



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAR 29 2000

Stewart R. Hakola
Staff Attorney
Michigan Protection and Advocacy Service Inc.
315 S. Front Street
Marquette, MI 49855-4644

Dear Mr. Hakola:

Your letter of September 7, 1999 regarding Michigan's new "school-of-choice" law was referred to this office for a response. Both the Office for Civil Rights (OCR) and the Office for Special Education Programs (OSEP) were consulted in preparing this response. I apologize for the delay in this response.

In your letter, you ask whether two specific subsections in Michigan's school-of-choice law are consistent with the United States Department of Education's (Department's) prior interpretations under Part B of the Individuals with Disabilities Education Act (Part B) and Section 504 of the Rehabilitation Act of 1973 (Section 504) with regard to public school choice programs. The first subsection requires that a non-resident district have a written agreement regarding the provision of a free appropriate public education with the district of residence for any student with a disability that enrolls in that contiguous non-resident district. The second subsection sets out that students enrolled in a non-resident school or district are not entitled to transportation services under the school-of-choice provisions.

While we understand your concern regarding the practical difficulties that districts may face in reaching an interagency agreement, there is nothing in either Part B, as amended by the Individuals with Disabilities Education Act Amendments of 1997 (IDEA'97) or Section 504 that prevents a State from requiring such agreements between resident and non-resident districts to ensure the provision of a free appropriate public education to children with disabilities. In fact, the Department believes that it is critical for States to establish effective mechanisms for ensuring that children with disabilities enrolled in public school choice programs retain their right to a free appropriate public education.

The Michigan Department of Education (MDE) has partially addressed the transportation issue cited in your letter. Specifically MDE's position is available on the agency's website at <http://www.mde.state.mi.us/cgi-bin/gf/money/stateaid/choice/CHOICE/>. Under "Common Questions and Answers about Section 105 Schools of Choice," question 17 (Q17) asks: "Is the enrolling district under a Section 105 schools of choice program responsible for providing transportation for the nonresident pupils?" The answer states: "No, however the district must

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provide the parents of the nonresident pupil with information about transportation options. If the nonresident pupil is a special education pupil and the IEP (Individualized Education Program) indicates special transportation, then that transportation must be provided." Based upon this, it appears that the State is interpreting this provision in a way consistent with Part B. Because transportation services under Section 504 are not specifically addressed in the web document, the Cleveland regional office of OCR will contact MDE seeking further clarification. The OCR contact person for this matter is Donald Yarab and he may be reached at (216) 522-7634.

Under 34 C.F.R. § 104.4, a recipient of federal financial assistance may not, on the basis of disability, deny a person the opportunity to participate in or benefit from any aid, benefit or service that it provides. If you have a specific factual basis to believe that these choice provisions are being implemented in a way that discriminates against children on the basis of their disability or denies a child with a disability a free appropriate public education, you may wish to file a specific complaint with OCR. In addition, you also may file a complaint under Part B directly with the Michigan Department of Education. For information on filing a complaint with MDE, contact:

Dr. Jacquelyn J. Thompson
Director
Special Education Services
Michigan Department of Education
P.O. Box 30008,
608 West Allegan Street
Lansing, Michigan 48909-7508

I hope that this letter is responsive to your concerns. If you have additional questions please do not hesitate to contact this office.

Sincerely,

Francisco Lopez

cc: Michigan Department of Education
OCR, Cleveland Office