



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

NOV 10 2003

Mr. David Nordyke
Executive Director
Harmony Community School
1580 Summit Road
Cincinnati, Ohio 45237

Dear Mr. Nordyke:

This is in response to your letter to the Office of Special Education Programs (OSEP) requesting a review of the Ohio Department of Education's (ODE's) policies and interpretation of Ohio law regarding allocation of State special education funds for community schools (Section 3314.08, Ohio Revised Code). In your letter you indicate that you disagree with the ODE's interpretation of the formula and allege that this interpretation does not permit a student with disabilities to "receive full benefit of his or her basic aid amount and receive full benefit from the additional monies needed to fulfill the requirements of the [individualized education program, or] IEP;" you also allege that the State's special education funding mechanism discourages the identification of students with disabilities in that the funding mechanism appears to penalize community schools for identifying such students. Based upon telephone conversations with Dale King of our office, it also is our understanding that your concerns are about State special education funds allocated to the Harmony Community School (a public charter school), and not the allocation of federal funds provided under Part B of the Individuals with Disabilities Education Act (IDEA).

OSEP is aware of the Ohio Supreme Court's decisions in DeRolph v. State of Ohio, that impact the State's methods of funding public education. OSEP also is mindful of the fiscal difficulties currently facing States and local educational agencies (LEAs) in ensuring the education of all children, including children with disabilities. However, as long as the provisions of the IDEA are met, issues regarding a State's public school funding formula, including State funding of special education and related services, are matters to be resolved at the State level.

We note that in OSEP's March 2001 report of its 1999 monitoring of the ODE, OSEP instructed ODE to review its funding mechanism to determine whether it results in placements that violate the requirement for the provision of services in the least restrictive environment (LRE) and to ensure that policies and procedures are developed to ensure compliance with the requirements of 34 CFR §§300.550-556. Ohio's current special education funding formula indicates that State special education funds are

distributed based on type of disability and not placement. Further, the State is subject to the requirements of, and has provided an assurance under, the maintenance of effort provisions of 34 CFR §300.154. The State is also responsible for ensuring that the requirements of 34 CFR §300.231, relating to maintenance of effort by LEAs, are met. It is our understanding that community schools in Ohio are recognized as LEAs under the State's charter school law for purposes of Part B of IDEA. However, it is not clear from your submission whether these federal requirements are relevant to your dispute.

It also is important to stress that, regardless of the funding mechanism adopted by the State, the ODE must ensure that all children with disabilities residing in the State who are in need of special education and related services are identified, located, and evaluated. See 34 CFR §300.125(a)(i). The ODE has responsibility for general supervision under 34 CFR §300.600, and must ensure that all LEAs (which, in Ohio, include public charter schools) meet the education standards of the State and the requirements of IDEA-Part B and its implementing regulations, including the requirements for provision of a free appropriate public education (FAPE) to eligible students with disabilities who are in the LEA's jurisdiction. The Part B regulations clarify that, if a public charter school is an LEA, then that charter school is responsible for ensuring that the requirements of Part B of the IDEA are met, unless State law assigns that responsibility to some other entity. See 34 CFR §300.312(b).

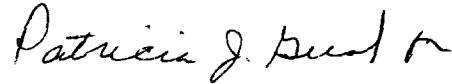
Under the IDEA, there are additional ways to resolve disputes regarding the provision of FAPE. Under 34 CFR §§300.660-300.662, an individual or organization may file a State complaint alleging violations of Part B. In addition, the parents of students with disabilities may request a due process hearing and LEAs must ensure that mediation is available whenever a due process hearing is requested under the provisions of 34 CFR §300.506 through §300.514.

Finally, the Department's Office for Civil Rights enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (Title II), two federal laws that prohibit discrimination on the basis of disability. If you believe that ODE's implementation of the State funding formula may violate these laws, you also may wish to contact the Office for Civil Rights at:

Cleveland Office
Office for Civil Rights
U.S. Department of Education
Bank One Center, Suite 750
600 Superior Avenue, East
Cleveland, OH 44114-2611
Telephone: 216-522-4970
FAX: 216-522-2573; TDD: 216-522-4944
Email: OCR_Cleveland@ed.gov

We hope this provides you with helpful information. If we can be of further assistance please do not hesitate to contact Mr. Dale King of the Office of Special Education Programs at (202) 260-1156.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie J. Smith Lee".

Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Mike Armstrong, Director, Office of Exceptional Children
John Mills, Director, Finance and Management Services