



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

NOV 21 1997

Edward J. Sarzynski
Hogan & Sarzynski, LLP
One Marine Midland Plaza
P.O. Box 660
Binghamton, New York 13902-0660

Dear Mr. Sarzynski:

This is in response to your letter to the Office of Special Education Programs (OSEP), dated August 15, 1997, in which you seek clarification regarding the responsibility of school districts under Part B of the Individuals with Disabilities Education Act (Part B) to provide educational programs and services listed on a student's individualized education program (IEP) during a time when the parent is home instructing the child.

According to your letter, under New York State law and regulations, a parent has the right to home instruct her child, subject to completion of certain requirements, including submission of an individualized home instruction plan to the Superintendent of Schools for approval. Your letter asks the following question:

Can a parent in the situation described above select what programs and services she wishes from an IEP at a time when a student is not enrolled in the school district? If so, are there any limitations? Is the school district obligated to transport the child from and to the home in order to receive the services, if your answer is in the affirmative?

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. 20 U.S.C. §1412(a)(1). However, if FAPE has been made available to a child and the parent rejects the offer of FAPE in favor of a private placement, this Office has interpreted Part B to mean that the public agency would not be required to pay for the child's education at that private placement.

However, special education and related services must be made available to children with disabilities placed at private schools by their parents, subject, to the requirements of section

612(a)(10)(A) of the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97). In determining the extent to which children with disabilities enrolled by their parents in private schools participate in special education programs conducted by local school districts, public agencies must consult with representatives of such students. The consultations are to assist the public agencies in determining which private school students with disabilities will receive services and how those services will be provided. 34 CFR §76.652. Note that on October 22, 1997, the Department published in the Federal Register a Notice of Proposed Rulemaking (NPRM) to implement IDEA '97, and the provisions regarding services for parentally-placed disabled students are found at proposed §§300.450-300.462. 62FR55026.

Part B and its implementing regulations do not explicitly address the obligations of school districts to provide services to home-educated students with disabilities; nor does Part B define the term "private school or facility." Consequently, OSEP has advised that the determination of whether a particular home education arrangement constitutes the enrollment of a child with a disability in a private school or facility must be based on State law. If, under the law of New York State, home education constitutes enrollment in a private school or facility, then the requirements of Part B governing the obligations of school districts to parentally-placed disabled students would apply. However, assuming a school district elects to serve a particular Parentally-placed disabled student, we find nothing in Part B that would require the school district to offer services to a parentally-placed disabled student at the precise time requested by the parent.

Since the issue you are raising depends on an interpretation of State law, not just Federal law, we are not in a position to respond fully to your inquiry. For further guidance on the obligations of school districts to home-educated students under New York State law, you should contact the New York State Education Department. The address is:

Ms. Rita D. Levay
Executive Coordinator
New York State Education Department
Office of Special Education Policy
and Quality Assurance
Office of Vocational and Educational
Services
1 Commerce Plaza, Room 1624
Albany, New York 12234-0001

We hope that you find this explanation helpful. If we can be of further assistance, you may contact the Office of the Director of Special Education Programs and speak with Dr. JoLeta Reynolds, who may be reached at (202) 205-5507, or Ms. Rhonda Weiss at

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(202) 205-9053, or Dr. Catherine Cooke in the Monitoring and State Improvement. Planning Division at (202) 205-5391.

Sincerely,

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

Thomas Hehir
Director
Office of Special Education
Programs

Enclosure

cc: Ms. Rita D. Levay