



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JAN - 8 1998

Mrs. Faanati Penitusi
American Samoa Parent Network
P.O. Box 3432
Pago Pago, American Samoa 96799

Dear Mrs. Penitusi

This is in response to your recent letter to the Office of Special Education Programs (OSEP), received in this Office on September 15, 1997. In your letter, you ask whether activity fees charged for students with disabilities can be waived, and whether requiring such fees is consistent with Federal law.

Under Part B of the Individuals with Disabilities Education Act (Part B), each State and its public agencies must ensure that a free appropriate public education (FAPE) is made available to all students with disabilities in mandated age ranges, and that the rights and protections of Part B are extended to eligible students and their parents. 34 CFR §§300.121 and 300.300. FAPE means, in part, the provision of special education and related services, at no cost to parents, and in conformity with an individualized education program (IEP). 34 CFR §300.8.

"Special education" is defined in relevant part as follows:

The term "special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including --

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
(ii) Instruction in physical education.

(2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, and is considered special education rather than a related service under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. 34 CFR §300.17(a)(1)(3).

The term "at no cost" is further defined to mean that "all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program." 34 CFR §300.17(b)(1) (emphasis added).

Under the above regulatory definitions, if incidental activity fees charged to parents of disabled children, are also charged to parents of nondisabled children as part of a regular education program, or the incidental fees are not for the instruction or services specified in the student's IEP, and are therefore unrelated to the special education and related services being provided, requiring such fees would be permissible under Part B. We have enclosed a copy of the current regulations implementing Part B for your information.

Whether or not a legitimate activity fee can be waived based on ability to pay is not a question of federal law but is determined by state and local law and policy.

We hope that you find this explanation helpful. If you need further assistance, you should contact Dr. Helen Eano, your State contact person in OSEP's Monitoring and State Improvement Planning Division, at (202) 205-9583, or Ms. Rhonda Weiss of my staff at (202) 205-5507.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

Enclosure

cc: Ms. Jane French
American Samoa Department
Of Education