



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

OCT 20 1998

Honorable Robert T. Matsui
Member, House of Representatives
8058 Federal Building
650 Capitol Mall
Sacramento, California 95814

Dear Congressman Matsui:

Your letter dated _____ to the Department's Office of Legislation and Congressional Affairs, written on behalf of your constituent, _____ has been referred to the Department's Office of Special Education Programs (OSEP) for response.

The Federal law administered by this Office that governs the education of children with disabilities is Part B of the Individuals with Disabilities Education Act (Part B). Part B makes Federal financial assistance available to States, and through them to local school districts, to assist in providing a free appropriate public education (FAPE) to their resident children with disabilities. It appears from your constituent's inquiry that _____ has been unable to obtain what _____ describes as therapeutic services, for _____ from local school district, in connection with his unilateral placement at a private school. Assuming _____ has been evaluated by _____ local school district and determined eligible for services under Part B, the explanation that follows of the applicable requirements of Part B, as amended by the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17 (IDEA '97) would be relevant to _____ inquiry.

We have enclosed for your constituent's information a copy of IDEA '97 as well as the current regulations, at 34 CFR §§76.650-76.662, governing obligations of school districts to parentally-placed private school students with disabilities. The reauthorization of IDEA by IDEA '97, signed into law by President Clinton more than one year ago, was the result of a bipartisan, bicameral process, and the views of educators, including representatives of children with disabilities enrolled in private schools by their parents, were carefully considered. Since IDEA '97 clarifies the scope of school districts' obligations to parentally-placed private school students with disabilities, we believe that no further statutory changes are needed, as suggested by your constituent.

In fulfilling their obligations to make FAPE available to disabled students, a public agency generally places children with disabilities in its own programs or in other public schools or facilities. A public agency may place disabled children in

private schools or facilities as a means of providing special education and related services to those children at no cost to their parents, if it is determined in an individual situation that the child cannot receive an appropriate education from the programs that the agency conducts or reasonably could be expected to initiate. However, when FAPE has been offered, and the parent chooses not to accept the program offered to their child by the local school district, and instead elects to enroll their child in a private school, then the district is not required to pay for that child's private education. In the event that the parents decide to return the child to public school, FAPE must be provided.

The Department's longstanding interpretation of Part B is that, with respect to parentally-placed private school students with disabilities, public school districts must (1) conduct child find (identification, location and evaluation) activities, and (2) ensure the equitable participation of parentally-placed private school students with disabilities in programs assisted or carried out under Part B.

However, let me emphasize that parentally-placed private school students with disabilities have no individual right to special education and related services under Part B, and a school district is not required to serve every parentally-placed private school student with a disability, or to provide the full range of services under Part B to those parentally-placed private school students with disabilities whom it elects to serve. Provided the district follows the law and regulations in determining the amount of Part B funds it will spend on services to parentally placed private school students with disabilities, which private school children it will serve, what services it will provide, and how such services will be rendered, the requirements of Part B would be satisfied.

Section 612(a)(10)(A)(i) of IDEA '97 provides that students with disabilities placed in private schools by their parents must be allowed to participate, to the extent consistent with their number and location, in programs assisted or carried out with Part B funds. The amounts expended by the local educational agency (LEA) on special education for these students must be equal to a proportionate amount of the available Part B funds. §612(a)(10)(A)(i)(I). Further, services under Part B may be provided to parentally placed private school students with disabilities on the premises of the private, including parochial, schools to the extent consistent with law. §612(a)(10)(A)(i)(II). IDEA '97 also clarifies that the child find responsibilities of public school districts also apply to parentally-placed private school students with disabilities. §612(a)(10)(A)(ii).

Although no parentally-placed private school student with a disability has an individual right to special education and

related services, current regulations provide that, in determining which children will be served, what services will be provided, and how such services will be provided, the LEA must consult with appropriate representatives of private school students. 34 CFR §76.652. The consultative process is to ensure that there is a genuine opportunity for the views of the private school children, through their representatives, to be expressed and considered. Further, the services that are actually provided must be comparable in quality to the services provided public school disabled students. 34 CFR §76.654.

Your constituent also may wish to contact officials of the School District to determine how the District is expending s proportionate share of Federal Part B funds on its parentally-placed disabled students, including how it has determined which children it will serve, what services it will provide, and how it will provide those services. For further information regarding the provision of services to parentally-placed private school students with disabilities in California, your constituent also may wish to contact the named official of the California State Department of Education at the following address and telephone number:

Dr. Alice Parker
State Director
Special Education Division
California State Department of Education
515 L Street, #270
Sacramento, California 95814
Telephone: (916) 445-4613

We hope that the above explanation and enclosed information are helpful to your constituent in clarifying the nature of a school district's obligations to parentally-placed disabled students. If your constituent would like further information from this office, she should contact Ms. Ellen Safranek, the California State contact in the Monitoring and State Improvement Planning Division at (202) 205-9131.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

Enclosures

cc: Dr. Alice Parker