



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

FEB - 2 2004

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This is in response to your letter of October 18, 2003 to Senator Olympia Snowe regarding the use of grade discrepancy in Maine. Your letter has been forwarded to the Office of Special Education Programs (OSEP). OSEP is responsible for administering the Individuals with Disabilities Education Act (IDEA).

In your letter to Senator Snowe, you say that, "the State Government and several school districts have interpreted the Federal regulations to say that a student does have to be grade discrepant to require [special education and related] services." It is our understanding that by "grade discrepant" you mean that a student is not advancing from grade to grade.

Maine must ensure that a free appropriate public education (FAPE) is made available to all children with disabilities. See 34 CFR §300.121(a). The regulations further clarify at 34 CFR §300.121(e) that, "(1) Each State shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child is advancing from grade to grade. (2) The determination that a child described in paragraph (a)(1) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making those determinations."¹

Thus, if a child is evaluated as having one of the disabilities specified in the definition of child with a disability at 34 CFR §300.7(a)(1), and, by reason of that disability, needs special education and related services, a public agency may not deny the provision of FAPE to the child because the child is advancing from grade to grade.

You will note from the enclosed letter that we have forwarded your complaint to the Maine Department of Education (MDE), and have requested the agency take action to resolve the complaint in accordance with the "State Complaint Procedures" applicable to Part B of the Individuals with Disabilities Education Act. See 34 CFR §§300.660-300.662 (copy enclosed).

¹ At 34 CFR §300.7(a)(1), the Part B regulations define "child with a disability": "As used in this part, the term **child with a disability** means a child evaluated in accordance with §§300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services."

In our letter, we have provided specific guidance to MDE as to the issues that it must address in resolving the systemic issues that you raised in your letter to Senator Snowe.

The Part B complaint regulations require that, within 60 calendar days of receiving your complaint, MDE must provide you with a written decision that addresses each allegation in the complaint, and contains (1) findings of fact and conclusions, and (2) the reasons for the final decision. We have asked MDE to provide us with a copy of the written decision that it sends to you. Enclosed is a copy of an OSEP memorandum 00-20, which provides more information about the complaint process.

To obtain more information about the resolution of your complaint, you should contact:

Mr. David Noble Stockford
Director, Special Services
Maine Department of education
23 State House Station
Augusta, Maine 04333

If this office can be of further assistance, please do not hesitate to contact Samara Goodman at (202) 358-3298.

Sincerely,

Patricia J. Bussell for
Stephanie Smith Lee
Director
Office of Special Education Programs

Enclosure

cc: Senator Olympia Snowe
Mr. David Noble Stockford