



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

THE ASSISTANT SECRETARY

May 16, 2006

Marcia Mittnacht
State Director of Special Education
Massachusetts Department of Education
Special Education Planning and Policy Development Office
350 Main Street
Malden, Massachusetts 02148-5023

Dear Ms. Mittnacht:

I am writing in response to your letter to the Office of Special Education- and Rehabilitative Services (OSERS), regarding Massachusetts' plans for compliance with the parentally-placed private school provisions in section 612(a)(10)(A) of the Individuals with Disabilities Education Improvement Act of 2004 (Act). You request that the Office of Special Education Programs (OSEP) provide the Massachusetts Department of Education (MASSDE) specific guidance on the obligation of Massachusetts' school districts to provide and pay for special education and related services for parentally-placed private school children with disabilities who reside outside of Massachusetts and attend private elementary schools and secondary schools in the State. You also request that we review and provide recommendations on a September 13, 2005 memorandum (Administrative Advisory SPED 2006-3: IDEA-2004 and Private School Students) from your office to Massachusetts' special education administrators, educational collaborative directors, and other interested parties informing them about State and federal special education requirements and describing the procedures that MASSDE requires school districts to follow in order to demonstrate compliance.

By way of background, you state that Massachusetts General Laws Chapter 71B requires school districts in Massachusetts to provide a free appropriate public education (FAPE) to all eligible students with disabilities who reside in the State, regardless of where students attend school (including private schools). We conclude from your letter that parentally-placed private school students with disabilities who reside in the State are provided special education and related services pursuant to individualized education programs (IEPs) developed in accordance with section 614(d) of the Act, and these students and their parents are guaranteed all the procedural safeguards under section 615 of the Act. You further state that Massachusetts' regulations specify that school districts are not required to provide special education and related services to parentally-placed private school students with disabilities who reside outside of Massachusetts and are attending private schools in Massachusetts.

We are responding to your request for specific guidance regarding the obligation of Massachusetts' school districts to provide and pay for special education and related services for parentally-placed private school children with disabilities who reside outside of Massachusetts and attend private elementary schools and secondary schools located in the State. However, we are not providing recommendations on the September 13, 2005 memorandum or other issues raised in your letter at this time. We gladly will review the memorandum and provide any recommendations to MASSDE upon publication of the final regulations implementing the Act. Given MASSDE's direction to its school districts to not provide services for parentally-placed private school children with disabilities residing outside of Massachusetts attending private schools in the State and the number of inquiries the Department has received regarding MASSDE's policy, we believe it is critical we address this issue now.

As you are aware, Congress made significant changes to the provisions governing parentally-placed private school children with disabilities with the enactment of the Act. Section 612(a)(10)(A)(i)(I) of the Act makes clear that the local educational agency (LEA), after timely and meaningful consultation with private school representatives, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools *located in the LEA* [emphasis added]. In addition, section 612(a)(10)(A)(i) of the Act makes clear that the obligation to spend a proportionate amount of federal funds to provide services to children with disabilities enrolled by their parents in private schools now refers to children enrolled by their parents in private elementary schools and secondary schools "in the school district served by a local educational agency." The requirements in section 612(a)(10)(A) of the Act do not provide exceptions for children with disabilities who reside in one LEA and are enrolled by their parents in a private school in another LEA or those who reside in one State and are enrolled by their parents in a private elementary school or secondary school in another State.

Therefore, MASSDE must ensure that each LEA conduct child find, including individual evaluations, of all parentally-placed private school children suspected of having a disability and attending a private school located in the LEA. This includes children from other States enrolled by their parents in private elementary schools and secondary schools located in LEAs in the State. Further, MASSDE must ensure that each LEA, in consultation with private school officials and representatives of parents of parentally-placed private school children with disabilities attending private schools located in the LEA, consider the needs of all parentally-placed children with disabilities who attend private schools located in the LEA, including children who reside outside of the State, in determining which parentally-placed private school children with disabilities will be served with a proportionate amount of the LEA's federal funds available under Part B of the Act, and the types and amounts of services that will be provided.

We consider this a serious matter and request that, no later than July 31, 2006, MASSDE submit a plan to OSEP describing the steps MASSDE is taking to ensure that: (1) each LEA identify and evaluate all parentally-placed children with disabilities attending private schools located in the LEA, including out-of-State children with disabilities

attending private schools located in the LEA and (2) all parentally-placed private school children with disabilities, including children who reside outside the State, who attend private schools located in the LEA are included in the group of parentally-placed children with disabilities whose needs are considered in determining which parentally-placed private school children with disabilities will be served by that LEA.

We look forward to our continued collaboration with Massachusetts to support your work to improve results for children with disabilities and their families. If you have any questions, please contact Ken Kienas at (202) 245-7621.

Sincerely,



John H. Hager