr. Riffel:

This letter concerns a letter issued by the Illinois State Board of Education (*ISBE*) dated March 29, 1999 written to Gary Sweat, Director, South Eastern Special Education Program, regarding a complaint filed with ISBE on behalf of . The complaint, among other matters, alleged that the student failed to receive special education and related services designed to address language disorder. With respect to this allegation, the March 29, 1999 letter states in relevant part: failing to meet the legal requirements for developing an IEP, the District has not provided the student with FAPE. The district excluded the student from certain academic classes based upon their failure to provide accommodations. The district did not determine the need for accommodations based upon the individual student's needs, but rather upon the willingness of teachers to provide accommodations.

As a corrective action to remedy the denial of FAPE to this student, ISBE ordered the District to determine the need for appropriate compensatory services, which address the District's failure to provide FAPE to the student. However, the March 29, 1999 letter also indicates that the provision of compensatory services to the student is contingent on the student's delaying graduation. Even though the student chose to graduate with class, still is seeking the award of compensatory services.

As your March 29, 1999 letter to the District correctly acknowledges, compensatory education is a remedy available to a state educational agency (SEA) to address the denial of FAPE. See: 34 CFR §300.660(b) (referencing an SEA's authority to impose remedies for denial of appropriate services in responding to complaints) and §300.662(c) (referencing a 3 year limitations period for state complaints requesting compensatory services). However, ISBE suggested incorrectly on page seven of its March 29, 1999 letter that "graduation would be delayed pending completion of the compensatory services." We find no provision in Part B that would permit a District to deny the provision of compensatory services to the student based solely on the student's decision to graduate with class. The student's eligibility for such services was not contingent on "delaying graduation" when the ISBE had already determined that she had been denied FAPE.

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has contacted this office regarding the District's refusal to provide with compensatory services. has indicated that despite recent graduation, is requesting the convening of the IEP team for purposes of determining needs regarding compensatory services.

Although the final regulations, at 34 CFR §300.122(a)(3)(i), clarify that there is no requirement that FAPE be made available to a student with a disability who graduates from high school with a regular high school diploma, a student's graduation with a regular high school diploma would not, in our view, relieve a school district of its obligation to provide compensatory education to remedy a denial of FAPE. However, in the absence of the need for compensatory services, graduation with a regular high school diploma would end a student's entitlement to FAPE. 34 CFR §300.122(a)(3). In our view, a student's decision to graduate is separate from the SEA's determination through a complaint resolution of the student's acknowledged need for compensatory services to remedy a denial of FAPE.

Therefore, in light of ISBE's determination that there was a denial of FAPE to the student that was the subject of this complaint, and ISBE's duty to require the corrective action regardless of the student's technical "graduation" status, we would appreciate your bringing this issue to the District's attention. We also ask that you kindly provide this Office with a copy of ISBE's letter to the District:

Should you have any questions, please do not hesitate to contact Dr. JoLeta Reynolds at (202) 205-5507, Ms. Rhonda Weiss at (202) 205-9053, or Suzy Rosen Singleton of my staff at (202) 260-3810 TTY or through the Relay at (800) 877-8339.

Sincerely,

Kenneth R. Warlick
Director
Office of Special Education
Programs

cc: [REDACTED]

Enclosures