



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

January 5, 2011

Rebecca H. Cort
VESID - New York State Education Department
99 Washington Avenue
One Commerce Plaza – Room 1606
Albany, New York 12234

Dear Ms. Cort:

This is in response to your August 23, 2010 letter seeking clarification from the Office of Special Education Programs (OSEP) regarding the authority of a local educational agency (LEA) to provide tuition reimbursement to parents of students with disabilities who unilaterally place their child in a nonpublic school when a free appropriate public education (FAPE) is at issue. You seek clarification as to whether an LEA can reach an agreement for tuition reimbursement absent the ruling of a court or hearing officer.

Specifically, you ask the following three questions:

1. Does 34 CFR §300.148 limit an LEA's authority to provide tuition reimbursement to meet its FAPE obligation to instances ordered by a court or hearing officer and upon the two-prong finding that the district failed to provide FAPE to the student and the private school placement is appropriate?
2. If Federal regulations would otherwise authorize tuition reimbursement agreements through mediation or settlement agreements, how does the State ensure that its students are receiving FAPE, particularly when most tuition reimbursement cases are for unilateral placements in non-special-education-approved schools and there has been no decision that the school is appropriate for the student?
3. If Federal regulations would otherwise authorize tuition reimbursement agreements through mediation or settlement agreements when there has been no finding that the private school is appropriate, how does the State meet its responsibilities pursuant to 34 CFR §300.129 that the State must have in effect policies and procedures that ensure that LEAs meet the private school requirements in 34 CFR §§300.130 through 300.148?

Generally, mediation and settlement agreements are ways to resolve disputes and avoid the time and costs associated with protracted litigation. The provisions of 34 CFR §300.148 prescribe when an LEA may be **required** by a hearing officer or court to reimburse the parent of a child

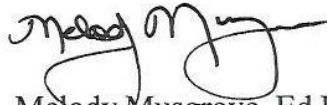
with a disability for a unilateral private school placement. It is not intended to limit the ability of LEAs to offer or include parental reimbursement in a mediation or settlement agreement. The provision also does not limit an LEA's ability to reimburse a placement in a private school that has not been approved by the State to provide special education.

In addition, the ability to include parental reimbursement in a mediation or settlement agreement does not change the responsibilities of LEAs to parentally-placed private school children with disabilities under 34 CFR §§300.130-300.144 or 300.148. As noted above, an LEA may still be ordered by a court or hearing officer to provide reimbursement consistent with 34 CFR §300.148. LEAs also remain responsible for providing equitable services, determined through timely and meaningful consultation, up to the proportionate share of Federal funds required by the regulations, to eligible children with disabilities placed by their parents in private schools where FAPE is not at issue. At the time of the required calculations and consultation, if the LEA is not on notice that FAPE is at issue for a specific parentally-placed private school student with a disability, then that child would be included under the provisions at 34 CFR §§300.130-300.144. If the LEA later determines that FAPE is at issue for that student, then it may adjust its calculations accordingly.

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 questions, please do not hesitate to contact Dr. Deborah Morrow, at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melody Musgrove', with a stylized flourish at the end.

Melody Musgrove, Ed.D.

Director

Office of Special Education Programs