



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

November 26, 2013

William J. Casey, Esq.
Watson Bennett Colligan & Schechter LLP
12 Fountain Plaza, Suite 600
Buffalo, New York 14202

Dear Mr. Casey:

This is in response to your letter to me dated October 2, 2012 asking for clarification of specific requirements in Part B of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations at 34 CFR Part 300. On December 17, 2012, Rebecca Walawender, Deputy Director of the Monitoring and State Improvement Planning Division in the Office of Special Education Programs (OSEP), held a conference call with you to clarify the question posed in your letter. You ask: may a local educational agency (LEA) require that, due to the nature of extended school year (ESY) services, a child remain in a private child care setting at the parent's expense in order to receive the ESY services on the child's individualized education program (IEP)?

Based on your letter and conversation with Ms. Walawender, I understand that your firm's client is the parent of a child with a disability who is transitioning from preschool to kindergarten. The child, while enrolled by the parent in a private child care program, was determined eligible for special education and related services at age four. The LEA implemented the IEP in the private child care setting during the "school year," *i.e.*, though June. The IEP also provided for ESY services pursuant to 34 CFR §300.106. At the end of the "school year," the LEA informed the parent that, due to the nature of the ESY services, the ESY services in the IEP would only be delivered if the child remained in the child care setting and that the cost of the child care program would be the responsibility of the parent. Finally, you informed Ms. Walawender that these facts are part of a due process complaint under 34 CFR §300.508 in which the parent is seeking reimbursement for the private child care center tuition paid during the summer and for which you are awaiting a due process hearing officer's decision.

Please be advised that OSEP's general practice is not to comment on matters that are the subject of a due process complaint or due process hearing. Therefore, OSEP declines to address the issues raised in your letter.

Sincerely,

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

cc: State Director of Special Education