



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

MAR 3 1 1998

Senator Tom Harkin
United States Senator
320 6th Street
110 Federal Building
Sioux City, Iowa 51101

Dear Senator Harkin:

This is in response to your letter to Secretary of Education Richard Riley on behalf of your constituent, _____ regarding _____ request for Secretarial review of a complaint against _____ Area Education Agency _____ (the District), related to the implementation of Part B of the Individuals with Disabilities Education Act (Part B of IDEA).

_____ was granted a Secretarial review three years ago of _____ allegation that the District used a time-out procedure with _____ that was not part of - individualized education program (IEP). In letters to _____ and the Iowa Department of Education (LADE), we gave both parties the opportunity to submit to this Office additional information regarding: (1) whether the use of the time-out procedure was part of the student's IFP during the period in question; (2) if it was in the IEP, was the time-out procedure implemented in a way that was consistent with the IEP, and (3) if the time-out procedure in question was not part of the IEP, does the District have policies and procedures for ensuring that time-out interventions for students with disabilities are in the IEP. Both parties submitted additional information, which this Office reviewed.

As a result of our review of the information submitted to this Office, we determined that (1) the District had dismantled the time out units, and _____ had removed _____ from the District's schools, was home schooling and had no intention of returning _____ to the District's schools. We therefore concluded that there was no reason to require IADE to direct the District to conduct a meeting to review _____ IEP and take corrective action regarding the provision of a free appropriate public education for _____. Thus the Secretary did not require IADE to take any further action regarding _____ allegation. We apologize for not notifying _____ of this decision.

As you know, the IDEA was reauthorized last year and certain parts of the Act, including Part B, were amended. Prior to the reauthorization, the U.S. Department of Education reviewed comments from parents and educators on how to improve the Act. These comments, and what the Department had learned over twenty years of implementing Part B, were considered when the

Department prepared its proposal to Congress for improving the Act. The issue raised in _____ allegation was taken into consideration in the Department's proposal and was subsequently addressed in the 1997 Amendments to IDEA, which were signed into law by President Clinton on June 4, 1997. The 1997 Amendments to IDEA add a requirement at section 614(d)(3)(B)(i) , which is part of IDEA's IEP requirements, that the IEP team shall "in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies and supports to address that behavior..." (emphasis added). The requirement to include positive behavioral intervention strategies discourages the use of aversive behavioral interventions. The proposed rules for implementing the 1997 Amendments to IDEA provide that if the IEP team, in considering; For example, strategies which address a behavior that impedes learning, determines that a child needs a particular device or service in order for the child to receive a free appropriate public education, the IEP team must include a statement to that effect in the child's IEP (see 34 CFR §300.346 (c) of the enclosed proposed rule).

I hope that this information is helpful in responding to your constituent. Please let me know if I can be of further assistance to you or your constituent. -

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

Enclosure