



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

SEP 9 1997

Ms. Jerri Katzerman
Ms. Kathleen Ross
Arizona Center for Disability Law
3839 North Third Street
Suite 209
Phoenix, Arizona 85012

Dear Ms. Katzerman and Ms. Ross:

This is in response to your letter dated February 4, 1997, written to the Office of Special Education Programs (OSEP), in which you seek our views as to whether the requirements of Part B of the Individuals with Disabilities Education Act (Part B) would be violated if, absent parental consent, the results of an independent educational evaluation (IEE), for which public funding is sought, were provided directly to the school district rather than only to the family of the child being evaluated. Please excuse the delay in issuing our response.

As we understand your inquiry, it is your view that such disclosure is impermissible absent parental consent. You base this both on your interpretation of the requirements of Part B as well as the "nature of the psychologist-client relationship."

Under 34 CFR §300.503(b), a parent has the right to an independent educational evaluation (IEE) at public expense if the parent disagrees with an evaluation obtained by the public agency. This right is subject to the agency's right to initiate an impartial due process hearing to show that its evaluation is appropriate. Part B does not address whether parents should be able to obtain public funding for an IEE before the IEE is performed or seek reimbursement after the evaluation. However, a public agency should not delay either in providing public funding or initiating a due process hearing so long as essentially to deny the parent the right to a publicly-funded IEE. See enclosed letter to Marilyn Wessels dated March 9, 1990.

In your letter, you note correctly that (I) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." 34 CFR §300.503(a)(3)(I). We do not agree, however, that the public agency is disinterested in the results of an IEE. In contrast, the intent behind the provisions of 34 CFR §300.503(b) is that, in determining the appropriate educational program for the child, the public agency will rely on the results of the IEE conducted at public expense, rather than, or in addition to, the results of its own evaluation, unless the public agency initiates a hearing to demonstrate that its evaluation is appropriate. Either way, the district would have to review the results of the IEE to

determine the appropriate course of action. Even with privately funded IEEs, the public agency must consider the results of the IEE in any decision made with respect to the provision of a free appropriate public education to the child. 34 CFR §300.503(c)(1).

Members of my staff have carefully reviewed your letter and accompanying documents, and do not interpret Part B as prohibiting the disclosure of the results of an IEE to a school district in the absence of parent consent. This office is not in a position to express an opinion on the applicability of the APA Ethics Code to this situation. You may wish to seek guidance, however, as to whether any State laws would be implicated under the circumstances prompting your inquiry.

We hope that you find the above explanation helpful.

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas Hehir", followed by a small mark that looks like a date "1/12".

Thomas Hehir
Director
Office of Special Education
Programs

Enclosure

cc: Ms. Kay Lund
Arizona Department
of Education