



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JAN - 8 1998

Ms. Margie Best
One North LaSalle Street
Suite 2200
Chicago, Illinois 60602

Dear Ms. Best:

This is in response to your letter to the Office of Special Education Programs (OSEP) dated August 14, 1997. I apologize for the delay in my response. In your letter, you request clarification of a child's residency and State educational agency (SEA) responsibility in a situation where the parents of a disabled child are divorced, the child's mother has legal custody of the child, the whereabouts of the child's father are unknown, and the child lives with another adult relative in a school district other than the mother's school district. Although not specifically stated in your inquiry, we will assume that the child's mother and the adult relative reside in different school districts in the same State.

Under Part B of the Individuals with Disabilities Education Act (Part B), the State is ultimately responsible for ensuring that eligible children with disabilities have available a free appropriate public education (FAPE). However, Part B does not specifically address the issue raised by your inquiry. Although generally, the parent's residence would determine which school district is responsible, we believe that State law, not Federal law, would determine the responsibilities of the respective school districts in the situation you describe. As long as the State makes a determination of which district is required to make FAPE available, and as long as that district carries out its responsibility, the Federal requirements will be met. However, a discussion of the applicable requirements of Part B, as interpreted by this Office, follows.

Under Part B, each State and its local school districts have an ongoing responsibility to ensure that FAPE is made available to all eligible children with disabilities in mandatory age ranges residing in the State, and that the rights and protections of Part B are extended to eligible students with disabilities and their parents. 34 CFR §§300.121 and 300.2. If the parents are separated or divorced, it is the position of this Office that both parents retain parental rights under Part B, unless State law or a court order provides otherwise. See EHLR 211:297.

In general, based on State law and practice, the State educational agency (SEA) designates the public agency in the State that is

responsible for ensuring the provision of FAPE to eligible disabled students. 34 CFR §300.600. Under Part B, the duty to make FAPE available to a student is generally derived from the parent's residency. Therefore, the State and generally the school district where the child's custodial parent resides would be responsible for the provision of FAPE. Part B, however, does not address the issue of which school district in the State is responsible for ensuring the provision of FAPE when the child's parents are divorced and the child resides with an adult relative in a school district other than the custodial parent's school district of residence in the same State, and the child does not live in the same school district as the custodial parent. Nor would Part B preclude the State from making one or both school districts responsible for ensuring the provision of FAPE. Since we believe that the issue you are raising would require an interpretation of State law, not Federal law, we would suggest that you contact the Illinois State Department of Education for further guidance. You may contact Associate Superintendent Mary Jayne Broncato at the following address and telephone number:

Mary Jayne Broncato
Associate Superintendent
Educational Innovation and Reform
Illinois State Board of Education
100 North First Street
Springfield, Illinois 62777-0001

(217) 782-3371

We hope that you find the above explanation helpful. If we can be of further assistance, please contact Ms. Rhonda Weiss at (202) 205-9053 or Dr. JoLeta Reynolds at (202) 205-5507.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

cc: Mary Jayne Broncato