



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

THE ASSISTANT SECRETARY

Jan 21 2000

Honorable David L. Hobson
House of Representatives
Washington, DC 20515

Dear Representative Hobson:

Your letter dated October 27, 1999 to the Department's Office of Legislation and Congressional Affairs, written on behalf of your constituents, has been referred to the Office of Special Education and Rehabilitative Services (OSERS) for response. Your constituents have sought your assistance because this school year they have been unable to obtain speech services from the Schools for their disabled children in connection with their parental private school placements.

In their letter, your constituents indicate that the School District has declined to provide their children with speech services, even if they would agree to transport their children to the public school to receive such services. According to their letter, the private school will not contract with a public school to provide the same services, and your constituents are questioning why they are not permitted to choose a certified teacher, in conjunction with the local Public School system, who would serve their children at the private school at public expense. Your constituents are also asking that pertinent regulations implementing the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97) be reexamined.

As in the past, IDEA '97 and its implementing regulations continue to require States and school districts to provide for the participation of parentally-placed private school children with disabilities in programs assisted or carried out under Part B through the provision of special education and related services, consistent with their number and location in the State. 20 U.S.C. §1412(a)(10)(A); 34 CFR §300.452. In meeting their obligations to parentally-placed private school children with disabilities, each local educational agency (LEA) must expend a proportionate share of available Federal funds on services for these children. 20 U. S. C. § 1412(a)(10)(A); 34 CFR §300.453. IDEA '97 also clarifies that services provided to private school children with disabilities may be provided on-site at a child's private school, including a religious school, to the extent consistent with law. 34 CFR §300.456(a).

In addition, as was true prior to the enactment of IDEA '97 and implementing regulations, under Part B, no parentally-placed private school child with a disability has an individual right to some or all of the special education and related services that the child would receive if enrolled in a public school. 34 CFR §300.454(a) and 300.455(a)(3). Instead, decisions about the services that will be provided to parentally-placed private school children with disabilities

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

as a group must be made in accordance with §300.454(b)-(c). Paragraph (b) of §300.454 provides that each LEA must consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities, in light of available funding and the numbers and location of such children, on matters such as the numbers of parentally-placed private school children with disabilities to be served, the services that will be provided, how and where the services will be provided, and how the services will be evaluated. 34 CFR §300.454(b).

Since no parentally-placed private school child with a disability has an individual right to special education and related services, the child's receipt of services from a public agency in one school year does not automatically entitle the child to continue to receive those services in a subsequent school year. In addition, Part B does not specifically prescribe how a school district must serve those parentally-placed disabled children whom the school district elects to serve. This would include the location and manner in which services are provided.

In light of their private school's decision not to contract with the local school district to provide speech services, your constituents suggest that services instead could be offered at the local school district or provided on the premises of a private school by an individual paid by the school district directly. If an LEA determines, through consultation with appropriate representatives of private school students with disabilities, that it will serve its parentally-placed private school students with disabilities through contracting with the private school to provide specific services, and the private school elects not to do so, we find nothing in Part B that would require the LEA to offer a disabled child services through some other arrangement, provided that the LEA ensures equitable participation of the group of parentally-placed private school children with disabilities and meets the expenditure requirements in 34 CFR §300.453 of the Part B regulations.

Your constituents also suggest in the letter to you that the regulations governing services for parentally-placed private school children with disabilities be reexamined. These regulations were published in final form on March 12, 1999 after an extensive public comment process and thorough consideration was given to public comments received, including those concerning services for parentally-placed private school children with disabilities. We believe that these regulations correctly implement the statutory provision at 20 U.S.C. §1412(a)(10)(A) and reflect the Department's longstanding interpretations of the requirements that are applicable to the equitable participation of parentally-placed private school children with disabilities in programs assisted or carried out under Part B.

We would urge your constituents to work with officials of the _____ schools and their State Department of Education to find out more about services for parentally-placed private school children with disabilities in Ohio. Your constituents can contact the named official of the Ohio Department of Education at the following address and telephone number:

Mr. John Herner
Director
Division of Special Education
Ohio Department of Education
933 High Street
Worthington, Ohio 43085-4087
Telephone: (614) 466-2650

We hope that you and your constituents find this explanation helpful. If we can be of further assistance to you or your constituents, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss, at (202) 205-5507, or (202) 205-9053, respectively.

Sincerely,

Kenneth R. Warlick
Director
Office of Special Education
Programs