



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

JAN 28 2004

I am writing in response to the July 9, 10, and 12, 2003 letters you wrote to the Department in response to my letter to you dated July 1, 2003. I hope the following information is helpful.

Initially, I would like to state that the Department has diligently tried to respond to your questions. As we explained in our May 9, 2002 letter to you, we initially referred your concerns to the Department's Office for Civil Rights (OCR). OCR responded to your issues on July 26, 2002, and upon your request for reconsideration, OCR responded again on December 20, 2002. In order to more fully respond to your issues, the Office of Special Education Programs also responded to your issues on February 26, 2003, and on July 1, 2003.

Upon receipt of our July 1, 2003 letter, you sent three letters to the Department requesting further clarification of our previous responses. Accordingly, I provide the following responses to your specific questions.

Your July 9, 2003 letter states that you "have asked for a clarification of the meaning of the school that he or she would attend if nondisabled" in the context of a school choice or selection situation. If a nondisabled child may attend and receive public tuitioning at school X as a result of parental choice or selection - and if my child meets all of the requirements for public tuitioning at that school, except that my child has a disability-if I also select school X for my child - should school X be considered the school that he or she would attend if nondisabled for my child?

Your July 10 and 12, 2003 letters rephrases the question slightly by asking, "If a nondisabled child can be publicly tuitioned as a result of parental school choice or selection at school X - if a child with a disability meets the same qualification as the nondisabled child, except that the child has a disability or qualifies for special education under a certain category of disability - if the disabled child's parents also choose or select school X - isn't the child with a disability entitled to be publicly tuitioned or placed at school X unless the IEP of (the) child with a disability requires some other arrangement?"

Your July 12, 2003 letter further restates the question as: "If a child was not disabled, and the child's parents could select high school X as the high school to which their local

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district should pay tuition to for the child-then according to 34 CFR §300.552 - if that child did have a disability and the child's parents chose school X - isn't the child entitled to have her tuition paid for at that school unless, and only unless, the IEP the child requires some other arrangement."

Your letters ask about the implications in school choice programs involving private schools of the provision in 34 CFR §300.552(c), which requires that each public agency ensure that "unless the IEP of a child with a disability requires some other arrangements, the child is educated in the school he or she would attend if nondisabled." In response to your specific questions, the facts you provide in your letters, namely that a nondisabled child may attend private school X as a result of parental choice, and your child meets all of the requirements for payment of public tuition at that private school, except that your child has a disability, do not mean that that private school must be considered "the school that he or she would attend if nondisabled." As I noted in my July 1, 2003 letter, 34 CFR §300.552(c) was developed in the context of special education programs within local education agency (LEA) schools, and not programs where tuition is paid for a child to attend a private school. Under a choice program involving private schools, that provision does not require that students with disabilities be offered the same choices of schools as are offered to nondisabled students.

As I explained in my July 1, 2003 letter to you, the Individuals with Disabilities Education Act does not require that private schools provide special education and related services that meet the needs of all students with disabilities, and it does not require that States certify all private schools to provide services to all students. See, St. Johnsbury Academy v. D.H. et.al., 240 F.3d 163 (2nd Cir. 2001) (a private school was not required to change its policy to ensure that a student with disabilities was able to receive a free appropriate public education at that school).

I hope this information answers your specific questions.

Sincerely,

 for

Stephanie Smith Lee

Director

Office of Special Education Programs

cc: Vermont Department of Education
U.S. Department of Education, Office for Civil Rights