



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

Alice Parker, Ed.D.
Assistant Superintendent
Director, Special Education
1430 N Street, Suite 2401
Sacramento, California 95814

OCT 27 2003

Dear Dr. Parker:

This is in response to your letter of October 2, 2003, which in turn, was a response to my letter to you of August 29, 2003. In my letter, I informed you that the Office of Special Education Programs (OSEP) had received several letters and e-mails from individuals in California, in which the writers raise allegations that the State is not in compliance with the State-level nonsupplanting requirements of the regulations promulgated under Part B of the Individuals with Disabilities Education Act (IDEA) at 34 CFR §300.153, and the maintenance of State financial support requirements of 34 CFR §300.154. With my letter, I enclosed copies of the signed, written letters we have received regarding these issues and asked that the California Department of Education (CDE) resolve them as State complaints, pursuant to 34 CFR §§300.660-300.662, and send a copy of the State's decision to OSEP within 60 calendar days from your receipt of this letter.

In your October 2, 2003 response to my letter, you indicated that CDE does not understand how the attachments "could be construed as state-level complaint matters, when they question the State's eligibility to receive federal funds...[because] establishing eligibility is the responsibility of the Secretary of Education, the United States Department of Education, or the Office of Special Education, Monitoring and State Improvement Section ... [and CDE] would like to know what federal authority requires [CDE] to investigate such allegations."

You are correct that the non-supplant and maintenance of effort provisions of Part B are eligibility requirements with which a State must comply to receive Part B funds. See, 20 USC 1412(a)(18)(C) and (19)(A), and 34 CFR §§300.153 and 300.154. Similarly, most of Part B's core requirements (including, for example, the requirements regarding provision of a free appropriate public education, child find, individualized education programs, placement in the least restrictive environment, etc.) are also State eligibility requirements.

While it is true that the Secretary must make determinations regarding a State's eligibility under Part B, the fact that the above-cited requirements also are State eligibility requirements does not diminish the responsibility of CDE to resolve a complaint alleging that it has failed to comply with Part B requirements. The Part B regulations, at 34 CFR §§300.660(a)(1) and 300.662(a), specifically require CDE to resolve a signed, written complaint that includes a statement that a public agency has violated a Part B requirement, and the facts on which the statement is based. For example, the State would need to investigate a complaint alleging that the State's policies

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and procedures for child find do not ensure the identification, location and evaluation of students with disabilities attending private schools in the State in violation of 34 CFR §300.125.

Therefore, we look forward to receiving CDE's decisions on the complaints that I forwarded to you with my letter of August 29, 2003.

If you have any questions, please contact Perry Williams or Larry Ringer of my staff.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia J. Guand".

for Stephanie Smith Lee
Director
Office of Special Education Programs