



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

SEP 12 1997

Mr. Jack E. Shook  
Division Administrator  
Division of Compliance  
Illinois State Board of Education  
100 North First Street, E-126  
Springfield, Illinois 62777

Dear Mr. Shook:

I am writing in response to an Illinois State Board of Education (ISBE) letter, dated March 7, 1997, regarding the office of Special Education Programs' (OSEP) remanding of unresolved issues contained in a complaint from [redacted], OSEP's [redacted] 1996 letter was based on its review of ISBE's letter of findings issued [redacted] 1996 to [redacted]. I am troubled by ISBE's continued delay in fulfilling its obligations under the relevant Federal regulations. Again, I am remanding these issues to ISBE and instructing ISBE to implement its complaint management procedures to address the unresolved allegations.

The content of ISBE's March 7, 1997 letter to OSEP shows that ISBE has not ensured that its staff uses the State's complaint management procedures according to the requirements at 34 CFR §§300.560--300.662. OSEP has determined that ISBE has neither resolved each allegation that OSEP remanded nor responded to the complainant as the Federal regulations require. Also, OSEP's letter, dated [redacted] asked ISBE to "please provide this Office and [redacted] with a copy of your written decision within 30 calendar days of the receipt of this letter." I note that, according to the response letter, dated March 7, 1997, ISBE exceeded the 30-day timeline for response and resolution of the issues that OSEP remanded. However, ISBE did not provide a reason for exceeding the timeline in its letter.

In ISBE's March 1997 response letter, a member of your staff wrote "I am puzzled as to what purpose would be served by investigating this case further." Based on this statement and the request for OSEP's advice, I am providing ISBE the following information and clarifications regarding its response in this matter. The purpose of complaint investigation is to carry out the State educational agency's

agency's (SEA) role pursuant to Federal requirements to ensure that allegations regarding the provision of a free appropriate public education (FAPE) under Part B of the Individuals with Disabilities Education Act (IDEA) are resolved in a timely manner. This role is important to the Federal and State partnership that seeks better results for children and youth with disabilities.

letters to ISBE included allegations that: (1) jails in \_\_\_\_\_ County and \_\_\_\_\_ and the Illinois Department of Corrections at \_\_\_\_\_ Illinois failed to comply with Federal and State laws mandating special education and related services for children and youth with disabilities (see May 31 and June 26, 1996 enclosures); and (2) before \_\_\_\_\_ reached age 21 years and/or received his GED, he was eligible for, but was denied, special education and related services while incarcerated in Illinois county and State correctional facilities. These allegations, if true, require the state to consider and fashion an appropriate remedy, which may include compensatory education, as requested by \_\_\_\_\_

Courts of appeal in the First, Second, Third, Sixth, Seventh, Eighth, and Eleventh Circuits have interpreted IDEA to allow an award of compensatory education as "appropriate relief" under the Act. Pihl v. Massachusetts Dept. of Educ., 9 F.3d 184 (1st Cir. 1993); Burr v. Ambach, 863 F.2d 1071, 1078 (2d Cir.1988), vacated and remanded sub nom. Sobol v. Burr, 492 U.S. 902, 109 S.Ct. 3209, 106 L.Ed.2d 560 (1989), reaff'd on reconsideration, Burr v. Sobol, 888 F.2d 258 (1989); Lester H. v. Gilhool, 916 F. 2d 865, 872-73 (3d Cir.1990); Hall v. Knott County Bd. of Educ., 941 F.2d 402, 407 (6th Cir.1991); Bd. of Educ. of Oak Park & River Forest High Sch. Dist. v. Ill. State Bd. of Educ., 79 F.3d 654, 656 (7th Cir. 1996)<sup>1</sup>; Miener v. State of Missouri, 800 F.2d 749, 753 (8th Cir.1986); Jefferson County Bd. of Educ. v Breen, 853 F.2d 853, 857-58 (11th Cir.1988). Four of these cases specifically held that a student who was deprived of services to which he was entitled under the IDEA has a right to a remedy, which may include compensatory education, regardless of his eligibility for current or future services under the Act. See Pihl, 9 F.3d at 189; Burr, 863 F.2d at 1078; Lester H., 916 F.2d at 873; Jefferson County Bd. of Educa., 853 F.2d at 857.

<sup>1</sup>The Seventh Circuit agreed that the Act's language "encompasses the full range of equitable remedies and therefore empowers a court to order adult compensatory education if necessary to cure a violation." Bd of Educ of Oak Park & River Forest High Sch Dist. v. Ill. State Bd. of Educ., 79 F.3d 654, 656 (7th Cir. 1996).

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I hope that the information provided in response to ISSE's request is helpful. I look forward to our continued Federal and State partnership to ensure that educational programs for children and youth with disabilities are being administered in a manner consistent with the requirements of Federal regulations.

Again, I respectfully request that you provide \_\_\_\_\_ and me with a written response that includes a report on each allegation. Please provide this information within 30 days from the date that you receive this letter. Thank you in advance for your attention to this matter. If you have questions or concerns regarding this matter, please feel free to contact Dr. Gerrie Hawkins of my staff at (202) 205-5386.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Hehir", followed by a small mark that looks like a stylized "H" or a flourish.

Thomas Hehir  
Director  
Office of Special Education  
Programs

Enclosures

cc: