



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

APR - 9 1999

Ms. Sonja D. Kerr, Esq.  
Kerr Law Offices  
5972 Cahill Avenue, South, Suite 111)  
Inver Grove Heights, Minnesota 55076

Dear Ms. Kerr:

This is in response to your letters to this Office dated November 23, 1997, August 24, 1998 and December 14, 1998. Please excuse the delay in issuing this response. The recent conversation that took place between you and a member of my staff was helpful in clarifying the concerns, as was the additional information that you forwarded to this Office. We appreciate your taking the time both to speak with us and to forward additional information that you thought would prove helpful.

In your letters, you seek clarification of financial responsibility for residential placements. We would like to take this opportunity to reiterate some of the requirements of Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17 (IDEA '97), also summarized during our telephone conversation.

The central issue that needs to be addressed before we can respond to your inquiry is whether a local educational agency (LEA) is the entity that placed the students in question at the residential placements for which payment is at issue, or whether those placements occurred as a result of a referral by the children's parents or guardians. The answer could depend on whether the placements were made by a public agency or whether the placements were the result of a parent's referral or application.

Part B of the IDEA requires each State to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing in the State in mandatory age ranges, and that applicable rights and procedural safeguards are afforded to those children and their parents. The term "free appropriate public education" is defined under Part B as "special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are

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provided in conformity with the Individualized Education Program required [under Part B]." §602(8) of IDEA '97.

Part B requires that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. §612(a)(5)(A) of IDEA '97. This statutory provision expresses a strong preference, not a mandate, for educating children with disabilities in regular classes with their nondisabled peers, with appropriate supplementary aids and services, in the school each child would attend if not disabled. Further, under Part B, each child's individualized education program (IEP) contains, among other components, "an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class" and in "extracurricular and other nonacademic activities." §614(d)(1)((A)(iii)(IV) of IDEA '97. IDEA '97 also makes explicit that the parents of a child with a disability are to be part of the group that makes the placement decision. §614 (f) of IDEA '97.

Further, the IEP, among other factors, forms the basis for the placement decision. 34 CFR §300.552(a)(2). Once the IEP is developed and finalized, it must be implemented as written, and the instruction and services included in the IEP must be provided to the child at no cost to the parents. If the child is placed at a residential facility because the public agency responsible for the child's education has determined that such a placement is necessary for the provision of special education and related services to the child, the Part B regulations also require that the entire program, including nonmedical care and room and board, be at no cost to the parents. 34 CFR §300.302.

In the situations prompting your inquiry, we are unable to ascertain whether the residential placements for which financial responsibility is at issue were made in conformity with applicable Part B requirements, and are placements by the responsible public agency, or whether the parents placed their children at the residential facilities unilaterally, even though the public agency had offered them other programs to satisfy its responsibility to make FAPE available to the children.

The documents that you have forwarded to this Office indicate that the Minneapolis Public Schools (MPS), the resident school

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district, disputes that the IEP team decided the child's placement. Instead, MPS alleges that the parents made the unilateral placement. Our office is unable to respond conclusively to this specific-situation until after the factual dispute is resolved through applicable procedural safeguards in Part B and any other mechanisms under State law for resolving such disputes.

Another issue underlying your query is which school district in the State is responsible for the cost of these residential placements. This is a matter of State law and, generally, States allocate responsibility for the provision of FAPE based on the school district in which the child's parents reside. However, although Part B does not address which school district in a State is responsible for the cost of a placement, under Part B, the State educational agency (SEA) must exercise general supervision over all educational programs for children with disabilities residing in the State, and has the ultimate responsibility for ensuring the availability of FAPE to these children. 34 CFR §300.600. Therefore, if there is a question regarding which school district is responsible for the cost of a placement, the SEA should be involved in resolving the question.

We hope that you find this explanation helpful. If there are further questions or concerns, please contact Rhonda Weiss in the Office of Special Education Programs at (202) 205-9053 or Suzy Rosen Singleton, the Minnesota State contact in the Monitoring and State Improvement Planning Division at 205-260-3180 (TTY) or 800-877-8339, ext. 202-260-3180 (Federal Relay Service).

Sincerely,

Thomas Hehir  
Director  
Office of Special Education  
Programs

cc: Dr. Thomas Lombard  
Acting Director  
Minnesota Department of  
Children, Families and  
Learning