UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL 1 1997

Mr. Howard Klebanoff
Attorney at Law
1305 Boston Post Road, Snits 301
Fairfield, Connecticut 06.432

Dear Mr. Klebanoff:

This is in response to your letter to the Office of Special Education Programs (0SEP) dated January 23, 1997, requesting clarification regarding the application of 34 CFR §300.513 in the following situation:

During an appeal proceeding, does the "stay put" provision apply to a student whose current placement was made by the Department of Mental Retardation through the Birth to Three Program? Does the nursery school where [a child] was placed by the Birth to Three program constitute (the] "current education program" under 34 CFR §300.513

Section 300.513 of the regulations implementing Part B of the Individuals with Disabilities Education Act (Part B) provides:

> **(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.**
> **(b) 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 program until the completion of all the proceedings.**

34 CFR §300.513.

Based on the information provided in your letter, it is our Understanding that the Connecticut Department of Mental Retardation placed the two-year-old child in the program at the private nursery school as a means of providing that child and his family appropriate early intervention services under Part H of the Individuals with Disabilities Education Act (Part H). ,When the child turned three, the school district had offered the child the placement in the public school preschool program as a means of providing him a free appropriate public education (FAPE) under Part B. It is this proposed public preschool placement with which the parents disagree. We understand your letter to be asking whether a placement that was intended to provide a disabled infant or toddler and his or her family with appropriate

early intervention services under Part H would constitute the child's "present educational placement" under 34 CPR §300.513.

OSEP does not interpret 34 CPR §300.513 as requiring a public agency responsible for providing FAPE to a disabled child to maintain that child in a program developed for a two-year-old child as a means of providing that child and his or her family appropriate early intervention services under Part H. Rather, in the situation prompting your inquiry, the complaint involves a child's initial admission to public school. Therefore, it is OSEP'A view that, in this instance, to meet its obligation under 34 CFR §300.513(b), the public agency responsible for providing FAPE to the child would place that child, with the consent of the parents, in the public preschool program until the completion of authorized review proceedings. 34 CFR §300:513(b).

We hope that you find this explanation helpful. If we can be of further assistance, please feel free to contract Dr. JoLeta Reynolds at (202) 205-5507 or Ms. Rhonda Weiss at (202) 205-9053.

Sincerely,

Thomas Hehir
Director
Office of Special Education Programs

Cc: Dr. Leslie Averna
Connecticut Department
of Education