



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG 21 1998

Kristin. M. Reedy
Special Services Director
Barre Supervisory Union
120 Ayers Street
Barre, Vermont 05641

This is in response to your letter to the Office of Special Education Programs dated May 20, 1997 and your follow-up communication to this Office in which you provided additional information relevant to your inquiry.

We appreciate your taking the time to speak with Ms. Rhonda Weiss of my staff to clarify your concerns, and apologize for the delay in issuing this response. Based on the facts presented by your inquiry, an explanation of the pertinent requirements of Part B of the Individuals with Disabilities Education Act (Part B) follows.

According to your letter; in February 1996, a Native American student with a disability was placed in a professional foster care home in your community by the Vermont Department of Developmental and Mental Health Services through a local community mental health center, Washington County Mental Health, Inc. The student, who is in the custody of _____ mother, who resides in the Province of Quebec, is not in the custody of either the Province of Quebec or the State of Vermont. Since this student was placed in your District, Barre City has served as the local education agency responsible for the provision of a free appropriate public education (FAPE) to the student. The costs of _____ education, exclusive of regular education tuition, have been reimbursed to Barre City School District by the Vermont Department of Education (VDE) as required for "state placed students" under VT statute (T. 16S. 1073 and 1075) and regulations. Subsequently, you indicate that VDE notified the District that the cost of this student's education would no longer be reimbursed but that the responsibility for the provision of FAPE would continue to rest with the District. Therefore, you are asking that this Office clarify "the responsibility of the state education agency and/or the local education agency for the provision of and payment for FAPE for a "non-resident" Native American student with a disability."

Although it is our understanding that the situation prompting your initial inquiry has been resolved, you requested guidance from this office because you believe there is a strong likelihood that the situation prompting your inquiry will recur in the future. There are two critical issues raised by your inquiry: the extent of a State's and school district's obligations to non-

resident disabled students living in a State, and the entity that is responsible for providing and paying for FAPE.

A State has an obligation to provide FAPE under Part B to all eligible children with disabilities residing in the State. 20 U.S.C. 1412(a)(1). In the circumstances presented by your inquiry, the determination of the residency of a child who has been placed in a foster care home by a Vermont state agency is a matter of State law. Regarding the FAPE obligation, if a child is placed by a State agency, either for education or treatment reasons, the State and its public agencies must ensure the provision of FAPE to the student. Part B, however, does not dictate which State entity is fiscally responsible for the placement. Rather, each State, pursuant to its general supervisory responsibility under 34 CFR §300.600, must determine which public agency in the State is responsible either for providing or paying for the child's education under Part B.

We hope that you find this explanation helpful. If you have further questions, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss of OSEP at (202) 205-9053, respectively.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

cc: Mr. Dennis Kane
Vermont Department of Education