



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

OCT - 9 2002

Beth L. Sims, Esq.
Mill & Garden Streets
P.O. Box 112
Poughkeepsie, New York 12602

Dear Ms. Sims:

The Office of Special Education Programs (OSEP), U.S. Department of Education, is in receipt of your correspondence to Mr. Michael Slade, the OSEP State Contact for the State of New York, dated January 10, 2001. Your letter, which we assume should be dated 2002, is in response to a series of conversations between you and Mr. Slade beginning on December 13, 2001, regarding OSEP Memorandum # 96-5 (December 6, 1995) titled *Obligations of States and School Districts to Disabled Students and Their Parents in Interstate Transfer Situations*. You have requested a written statement indicating whether OSEP Memo # 96-5 has been amended, modified, or repealed since its issuance. You have further requested a copy of any changes, amendments, modifications, or revocation of that OSEP memorandum.

During your conversations with Mr. Slade, you indicated that you were representing a parent of a disabled student who, having transferred from the State of Connecticut, sought enrollment as a special education student in a local educational agency (LEA) in New York for school year 2001-2002. You initially conveyed to Mr. Slade that you were seeking clarification of OSEP Memo # 96-5 because the LEA in New York refused to accept either the individual education program (IEP) or the supporting evaluations from Connecticut. You further indicated to Mr. Slade that the LEA in New York placed your client's son in a regular educational setting without the needed supports. In subsequent conversations with Mr. Slade, you noted that your client had requested and had been granted an impartial due process hearing seeking tuition reimbursement for her son's current private placement. Further, of greatest import, the defense for your client's case was purportedly predicated on the policy guidance provided in OSEP Memo # 96-5.

OSEP Memorandum # 96-5 was written prior to the enactment of the Individuals with Disabilities Education Act, as amended in 1997 (IDEA). Therefore, the statutory and regulatory citations in OSEP Memo # 96-5 are no longer accurate. IDEA, as amended, and the implementing regulations at 34 CFR Part 300 do not obligate a school district receiving a special education student from another State to accept the evaluation results, eligibility determinations, and IEP decisions made in another State. However, the obligation for an LEA to provide a free appropriate public education, in accordance with State education standards, to all eligible students has not changed.

Each public agency shall ensure that a full and individual evaluation is conducted in accordance with 34 CFR §§300.532–300.533 for each child being considered for special education and related services to determine if the child is eligible under State standards for special education and, if so, to determine the educational needs of the child. Pursuant to 34 CFR §300.343, each public agency shall ensure that a child is evaluated within a reasonable period of time following an agency’s receipt of parent consent to an initial evaluation of a child. A meeting to develop an IEP for the child must be conducted within 30 days of a determination that the child needs special education and related services.

As part of an initial evaluation, if appropriate, and as a part of any reevaluation under Part B, the IEP team (as described under 34 CFR §300.344), and other qualified professionals, as appropriate, shall review existing evaluation data on the child, including: (1) evaluations and information provided by the parents of the child; (2) current classroom-based assessments and observations; and (3) observations by teachers and related services providers. On the basis of that review and input from the child’s parents, the team must identify what additional data, if any, are needed to determine: (1) whether the child has a particular category of disability, as described in §300.7, or, in case of a reevaluation of a child, whether the child continues to have such a disability; (2) the present levels of performance and educational needs of the child; (3) whether the child needs special education and related services, or in the case of reevaluation of a child, whether the child continues to need special education and related services; and (4) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general curriculum (34 CFR §300.533).

A child’s educational placement must be based upon the child’s IEP. The child’s parents are members of the IEP team and must be invited to participate (see 34 CFR §300.345). Parents play a key role, along with school personnel in developing, reviewing, and revising, if necessary, a child’s IEP; in determining the nature and extent of the child’s needs; and in the placement decision. Through the IEP process, a parent can discuss with school officials different approaches that would appropriately meet their child’s unique needs.

If the parent and the local school district staff cannot agree on the content of the IEP, the parent can ask for a due process hearing, and an impartial hearing officer can make an independent decision in order to resolve any disagreements (see 34 CFR §§300.500-300.517). A mediation process must be available to parents who request a due process hearing, in accordance with the requirements at 34 CFR §300.506 of the Part B regulations. A parent also has the option of filing a complaint with the State if he or she believes that a public agency has violated a requirement of Part B (see 34 CFR §§300.660-300.662).

Except when a parent requests a hearing or an appeal regarding a disciplinary action, during the pendency of any administrative or judicial proceeding regarding a complaint

under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement. If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings. While the placement may not be changed unilaterally by the public agency, this does not preclude the parent from changing the placement at his or her own expense and risk.

I hope this information proves helpful in meeting the needs of your client. If this Office can be of any further assistance regarding this matter please feel free to contact me or Michael F. Slade, OSEP's Part B contact for New York, at (202) 205-8969.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephanie S. Lee".

Stephanie S. Lee
Director
Office of Special Education Programs

cc: Lawrence C. Gloeckler
Deputy Commissioner