



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 26 1998

Honorable Wayne Gilchrest  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Gilchrest:

This is in response to your letter dated February 27, 1998, written to the U.S. Department of Education's Office of Legislation and Congressional Affairs. Your letter, written on behalf of your constituent, Dr. Linda J. Jacobs, Director of the Harbour School in Annapolis, Maryland, has been forwarded to the office of Special Education and Rehabilitative Services for response. Dr. Jacobs' letter concerns the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. No. 105-17 (IDEA '97) as they relate to the requirements for a continuum of alternative placements. Please excuse the delay in issuing this response.

In her letter, Dr. Jacobs states that through monitoring, the office of Special Education Programs (OSEP) is advising States that IDEA '97 no longer permits States to utilize separate private school placements. We appreciate the opportunity to clarify the requirements of IDEA '97 and OSEP's implementation thereof that are relevant to your constituent's inquiry.

Let me state at the outset that there is nothing in IDEA '97 that undermines the continuum of alternative placements or a State's ability to place a disabled child in a costly, intensive private school placement, such as the Harbour School, if it is properly determined that such a placement is necessary in order for a particular disabled student to receive a free appropriate public education (FAPE). Prior to this Office's receipt of your constituent's letter, members of my staff and I had a meeting at the request of representatives advocating on behalf of the rights of disabled students who require separate special education placements, including officials of the National Association of Private Schools for Exceptional Children (NAPSEC). At that meeting, concerns were expressed about the focus of OSEP's monitoring, some similar to those raised by your constituent. These concerns were addressed and satisfactorily resolved at the meeting. Please be assured that my staff who monitor the implementation of the new requirements of IDEA '97 do so in a

manner that is entirely consistent with the explanation of IDEA '97 set forth below.

The following explanation of the relevant requirements of IDEA '97 is provided for your constituent's information.

On October 22, 1997, the Department published in the Federal Register at 62 Fed. Reg. 55026 a Notice of Proposed Rulemaking (NPRM) implementing IDEA '97. That NPRM retains the current regulation at 34 CFR §300.551 regarding the continuum of alternative placements. The legislative history of Pub. L. No. 105-17 underscores the importance of providing a full continuum of alternative placements to meet the unique needs of children with disabilities. The Senate and House Committee Reports on Pub. L. No. 105-17 provide:

The Committee supports the longstanding policy of a continuum of alternative placements designed to meet the unique needs of each child with a disability. Placement options available include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. For disabled children placed in regular classes, supplementary aids and services, and resource room services or itinerant instruction must also be offered as needed. (S. Rep. No. 105-17, p. 11; H. Rep. No. 105-95, p. 91 (1997)).

IDEA '97 incorporates the least restrictive environment (LRE) provision of prior law at §612(a)(5)(A). In addition, §612(a)(5)(B) of IDEA '97 adds a new requirement which provides in clause (i) that, if a State uses a funding mechanism to distribute State funds on the basis of the type of setting in which a child is served, that funding mechanism may not result in placements that violate the Act's LRE requirements. In addition, if the State does not have policies and procedures to ensure compliance with clause (i), the State must provide the Department an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate LRE. See Oct. 22, 1997 NPRM at 62 Fed Reg. 55035. Therefore, the Act's provision at §612(a)(5)(B) does not require a State to revise a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, unless it is determined that the State does not have policies and procedures to ensure that the funding mechanism does not result in placements that violate the LRE requirements of §§300.550-300.556. The Senate and House Committee Reports on Pub. L. No. 105-17 emphasize the importance of §612(a)(5)(B), stating that:

The bill amends the provisions on least restrictive environment . . . . to ensure that the State's funding formula does not result in placements that violate the requirement. The Committee supports the longstanding concept of the least restrictive environment, including the policy that, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of special education and related services or supplementary aids and services cannot be achieved satisfactorily. (S. Rep. No. 105-17, p. 11; H. Rep. No. 105-95, p. 91 (1997)).

In light of the legislative history and the above explanation of the LRE requirements in IDEA '97, it is our view that there is nothing in IDEA '97 that would eliminate the need for a continuum of alternative placements that is designed to meet the unique needs of each child with a disability.

We hope that you find this explanation helpful in clarifying IDEA '97's LRE requirements. If we can be of further assistance, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss of OSEP at (202) 205-5507, or (202) 205-9053, respectively.

Sincerely,



Thomas Hehir  
Director  
Office of Special Education  
Programs