



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

JUN - 3 2000

[REDACTED]
[REDACTED]
[REDACTED]
Dear [REDACTED]

Your letter to Secretary Richard Riley concerning a student in Kentucky with Attention Deficit Disorder (ADD)/Attention Deficit Hyperactive Disorder (ADHD) has been referred to the U.S. Department of Education's Office of Special Education Programs (OSEP) for response. OSEP is responsible for administering the Individuals with Disabilities Education Act (IDEA). As you may know, IDEA provides Federal financial assistance to State education agencies, and through them to local educational agencies, to assist in providing special education and related services to children with certain disabilities

You raise two concerns that you asked Secretary Riley to address: (1) the Kentucky requirement that there be a verification by a physician that a child is ADD/ADHD before educational services are provided; and (2) the obligation of due process hearing officers to follow Kentucky law. Further, you expressed the opinion that the due process hearing system under IDEA has become a "legal nightmare," requiring parents to retain legal representation at substantial costs in order to avail themselves of these protections. A member of my staff, Mr. Martin Benton, discussed these issues with you in a telephone conversation April 4, 2000. We would like to provide you with the following additional information in response to your concerns.

Under Part B of the IDEA (Part B), State and local educational agencies (SEAs and LEAs) have an affirmative obligation to evaluate all children who have a disability, or who are suspected of having a disability, to determine the child's need for special education and related services, and SEAs and LEAs are required to have procedures for locating, identifying, and evaluating such children. 34 CFR §§300.125 and 300.220. This is known as "child find" and is applicable to all children from birth through 21 years of age, regardless of the severity of their disability.

Public agencies must also ensure that decisions as to whether a child meets the eligibility requirements under Part B are made by a group of qualified professionals and the parents of the child and are made in accordance with the requirements of IDEA. Part B does not necessarily require a school district to conduct a medical evaluation for the purpose of determining whether a child has ADD/ADHD. However, Part B also does not prohibit a State from requiring a medical evaluation for such a purpose. If the school district believes that there are other effective methods for determining whether a child suspected of having ADD/ADHD meets the

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eligibility requirements of the OHI category, or any other disability category under Part B, then it would be permissible to use qualified personnel other than a licensed physician to conduct the evaluation as long as all of the protections in evaluation procedures under IDEA are met. However, it would not be inconsistent with Part B for a State to impose a requirement that a school district ensure that a medical evaluation by a licensed physician is conducted as part of the evaluation. This medical evaluation, however, would have to be conducted at no cost to the child or his or her parents. Services required under Part B may include medical services provided by a licensed physician to determine whether a child has a medically related disabling condition, which results in the child's need for special education and related services. 34 CFR §300.24(b)(4).

If a parent requests an evaluation of his or her child who is suspected of having a disability under Part B, the school must provide this evaluation. If a parent requests an evaluation and the school district fails to provide one, the parent may request a due process hearing and/or file a complaint with the State. If a public agency believes that a medical evaluation by a licensed physician is needed as part of the evaluation to determine whether a child suspected of having ADD/ADHD meets the eligibility criteria of the other health impairment (OHI) category, or any other disability category under Part B, the school district must ensure that this evaluation is conducted at no cost to the parents.

If, as you alleged in your telephone conversation with Mr. Benton, school districts in Kentucky are not informing parents that medical evaluations for ADD/ADHD determinations are available at no cost to a parent, you may wish to file a formal complaint with the Kentucky State Educational Agency (SEA). Complaints can be filed with:

Mr. Michael Armstrong
Director
Divisional of Exceptional Children
Services
Capital Plaza Tower
500 Mero Street, Room 805
Frankfort, Kentucky 40601
Telephone: (502) 564-4970
FAX: (502) 564-6721

With respect to the concern you raised about the obligation of due process hearing officers to apply Kentucky law and regulations in their hearing decisions, the following explanation may be helpful. Under Part B, the SEA is responsible for ensuring that each public agency establishes, maintains and implements procedural safeguards that meet the requirements set forth in §§300.500-300.529, impartial due process hearings, impartial hearing officers, hearing rights, hearing decisions, appeal rights, and stay put. See 34 CFR §300.500. In addition to meeting the requirements of the Part B regulations referenced above, the due process hearing officer must also ensure that all State laws and regulations are complied with, so long as they do not conflict with the Federal requirements.

As you point out, it is regrettable that the costs associated with the pursuit of due process hearings have escalated over the years, since the original enactment of the Federal requirements in 1975. However, there are several provisions in Part B that are intended to reduce the need to resort to the formal due process procedures. As you may know, under the State complaint procedures each State must adopt written procedures to resolve any signed, written complaint filed within 60 days after the complaint is filed. *See* 34 CFR §§300.660-300.662. With the reauthorization of IDEA in 1997, Congress attempted to address the escalating costs of due process hearings by requiring that States establish procedures to allow parties the opportunity to mediate disputes when hearings are requested. *See* 34 CFR §300.506. It should also be noted that there have been provisions in Part B, prior to the 1997 Amendments, that permitted a Court to award attorneys fees in certain circumstances. *See* 34 CFR §300.513.

I hope that this information is helpful in responding to your questions. If I can be of further assistance, please let me know.

Sincerely,



Kenneth R. Warlick

Director

Office of Special Education

Programs