



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

AUG 14 1998

Mr. Robert W. Runkel
Director
Office of Public Instruction
Division of Special Education
State Capitol Room 106
Helena, Montana 59620

Dear Mr. Runkel:

This letter sets out my decision concerning an allegation made by (Complainant) against the School District (SD) that I agreed to review in my letter of January 7, 1997. The allegation I agreed to review was whether SD violated the requirements of Part B of the Individuals with Disabilities Education Act (Part B) by failing to respond to the Complainant's request for an independent educational evaluation (IEE) for when disagreed with SD's evaluation. This allegation was addressed during a complaint investigation conducted by the Montana Office of Public Instruction (OPI) in response to a complaint that the Complainant filed on March 30, 1996.

Following its investigation, OPI issued a Final Report on May 10, 1996, indicating that SD did not violate the requirements of Part B, and stating that (1) OPI has no authority to order SD to make arrangements for an IEE, (2) there is no time line for responding to 2 request for an IEE, and (3) a parent may request a due process hearing to ask the hearing officer to issue an order requiring a school district to pay for an IEE.

My January 7, 1997 letters invited the Complainant and OPI to submit within 30 days any relevant information or documentation that either party wished to provide about this matter. Neither the Complainant nor OPI submitted a response.

Based upon my review of the information provided to this Office, I conclude that SD violated the requirements of Part B by failing to take one of the following actions: (1) paying the full cost of an IEE for the Complainant's or ensuring that an IEE is otherwise provided at no cost to the Complainant; or (2) initiating a due process hearing under 34 CFR §300.506 to show that its evaluation of the Complainant's was appropriate.

As a recipient of Part B funds, OPI must ensure that the administration of educational programs for children with disabilities within the State of Montana complies with the requirements of Part B. See 34 CFR §300.600. Although Federal law does not prescribe a specific time line for

responding to requests for an IEE, it is the position of the U.S. Department of Education that parents have the right to obtain an IEE at public expense, without delay, and in a manner that does not interfere with the free appropriate public education provided for a child. The public agency must respond without unnecessary delay to a request for an IEE when a parent disagrees with an evaluation obtained by the public agency by either (1) paying in full for the cost of the evaluation or ensuring that the evaluation is otherwise provided at no cost to the parent, using whatever State, local, Federal, or private sources that are available in the State; or (2) initiating a due process hearing under 34 CFR §300.506 to show that its evaluation is appropriate. See 34 CFR §300.503(a)(3)(ii) and (b). If a parent requests an IEE and needs assistance with information about where to obtain an IEE, the public agency must provide information about where an IEE can be obtained. See 34 CFR §300.503(a)(2). If a parent of a child with a disability requests an IEE and believes that the delay in the LEA's handling of their request effectively denies them a meaningful IEE, the parent may request a due process hearing or file a complaint under 34 CFR §§300.660-300.662 with the SEA.

In its Final Report, OPI stated that it has no authority to order SD to arrange or pay for an IEE. This is a violation of the Part B requirement at 34 CFR §300.600 regarding a State's responsibility to ensure that the requirements of Part B are carried out in the State. This requirement is taken verbatim from the Part B statute and reflects the desire of Congress for a central point of responsibility and accountability in the education of children with disabilities within a State. Therefore, rather than suggesting that the parent request a due process hearing, the SEA must ensure that the LEA takes action to respond without unnecessary delay to the parent's request for an IEE by either paying for the IEE or initiating a due process hearing to show that its evaluation is appropriate.

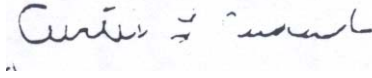
Based on the preceding paragraphs, I direct OPI to notify SD that it was out of compliance with Part B requirements when it failed to either (1) initiate a due process hearing to show that its evaluation of the Complainant's was appropriate, or (2) make arrangements to pay the full cost of an IEE or otherwise provide an IEE at no cost to the parent. As a result of these findings, OPI must verify to this Office (1) that the State of Montana has policies and procedures in place to ensure compliance with the IEE requirements at 34 CFR §300.503; and (2) that OPI monitors school districts to determine compliance with its IEE policies and procedures, and implements corrective actions when a school district is out of compliance with these requirements and/or does not implement them in a timely manner.

In addition, OPI must ensure that SD takes corrective action with respect to its refusal to provide the Complainant with an IEE for the Complainant's by either paying for the full cost of an IEE or otherwise providing an IEE at no cost to the Complainant, unless the Complainant withdraws his request for an IEE. If SD continues to feel that its evaluation was appropriate, SD must initiate a due process hearing to demonstrate that SD's evaluation of the Complainant's is appropriate.

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A copy of this letter has been sent to . Thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Judith E. Heumann". The signature is written in a cursive style and is positioned above the typed name.

for

Judith E. Heumann
Assistant Secretary

cc: