



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

OCT 27 2009

Wendy Whipple
Part C Office, Aging and Disability
Services Division
70 Linden Street, Suite 1
Reno, NV 89502

Dear Ms. Whipple:

This letter is in response to your July 16, 2009 electronic mail (e-mail) communication to the Office of Special Education Programs (OSEP) requesting clarification regarding Nevada's obligation under Part C of the Individuals with Disabilities Education Act (IDEA) to locate families and provide compensatory services to children who no longer reside in the State.

In the situation you described, a State complaint was filed under Part C against the Nevada Department of Health and Human Services and the written decision responding to the complaint found that many children in the State were waiting for early intervention services. The decision required all early intervention programs statewide to reconvene individualized family service plan (IFSP) meetings for children and families who have been waiting for services to determine the appropriateness of compensatory services. In your e-mail, you indicated that the State is tracking the compensatory services it is required to provide, and has found that some of the children have moved out of the State. You ask whether the State is obligated to locate those families who have moved out of the State to offer them compensatory services.

Under Part C of the IDEA, each State is required to develop a statewide system to provide early intervention services to infants and toddlers with disabilities in the State from birth through age two. 20 U.S.C. 1432(5) and 1434. The lead agency responsible for implementing Part C in the State must adopt written procedures for resolving any complaints that any public agency or private service provider is violating a requirement of Part C. 34 CFR §§303.510-303.512. The Part C regulations provide that, in resolving a complaint in which the lead agency finds a failure to provide appropriate services, it must address both "(1) how to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and (2) appropriate future provision of services for all infants and toddlers with disabilities and their families." 34 CFR §303.510(b).

OSEP stated in *Letter to Anonymous*, dated August 19, 2003, that because the basis for compensatory services is the past denial of early intervention services that were not originally provided, compensatory services "could, if determined appropriate, be available even after a child is no longer receiving services under Part C."

Courts have further found that compensatory services under Part B of the IDEA could be awarded to a student who has moved out of the local educational agency (LEA). The United States Court of Appeals for the Eighth Circuit, in *Indep. Sch. Dist. No. 284 v. A.C.*, 258 F.3d 769, 774 - 776 (8th Cir. 2001), held that a claim seeking a compensatory remedy from the LEA in which the child had lived was not moot even though the student had moved to another school district.

We believe that compensatory services can be awarded to a child who is no longer eligible for Part C services from a State, such as a child who has aged out of the program or a child who has moved out of the State. In the situation you describe, the written decision responding to the State complaint directed all early intervention programs in the State to reconvene IFSP team meetings for families that have been waiting for Part C services to determine the appropriateness of compensatory services. If it is determined that compensatory services are appropriate, they must be provided. If a family has moved out of State before the IFSP team has been convened to determine the appropriateness of compensatory services, the State must make reasonable efforts to locate the child and determine whether the parents are interested in participating in an IFSP meeting to determine whether compensatory services are appropriate. If the family moved out of the State after an IFSP team meeting determined that compensatory services would be appropriate, the State must make reasonable efforts to contact the parents to determine if they want to receive the compensatory services indicated in the IFSP. If the parents elect to receive the compensatory services, the State can provide such services through contractual arrangements where the family currently resides if it is not feasible for the service providers to reach the child in his or her new location.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

I hope the information provided in this response is helpful for you as you continue to meet the needs of children and families in the State of Nevada. If you have further questions, please do not hesitate to contact Tammy Proctor at 202-245-7333 or by e-mail at Tammy.Proctor@ed.gov if you would like any further assistance.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education
Programs