



Federal Register

**Tuesday,
April 11, 2000**

Part IX

Department of Education

**Office of Special Education and
Rehabilitative Services; List of
Correspondence; Notice**

DEPARTMENT OF EDUCATION**Office of Special Education and Rehabilitative Services List of Correspondence**

AGENCY: Department of Education.

ACTION: List of Correspondence from October 1, 1999 through December 31, 1999.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the *Federal Register* a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds or Rhonda Weiss. Telephone: (202) 205-5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205-5465 or the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday, except Federal holidays.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205-8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued between October 1, 1999 and December 31, 1999.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A—General Provisions*Section 607—Requirements for Prescribing Regulations*

Topic Addressed: Policy Interpretation Under Part B of the Individuals With Disabilities Education Act

- OSEP memorandum 00-1 dated October 7, 1999 to Chief State School Officers, regarding the determination that the letter dated October 8, 1998 to Wisconsin Superintendent of Public Instruction John T. Benson regarding public charter schools contained an interpretation that raised an issue of national significance to the implementation of Part B of IDEA.

Part B—Assistance for Education of All Children With Disabilities*Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations*

Topic Addressed: Use of Funds

- Letter dated December 27, 1999 to Northern Mariana Islands Federal Program Officer William Matson, regarding whether use of Part B funds for the purchase of a school bus to be used exclusively to meet the special needs of eligible disabled students is an allowable cost.

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

- Letter dated November 8, 1999 to Fredric B. Garner, M.D., clarifying that decisions about services provided to each child must be based on each child's special education and related services needs, and that the entitlement under Part B of IDEA is to a free appropriate public education, and not to a particular label.

Topic Addressed: Least Restrictive Environment

- Letter dated November 19, 1999 to Montgomery County Maryland Public Schools Department of Special Education Director Raymond W. Bryant, regarding the application of the least restrictive environment requirements to the proposed movement of children with disabilities from special education centers to other settings, including requirements to make available a continuum of alternative placements and to give parents written prior notice in accordance with the change of placement procedures.

- Letter dated December 27, 1999 to individual, (personally identifiable information redacted), regarding whether a State is compelled to maintain a special or residential school

placement within a State if an appropriate placement for a child with a disability is available at no cost to the parents.

Topic Addressed: Children With Disabilities Placed in Private Schools by Their Parents

- Letter dated November 15, 1999 to Baton Rouge, Louisiana Special Education Department Director Sharon M. Crary, regarding the requirement for public agencies to expend a proportionate share of available Federal funds on services for parentally-placed private school children with disabilities, even though districts can count for purposes of generating Part B funds only those parentally-placed private school children with disabilities whom they are serving, and clarifying the two required child counts for these children.

Topic Addressed: State Educational Agency General Supervisory Responsibility

- Letter dated October 29, 1999 to Washington State Director of Special Education Douglas Gill, responding to an inquiry about the doctrine of *res judicata* and clarifying that a State is not relieved of its obligation to resolve an issue raised in a complaint filed with the State if the merits of that issue were not decided in a prior due process hearing involving the same parties.

- Letter dated December 3, 1999 to California Department of Education Chief Deputy Superintendent Leslie Fausset, regarding the State's longstanding failure to exercise its general supervisory responsibility effectively through a corrective action plan to achieve State-wide compliance and the State's tardiness in submitting a report as required under the special conditions to its Federal Fiscal Year (FFY) 1999 Part B of IDEA grant award.

- Letter dated December 17, 1999 to Attorney Marc Grober regarding requirements for States receiving IDEA FFY 1998 and FFY 1999 Part B funds to provide assurances in order to comply with the IDEA Amendments of 1997.

- Letter dated December 27, 1999 to Pennsylvania Big Spring School District Superintendent Dr. William Kerr Cowden, regarding the provisions in the IDEA Amendments of 1997 that reduce unnecessary paperwork, and clarifying that States may impose their own requirements to govern the education of students with disabilities, as long as those State requirements are not in conflict with Federal requirements.

Topic Addressed: Personnel Standards

- Letter dated December 1, 1999 to individual (personally identifiable

information redacted), regarding personnel shortages of special education teachers in New Hampshire and the provisions under the IDEA Amendments of 1997 that may relate to such shortages.

Topic Addressed: Information Required for State Program Grants

- OSEP memorandum 00-4 dated November 3, 1999 to State Directors of Special Education, clarifying the eligibility documentation and public participation requirements that States must meet to comply with Part B of IDEA.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Individualized Education Programs

- Letter dated October 6, 1999 to Winston-Salem and Forsyth County Schools, North Carolina Attorney Douglas S. Punger, regarding the ability of the parents of a child with autism to invite parents of other students with disabilities to their child's individualized education program (IEP) meeting, and the responsibility of the IEP team to determine, if appropriate, whether a child with autism should receive applied behavioral analysis.

Section 615—Procedural Safeguards

Topic Addressed: Student Discipline

- Letter dated December 7, 1999 to Iacocca Professor of Education Perry A. Zirkel, regarding the requirements in the IDEA Amendments of 1997 and the March 12, 1999 final regulations that are applicable to students with disabilities removed from their current placements for more than 10 school days in a school year.

Section 619—Preschool Grants

Topic Addressed: Procedures for Allocating Preschool Grants

- Letter dated October 21, 1999 to New York State Education Department

Deputy Commissioner Lawrence Gloeckler, regarding New York's distribution of section 619 funds to eligible entities, and confirming that ineligible entities cannot receive future awards under the Preschool Grants program.

- Letter dated November 24, 1999 to New York State Education Department Deputy Commissioner Lawrence Gloeckler, regarding the State's discretion to require its local educational agencies that place preschool age students with disabilities in approved private preschool special education programs to provide those programs with an amount equal to the flow-through dollars generated by the individual students, and clarifying that if LEAs provide section 619 funds to those schools, those funds must be used in accordance with the requirements of Part B of IDEA, including the applicable cost principles.

Part C—Infants and Toddlers With Disabilities

Sections 631-641

Topic Addressed: Definitions

- Letter dated December 15, 1999 to Permanent Judicial Commission on Justice for Children Member Sheryl Dicker, clarifying that the Part C regulatory definition of "parent," like the statutory definition applicable under both Parts B and C of IDEA, does not include the "State" if the State is the child's guardian.

Section 635—Requirements for Statewide System

Topic Addressed: State Lead Agency General Supervisory Responsibility

- Letter dated December 15, 1999 to Mississippi State Health Officer Dr. E.F. Thompson, Jr., regarding a Part C State lead agency's general supervisory responsibility to ensure State-wide compliance within its Part C system and to identify whether deficiencies in some districts exist in other districts and to correct all identified deficiencies.

Section 640—Payor of Last Resort

Topic Addressed: Payments by CHAMPUS and TRICARE Program Funds for Early Intervention Services

- Letter dated December 21, 1999 to TRICARE Management Activity, requesting clarification of, and amendment to, a Department of Defense proposed regulation to provide that CHAMPUS and TRICARE is first payor for early intervention services under Part C of IDEA, as required by the IDEA Amendments of 1997.

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: April 6, 2000.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitation Services.

[FR Doc. 00-8962 Filed 4-10-00; 8:45 am]

BILLING CODE 4000-01-U