UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

NOV 1 3 1998

Dear

This is in response to your letter dated in which you relate your continuing difficulties in securing what you believe to be appropriate public educational services for your I remember meeting you in and certainly regret the arduous process that you and your family have undergone over the past several years in relation to _ education. I also am aware that you have filed a complaint with the Department of Education, requested a Secretarial review, and when these mechanisms were not successful, initiated a due process hearing, but still were unable to obtain the relief you were seeking.

In light of successful private school placement, and your inability to obtain relief through applicable due process or State complaint procedures, I thought you would find helpful this brief summary of the Individuals with Disabilities Education Act Amendments of 1997, Pub.L. 105-17 (IDEA '97), that are relevant to disabled children unilaterally placed at private schools. A copy of the relevant provision (§612(a)(10)) in IDEA '97 is enclosed for your information.

Section 612(a)(10) addresses and clarifies obligations of States and school districts to children in private schools. Subparagraph (A) of §612(a)(l0) requires that parentally-placed private school children with disabilities be allowed to participate in programs assisted or carried out under Part B of IDEA (Part B), consistent with their number and location in the State. The amounts expended on such children are limited to a proportionate share of Federal funds made available under Part B, (§612(a)(10)(A)(i)(I)), and there is no requirement to expend state and local funds for services to parentally-placed private school disabled children. However, the services that are provided to these students must be determined through a process of consultation between the school district and appropriate representatives of private school students. Current regulations provide that, in determining which children will be served, what

services will be provided, and how those services will be provided, the LEA must consult with appropriate representatives of private school students. 34 CFR §76.652. The consultative process is to ensure that there is a genuine opportunity for the views of the private school children, through their representatives, to be expressed and considered. Further, the services that are actually provided must be comparable in quality to the services provided public school disabled students. 34 CFR §76.654.

While there is a process for determining the manner in which public agencies meet their obligations to parentally-placed disabled children, the Department's longstanding position is that there is no requirement to serve every parentally-placed private school disabled child, and parentally-placed private school children with disabilities do not have an individual entitlement to services under Part B. Regulations for Part B, initially published in 1977, have not required public agencies to pay for a child's education at a unilateral private school placement if a public agency has made FAPE available to the child. See 34 CFR 300.403(a). However, the public agency must make FAPE available to the child should the parents elect to return the child to the public school program.

Subparagraph (B) of §612(a)(10) addresses school districts' obligations to provide special education and related services to disabled children placed at a private school by a public agency when the agency cannot make FADE available to such children in the programs that it conducts or reasonably could be expected to initiate. Under these circumstances, the disabled children who are publicly-placed at private schools must receive special education and related services in accordance with an individualized education program at no coat to the parents. Publicly-placed children with disabilities and their parents have all the rights they would have if served directly by a public agency. See 34 CFR §300.401.

A new subparagraph (C) was included in §612(x)(10) of IDEA '97 and further clarifies that, in general, a public agency is not required "... to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility." §612(a)(10)(C)(i) of IDEA '97. However, under subparagraph (C)(ii), "a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment." Nevertheless,

subparagraph (C)(iii) explains that the cost of that reimbursement may be reduced or denied--

(I) if--

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in [this section, unless an exception set forth at (iv) (e.g. the parents had not received notice of the notice requirement pursuant to §615 of IDEA '97) would apply];

(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, [through the applicable notice requirements], of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

§612(a)(10)(C)(iii) and (iv) of IDEA '97.

It appears that you already have completed a due process hearing and appeal thereof regarding public educational services. Part B does not establish specific time frames governing the filing of requests for due process hearings or judicial appeals of hearing decisions, and as long as a State's timeline for filing is reasonable it would not conflict with Part B. Traditionally, courts have imposed analogous State statutes of limitations on both requests for due process hearings and judicial appeals of those hearing decisions. You may wish to consider raising any issues that may not yet have been addressed at the administrative level, and for which no valid statute of limitations has expired, to try to obtain a resolution of your concerns.

Again, I am very pleased to hear that has progressed considerably in the past several years, and sincerely regret the difficulties you have experienced in obtaining what you believe are appropriate educational services for . We appreciate the time you have taken to write and share your concerns, and wish continued success in school.

Sincerely,

Thomas Hehir
Director
Office of Special Education Programs

Enclosure

cc: