



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

April 16, 2001

Honorable Jo Ann Emerson
Member, House of Representatives
22 East Columbia
Farmington, Missouri 63640

Dear Representative Emerson:

This is in response to your letter on behalf of your constituents, x, of Missouri. X wrote to you regarding their issues with the X Schools and the Missouri Department of Elementary and Secondary Education (MDESE). Your letter has been referred to the Office of Special Education Programs (OSEP) for a response.

OSEP is responsible for administering the Individuals with Disabilities Education Act (IDEA), which provides Federal financial assistance to State educational agencies and through them to local educational agencies, to ensure that all children with specified disabilities have available to them a free appropriate public education (FAPE) in the least restrictive environment.

X provided to your office information about their concerns regarding: (1) their rights as members of the individualized education program (IEP) team; (2) the reasonableness of X's help with their concerns; and (3) whether MDESE based its complaint investigation decision on their son's needs.

Under Part B, when a local school district conducts an IEP meeting, the child's parents are members of the IEP team and must be invited to participate. Parents play a key role, along with school personnel in developing, reviewing and revising, if necessary, a child's IEP, in determining the nature and extent of the child's needs. Through the IEP process, a parent can discuss with school officials different approaches that would appropriately meet their child's unique needs.

If the parent and the local school district staff cannot agree on the content of the IEP, the parent can ask for a due process hearing, and an impartial hearing officer can make an independent decision in order to resolve any disagreements (see 34 CFR §§300.500-300.517). A mediation process must be available to parents who request a due process hearing, in accordance with the requirements at 34 CFR §300.506 of the Part B regulations. A parent also has the option of filing a complaint with the State if they believe that a public agency has violated a requirement of Part B. The complaint procedures applicable to Part B are described in the enclosed regulations at 34 CFR §§300.660-300.662. From the materials provided to us by you, it is apparent that X exercised their option to file a complaint with MDESE.

The State complaint procedures are available for resolving any complaint that meets the requirements of 34 CFR §300.662, including: (1) complaints that raise systemic issues; and (2) individual child complaints. Parents may use (but are not required to use) the complaint procedures – in addition to the due process hearing system – to resolve disagreements with public agencies over any matter concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child, as well as any other allegation that a public agency has violated Part B.

Under IDEA, the State education agency (SEA) is responsible for ensuring that FAPE has been made available to children with disabilities. If a parent believes that what is offered during an IEP meeting to his or her child with a disability does not constitute FAPE and files a complaint, the State must resolve the complaint. The SEA resolves a complaint challenging the appropriateness of a public agency's determination regarding a child's education program or placement by determining not only whether the public agency has followed the required procedures to reach that determination, but also whether the public agency has reached a decision that is consistent with Part B requirements in light of the individual child's abilities and needs. The SEA may conduct an on-site investigation, or it may interview appropriate individuals if necessary to resolve the complaint. Please see enclosed OSEP memo 00-20, "Complaint Resolution Procedures under Part B of the Individuals with Disabilities Education Act (Part B)," for further information.

Although it appears X disagree with the decision of the MDESE on their complaint, as of May 11, 1999, the Part B regulations no longer provide for a process by which the Secretary of Education may review SEA decisions. A State may have established procedures for reconsideration of complaint decisions, but it is not required to do so. If, after the MDESE's decision on the complaint, X still wish to dispute the issue, they may, if they have not done so already, initiate a due process hearing.

It may be of interest to your constituent to know that OSEP has addressed the issue of a school district's obligation to provide eyeglasses to a student under Part B of IDEA in the Notice of Final Regulations published in the Federal Register on March 12, 1999. There OSEP stated, "As a general matter, public agencies are not responsible for providing personal devices, such as eyeglasses or hearing aids or braces, that a disabled child requires regardless of whether he or she is attending school. However, if a child's IEP team specifies that a child requires a personal device in order to receive FAPE, the public agency must provide the device at no cost to the child's parents." See 64 Fed. Reg. 12406, 12540 (March 12, 1999). OSEP's statement is consistent with Section 300.308 of the Part B regulation, which provides that it is the IEP team that determines when certain devices or services are considered special education, related services, or supplementary aids and services.

I have also enclosed some information that may be helpful to your constituents. This information is issued by the National Information Center for Children and Youth with Disabilities which is a national information clearinghouse that provides free information to assist parents, educators, and others in helping children with disabilities become participating members of the school and community. The Parent Training and Information Centers listed on the enclosed resource sheet were established to make parent-to-parent training and information services available to parents of children with disabilities across the country. The purpose of these services is to enable families to participate more fully in the education of their children.

Finally, it appears that your constituents believe that members of the school district have discriminated against them based on their disability and have retaliated against them based on their complaints of discrimination. If they believe that they have been subjected to discrimination based on disability, they may file a written complaint with U.S. Department of Education's Office for Civil Rights, Kansas City Office, Director Angela M. Bennett, 10220 N. Executive Hills Blvd., Suite 720, Kansas City, MO 64153-1367.

I hope that this information is helpful in responding to your constituents. I have enclosed a copy of the Part B regulations for their review. Please let me know if I can be of further assistance.

Sincerely

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

Patricia J. Guard
Acting Director
Office of Special Education
Programs

Enclosures