



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Dec 21 1998

Dear

This is in response to your letter of August 19, 1998, regarding the age of majority requirements for Part B of the individuals with Disabilities Education Act Amendments of 1997 (IDEA).

At 20 USC 1415(m), the IDEA provides that when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law) all rights accorded to the parents transfer to the child. The Office of Public Instruction (OPI) has indicated that under State law a youth may exercise the rights of an adult, including those related to educational decisions, unless guardianship is established, at age 18.

In the documentation you provided you have requested the OPI to authorize you to make educational decisions for your 18 . In its reply to you on , the OPI stated that it does not have the authority to appoint you to act for at the age of majority

Your letter refers to the "Special rule" concerning transfer of rights at the age of majority which is found at 20 U.S.C. 1415(m)(2). That provision specifies that if "under State law a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent. . . to represent the educational interest of the child." This provision does not require a State to have a mechanism to determine that a child of the age of majority who has not been declared incompetent nonetheless does not have the ability to provide informed consent for educational purposes. It merely specifies that if a State does have such mechanism, it must also have procedures for appointing the parent or if the parent is unavailable, some other appropriate individual, to represent the educational interest of the child. In a State that has

such process, the State educational agency is not obligated under Part B to act to seek the appointment of parent or other appropriate individual on request, unless that obligation is part of the State's own procedures.

The letter to you indicated that a protective process related to legal guardianship is available and explains that process is one that individuals pursue in the State court of appropriate jurisdiction and that the OPI has no authority to appoint you to act for under that provision. The OPI indicates that this process is found at Section 72-5-102 of the MCA.

This Office can be of no further assistance to you in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Hehir", with a stylized flourish at the end.

Thomas Hehir  
Director  
Office of Special Education  
Programs

cc: