



**UNITED STATES DEPARTMENT OF EDUCATION**

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Ms. Shann Goff  
Bureau Chief  
Bureau of Instructional Support and Community Services  
Florida Department of Education  
325 West Gaines Street, Suite 614  
Tallahassee, Florida 32399-0400

Re: Complaint #04-01-1146

Dear Ms. Goff:

This is a follow-up to the telephone conversation between you and members of our respective staffs that took place on September 5, 2001 regarding complaint No. 04-01-1146, dated February 22, 2001, filed with the Office for Civil Rights by parents of two students with disabilities. (A copy of that complaint was previously forwarded to you by our Atlanta Office.) Specifically, the Complainant alleged that Florida Department of Education (FDE) failed to ensure that the Students were provided with necessary related aids and services while they are enrolled in a private school under the Scholarship Program for Students with Disabilities (Scholarship Program.)

We understand that in the particular circumstances giving rise to this complaint, there was a delay in the initiation of services because the complainants' sons' individualized education programs (IEPs) were not current prior to their enrollment in private school, and matrices of services, which form the basis for levels of State funding, could not be developed for them. Thus, the issues giving rise to the complaint raise questions regarding the extent of FDE's responsibility to Scholarship students with disabilities who are to receive special education within the private school setting.

During our September 5, 2001 telephone conversation, we requested that you provide clarification of FDE's responsibilities for the administration of the Scholarship Program. Your preference was to provide the requested clarification in writing. We would like to take this opportunity to elaborate further on the scope of our request to you to enable you to respond.

As we discussed in September, the Department's position, as stated in our letter of March 30, 2001, to Pinellas County School Board Attorney, John W. Bowen (copy enclosed), is that private schools are not required to provide students with disabilities who attend private schools pursuant to State-funded scholarship programs, with a free appropriate public education at the private school. Such private schools are neither recipients of Federal financial assistance nor public entities and are not subject directly to the requirements of Section 504 or Title II. In addition, the students with disabilities who are eligible for services under the Individuals with Disabilities Education Act (IDEA) who attend these private schools as a result of parental placements are considered "private school children with disabilities," who have no individual entitlement to services under IDEA.

However, FDE does receive Federal financial assistance and thus, 504, Title II, and other Federal civil rights laws do apply to all FDE operations. Accordingly, FDE must ensure that the Scholarship Program for Students with disabilities (SPSWD) is administered in a nondiscriminatory manner. In order to address the allegations of the previously referenced complaint, it is important to understand what FDE believes is the scope of its obligation in administering the SPSWD in a non-discriminatory manner.

Specifically, please explain what FDE believes is its current policy and/or practice for administration of the SPSWD and what FDE believes is the scope of its role and responsibilities relative to students with disabilities who chose to attend private schools pursuant to the SPSWD. In addition, please explain how your current statement, in response to our question above, regarding FDE's role and responsibilities in administering the SPSWD, relates to the statements contained on your Opportunity Scholarships/Opportunity Schools website over the past year regarding these responsibilities.

For example, on May 13, 2001, the website had stated that private school responsibilities were to "Provide all of the necessary special education and related services to each scholarship student . . ." In the June 13, 2001 website statement of private school responsibilities, the above statement was omitted. The website posting of June 13, 2001 included the statement that the private school must "agree to comply with the anti-discrimination provisions of 42 U.S.C. s. 2000d . . ." The statutory reference to 42 U.S.C. § 2000d is to Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin. There is no similar reference to other Federal civil rights laws, including Section 504 and Title II, which prohibit discrimination on the basis of disability.

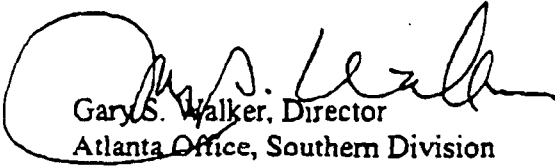
As you know, even though private schools are not directly subject to these laws, FDE must ensure that the requirements of these laws are met in its administration of its Scholarship Program. Accordingly, please explain the change in FDE's perception, if any, of its role relative to compliance with Section 504 and the ADA with respect to students with disabilities attending private schools under this program in light of your changes to your website.

Ms. Shann Goff

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Thank you in advance for your attention to this matter. If you have any questions, please feel free to call me.

Sincerely,

  
Gary S. Walker, Director  
Atlanta Office, Southern Division  
Office for Civil Rights

Enclosure

cc: JoLeta Reynolds, Office of Special Education Programs  
Susan Bowers, Enforcement Director, East, Office for Civil Rights  
Lilian S. Dorka, Litigation Coordinator, Office for Civil Rights  
Frank Lopez, Office of the General Counsel