



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
THE ASSISTANT SECRETARY

Feb 17, 2005

Mr. David Noble Stockford
Director
Office of Special Services
Maine Department of Education
23 State House Station
Augusta, Maine 04333

Dear Mr. Stockford:

It has come to our attention that there may be an issue concerning the provision of special education services to students with disabilities in Maine. The Department recognizes that Maine has a somewhat unique approach to providing a secondary education to students residing in the State. We understand that in Maine, a number of towns that do not have their own public high schools pay tuition to enable students to attend private town academies and that this practice has been longstanding. These publicly tuitioned students attend private academies as a means of the State and its public agencies providing a secondary education for students who reside in the towns.

Even though some of the children who attend these schools have disabilities, they are placed in the school because the towns do not operate any public high schools. Further, we understand that the standard for attendance at these schools is residence, not disability. The Maine Department of Education (MDE) and its public agencies, however, must ensure that a free appropriate public education is made available to children with disabilities in this circumstance.

It is the Department's understanding that some private schools are concerned that Maine may impose new requirements on Maine private schools that enroll publicly tuitioned students based on interpretations of federal special education laws.

The Individuals with Disabilities Education Act (IDEA) applies to public schools and does not place requirements on private schools. IDEA imposes requirements on States and public agencies that refer to or place students with disabilities in private schools. Each public agency in the State is responsible for ensuring that the rights and protections of Part B of IDEA are given to children with disabilities "[r]eferred to or placed in private schools and facilities by that public agency." 34 CFR §300.2(c)(1).

Private schools are not run by the State government or other public agency and, therefore, are not responsible for ensuring compliance with the requirements of IDEA. IDEA requires States and their public agencies, including school districts, to ensure that FAPE is made available to all children with disabilities residing in the State in mandatory age ranges, and that the rights and protections of IDEA are extended to eligible children and their parents. 20 U.S.C. §1412(a)(1);

34 CFR §§300.2, 300.121 and 300.300. In general, a State and its public agencies fulfill this obligation to make FAPE available either by educating their students with disabilities in an appropriate public agency program or by placing them at an appropriate private school. The obligation to make FAPE available to eligible students with disabilities applies to a State and its public agencies even in a situation, as in Maine, where a school district does not operate public secondary school programs of its own.

If students with disabilities attend a private school in Maine because the State or public agency has placed the child in the school or offered that placement for the child, then MDE and the school district must ensure that these students receive required special education and related services at public expense, at no cost to the parents, in accordance with an individualized education program (IEP). 34 CFR §300.401(a). These students retain all the rights under the IDEA they would have if served directly by a public agency, and MDE and its public agencies must ensure that this occurs. 34 CFR §300.401(c). If MDE or its public agencies allow parents to select from among a list of approved public or private schools where they will enroll their children and then the State or public agency pays to send the children to those schools in order to receive an education, MDE or the public agency must ensure either that FAPE can be made available to the students with disabilities at the school the parents select, or that the parents are provided the opportunity to enroll their children with disabilities in another appropriate school (whether public or private) where FAPE is available to their children. 34 CFR §300.2.

MDE and/or the school district may provide special education and related services at a private school through direct arrangements with the private school or through alternative means (e.g., a third party contract) using whatever State, local, federal, and private sources of support are available in the State to meet the requirements of Part B of IDEA. 34 CFR 300.301(a), the State or public agency may contract with a third party or with the private school which the student attends to meet these requirements. This Department does not encourage one option over the other. Either is acceptable.

Let us be clear – The IDEA gives the State and other public agencies no regulatory authority over private school; and the question of whether the State or public agency contracts with a private school to meet IDEA requirements is an issue between the State or public agency and the private school. Similarly, the issue of whether a State or public agency can require a private school that accepts a publicly-placed student with disabilities to take on these contractual obligations is a matter between the State and the private school under State law. Federal law does not encourage or prohibit the imposition of such requirements as a condition of placing these students in the private school. Regardless of the option that MDE utilizes for educating students with disabilities at private schools, MDE must ensure that the education provided constitutes FAPE for these students, consistent with the requirements of IDEA.

We should also note that there could be situations where students with disabilities attend private academies because their parents have enrolled them there even though the school district has offered to make FAPE available to their child through an appropriate placement at a public program or another private school. If the parents were to reject that offer of FAPE because they preferred their child to attend a particular town academy, the child with a disability would have no individual entitlement to services under IDEA and would have no individual right to receive

Page 3 – Mr. David Stockford

some or all of the services that the child would receive if enrolled in a public school. 34 CFR §300.454(a). These children are considered under 34 CFR §300.450 to be children with disabilities enrolled by their parents in private schools. States and public agencies have different obligations to parentally placed private school students with disabilities, yet must ensure that these students have the opportunity to participate in equitable services under IDEA. 34 CFR §§300.450-300.462.

We value the role that private schools play in educating children, including students with disabilities, and we respect the independence of private schools. We ask that MDE work together with private school officials to ensure that children with disabilities are appropriately served under the requirements of the IDEA as outlined above.

If this office can be of further assistance, please do not hesitate to contact my Deputy, Dr. Troy Justesen at 202-245-7468.

Sincerely,


John H. Hager

cc: Troy R. Justesen
Stephanie Smith Lee