



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JAN 29 1998

Honorable Richard Burr
House of Representatives
Washington, DC 20515-3305

Dear Mr. Burr:

This is in further response to your facsimile transmittal dated November 3, 1997, sent on behalf of your constituent,

. Your constituent seeks clarification of the obligations of Academy to disabled students attending that school whom he indicates had previously been identified as disabled by officials of local school districts.

Among other issues, your constituent requested clarification regarding the obligations of Academy to implement disabled students' individualized education programs (IEPs), the availability of Federal funds to private schools for the education of disabled students, and obligations of private school and public school personnel to evaluate students at private schools. The explanation that follows will address the requirements of Part B of the Individuals with Disabilities Education Act (Part B), referred to in your constituent's inquiry as Public Law 94-142, that are relevant to your constituent's inquiry.'

Under Part B, each State and its local school districts must ensure that a free appropriate public education (FAPE) is made available to all children with disabilities in mandatory age ranges who reside in the State. §612(a)(1). FAPE means

1Public Law 94-142 was the original Federal legislation that enacted the Education for All Handicapped Children's Act of 1975. It was amended several times and is now referred to as Part B of the Individuals with Disabilities Education Act (Part B). On June 4, 1997, President Clinton signed into law Public Law 105-17, the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97). Since the statutory changes made to Part B by IDEA '97 reflect current obligations of local school districts to students with disabilities enrolled in private schools, the statutory references below are to IDEA '97.

special education and related services provided under public supervision and direction, at no cost to the parents, which meet the State educational standards and are provided in an appropriate preschool, elementary or secondary school in the State involved, and in conformity with an IEP. §602(8).

If FAPE has been made available to a disabled child and the parents reject the offer of FAPE in favor of a unilateral private placement, Part B does not require the public agency to pay for the child's education at that private placement. §612(a)(10)(C)(i); 34 CFR §300.403(a). Nor does Part B require a private school to provide special education to children with disabilities who enroll at the school. Part B requirements apply only to public agencies.

Public agencies must provide for participation in their special education program for children with disabilities placed in private schools by their parents in accordance with the requirements of §612(a)(10)(A). However, disabled students parentally placed at private schools do not have an individual entitlement to services under Part B or the right to receive the same services that they would be provided if educated in a public school program or placement. Further, the Department's long-standing position is that public agencies are not required to provide parentally-placed disabled students with the full range of services under Part B. However, to the extent consistent with the number and location of such children, special education and related services must be made available for the children by the State, via the local school districts, through expenditures that are equal to a proportionate amount of the available IDEA funds. In determining the extent of participation of parentally-placed private school children with disabilities in special education programs conducted by local school districts, public agencies are obligated to consult with representatives of the students in considering which private school students with disabilities will receive services, what services will be provided, and how those services will be provided. 34 CFR §76.652.

Even though the students may have previously been identified as disabled and have IEPs, if the students have been parentally placed at Academy, the Academy would not be required by Part B to develop or implement IEPs for those students. On the other hand, for those disabled students who have been placed at the Academy by their parents, and who the responsible local school districts have determined should participate in the provision of special education and related services offered by

the districts, the districts must develop and implement IEPs for those children.

There also may be situations in which a local school district places a disabled student at a private school for the purpose of providing special education and related services to that student. §612(a)(10)(B); 34 CFR §300.401. In this situation, the students so placed must have the same rights that they would have if educated directly in a public school program. §612(a)(10)(B)(ii); 34 CFR §300.401(b). In the event that any of the students have been placed at _____ Academy by a public agency, the public agency placing the child would have ultimate responsibility for ensuring that the student is provided FAPE, and the public agency would contract with private school personnel to implement all aspects of the publicly-placed disabled student's IEP.

Your constituent also asks whether _____ Academy is directly eligible for Federal funds for its exceptional students. Federal funds under Part B are awarded to State educational agencies (SEAs), which in turn award those funds to local school districts and other public entities responsible for the education of students with disabilities. Funds under Part B may not be awarded directly to private schools. However, as indicated above, a public agency could use Part B funds to contract with a private school to provide special education and related services to students the public agency placed at that school.

Your constituent also raises a question about evaluations of students at _____ Academy since _____ does not have the staff to conduct such evaluations. Under Part B, States and local school districts are responsible for locating, identifying, and evaluating all children suspected of having disabilities who may be in need of special education and related services. Therefore, if private school personnel suspect a child of having disabilities, they should request that the local school district where the child resides evaluates the student.

Note that on October 22, 1997, the Department published in the Federal Register a Notice of Proposed Rulemaking (NPRM) to implement IDEA '97. 62 Fed. Reg. 55026. The provisions regarding services for parentally-placed private school disabled students are found at proposed §§300.450-300.462. We have enclosed a copy of the NPRM for your constituent's information.

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We hope that your constituent finds this explanation helpful. If he would like further assistance, he may wish to contact Ms. Judith Gregorian, the North Carolina State contact in the Monitoring and State Improvement Planning Division, at (202) 205-9092.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Hehir".

Thomas Hehir
Director
Office of Special Education
Programs

Enclosure

cc: E. Lowell Harris
North Carolina Department of
Public Instruction