



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

Dated March 17, 2008

This is in response to your September 26, 2007 letter to the Office of Special Education Programs (OSEP) in which you ask whether the policy interpretations stated in the OSEP letters responding to inquiries from Thomas Nevelndine dated May 28, 1993 and January 25, 1995 still represent OSEP's position regarding a public agency's obligations to pay tuition costs when a public agency places a preschool-aged child with a disability into a private preschool for children without disabilities for the purpose of receiving a free appropriate public education (FAPE). We apologize for the delay in responding.

Under Part B of the Individuals with Disabilities Education Act (Part B), each State and its public agencies must make FAPE available to all children with disabilities residing in the State in mandated age ranges in the least restrictive environment. 34 CFR §300.101(a) and §§300.1114 through 300.117. Because many local educational agencies (LEAs) do not offer preschool programs, particularly for three- and four-year-olds, LEAs often make FAPE available to a preschool child in a private school or facility. See 34 CFR §§300.145 through 300.147 (obligations of public agencies to children with disabilities placed in or referred to private schools by public agencies as a means of providing special education and related services to those children).

The OSEP letters to Thomas Nevelndine dated May 28, 1993 and January 25, 1995 continue to represent the Department's interpretation of the requirements of Part B that are applicable when a public agency places a preschool child with a disability in a private preschool for children without disabilities for the purpose of providing special education and related services to that child. As your letter correctly points out, the interpretation contained in the referenced letters was reflected in a response to a public comment on the regulations implementing the Individuals with Disabilities Education Act of 2004, asking about a public agency's obligation to pay tuition costs, transportation, special education and related services, and the supplementary aids and services that the child needs, if an inclusive preschool is the appropriate placement for a preschool child and there is no inclusive public preschool that can provide all of the appropriate services and supports that a child needs. The Department responded that "...if a public agency determines that placement in a private preschool program is necessary as a means of providing special education and related services to a child with a disability, the program must be at no cost to the parent of the child." Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46589 (Aug. 14, 2006). Please note also that since the OSEP letters to Mr. Nevelndine predate statutory and regulatory changes made to Part B as a result of

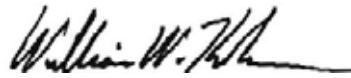
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the Individuals with Disabilities Education Act of 2004, the regulatory provisions cited in those letters do not reflect citations from the current Part B regulations in 34 CFR Part 300.

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.

If you have additional questions, please do not hesitate to contact Perry Williams at 202-245-7575.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Knudsen".

William W. Knudsen
Acting Director
Office of Special Education
Programs

cc: Dr. Mabrey Whetstone