



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF EDUCATION AND REHABILITATIVE SERVICES

APR - 2 2002

Dear

Thank you for your letter regarding the Florida Department of Education's (FDE) compliance with the Individuals with Disabilities Education Act (IDEA). We apologize for the delay in responding.

One of the primary concerns that you raise in your most recent letter is whether FDE operates either a one-tier or two-tier due process system. Section 6A-6.03311(5) of the Florida Statute of State Board of Education Rules outlines the requirements for due process hearings in Florida. Section 6A-6.03311(5)(a)-(b) describes certain responsibilities to be carried out by school districts, such as keeping a list of persons who serve as hearing officers including a statement of their qualifications. However, Section 6A-6.03311(5)(e) states, "A hearing shall be conducted by a hearing officer from the Division of Administrative Hearings, Department of Administration." For your information, we are enclosing a copy of the sections referenced above. As stated in our most recent letter to you dated July 2, 2001, the Office of Special Education Programs (OSEP) has determined that FDE operates a one-tier due process system. This decision was reached as a result of OSEP's 2000 monitoring review of FDE as well as our review of Florida's Eligibility Document Submission for Federal Fiscal Year 2000.

On July 2, 2001, based on FDE's assurance that throughout the period of the current grant award, all public agencies in Florida that provide special education and related services to children with disabilities will operate their programs in a manner fully consistent with Part B and Florida will resolve all of the issues identified in OSEP's review of the Florida eligibility documentation, Florida received a conditional approval from the U.S. Department of Education (Department). At this time, FDE is revising its eligibility documents and will resubmit the documents to the Department this spring. As you may know, this process included public hearings recently conducted by FDE on the Florida statute and State Board of Education rules. When we receive FDE's eligibility documents, OSEP's review will again include a careful analysis of the State's policies and procedures, including the due process system, to ensure that FDE's documents meet the requirements of Part B of IDEA.

Another issue you raise in your correspondence is that OSEP's April 23, 2001 monitoring report is "59 pages of fluff" that contains "only suggestions for improvement". That is incorrect. While the report contains suggestions for improvement, it also includes a

number of significant findings of noncompliance. These findings include, among others, that FDE's monitoring system is not effective in identifying and correcting noncompliance with Part B requirements that focus on improved results for children with disabilities. The next phase of OSEP's Continuous Improvement Monitoring Process, developed with input from stakeholders throughout the nation, is the development, implementation and evaluation of the State's Improvement Plan (IP). Currently, FDE, with input from the Florida State Advisory Panel, is developing an IP that will address the areas of noncompliance identified in OSEP's monitoring report. We are working closely with FDE staff to track the progress of the IP and ensure that it includes the activities necessary to correct the deficiencies identified in OSEP's monitoring report.

You also mention Florida's program of Scholarships to Public or Private Schools of Choice for Students with Disabilities authorized by Florida statute 229.05371 (referred to as the Scholarship Program). The March 30, 2001 letter you refer to from the Department concerning the Scholarship Program does state that if FDE and its local school districts have made a free appropriate public education (FAPE) available to eligible children with disabilities in a public school but their parents elect to place them in private schools through the Scholarship Program, then such children are considered "private school children with disabilities" enrolled by their parents. See 34 CFR §300.450. IDEA provides for a process by which limited services may be provided to some parentally placed private school students with disabilities. 34 CFR §§300.453-300.462. You state that school districts consider children who participate in the Scholarship Program to be dually enrolled both in the school district and in the private school placement. Under 34 CFR §300.753(a)(3), a State may include in its annual count of children with disabilities served the number of private school children with disabilities provided special education or related services under 34 CFR §§300.452-300.462 that meet State standards. Therefore, a school district may count these children for IDEA purposes if they are providing them special education or related services under 34 CFR §§300.452-300.462. Finally, the letter states that the Department strongly recommends that the State or local school district notify parents who choose private school placement under the Scholarship Program that the student may retain certain rights under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act, although the student will not be entitled to FAPE under IDEA, while enrolled in the private school.

In your letter, you asked, "how do parents exhaust 504 issues?" The U.S. Department of Education's Office for Civil Rights (OCR) is responsible for enforcing Section 504. The address and telephone number for OCR's Southern Division are listed below:

Office for Civil Rights, Atlanta Office
U.S. Department of Education
61 Forsyth St. S.W., Suite 19T70
Atlanta, GA 30303-3104
Telephone: (404) 562-6350
Fax: (404) 562-6455
Email: OCR_Atlanta@ed.gov

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Both the eligibility documents review process and the OSEP monitoring review of FDE involve extensive analysis of FDE's policies and procedures by Department of Education staff. We hope you find this information helpful.

Sincerely,

A handwritten signature in black ink that reads "Patricia J. Bland". The signature is written in a cursive style with a large initial "P".

for

Stephanie S. Lee

Director

Office of Special Education Programs

Enclosure