



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

Dated February 4, 2008

Dear

This letter is in response to your October 24, 2007 electronic mail (email) correspondence to Dr. Al Jones in the Office of Special Education Programs (OSEP), Ms. Jennifer Sheehy in the Office of the Assistant Secretary (OAS), and other U. S. Department of Education (ED) staff, and your October 28, 2007 email to Dr. Al Jones, regarding questions about private placement of children with disabilities at public expense. Because of the many conversations and the recent correspondence between you and OSEP, we are including the issues raised and OSEP's responses to those issues, to date, in order to establish the context of your most recent inquiry and our response to that inquiry.

You wrote on July 2, 2007 regarding the issues enumerated below. Included are OSEP's responses to those issues, provided on July 19, 2007.

The inclusion of short-term objectives in the individualized education program (IEP):

"[T]he IDEA [Individuals with Disabilities Education Act] Amendments of 2004 specifically removed a provision from prior law (IDEA-97) that required each child's IEP to include "a statement of measurable annual goals including benchmarks or short term objectives" (emphasis added). However, the 2004 Amendments also added a new provision that, "for children with disabilities who take alternate assessments aligned to alternate achievement standards," the IEP [individualized education program] must include "a description of benchmarks or short-term objectives." 20 U.S.C. 1414(d)(1)(A)(i)(I)(cc) and 34 CFR 300.320(a)(2)(ii).

Severe Discrepancy in the Identification of Children with Specific Learning Disabilities: In regard to severe discrepancy section 614(b)(6) of the Act provides that, when determining whether a child has a specific learning disability (SLD), a local educational agency (LEA) "(A)...shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning" and "(B)... may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in (paragraphs (b)(2) and (3) of section 614)." (Emphasis added).

The provision of ESY services to children with disabilities placed in Michigan's Severely Cognitively and Multiply-Disabled Programs:

In regard to ESY and the funding status of Michigan's grant under Part B of the IDEA, we reiterated that neither OSEP nor other units in the U.S. Department of Education have informed MDE [the Michigan Department of Education] that the State would lose its funding based on the additional 50 days included in R 340.1738 & R 340.1748.

Whether a State educational agency (SEA) can exceed the requirements of the 2004 Amendments to the IDEA:

In regard to exceeding minimum requirements generally, a State can exceed Federal requirements as long as what the State requires: (1) is not inconsistent with other requirements in the IDEA; and (2) is consistent with 34 CFR §300.199(a)(2) and sections 608(a)(2) and 614(d)(1)(A)(ii)(I) of the Act, that the State identifies in writing to the LEAs [local educational agencies] located in the State and to the Secretary that such rule, regulation, or policy is a State-imposed requirement that is not required by Part B of the Act or regulations. All States receiving funds under Part B of the IDEA must meet the requirements of Part B of the IDEA and its regulations.

In several subsequent conversations, we have attempted to respond to additional concerns you raised regarding Michigan's lack of private placement of children with disabilities at public expense, the subject of your October 24, 2007 and October 28, 2007 emails to Dr. Jones, in which you requested a written response regarding Michigan's Constitution, Article VIII, Section 2 and the use of State funds for children with disabilities.

We understand that you are one of 64 parents who have filed a complaint with the State regarding Michigan's failure to provide private placements for children with disabilities at public expense. The regulations at 34 CFR §§300.151 through 300.153 give States the authority and responsibility to investigate and resolve any complaint that a public agency has violated a requirement of Part B of IDEA. The State has informed OSEP that the Michigan Department of Education (MDE) resolved this complaint and issued a decision on January 15, 2008.

One of your concerns is that the State's constitution prohibits the State from using public funds to place children with disabilities in private schools. We want to clarify that contrary to the information in the complaint filed with the State on this issue, the Office of the General Counsel (OGC) has not made a determination that Section 2 of Article VIII of the Michigan Constitution does not prohibit the use of public funds for students with disabilities. It is the prerogative of the State to interpret its own laws and Constitution.

As you know, OSEP recently conducted a verification and focused monitoring visit to Michigan during the week of November 12, 2007. As reauthorized in 2004, IDEA requires the Department to monitor States with a focus on: (1) improving educational results and functional outcomes for children, and youth with disabilities; and (2) ensuring that States meet the program requirements, particularly those most closely related to improving educational results for children with disabilities. The purpose of our verification and focused monitoring visit was to evaluate how Michigan uses its general supervision, State-reported data collection, and financial management

Page 3

systems to assess and improve State performance, child outcomes, and the protection of child and parent rights. OSEP will be issuing a letter describing the results of the visit shortly.

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.

We appreciate your concern and desire to improve the lives of children with disabilities. If you have other comments or questions, please feel free to contact Dr. Jones in OSEP at (202) 245-7394.

Sincerely,

A handwritten signature in dark ink, appearing to read "Patricia J. Guard". The script is cursive and fluid.

Patricia J. Guard
Acting Director
Office of Special Education
Programs

cc: Dr. Jacquelyn Thompson