



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 29 1999

Ms. Rosemary Anderson  
Faculty Senate President  
Madison Elementary School  
R.R. 1, Box 121  
Valley Grove, West Virginia 26060

Dear Ms. Anderson:

This is in response to your letter to Judith E. Heumann, Assistant Secretary for the Office of Special Education and Rehabilitative Services, which has been referred to the Office of Special Education Programs for response. I am pleased to have the opportunity to respond to the concern raised in your letter to Assistant Secretary Heumann, and am impressed with the sensitivity and seriousness demonstrated in your approach to this issue. As you described the situation, a first grader with a disability (brittle bone disease) registered to attend your school, however the parents did not inform the school about the child's disabilities or educational needs. On the day the child arrived at school, he was placed in a regular education class. You explained that the child did not have an individualized educational program (IEP) at the school he attended prior to enrolling in your facility. Because your school was initially unaware of the child's brittle bone disease, problems arose on his first day of school regarding his mobility in and from school. The child is now enrolled in another school after one day of attendance at your school. As a result of this experience, you ask whether it is permissible for the school to adopt a formal policy requiring a several day waiting period between registration and attendance of a special needs student until such time as an evaluation can be held and the school made safe and accessible for the student.

Part B of the Individuals with Disabilities Education Act (IDEA) requires a State to ensure that a free appropriate public education is available to all children and youth with disabilities residing in the State. See: 20 U.S.C §1412(a)(1); 34 CFR §300.300. Enclosed are copies of IDEA and the regulations implementing Part B of the IDEA. If a child is not eligible for special education under the IDEA, he or she may still require services under Section 504 of the Rehabilitation Act of 1973 (Section 504) in order to ensure equal access to public education. Section 504 prohibits discrimination in public programs against individuals with disabilities, and similar to the IDEA, requires that local educational agencies (LEAs) have policies and procedures for evaluating children suspected of having a disability to determine the need for special education and related services. 34 CFR §§104.35(a) and 300.320. Once a child is suspected of having a disability, and before the initial placement of the child in a program providing special education and related services, a full and individual evaluation of the child's educational needs must be conducted. 34 CFR §§104.35(a) and 300.342(a).

600 INDEPENDENCE AVE., S.W. WASHINGTON, D.C. 20202

our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

If a child with a disability moves from one school to another, the new school has a responsibility under IDEA and Section 504 to ensure that the child receives an appropriate education. A blanket policy of requiring children with disabilities to delay attendance at your school after registration in order to evaluate the children and determine their needs would not comply with the IDEA and Section 504. However, a child could be temporarily placed and provided accommodations agreed to by the parents and the school to ensure the child's safety as part of the evaluation process - while the IEP or Section 504 plan is finalized. Where a child already has an IEP or Section 504 plan from a prior school, the new school should strive to implement that plan as appropriate, especially if the parents believe the prior plan was successful for their child.

With respect to the specific situation you described in your letter, there are several factors not addressed in your letter that you may want to focus on in light of the requirements of IDEA and Section 504. First, was there a period of time between the child's registration and day the child came to school? Second, when was your school informed of the child's disability, and what questions were asked by your school? Third, was the child previously identified and evaluated to determine eligibility for special education and related services?

I hope that this information is helpful to you and the school in formulating policies and procedures for addressing the educational needs of children with disabilities. If I can be of further assistance, please let me know.

Sincerely,

Thomas Hehir  
Director  
Office of Special Education  
Programs

Enclosures