



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

March 1, 2001

(Address blacked out)

Dear (Name blacked out):

Dear x:

I write in response to your June 29, 2000 faxed correspondence to a member of my staff, Mr. Michael F. Slade, and your follow-up conversations with him. You expressed concerns about x's experience during placement in a New Jersey residential treatment program. The educational component of the placement was funded through the State of New York. Please excuse the delay in our written response to you but I understand Mr. Slade has had multiple conversations with you regarding this matter since July 2000.

Before we can address your concerns, we confirm our understanding of the following information contained in the correspondence you provided. X was placed at the x, a residential treatment program in New Jersey, as a result of extensive litigation (from 1990-1998) with the New York State Department of Education (NYSDE) regarding x's education. Your complaints about x's experience stem from occurrences commencing after enrollment at x in late 1992 and in 1993. You indicated to Mr. Slade that x placed at x as part of a compensatory services remedy awarded to x in the NYSDE litigation. Under the terms of the order awarding compensatory services, x was to remain at x until x turned 23. Apparently, x continued to be placed at x after this age until at least approximately June, 1995 as part of a settlement of additional litigation with NYSDE.

As you know, this office, the Office of Special Education Programs (OSEP), administers the Individuals with Disabilities Education Act (IDEA). We have reviewed the information you have provided and determined that there is nothing further our office can provide at this time given the following three reasons (1) the behavior alleged occurred in 1993; (2) x's placement at x was the subject of extensive litigation both subsequent to the 1993 incidents alleged; and (3) x was well past the applicable age range under Part B of the IDEA (which provides generally that children with disabilities receive a free appropriate education from ages 3 through 21). Please note that while the IDEA only applies to children through age 21, States may have exceptions to

this age range for children aged 19 through 21. Additionally, some children may receive services under Part B of the IDEA beyond age 21 if there has been a specific determination that they did not receive FAPE and thus are awarded compensatory education services as a remedy by the State or a due process hearing officer, which apparently occurred in x's situation. However any extensions of the compensatory education services as a remedy under the IDEA would be based on a determination made either by the State or a due process hearing officer or judge.

We also note that the two complaint mechanisms available under the IDEA, State complaints and due process complaints, appear to have both been utilized and there is nothing further we can add at this time. As Mr. Slade indicated to you during a telephone conversation, NYSDE's reference to the lapsed timeframe for filing a State complaint with NYSDE under the IDEA is correct. Enclosed, for your information, is a copy of the regulations applicable to State complaints under Part B of the IDEA and 34 CFR §300.662(c) contains the applicable timeline. The only other complaint process available under the IDEA is through due process hearings and court action. See 34 CFR §§300.509 and 300.512. Given that x was involved in litigation with NYSDE from 1990 through 1998, we assume that the issues that arose as a result of the 1992-1993 placement were raised and settled prior to the settlement that resulted in x's further placement at x in 1995. Finally, as Mr. Slade confirmed in July, 2000, the Secretarial review process under the IDEA was eliminated with the publication of the final IDEA, Part B regulations, which became effective on May 11, 1999.

You have corresponded with NYSDE and NYSDE has indicated to you that it would forward your concerns to the State of New Jersey Department of Human Services, Division of Developmental Disabilities, Office of Licensing and Inspections, the New Jersey State agency with oversight responsibility for the residential treatment setting. You may wish to contact NYSDE to determine the status of this referral or separately contact the New Jersey agency. Additionally, NYSDE suggested contacting the local law enforcement agency in New Jersey to determine if there are any additional remedies to pursue.

Finally, Mr. Slade contacted the Office of Civil Rights (OCR) Eastern Division regarding your concerns and he was informed that you had already contacted OCR directly and had indicated your intent to officially file a complaint with that office. Should you decide to do so, OCR has indicated its willingness to assist you in the matter. OCR is the office responsible for administering Federal statutes and regulations governing students with disabilities other than the IDEA. Enclosed for your information is a Dear Colleague letter dated July 25, 2000 from the U.S. Department of Education regarding Disability Harassment.

We hope this information is helpful in understanding the different roles of Federal and State agencies that provide educational services. If you have any other questions please feel free to contact Mr. Michael Slade.

Sincerely,

A handwritten signature in cursive script that reads "Patricia J. Guard".

Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures: IDEA Part B regulations published March 12, 1999
Dear Colleague Letter dated July 25, 2000