



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

MAR 15 2000

Dear [REDACTED]

Your letter to Senator Phil Gramm has been referred to the U.S. Department of Education's Office of Special Education Programs (OSEP) for response. OSEP is responsible for administering Part B of the Individuals with Disabilities Education Act (Part B), as amended by the IDEA Amendments of 1997 (IDEA '97). Part B is a Federal law that assists States, and through them local school districts, in providing special education and related services to children with disabilities. State and local educational agencies (SEAS and LEAs) are responsible for ensuring that all children suspected of having a disability and who need special education and related services are located, identified, and evaluated, and that a free appropriate public education (FAPE) is made available to eligible children. A copy of the Part B regulations is enclosed for your information.

According to your letter, ten-year-old [REDACTED] with attention deficit behavior, who has a special education program, was allegedly involved in an altercation with a teacher, for which [REDACTED] has been arrested for disorderly conduct. Your letter indicates that [REDACTED] was scheduled to appear in adult criminal court. Despite the arrest, you allege that [REDACTED] teacher actually inflicted physical injury on [REDACTED] but that [REDACTED] did not injure the teacher. You have been advised by your school district, the [REDACTED] School District in Texas, that you could hire an attorney and request a hearing from the Texas Education Agency (TEA).

While you do not indicate clearly in your letter that that [REDACTED] has been found eligible for special education and related services under Part B, this letter will provide you with some information about some of the requirements of Part B that you may find useful in addressing [REDACTED] educational needs. In the situation prompting your inquiry, you indicate that a criminal proceeding was pending against [REDACTED]. You should know that there is nothing in Part B that prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. See 34 CFR §300.529.

It appears from the information that there is a dispute over the facts giving rise to [REDACTED] arrest. In addition, because the resolution of this matter is dependent on the application of the facts to State law and any other applicable State and local requirements, it falls

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outside of the jurisdiction of this office. However, with regard to the costs you have already incurred in consulting with an attorney, we will provide you with some information about where you might learn more about free or low-cost legal or other services that may be available to you, should you need such services in the future.

An integral part of any special education program is the development and implementation of an individualized education program (IEP). The IEP provides the framework through which the school provides services to children with disabilities. The development of the IEP involves a number of persons, including teachers, administrators and parents who meet and determine what educational services must be provided to address an individual child's educational needs. Part B specifically recognizes the importance of parent participation in the IEP process. For example, the strengths of the child and the concerns of the parents for enhancing their child's education must be considered in IEP development. 34 CFR §300.346(a)(1)(i).

One of the special factors that must be considered in IEP development is the use of positive behavioral interventions and strategies, where the child's behavior impedes his or her learning or that of other students. 34 CFR §300.346(a)(2)(i). At the conclusion of this letter, we will provide you with some ways that you can obtain more information about the appropriate use of behavioral interventions and strategies, which may be useful in working with a child such as

[REDACTED]

When parents and school districts cannot resolve their differences, the following information describes the resources that are available to parents in resolving disagreements on special educational matters. Under Part B, parents have the right to initiate an impartial due process hearing regarding any matter related to the identification, evaluation, educational placement of their child, or the provision of FAPE to their child. 34 CFR §§300.506-300.512. A due process hearing is conducted either by the public educational agency responsible for the child's education or at the SEA level, depending on State law or policy. In Texas, the Texas Education Agency (TEA) is responsible for conducting due process hearings. In a due process proceeding, the parties, among other rights, have the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, and to present evidence and to confront, cross-examine, and compel the attendance of witnesses. 34 CFR §300.509.

When a hearing is initiated, the public agency must inform parents of the availability of any free or low-cost legal or other relevant services available in the area, if the parent requests the information, or if the parent or the agency initiates a hearing. 34 CFR §300.507(a)(3). A hearing may not be conducted by a person who is an employee of a State agency or the local educational agency that is involved in the education or care of the child, or by any person having a personal or professional interest that would conflict with his or her objectivity at the hearing. 34 CFR §300.508(a). An individual who is otherwise qualified to conduct a due process hearing "is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer." 34 CFR §300.508(b).

Part B also provides that public agencies must have procedures for allowing parties to disputes that can be the subject of due process to resolve their disputes through a mediation process, which, at a minimum, must be available whenever a due process hearing is requested. 34 CFR §§300.506(a) and 300.507(a)(2). Mediation must be voluntary on the parties, not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part B of the Act. Mediation involves the parent and school officials meeting together with an impartial third-party mediator who is trained in effective mediation techniques to discuss and attempt to resolve differences. 34 CFR §300.506(b)(1). In Texas, in addition to offering the parties the opportunity to resolve their concerns through mediation, a parent may request mediation prior to requesting an impartial due process hearing, provided the request is voluntary.

Another mechanism for resolving disagreements with school districts over services for individual children is the Part B State complaint procedures at 34 CFR §§300.660-300.662 of the enclosed Part B regulations. The regulations require each SEA to develop procedures for receiving and resolving any written signed complaint that a public agency has violated a requirement of Part B. Once a complaint is filed, the SEA must investigate and resolve the complaint within 60 days after the complaint is filed. The complainant will receive a written decision addressing each allegation in the complaint. As applied to your inquiry, if you believe that the hearing officer appointed by TEA to conduct a due process hearing regarding [REDACTED] was not impartial because, as your letter indicates, the hearing officer "works for" [REDACTED] school district, you may file a State complaint regarding that matter.

For more information with regard to [REDACTED] educational program, or about requesting mediation, initiating due process, or filing a Part B State complaint, you may wish to contact the named TEA official at the following address and telephone number:

Mr. Gene Lenz  
State Director of Special Education  
Texas Education Agency  
W.B. Travis Bldg. Room 5-120  
1701 N. Congress Avenue  
Austin, TX 78701-1494  
Telephone: (512) 463-9734

To assist you in addressing [REDACTED] educational needs, you may wish to contact two of the parent centers in your State that are funded by grants from OSEP. The Texas Statewide parent center is the Parents Resource Network, Inc., located in Beaumont, Texas. They may be reached by telephone at 1-800-866-4726 or (409) 898-4684. Another possibility is the Grassroots Consortium in Houston, telephone (713) 734-5355. These centers are established to help parents participate more effectively with professionals in meeting the educational needs of children and youth with disabilities. They may be able to offer suggestions and/or provide resources that will help you meet [REDACTED] needs.

A resource for you to contact in obtaining legal assistance or additional sources of free or low-cost legal assistance is the Texas Protection and Advocacy Agency as shown below:

James Comstock-Galagan  
Executive Director  
Advocacy, Inc.  
7800 Shoal Creek Blvd., # 171-E  
Austin, TX 78757  
(512) 454-4816

I thought that you also might find it useful to know that this Department funds a number of projects that focus on the use of positive behavioral interventions and supports. One of these projects that the Department funds that you may wish to contact for information about positive behavioral interventions and supports for the organization listed below:

The Center on Positive Behavioral  
Interventions and Supports  
5262 University of Oregon  
Eugene, Oregon 97403-5262 (541) 346-2505

I hope that this explanation and the information provided in this letter are helpful to you in addressing the concerns that you have about educational program. I would like to commend you for your efforts to ensure that educational needs are met. Should you have any questions, please contact Paul Steenan, Texas' State contact for Part B in the Monitoring and State Improvement Planning Division, at (202) 205-9908.

Sincerely



Kenneth R. Warlick  
Director  
Office of Special Education  
Programs

Enclosure

cc: Senator Phil Gramm

Mr. Gene Lenz  
Texas Education Agency