



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

NOV 13 1998

Helen Walter  
Advocate for Hard of Hearing People  
4325 Mockingbird Lane  
Banning, California 92220

Dear Ms. Walter:

Your letters dated September 15, 1998, written to Secretary of Education Richard W. Riley and to me, regarding the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17 (IDEA '97), have been referred to the Office of Special Education Programs for response. It appears from your letter that you are concerned that, under IDEA '97, parents who unilaterally place their disabled children at private schools when a free appropriate public education (FAPE) has been offered to them will be denied due process rights. We appreciate your writing to share your concerns. While we acknowledge the complexity of issues that your inquiry raises, we believe that the Federal statutory and regulatory provisions to which you refer in your letter are consistent with the Department's longstanding interpretation of the rights accorded to parents who unilaterally place their disabled children in private schools when FAPE has been offered to them.

Under Part B of IDEA, as amended by IDEA '97 (Part B), each State and public agency within the State must ensure that a free appropriate public education (FAPE) is made available to all resident children eligible for services under Part B. In fulfilling this responsibility, a public agency generally would place an eligible disabled student outside its own programs, in another public school or facility or in a private school or facility at public expense only if the agency cannot provide the child with FAPE in the programs it conducts or reasonably could be expected to initiate. When FAPE has been offered, and the parent chooses not to accept the offered program, and instead elects to enroll his/her child in a private school, the district is not required to pay for that child's private education. 34 CFR §300.403(a). In the event that the parents decide to return the child to public school, FAPE must be provided. This interpretation of school districts' obligations to parentally-placed private school students with disabilities has been included in the Part B regulations since they were first published in 1977.

Let me emphasize that parentally-placed private school students with disabilities have no individual right to special education and related services under Part B, and a school district is not required to serve every parentally-placed private school student with a disability, or to provide the full range of services under

Part B to those parentally-placed private school students with disabilities whom it elects to serve. Provided the district follows the law and regulations in determining the amount of Part B funds it will spend on services to parentally-placed private school students with disabilities, which parentally-placed private school children with disabilities it will serve, what services it will provide, and how such services will be rendered, the requirements of Part B generally would be satisfied.

Section 612(a)(10)(A)(i) of IDEA '97 provides that students with disabilities placed in private schools by their parents must be allowed to participate, to the extent consistent with their number and location, in programs assisted or carried out with Part B funds. The amounts expended by the local educational agency (LEA) on special education for these students must be equal to a proportionate amount of the available Part B funds. §612(a)(10)(A)(i)(I). Further, services under Part B may be provided to parentally-placed private school students with disabilities on the premises of the private, including parochial, schools to the extent consistent with law. §612(a)(10)(A)(i)(II). IDEA '97 also clarifies that the child find responsibilities of public school districts also apply to parentally-placed private school students with disabilities. §612(a)(10)(A)(ii) .

Although no parentally-placed private school student with a disability has an individual right to special education and related services, current regulations provide that, in determining which children will be served, what services will be provided, and how such services will be provided, the LEA must consult with appropriate representatives of these private school students. 34 CFR §76.652. The consultative process is to ensure that there is a genuine opportunity for the views of the private school children, through their representatives, to be expressed and considered. Further, the services that are actually provided must be comparable in quality to the services provided public school disabled students. 34 CFR §76.654.

The above requirements therefore clarify that parentally-placed disabled students are not entitled to FAPE in connection with their unilateral private school placements, but would be entitled to FAPE if their parents returned them to public school.

On October 22, 1997, the Department published in the Federal Register, at 62 Fed. Reg. 55026, a Notice of Proposed Rulemaking (NPRM) to implement statutory changes made by IDEA '97. With regard to the concern set out in your inquiry, the NPRM included the following:

In proposed §300.457(a), the Secretary interprets the statutory provision regarding services to private school children with disabilities to mean that the due process

procedures of the Act do not apply to complaints that an LEA has failed to meet the requirements of §§300.452-300.462, including the provision of services indicated on the child's IEP. This provision is based on the statutory scheme, which does not include any individual right to services for private school students placed by their parents. Proposed §300.457(b) would clarify that complaints that an SEA or LEA has failed to meet the requirements of §§300.451-300.462 may be filed under the State complaint procedures addressed in this NPRM at §§300.660-300.662.

See 62 Fed. Reg. 55043 (copy enclosed). Under this interpretation, parents of parentally-placed private school disabled students would continue to retain due process rights if the parents disagree with the public agency's identification or evaluation of their child, including the refusal by a public agency to identify their child as an eligible child with a disability under Part B.

The Department received numerous public comments on the NPRM, and it is anticipated that final regulations implementing IDEA '97 will be issued shortly. In the meantime, we urge you to continue to work with officials of the California State Department of Education in connection with your advocacy for the rights of disabled students and their parents in California.

We hope that you find the above explanation helpful. If you would like further assistance, please contact Ms. Ellen Safranek, the California State contact in the Monitoring and State Improvement Planning Division, at (202) 205-9131.

Sincerely,



Thomas Hehir  
Director  
Office of Special Education  
Programs

Enclosures

cc: Dr. Alice Parker  
California State Department  
of Education