



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

OCT 24 2003

Honorable William L. Librera
Commissioner of Education
100 River View Plaza
Trenton, New Jersey 08625-0500

Dear Dr. Librera:

This letter is in response to a letter received by the Office of Special Education Programs (OSEP), U.S. Department of Education from Ms. Diana Autin of the Statewide Parent Advocacy Network in Newark New Jersey. Ms. Autin requested clarification regarding the responsibility of the New Jersey Department of Education to ensure a free appropriate public education (FAPE) to children with disabilities who live in New Jersey, but attend school in New York under a contract between New Jersey and New York school districts. According to Ms. Autin, beginning in middle school, all public school students who live in Montague, New Jersey attend school in Port Jervis, New York under a contractual agreement between the two districts. Ms Autin specifically asked whether, for these students, evaluations are to be conducted and eligibility determinations made consistent with New Jersey's policies, and whether the New Jersey Department of Education must provide access to dispute resolution procedures (e.g., due process hearings, mediation) that are available to all parents of children with disabilities who live in New Jersey.

The Individuals with Disabilities Education Act (IDEA) requires States to have in effect policies and procedures to ensure that children with disabilities have available to them special education and related services that meet their unique needs. Among the requirements under the IDEA and its implementing regulations, States must ensure that: (a) a free appropriate public education is available to all children with disabilities residing in the State (20 U.S.C. 1412(a)(1); 34 C.F.R. §300.121); (b) all children with disabilities residing in the State who are in need of special education and related services are identified, located, and evaluated (20 U.S.C. 1412(a)(3); 34 C.F.R. §300.125); (c) children with disabilities and their parents are afforded their procedural safeguards (20 U.S.C. 1412(a)(6); 34 C.F.R. §300.129); and (d) children with disabilities are evaluated in accordance with procedures outlined in section 614 of the IDEA (20 U.S.C. 1412(a)(7); 34 C.F.R. §300.126).

The IDEA does not prohibit a State or school district from entering into an agreement with another entity to provide special education and related services. However, the State remains responsible for ensuring that the requirements of Part B of the IDEA are carried out and that each educational program for children administered within the State, including each program administered by any other State or local agency, is under the general supervision of the persons responsible for educational programs for children with disabilities in the State; and meets the educational standards of the State, including the requirements of Part B of the IDEA (20 U.S.C. 1412(a)(11); 34 C.F.R. §300.600). In addition, each local educational agency (LEA) must have

policies, procedures and programs that are consistent with the State policies and procedures. (20 U.S.C. 1413(a)(1); 34 C.F.R. §300.220.)

It is unclear how some aspects of the mechanisms in place for children with disabilities living in New Jersey and attending school in New York are consistent with these requirements. Based on a review of the contract agreement between the Montague School District in New Jersey and the Port Jervis City School District in New York (obtained from the New Jersey Department of Education), it appears to apply New York's policies and procedures for evaluation and eligibility determinations, and for due process to students who are residents of New Jersey. However, under the IDEA, New Jersey and the Montague School District are responsible for ensuring the provisions of FAPE to these students.

Furthermore, with regard to procedural safeguards, the contract arrangement provides that New Jersey students and parents must file for a due process hearing with the State of New York and that such appeals are pursued in accordance with applicable New York State law. Under the IDEA, parents who disagree with a hearing officer's decision in a due process hearing have the right to bring a civil action in any State court of competent jurisdiction or in a district court of the United States (20 U.S.C. 1415(i)(2); 34 C.F.R. §300.512). As New Jersey and its LEA are responsible under the IDEA for ensuring the provision of FAPE to these students, their parents cannot be denied the opportunity to pursue complaints against the New Jersey LEA or State through the New Jersey due process system, and, if necessary, civil actions through the State of New Jersey courts of competent jurisdiction or federal district court.

Please explain in writing how New Jersey is fulfilling its responsibilities under the IDEA for these children and specifically address the concerns raised above regarding how the State is fulfilling its responsibilities to ensure the availability of FAPE, the implementation of the child find and evaluation requirements, and the procedural safeguards afforded to New Jersey parents and children, consistent with the IDEA.

We look forward to hearing from you no later than 30 days following receipt of this letter. Please also send a copy of your response to Ms. Autin. If you have any questions, please do not hesitate to contact Dr. Wendy Tada at 202-205-9094 or Dr. JoLeta Reynolds at 202-205-5507 (press 3) and ask to be transferred to Dr. Reynolds.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Ms. Barbara Gantwerk, Director, Office of Special Education Programs,
New Jersey Department of Education
Ms. Diana Autin, Statewide Parent Advocacy Network, Inc., Newark, New Jersey