



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

April 16, 2001

Honorable Wayne T. Gilchrest
Member, House of Representatives
44 Calvert Street, Suite 320
Annapolis, Maryland 21401

Dear Congressman Gilchrest:

I am writing in response to your letter that was forwarded to the former Assistant Secretary for the Office of Special Education and Rehabilitative Services, Judith E. Heumann, from the former Assistant Secretary for Legislation and Congressional Affairs, Scott Fleming, on behalf of your constituent. X expressed concern in her February 21, 2000 letter to you regarding the provision of special education and related services by the Maryland State Department of Education (MSDE) under Part B of the Individuals with Disabilities Education Act (Part B). We apologize for the delay in our response.

In her letter to your office, X noted concern for what she believes to be the MSDE's non-compliance with federal law regarding the provision of a free appropriate public education (FAPE) for the unique needs of x. In particular, she contends that Maryland's enforcement of Maryland Education Article §8-413(i) concerning reimbursement for private school tuition is contrary to the provisions in Part B addressing the same issue. Additional concern was referenced in x's letter regarding the National Council of Disabilities report to Congress regarding State compliance with Part B. Former Assistant Secretary Heumann responded to the report, and that response is enclosed for your information. The following information is for your consideration in responding to x.

OSEP received a letter from x on October 11, 1999, after a United States District Court Judge had reversed a December 17, 1997 decision of a Maryland hearing officer, in which the hearing officer had denied the parents' request for a due process hearing. The basis for the denial was the parents' alleged failure to comply with the requirements of Maryland Education Article §8-413(i). X was waiting for the hearing officer to schedule the remanded due process hearing in order to review the identification, evaluation and placement of her child and her request for reimbursement for tuition associated with her child's placement in a private school. On December 15, 1999, the Administrative Law Judge rendered a decision on the merits of the case, finding that the school district had offered FAPE to x and denying the parents' request for reimbursement for tuition and related costs for the parents' unilateral placement of their child in a private school for the 1997 - 1998 school year (see decision attached).

After consulting with x's legal counsel, Mr. Michael F. Slade of my staff telephoned x on January 27, 2000, and explained to her that the implementing regulations under Part B, 34 CFR §300.510, provide that a decision made in an impartial due process hearing is final, leaving the United States Department of Education with no authority to intervene in her individual case. Rather, as indicated in §300.512, we informed x that she had the right to bring a civil action to appeal the hearing officer's December 1999 decision in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

X also contends in her letter to you that Maryland Education Article §8-413(i) denies parents a timely due process hearing, contrary to the requirements of Part B. Section 8-413(i) addresses reimbursement for private school tuition and costs. It provides:

If the parent or guardian of a student with disabilities, eligible to receive special education and related services from a county board, enrolls the child in a nonpublic school, the county board is not required to reimburse the parent or guardian for tuition or related costs associated with the enrollment if:

- (1) The parent or guardian does not provide to the county board prior written notice rejecting the program proposed by the county board, including the reason for the rejection, and stating an intention to enroll the student in a nonpublic school;
- (2) The nonpublic school placement of the student is found inappropriate; or
- (3) The proposed county board program is found appropriate.

Part B of the IDEA addresses limitations on the reimbursement for private school tuition and costs at 34 CFR § 300.403(d), which provides:

- (d) The cost of reimbursement described in paragraph (c) of this section may be reduced or denied--

- (1) If--

- (i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

- (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;
 - (2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for evaluation; or
 - (3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.
- (e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement may not be reduced or denied for failure to provide notice if--
- (1) The parent is illiterate and cannot write English;
 - (2) Compliance with paragraph (d)(1) of this section would likely result in physical or serious emotional harm to the child;
 - (3) The school prevented the parent from providing the notice; or
 - (4) The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (d)(1) of this section.

OSEP is aware of Maryland's Education Article §8-413(i) and shares x's concern that the statute may not use language concerning limitations to reimbursement for private school tuition and the exceptions to those limitations consistent with 34 CFR §300.403(d) and (e). OSEP has raised this issue with the Maryland State Department of Education in the course of OSEP's review of the State's statutes, regulations, policies and procedures to determine Maryland's eligibility to receive a grant under Part B of the IDEA. See 34 CFR §§ 300.110 and 300.133. OSEP will continue to work with the MSDE to ensure that Maryland's statutes, regulations, policies and procedures meet all requirements of the IDEA in order for the State to receive its Part B funding.

In your March 8, 2000 letter, you also inquired after a complaint x had filed with the U.S. Department of Education's Office for Civil Rights (OCR). OSEP has contacted OCR to ascertain the status of x's complaint. Subsequent to an April 27, 2000, letter from OCR informing you that the complaint had yet to be resolved, OCR issued a decision on July 27, 2000, closing its file on the complaint with a finding of no Section 504 violation. On September 29, 2000, OCR issued another letter to x, denying her request for reconsideration of OCR's decision

and finding no evidence to cause OCR to alter its original determination. OCR noted, as we confirm herein, that the issue to be resolved is the compliance of Maryland Education Article §8-413(i) with IDEA, not Section 504. Copies of the two OCR letters referenced above are enclosed. If you have any questions related to OCR's decision on x's complaint, please feel free to contact Wendella P. Fox, Director in the Philadelphia Office of the Office for Civil Rights, at (215) 656-8541.

I hope this information is helpful to you in responding to X. If this Office can be of any further assistance regarding this matter please feel free to contact me or Michael F. Slade at (202) 205-8969.

Sincerely,

A handwritten signature in cursive script that reads "Patricia J. Guard".

Patricia J. Guard
Acting Director
Office of Special Education
Programs

cc: Nancy Grasmick, Superintendent of Schools, MSDE

Enclosures: Part B regulations published March 12, 1999
Statement on NCD Report by Assistant Secretary of Education
Maryland Office of Administrative Hearings Decision
Letter from OCR to x, July 27, 2000
Letter from OCR to x, September 29, 2000