



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG 26 1998

Honorable Steven R. Rothman
1607 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Rothman:

This is in response to your letter dated July 9, 1998, written to OSERS Assistant Secretary Judith E. Heumann, on behalf of your constituent, . Ms. , who has enrolled her in a private school has sought your assistance because of the decision of the Borough of not to provide her , who has low muscle tone, with occupational therapy services to improve neurological functioning.

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 of IDEA). Part B of IDEA 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. Your constituent has not indicated in her letter whether her has been determined to be a "child with a disability" pursuant to Part B of IDEA and is therefore eligible for special education and related services. However, assuming your constituent's has been determined eligible for services under Part B of IDEA, the explanation that follows of the applicable requirements of Part B of IDEA, as amended by the IDEA Amendments of 1997, Pub. L. 105-17 (IDEA '97) would be relevant to her inquiry.

School districts generally meet their obligations to make FAPE available to disabled students by offering them an appropriate public school program or by placing them at an appropriate private school at public expense. 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 parent(s) decide to return the child to public school, FAPE must be provided.

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

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

In IDEA '97, which was signed into law on June 4, 1997 by President Clinton, Congress codified the Department's longstanding interpretations of Part B of IDEA regarding public school district responsibilities toward private school students. §612(a)(10)(A) of IDEA '97. A copy of IDEA '97 is enclosed for your constituent's information. Section 612(a)(10)(A)(I) states that private school students must be allowed to participate, to the extent consistent with their number and location, in programs assisted or carried out with Part B of IDEA funds. The amounts expended by the local educational agency (LEA) on special education for private school students must be equal to a proportionate amount of the available Part B of IDEA funds. §612(a)(10)(A)(I)(I). Further, services under Part B of IDEA may be provided to parentally placed private school students 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 private school students. §612 (a)(10)(A)(ii).

Although no private school student 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.

we have enclosed for your constituent's information a copy of the current regulations, at 34 CFR §§76.650-76.662, governing obligations of school districts to parentally-placed private school students with disabilities.

Your constituent may wish to contact officials of the Borough of
to determine how the District is expending its

proportionate share of Federal Part B of IDEA 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 for Parentally-placed private school students with disabilities in New Jersey, your constituent may wish to contact the named official of the New Jersey State Department of Education at the following address and telephone number:

Ms. Barbara Gantwerk
Director
Office of Special Education Programs
New Jersey State Department of Education
CN 500
Trenton, New Jersey 08625-0500
Telephone: (609) 633-6833

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. Maral Taylor, the New Jersey State contact in the Monitoring and State Improvement Planning Division at (202) 205-9151. Sincerely,

Sincerely,



Thomas Hehir.
Director
Office of Special Education
Programs

Enclosures

cc: Ms. Barbara Gantwerk
New Jersey State Department of Education