



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

NOV 26 1997

Paul Chassy, Ph.D.
Attorney at Law
3509 Sandy Court
Kensington, Maryland 20895-1420

Dear Dr. Chassy:

This is in response to your letter dated July 11, 1997, written on behalf of your client, a student with disabilities, and parents.

Based on our review of your letter, it appears that many of the issues you are raising would require an interpretation of the order issued by a hearing officer in a due process hearing. Therefore, it would not be appropriate for this Office to respond to these queries. However, we will provide some general comments that you may find useful.

In your letter, you seek our interpretation of the requirements of the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97). These Amendments were enacted by Public Law 105-17, which was signed into law by President Clinton on June 4, 1997. Proposed regulations implementing IDEA '97 were published in the Federal Register on October 22, 1997, at 55 Fed. Reg. 55026. However, since your letter indicates that the alleged procedural violations alluded to in your letter occurred prior to June 4, 1997, IDEA '97 is not the controlling law.

Also, as you know, a decision in a due process hearing conducted under Part B of the Individuals with Disabilities Education Act (Part B) is final, unless a party to the hearing appeals the decision to the State Educational Agency (SEA), if applicable, or brings a civil action under § 615 of the Individuals with Disabilities Education Act. 34 CFR §§ 300.509-300.511.

You also raise a number of questions about your client's "then-current" educational placement during the pendency of review proceedings under Part B, if the parties are unable to agree on this issue. Part B provides that during the pendency of any administrative or judicial proceeding brought under Part B, the child involved in the complaint must remain in his or her present educational placement unless the public agency and the parents agree otherwise. 34 CFR § 300.513(a)¹ OSEP has repeatedly

¹With one exception, Part B's "pendency" provision has been retained at § 615(j) of IDEA '97. An exception to this provision is made if the circumstances described at § 615(k)(7) are present.

advised that if the public agency and the parents are unable to agree on the child's current educational placement or on another placement for the child, the determination of what constitutes the child's current educational placement for purposes of 34 CFR § 300.513(a) generally is made by the hearing officer or by an appropriate State or Federal court.

With regard to parental consent/notice issues, the Part B regulations provide that written notice that meets the requirements of 34 CFR § 300.505 be given to the parents of a child with a disability a reasonable time before a public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. 34 CFR § 300.504(a). Section 300.505(a)(3) provides that this notice must include the evaluation procedures, tests, records, or reports the agency uses as the basis for the proposal or refusal. The Department has interpreted this requirement to mean that the agency must provide parents with written notice of the tests it used, as opposed to the tests it will be administering, as the basis for the decision to change the evaluation or educational placement of the child. See EHLR 211:187 (copy enclosed). This Departmental interpretation is now codified in section 615(c)(4) of IDEA '97.

Note that prior to IDEA '97, parental consent was not required for reevaluations. However, some states have required parental consent for reevaluations or other actions. Thus, unless state law required parental consent, a school district need only have provided written notice to a parent in accordance with 34 CFR § 300.505 with respect to a proposed reevaluation.

You also question whether a public agency can meet its obligations under 34 CFR § 300.504(a) by notifying the parent's attorney in lieu of the parents. In our view, although prior written notice required under Part B must be given to parents, public agencies could notify the parent's representative, in lieu of the parents, if explicitly authorized to do so by the parents.

Finally, you raise a number of questions about what would constitute an appropriate placement for your client. As you know, Part B requires that, to the maximum extent appropriate, children with disabilities be educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR § 300.550(b)(1)-(2). This provision, known as the least restrictive environment (LRE) provision, expresses a preference, not a mandate, for educating disabled students in regular classes alongside their nondisabled peers

with appropriate supplementary aids and services. The overriding rule in placement is that each child's placement must be determined on an individual basis, and the child's individualized education program forms the basis for the placement decision. 34 CFR § 300.552(a)(2). It is the school district's responsibility to ensure that the IEP is implemented and the child receives an appropriate education. Inaccessibility of facilities would not relieve a public agency of its responsibility to ensure that a disabled child receives an appropriate education in accordance with his or her individualized education program (IEP).

with respect to your question about private school placement, if a school district determines that placement in a private school is necessary in order to meet the educational needs of a child with disabilities, the special education and related services outlined in the child's IEP must be available to the child at no cost to the parent.

We hope that you find the above explanation helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Hehir".

Thomas Hehir
Director
Office of Special Education
Programs

Enclosure