



# Federal Register

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**Tuesday,  
June 6, 2000**

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**Part V**

## **Department of Education**

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

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

**AGENCY:** Department of Education.

**ACTION:** List of correspondence from January 3, 2000 through March 31, 2000.

**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 a.m. and 8 p.m., Eastern time, Monday through Friday, except Federal holidays.

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**SUPPLEMENTARY INFORMATION:** The following list identifies correspondence from the Department issued between January 3, 2000 through March 31, 2000.

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 602—Definitions*

Topic Addressed: Child With a Disability

- Letter dated March 24, 2000 to individual, (personally identifiable information redacted), regarding school

districts' obligations to appropriately evaluate children with attention deficit disorder (ADD) under Part B of IDEA, and clarifying applicable requirements under Part B of IDEA for children who have a prior medical diagnosis of ADD and the relationship of relevant State requirements to applicable Part B requirements.

- Letter dated March 24, 2000 to Education Consultant and Advocate Michele Williams, regarding identification, evaluation, eligibility, and the provision of appropriate services and interventions in the least restrictive setting for children with Asperger's Syndrome determined eligible for services under 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 February 7, 2000 to California State Department of Education Special Education Director Dr. Alice Parker, regarding a finding in a Federal Fiscal Year (FFY) 1996 audit report questioning the use of Part B of IDEA funds to pay parents' or guardians' attorneys' fees in lawsuits against the State and clarifying that the IDEA March 12, 1999 final regulations explicitly prohibit using Part B of IDEA funds to pay attorneys' fees.

- Letter dated March 8, 2000 to U.S. Senator Bob Graham, explaining that the Department does not provide Federal funds directly to parents, private schools, or a local educational agency (LEA) to pay the cost of special education programs for children with disabilities, but that State, local, or private sources of support may be available for this purpose.

Topic Addressed: Eligible Entities

- Letter dated March 15, 2000 to the Office of U.S. Senator Don Nickles, regarding eligibility of State-supported schools for Federal education program funds, clarifying that a State-supported school cannot be made eligible for these funds in the absence of authorizing legislation, and that under many Federal programs, including Part B of IDEA, State-supported schools can be eligible for funds if they qualify as local school districts.

*Section 612—State Eligibility*

Topic Addressed: Free Appropriate Public Education

- Letter dated March 29, 2000 to Michigan Protection and Advocacy

Attorney Stewart R. Hakola, regarding Michigan's School-of-Choice legislation, and clarifying that (1) States may establish mechanisms to ensure that students with disabilities attending public school choice programs retain the right to a free appropriate public education (FAPE), and (2) the Department's view that a provision in the Michigan law requiring a written agreement between the resident district and the non-resident district regarding the provision of FAPE for any student with a disability who is enrolled in a non-resident school or program does not violate Part B of IDEA or Section 504 of the Rehabilitation Act of 1973.

- Letter dated March 20, 2000 to Illinois State Board of Education Special Education Director Dr. Gordon M. Riffel, clarifying that there is no provision in Part B of IDEA that would permit a school district to make the award of compensatory services to a student with a disability contingent on the student's delaying graduation from high school, when a determination has been made as a result of a complaint resolution that compensatory services are necessary to remedy the denial of FAPE to that student.

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

- Letter dated January 21, 2000 to U.S. Congressman David L. Hobson, regarding a parent's request for speech services for their child with a disability who is parentally-placed at a private school, and clarifying that the March 12, 1999 final regulations regarding the participation of parentally-placed private school children with disabilities accurately reflect the applicable statutory provision in the IDEA Amendments of 1997 and the Department's longstanding interpretations of the relevant statutory and regulatory requirements regarding the participation of these children in programs assisted or carried out under Part B of IDEA.

Topic Addressed: State Educational Agency General Supervisory Responsibility

- Letter dated February 9, 2000 to Massachusetts Department of Education Program and Quality Assurance Administrator John Stager, regarding the State's obligation to recover the Part B of IDEA funds received by the Boston Renaissance Charter School because the charter school counted children with disabilities but did not produce required documentation that those children had received appropriate special education and related services.

- Letter dated February 10, 2000 to Lawrence M. Siegel, Esq., explaining the Department's view that a State complaint unit's decision—which found that a complaint did not allege a violation of Part B of IDEA—was valid, since the issue raised in the particular complaint concerned the district's alleged failure to provide services for a student with a disability in the succeeding school year.

- Letter dated February 10, 2000 to Maryland State Department of Education Special Education Assistant Superintendent Carol Ann Baglin, regarding the State's authority to require a corrective action in resolving a complaint against a school district which prohibits that district from allowing parents to voluntarily waive their right to receive a copy of procedural safeguards available to parents under Part B of IDEA, since the statute specifies the times when the procedural safeguards notice must be provided and does not authorize any exceptions.

- Letter dated February 28, 2000 to Alaska Department of Education and Early Development Commissioner Richard S. Cross, informing Alaska that, despite the unique circumstances set out in its inquiry, there is no authority in IDEA for the Department to grant a State a waiver of the requirement that it revise its State statutes to comply with the requirements of the IDEA Amendments of 1997 in order for the State to receive its Part B of IDEA grant awards for FFY 2000.

- Letter dated March 27, 2000 to Virginia Department of Education Acting Superintendent Dr. Jo Lynne DeMary, informing the Virginia Department of Education that (1) its failure to comply with the regulation at 34 CFR 300.514(c)—which addresses what constitutes a child's "stay-put" or "pendency" placement if the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate—could result in enforcement action against the State, and (2) compliance with this regulation, which is a valid and appropriate exercise of the Department's regulatory authority, is required of all States receiving IDEA funds.

Topic Addressed: Coordinated Services

- Memorandum to Chief State School Officers dated January 24, 2000, regarding distribution of Office of Special Education Programs (OSEP) Memorandum 00-7 dated January 13, 2000 to State Directors of Special

Education, which explains five provisions in the IDEA Amendments of 1997 that enhance coordinated services and are designed to improve results for students with disabilities.

Topic Addressed: Participation in State and District-Wide Assessment Programs

- Letter dated February 4, 2000 to individual, (personally identifiable information redacted), regarding the importance of ensuring that students with disabilities are fully included in the benefits of State and district-wide assessment programs and that States that report data about the performance of nondisabled children on assessments at the district or State level must also do so for disabled children.

*Section 613—Local Educational Agency Eligibility*

Topic Addressed: Charter Schools

- Letter dated March 31, 2000 to New York State Education Department Deputy Commissioner Lawrence Gloeckler, clarifying that an LEA is not required to distribute Part B of IDEA flow-through funds to charter schools that are not established as LEAs or as public schools of the LEA.

*Section 615—Procedural Safeguards*

Topic Addressed: Student Discipline

- Letter dated February 4, 2000 to individual, (personally identifiable information redacted), regarding options available to school authorities in appropriately educating a disabled student whose continued presence in a classroom may pose a threat to school safety.

- Letter dated February 4, 2000 to U.S. Congressman Ronnie Shows, regarding a perceived disparity in procedures for disciplining disabled and nondisabled students, and providing an explanation of the requirements of the IDEA Amendments of 1997 that govern disciplining disabled students.

- Letter dated February 16, 2000 to individual, (personally identifiable information redacted), regarding options available to school authorities in disciplining students with disabilities.

- Letter dated March 15, 2000 to individual, (personally identifiable information redacted), regarding options available to parents in resolving disagreements with a school district over the requirements of Part B of IDEA even if criminal charges are pending against a student, and explaining that (1) Part B of IDEA does not prohibit a State or local school district from reporting a crime committed by a student with a disability to appropriate State law enforcement or judicial

authorities, and (2) a hearing officer is not considered an employee of a local school district merely because the hearing officer is paid to conduct the hearing.

- Letter dated March 15, 2000 to Louisiana State Superintendent Cecil Picard, clarifying that (1) the statutory provision requiring a school district to ask a hearing officer, in lieu of permitting school officials unilaterally, to order the removal of a child who is potentially dangerous to an appropriate interim alternative educational setting for up to 45 days strikes an appropriate balance between the need to provide school officials increased flexibility in dealing with school safety while maintaining due process and procedural protections for children with disabilities and their parents, and (2) regardless of available Federal special education funding, States have flexibility in accessing existing State and Federal programs to fund special education services.

### **Part C: Infants and Toddlers With Disabilities**

*Sections 631–641*

Topic Addressed: Natural Environments

- Letters dated March 21, 2000 to U.S. Senator Dianne Feinstein, responding to separate inquiries from constituents, regarding the history and changes to the natural environments requirements of Part C of IDEA since the law was originally enacted, and clarifying that the need for parent networking and parent training could be addressed through the provision of appropriate services in the child's individualized family services plan (IFSP).

- Letter dated March 21, 2000 to U.S. Congressman Mike Thompson, regarding the history of and changes to the natural environments provisions of Part C of IDEA and the requirement that decisions about the provision of required early intervention services in natural environments must be individually determined by the child's IFSP team, and clarifying that determinations regarding services, including services for parents and the location of services to a child, are made by the child's IFSP team.

- Letter dated March 21, 2000 to U.S. Congresswoman Lynn Woolsey, regarding the natural environments provision of Part C of IDEA, and clarifying, in general, that providing services to an infant or toddler with a disability in a setting such as a center-based program that is limited exclusively to infants and toddlers with disabilities would not constitute a

natural environment, but that early intervention services may be provided in a center-based program serving only children with disabilities, if the IFSP team justifies in the IFSP that this location is necessary to meet the individual needs of a child for a particular service.

*Section 640—Payor of Last Resort*

Topic Addressed: Use of Family's Public and Private Insurance for Early Intervention Services

- Letter dated March 22, 2000 to Illinois Department of Human Services Director of Community Health and Prevention James R. Nelson, explaining that (1) with respect to the use of a family's private insurance for services under Part C of IDEA, pending further regulatory action, the Department will accept a State's reasonable interpretation of Part C of IDEA, including OSEP's prior policy letters and the position set out in the Department's Notice of Proposed Rulemaking on this issue; (2) with respect to the use of public insurance, Part C of IDEA funds are the payor of last resort; and (3) if a family does not permit access to its Medicaid payments, Part C of IDEA requires that a State ensure that the inability of a family to pay for required services does not result in the denial of services under Part C of IDEA to the child or to the child's family.

**Part D: National Activities To Improve Education of Children With Disabilities**

**Subpart 1—State Program Improvement Grants for Children With Disabilities**

*Section 653—Applications*

Topic Addressed: Information About State Program Improvement Grants

- Letter dated March 24, 2000 to individual, (personally identifiable information redacted), clarifying that (1) State Program Improvement Grants, authorized by Part D of IDEA, are discretionary grants that are not intended to provide direct services to children with disabilities, and (2) Part D of IDEA does not require a State to establish its own regulations to administer this grant program.

*Miscellaneous*

Topic Addressed: Inapplicability of the Least Restrictive Environment and Discipline Requirements of Part B of IDEA to College Students

- Letter dated February 10, 2000 to individual, (personally identifiable information redacted), clarifying that the least restrictive environment (LRE) and discipline provisions of Part B of IDEA do not apply to college students since the Part B of IDEA regulations provide that a disabled student's graduation from high school with a regular high school diploma ends the student's entitlement to FAPE, and noting that some of the issues regarding

the provision of postsecondary services to students with disabilities may be within the jurisdiction of the Department's Office for Civil Rights.

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

Dated: May 31, 2000.

**Curtis L. Richards,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

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