UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Dated October 22, 2007

Honorable James M. Inhofe
United States Senate
453 Russell Senate Office Building
Washington, DC 20510-3603

Dear Senator Inhofe:

Thank you for your September 5, 2007 letter to Secretary Margaret Spellings. Your letter was forwarded to the Office of Special Education and Rehabilitative Services (OSERS) for a response. We appreciate your strong support for our efforts to secure a quality education for all of our nation's children.

In your letter, you indicate that it was brought to your attention that "there were some cases where schools were acting as physicians or psychologists by strongly suggesting that children with behavioral problems be put immediately on some form of psychotropic drugs." You acknowledge the prohibition of mandatory medication included in section 612(a)(25) of the Individuals with Disabilities Education Act (IDEA) and request information regarding the application and implementation of the prohibition. Additionally, you inquire whether the statutory language can be interpreted as covering all children and not just children who have been evaluated and determined eligible to receive special education and related services under the IDEA.

School personnel can make assessments and recommendations based on the child's behavior about the child's need for evaluation under Part B of IDEA and the child's need for special education and related services. Educational services, however, cannot be conditioned upon a parent's decision to medicate his or her child.

The prohibition on mandatory medication in 20 U.S.C. 1412(a)(25), which was added to the IDEA by the Individuals with Disabilities Education Improvement Act Amendments of 2004, became effective on July 1, 2005. This prohibition on mandatory medication, which is implemented by the Department's regulation at 34 CFR §300.174, is one of the conditions that a State must meet in order to be eligible for assistance under Part B of the IDEA. Beginning with applications for Part B funds for Federal Fiscal Year 2006, States were required to include an assurance in their State applications for Part B funds that they had policies and procedures in effect that prohibit State and local educational agency (LEA) personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation or reevaluation for special education and related services, or receiving services under the IDEA. A State that does not have policies and procedures in effect consistent with this and other eligibility requirements in section 612 of the IDEA

is required to assure in its Part B grant application that it will operate consistent with all of the requirements of section 612 of the IDEA and applicable regulations during the period of the grant award. Additionally, the State is required to make any necessary changes to existing policies and procedures to bring them into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than the conclusion of the grant period. Further, each LEA, in providing for the education of children with disabilities in its jurisdiction, must have policies, procedures, and programs that are consistent with State policies and procedures. 34 CFR §300.201. Therefore, each State must ensure that their LEAs comply with the requirements of 20 U.S.C. 1412(a)(25) and 34 CFR §300.174 regarding the prohibition on mandatory medication as a condition of receiving Part B of IDEA funds from the SEA.

We do not have specific information on how the prohibition on mandatory medication is being applied and implemented at the State and local level. However, State educational agencies (SEA) are required to exercise general supervisory responsibility over all education programs for children with disabilities administered within the State and ensure that all such programs meet State education standards and Part B requirements. 34 CFR §300.149. Further, SEAs are required to monitor the implementation of the IDEA by their LEAs and must identify noncompliance with Part B requirements and ensure correction of identified noncompliance within one year of its identification. 20 U.S.C. 1232d(b)(3)(iii) and 34 CFR §300.149. In addition to SEA monitoring, if an organization or individual believes that a State or one of its public agencies has violated any requirement of Part B of IDEA or the Part B regulations, including the prohibition on mandatory medication in 20 U.S.C. 1412(a)(25) and 34 CFR §300.174, the organization or individual may file a complaint with the SEA in their state as outlined in 34 CFR §§300.151 through 300.153. The State must have procedures for resolving the complaint, which include issuing a written decision that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the SEA's final decision. 34 CFR §300.152(a)(5). Generally, State complaints are filed at the State level, since it is the SEA that has the authority and responsibility to resolve complaints. If complaints alleging violations of any requirement of Part B or the Part B regulations are filed with our Office, it is our general practice to refer such complaints to the relevant SEA for resolution under the State complaint procedures applicable to Part B of the IDEA. At this time, we are not aware of complaints filed with this Office alleging violations of the prohibition on mandatory medication at the State and local level.

Regarding your question about the statutory reference to "child," instead of "child with a disability," we agree with the interpretation that this statutory provision applies broadly to all children, not just to those considered "children with disabilities" under Part B of IDEA. In our view, there is a reason why the term "child" is used in this statutory provision. The prohibition on mandatory medication would most likely be relevant in situations where a child displays behavior that might suggest the need for special education and related services, and this behavior occurs before school personnel have evaluated the child under 34 CFR §§300.300 through 300.311 to determine whether the child has a disability under Part B of IDEA, and before school personnel have identified the child as needing special education and related services under 34 CFR §300.111. The

broad application of this statutory provision ensures that States and their public agencies implement the statutory mandate to make a free appropriate public education available to all eligible children with disabilities residing in the State and do not condition a child's consideration for or receipt of benefits and services under Part B of IDEA on a parent's or guardian's decision to medicate their child. Therefore, we interpret the explicit statutory language to mean that school personnel may not require a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) in order for that child to attend school, be evaluated or reevaluated under Part B of IDEA, or receive special education services under Part B of IDEA.

Based on section 607(e) of the IDEA, we are informing you that our response to your letter is to be read only as informal guidance and is not legally binding, as it represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

We hope you find the above explanation helpful. If you have further questions, please do not hesitate to contact me.

Sincerely,

William W. Knudsen
Acting Deputy Assistant Secretary