



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT 4 2001

[REDACTED]
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Dear [REDACTED]

This is in response to your e-mail to Secretary Paige on September 19, 2001, requesting clarification concerning an apparent conflict between the Individuals with Disabilities Education Act (IDEA) and the regulations promulgated by the US Department of Education to implement the IDEA. Secretary Paige forwarded your e-mail to me because I am the Assistant Secretary for Special Education and Rehabilitative Services within the Department of Education. The Office of Special Education and Rehabilitative Services oversees the Office of Special Education Programs (OSEP), which is the office that administers the IDEA.

Specifically, you ask whether §300.457¹ of the IDEA regulations is inconsistent with section 607(b) of the IDEA statute. We understand from your e-mail that you ask for this clarification because you have placed your son who has a disability in a private school and believe that he is not receiving appropriate speech therapy services.

Our response is that there is no inconsistency between the statute and the regulations implementing the IDEA issued by the Department of Education with respect to section 607(b) and the regulation at §300.457. Set forth below is our explanation of the statutory and regulatory requirements of the IDEA with respect to the obligations of public agencies to children with disabilities enrolled by their parents in private schools.

As you know, Congress amended the IDEA in 1997. Section 607(b) of IDEA '97 states that "[T]he Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act that would procedurally or substantively lessen the protections provided to children with disabilities under the Act, as embodied in regulations in effect on July 20, 1983...*except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation [emphasis added].*"

With respect to §300.457(a), this provision is consistent with Congressional intent to clarify the extent of rights available to parentally-placed private school children with disabilities and their parents. Congress, in the reauthorization of the IDEA in 1997, clearly intends that a local educational agency (LEA) is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that

¹ OSEP uses the word "section" when providing citations to the IDEA statute, but we generally use the symbol ("§") for the word when providing citations to the IDEA's regulation. The word and the symbol have the same meaning, but this citation method helps make clear when one citation references the statute and the other references the regulation. We use the word at the beginning of a sentence in either citation.

agency made a free appropriate public education (FAPE) available to the child and the parents elected to place the child in such private school or facility. See section 615(a)(10)(C)(i).

I also want to take this opportunity to provide you with an explanation of the obligation of public agencies in serving children with disabilities placed by their parents in private schools. Under the IDEA, services that an LEA is required to provide a child with a disability differ depending on whether the child attends public school² or is placed by his or her parents in private school. This difference is based on the fundamental principle that children with disabilities attending public schools are entitled to FAPE, whereas children with disabilities voluntarily attending a private school are not entitled to FAPE. Consequently, the protections afforded children with disabilities and their parents do not extend to the private school or the educational services in the private educational environment.

Section 612(a)(10)(C)(i) of the IDEA states that an LEA is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the LEA made FAPE available to the child and the parents elected to place the child in the private school. As stated above, children with disabilities unilaterally placed by their parents in private schools and not placed by a public agency as a means of providing special education and related services, are not entitled to FAPE. Because there is no requirement to provide FAPE to private school children with disabilities voluntarily placed by their parents, the right to due process procedures does not apply.

The IDEA statute limits the obligations of public agencies to provide services to parentally-placed private school children with disabilities, which the regulations further clarify. Section 300.454(a) specifies that no individual private school child with a disability has a right to receive some or all of the special education and related services the child would receive if enrolled in a public school. Because parentally-placed private school children have no individual right to services, LEAs do not have to serve every student with a disability who is voluntarily enrolled in a private school, including the provision of speech therapy services. Moreover, if the parents make clear their intention to enroll their child with a disability at a private school and that they are not interested in a public program or placement for their child, the public agency is not required to develop an individualized education program (IEP) for their child, which is required to be developed for children with disabilities attending public schools or for children placed by a public agency in a private school or facilities as a means of providing special education and related services.

Each LEA must consult, in a timely and meaningful way, with appropriate representatives of parentally-placed private school children with disabilities, in light of the minimum amount of IDEA Part B funds that must be expended for services for this population of children, on the number of parentally-placed private school children with disabilities, the needs of those children, and their location. Through this consultation process, decisions are made about which parentally-placed private school children with disabilities will receive services, what services

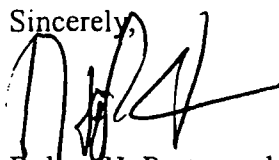
² If a child with a disability is placed in or referred to a private school by a public agency in order to provide that child with FAPE, then the public agency must provide an education that meets the standards that apply to education provided by the SEA and LEAs. That child has all of the rights of a child with a disability who is served by a public agency. See §300.401.

will be provided, how and where the services will be provided, including the timing and location of the services provided, and how the services provided will be evaluated. Each LEA must give appropriate representatives of parentally-placed private school children with disabilities a genuine opportunity to express their views regarding each matter that is the subject of the consultation process. However, the LEA makes the final decision about which eligible children will receive services, the services to be provided to eligible parentally-placed private school children with disabilities, and where the services will be provided. See §300.454(b)(1), (2), and (4). If the LEA determines that it will provide special education and related services to a particular private school child with a disability, that child must have a services plan that describes the specific special education and related services that the LEA will make available. See §300.455.

Since eligible parentally-placed private school children with disabilities do not have an individual entitlement to services under Part B of the IDEA, the due process procedures in Part B of the Act do not apply to complaints that an LEA has failed to meet applicable requirements for serving those children, including an LEA's alleged failure to provide the services specified on a child's services plan. However, an organization or individual may file a signed written complaint under the applicable State complaint procedures at §§300.660-300.662 alleging that a State educational agency or an LEA has failed to meet the requirements in §§300.451-300.462, such as a failure to properly conduct the appropriate child find activities of children in private schools, including religious schools.

We hope this information is helpful to you. Enclosed is a copy of OSEP memorandum 00-14 dated May 4, 2000, which discusses the obligations of public agencies in serving children with disabilities placed by their parents at private schools. Also, if you have further questions, you may call Dr. JoLeta Reynolds at 202-205-5507 or Mr. Troy Justesen at 202-205-9053 at OSEP.

Sincerely,



Robert H. Pasternack
Assistant Secretary

Enclosure