



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

Dated January 25, 2008

Honorable Joseph I. Lieberman
United States Senator
One Constitution Plaza, 7th floor
Hartford, Connecticut 06103

Dear Senator Lieberman:

This letter is in response to your October 24, 2007 letter addressed to Assistant Secretary Terrell Halaska, Office of Legislation and Congressional Affairs, U. S. Department of Education (Department), on behalf of your constituent, X of Z County, Connecticut. In your letter, you seek information regarding the obligation of Bergen County, New Jersey, to pay for supplemental instructional services at the Torah Academy in Teaneck, New Jersey, for X's son, Y. Your letter was referred to the Office of Special Education Programs (OSEP), Office of Special Education and Rehabilitative Services (OSERS), within the Department, for reply.

In your letter, you state that Y was evaluated by Z County Special Services, determined to be eligible for special education services, and "...classified as an out-of-state parentally placed private school student, though he maintains a residence in Z County." However, Ms. X expressed to you "...that Z County is unwilling to pay for Y's supplemental instruction services." The information contained in this letter is provided for your consideration in responding to Ms. X.

The obligation of States and local educational agencies (LEAs) to children with disabilities, enrolled by their parents in private elementary schools and secondary schools, changed on July 1, 2005, the effective date of new provisions in the 2004 Amendments to the Individuals with Disabilities Education Act (IDEA). Under 34 CFR §§300.130-300.144 of the final Part B regulations (copy enclosed), the LEA where the private school is located is now responsible for child find, including individual evaluations, and the provision of equitable services for children with disabilities enrolled by their parents in private schools. The new provisions reflect a significant change in IDEA. As a result, the LEA where Y attends school is responsible for making decisions about services for parentally-placed private school children with disabilities rather than the district where Y resides, as was previously the case (although, as you point out, this change would not be significant for Y as he also maintains a residence in Z County).

Under 34 CFR §§300.130 through 300.144, children with disabilities who are enrolled by their parents in private schools may receive equitable services under a services plan. The

services plan is not an IEP and whether Y receives such services is determined by the LEA where the private school is located, as the result of timely and meaningful consultation with the private schools within its jurisdiction. Not all children with disabilities may be served or receive the same services they would receive if enrolled in public schools.

It is important to point out that, "Children with disabilities enrolled in private schools by their parents have no individual entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school other than child find, including evaluations. Under the Act, LEAs have the obligation to provide the group of parentally placed private school children with disabilities with equitable participation in the services funded with federal IDEA funds." (See page 7, answer to question C-2, of: *Questions and Answers on Serving Children With Disabilities Placed by Their Parents at Private Schools, March 2006* (copy enclosed)).

If Ms. X has any questions about how the requirements of IDEA are implemented in the State of New Jersey, she may wish to contact the New Jersey State educational agency, as follows:

Dr. Roberta Wohle, Director
Office of Special Education Programs
New Jersey Department of Education
100 Riverview Plaza
P.O. Box 500
Trenton, New Jersey 08625-0500
Telephone number: (609) 292-4469

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

Thank you for writing on behalf of Ms. X. I hope this information is helpful. If OSEP can be of any further assistance regarding this matter, or in the future, please feel free to contact me, or Ms. Susan Falkenhan, OSEP's Part B State contact for New Jersey, at (202) 245-7491.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education
Programs

Enclosures

cc: Roberta Wohle