



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

THE ASSISTANT SECRETARY

MAR 27 2000

Dr. Jo Lynne DeMary
Acting Superintendent
Virginia Department of Education
P.O. Box 2120
Richmond, Virginia 23216-2120

Dear Dr. DeMary:

I write to you about a matter of significant concern relating to Virginia's implementation of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations. It is my hope that you will be able to quickly allay our concerns.

It has recently come to our attention that counsel for the Virginia Department of Education (VDOE) on January 17, 2000, argued in an administrative hearing in a case entitled, "Michael 'Glenn' White v. Virginia Department of Education," that the IDEA regulatory provision at 34 CFR §300.514(c) exceeds and contradicts the statutory authority. This provision refers to the 'pendency' placement when a State level hearing or review officer agrees with the parents that a change of placement-is appropriate. It is our understanding that in this case the VDOE now is refusing to comply with this regulation.

We also note, admittedly with some confusion, that the proposed regulations published by VDOE on the same date, January 17, 2000, to align Virginia's special education regulations with the Federal IDEA regulations, contain a provision that closely parallels 34 CFR §300.514(c). (8 VAC 20-80-76 E 3, proposed; volume 16, issue 9, Virginia Register of Regulations, p. 1095)

The final IDEA regulations were published on March 12, 1999, and took effect on May 12, 1999 (64 Fed. Reg. 12406). As explained in the preamble to that document, State compliance with those regulations was required on the earlier of the date the State received a grant for the Federal fiscal year 1999, or October 1, 1999. VDOE received its 1999 grant on July 11, 1999. In order to receive that grant, VDOE assured that "... throughout the period of the grant award, all public agencies in the State will comply with all of the requirements of Parts A and B of the IDEA, as amended by the IDEA Amendments of 1997 . . ." The State also assured that no later than July 1, 2000, the State would revise its statutes, regulations, policies, and procedures to make them fully consistent with the IDEA as amended by the IDEA Amendments of 1997 and that it would provide the Secretary copies of the statutes, regulations, policies and procedures it has in effect to ensure that it meets each of the eligibility requirements in section 612 of the Act.

A copy of that grant award and Virginia's assurance are attached for your information.

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Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

Should you have any question, we believe that 34 CFR §300.514(c) is a valid, appropriate exercise of the Department's regulatory authority, and that the regulation was legally promulgated. As such, compliance with this regulation is required of all States that participate in Part B of the IDEA. I ask you please to clarify VDOE's position so that we will know how to proceed. If VDOE will not comply with 34 CFR §300.514(c), we will have no choice but to institute appropriate enforcement action, which may include a referral to the U.S. Department of Justice to initiate a lawsuit against the State.

Sincerely,

Judith E. Heumann

Enclosures

cc: Douglas Cox