



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

DEC 3 1997

John Copenhaver
Director
Mountain Plains Regional Resource Center
1780 North Research Parkway, Suite 112
University of Utah
Logan, Utah 84341

Dear Mr. Copenhaver:

This is in response to your letter, written to the Office of Special Education Programs (OSEP), dated August 6, 1997, regarding the surrogate parent provisions of Part B of the Individuals with Disabilities Education Act (Part B). Your questions and OSEP's responses follow.

Question:

If an educational surrogate parent disagrees with the school district regarding the educational evaluation, services, and/or placement of his or her assigned student's special education program, who pays for the attorneys' fees of the surrogate parent?

Response:

Under Part B, each State and its public agencies are required to make a free appropriate public education available to all children with disabilities residing within the State in mandatory age ranges, as well as to ensure that the rights and protections under Part B are extended to those children and their parents. Section 300.13 of the Part B regulations defines the term "parent" as follows:

As used in this part, the term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with §300.514. The term does not include the State if the child is a ward of the State.

34 CFR §300.13.

Thus, surrogate parents have the rights of parents under Part B. Part B gives parents who disagree with a decision of a public agency regarding their child's identification, evaluation, or educational placement, or the provision to their child of a free

appropriate public education, the right to enter into mediation and/or initiate an impartial due process hearing, in accordance with State procedures. Section 615(e)(1) & (g) of the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97). Parents aggrieved by the findings and decision of a due process hearing who do not have administrative appeal rights or who have exhausted their administrative appeal rights may seek judicial review. Section 615(I)(2)(A) of IDEA '97.

Where parents under Part B have incurred legal fees in any action or proceeding brought under Section 615, a court, at its discretion, may award reasonable attorneys' fees to parents who are prevailing parties. Section 615(I)(3)(B) of IDEA '97. Who actually pays the parent's attorneys' fees is also a matter left to the court's discretion and would generally depend on the court's determination of relative liability.

Question:

Can the SEA or school district release an educational surrogate parent after a due process hearing has been requested if the surrogate parent is not fulfilling his or her assigned responsibilities?

Response:

Under Part B, States and public agencies must ensure that the rights of disabled children are protected. This duty must include a method for determining whether a child needs a surrogate parent and a method for assigning a surrogate parent to the child. 34 CFR § 300.514(b). Section 300.514(c)(1) provides that surrogate parents may be selected in any manner permitted under State law. Public agencies must ensure that persons selected as surrogates have "no interest that conflicts with the interest of the child" and "knowledge and skills that ensure adequate representation of the child." 34 CFR §300.514(c)(2).

Part B, however, does not address procedures for the removal of Surrogate parents. While we believe that this is a matter that is governed by State law, we do not believe that public agencies have unfettered discretion in this area. For example, we do not believe it would be *consistent with* Part B for a public agency to institute procedures for removing a surrogate parent on the basis that the public agency disagrees with the views of the surrogate parent on an issue involving the provision of a free appropriate public education to the child. However, if a public agency has a basis for concluding that an appointed surrogate parent no longer possesses the requisite knowledge and skills adequate to represent the child, or has a conflict with the interests of the child, it would be consistent with Part B for the public agency to remove the surrogate parent in accordance with State law.

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we hope that you find this information helpful.

Sincerely,

A handwritten signature in black ink that reads "Thomas Hehir". The signature is written in a cursive style with a prominent initial "T" and a stylized "H".

Thomas Hehir
Director
Office of Special Education
Programs