



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

December 8, 2009

Lawrence D. Weinberg
Susan Luger Associates, Inc.
155 West 72nd Street, Suite 201
New York, NY 10023

Dear Mr. Weinberg:

This is in response to your August 4, 2009 letter to me in which you pose two specific questions regarding whether parents can obtain reimbursement under Part B of the Individuals with Disabilities Education Act (IDEA) for the costs of a private placement for a child not previously found eligible for special education and related services. As background, you state that the parents requested an evaluation in March 2008, enrolled the student in a private residential facility in April 2008, and that due to “various reasons the CSE [Committee on Special Education] did not meet until February 2009,” and did not find the student eligible as a student with emotional disturbance at that time.¹

Your specific questions and the responses from the Office of Special Education Programs (OSEP) follow.

1. Should the CSE have considered whether the child met criteria for an emotionally disturbed classification in March 2008 or February 2009; and
2. When determining whether parents are entitled to reimbursement for the costs of sending the child to a facility, should an impartial hearing officer examine whether the child met criteria for an emotionally disturbed classification in March 2008 or February 2009?

The IDEA addresses the timing for completing an initial evaluation under 34 CFR §300.301(c), but does not address the timing of the public agency’s eligibility determination under 34 CFR §300.306. Under 34 CFR §300.300(c)(1), an initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. There is no specific timeline for the public agency to make its eligibility determination from the time the parent has requested an initial evaluation, the public agency has obtained parental consent for the initial evaluation under 34 CFR §300.300(a), and/or the evaluation is completed in accordance with 34 CFR §§300.300 through 300.311. Consistent with its child find responsibilities to locate, identify, and evaluate children suspected of having disabilities who are in need of special education and related services, a public agency must make eligibility determinations within a reasonable period of time after the evaluation has been conducted to ensure that an eligible child with a disability receives

¹ We are interpreting your statement that the CSE “came to the conclusion that he was did not meet those criteria at that time” as a typographical error.

a free appropriate public education (FAPE) without undue delay. 34 CFR §§300.111, 300.201, and 300.300 through 300.311.

A parent who disagrees with a public agency's determination that their child is not a child with a disability under the IDEA, or who believes the public agency is unreasonably delaying its determination or otherwise denying a free appropriate public education (FAPE) to their child, may use IDEA's dispute resolution procedures, including mediation, to resolve the matter.

With regard to your second question, under 34 CFR §300.148(b) and (c), disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to IDEA's due process procedures in 34 CFR §§300.504 through 300.520. In general, reimbursement for part or all of the costs of the private placement may be available if a court or hearing officer finds that the agency had not made a FAPE available to the child in a timely manner prior to the child's enrollment in the private school, and finds that the private placement is appropriate. In *Forest Grove School Dist. v. T.A.*, 129 S. Ct. 2484 (2009), a case in which the United States participated as amicus curiae on behalf of the parents, the U.S. Supreme Court held that when a school district fails to make FAPE available to a child with disabilities, parents of the child may seek reimbursement for the costs of an appropriate private education, even though the child had not previously received special education and related services from the public schools. 129 S. Ct. at 2495. Because reimbursement is an equitable remedy, when a court or hearing officer concludes that a school district failed to provide a FAPE and the private placement was suitable, it must consider all relevant factors before determining whether reimbursement for some or all of the costs of the child's private education is appropriate. The Supreme Court specifically noted that "courts retain discretion to reduce the amount of a reimbursement award if the equities so warrant — for instance, if the parents failed to give the school district adequate notice of their intent to enroll the child in private school." 129 S. Ct. at 2496.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have additional questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Posny".

Alexa Posny
Acting Director
Office of Special Education Programs

cc: Rebecca Cort