



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

NOV 22 2000

John A. Nelson
Legal Counsel
Vermont State Department of Education
120 State Street
Montpelier, Vermont 05620-2501

Dear Mr. Nelson:

This is in response to your letters written to the Office of Special Education Programs (OSEP) dated June 15, and July 31, 2000, seeking clarification of the regulations at 34 CFR §300.509(a)(4) and 34 CFR §300.509(c)(2) under the Individuals with Disabilities Education Act (IDEA) that require parents to be provided at no cost to them verbatim transcripts of due process hearings. Specifically, you asked whether a verbatim transcript of a due process hearing must be provided to parents at no cost when the request is not related to an appeal of a hearing official's decision.

The requirements under 34 CFR §300.509(a)(4) are that parents receive at no cost a written, or, at the option of the parents, electronic, verbatim record of the hearing, and obtain written, or, at the option of the parents, electronic findings of fact and decisions. These rights of parents were established by Congress in the IDEA statute and are not limited in any way in the statute. *See*, 20 U.S.C. §§1415(h)(3) and (h)(4). The statute and regulations do not set a specific time by which the record must be provided. However, the record must be provided in a timely fashion such that parents are not denied the ability to exercise all rights available to children with disabilities under the IDEA.

In your letter, you noted that in the Analysis of Comments and Changes in Attachment I of the Federal Regulations (March 12, 1999) it states that "Access to a written verbatim record of the hearing is vital for parents to exercise their full due process rights." You further noted that Vermont's period for filing a civil action is ninety days and questioned the obligation to provide a transcript after this period. We neither comment on nor approve Vermont's statutory limitation period in this letter as we do not need to in order to inform you that, under the IDEA, the fact a public agency must still provide a transcript even if a state-imposed appeal time period has passed. Our reasoning follows

While a copy of the transcript may help the parent determine if there are appeal rights from the due process hearing decision, other rights are implicated as well. These rights include the right to file a complaint with the state educational agency under 34 CFR §§300.660 – 300.662 if the parent believes that Part B of the IDEA has been violated by

the school district. The time period for filing a state complaint is either one year for a complaint alleging a violation to three years for a complaint in which compensatory services are requested. 34 CFR §300.662(c.). Exercise of these other rights under the IDEA may be hindered by the lack of access to a transcript. Thus, the fact that the time for an appeal has run from a due process hearing decision does not relieve the public agency of its obligation to provide transcripts at no cost to parents as is required by the IDEA and its regulations. Access to a written verbatim record of the hearing is vital for parents to exercise all rights under IDEA.

We understand the concerns of the State and school districts regarding the costs of providing transcripts in some instances. However, we believe “although there are costs associated with the statutorily mandated shift of the choice between an electronic or written record of the hearing from the public agency, as newer technologies are better capable of generating accurate transcriptions, these costs will decrease.” See, Discussion section of the final Part B regulations published on March 12, 1999.

I understand that you previously discussed this matter with Jill Harris, the IDEA Part B State Contact for Vermont, and that she provided you with a similar response. I hope this clarifies the matter. If we can be of further assistance, please contact me.

Sincerely,



Kenneth R. Warlick
Director,
Office of Special
Education Programs

cc: Mr. Dennis Kane, External Manager
Division of Special Education
Vermont Department of Education