



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

Mr. John Tommasini
Director of Special Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, Pennsylvania 17126

JUL 24 2012

Dear Mr. Tommasini:

We are writing to follow up on your inquiry regarding a reference in the June 27, 2012 Office of Special Education Programs (OSEP) determination letter to the Pennsylvania Department of Education (PDE) concerning allegations made against PDE in *Chester Upland School District, et al. v. Commonwealth of Pennsylvania Department of Education, et al*, Civil Action No. 12-0132. This case presents allegations of denial of a free appropriate public education (FAPE) to eligible students with disabilities enrolled in the Chester Upland School District (CUSD) in violation of Part B of the Individuals with Disabilities Education Act (IDEA), that may stem, in part, from an alleged failure to fund CUSD sufficiently in the 2012-2013 school year. We noted in the determination letter to PDE that, although not considered for this year's determination that Pennsylvania "meets requirements" under IDEA section 616(d), we may consider any conclusions or findings of law from this case, or any relevant information in this case, as a factor in future determinations for Pennsylvania. Under section 616(d)(2)(A), OSEP may use any relevant publicly available information when making determinations, and has used this type of information in the past in making determinations for other States.

As you know, FAPE includes, among other elements, the provision of special education and related services at no cost to parents in accordance with an individualized education program (IEP) that meets the requirements of State and federal law, including the provisions regarding placement in the least restrictive environment (LRE). 20 U.S.C. § 1401(9). It is our understanding that the Court has discussed factual findings of violations of IDEA for the 2011-2012 school year. Transcript of Trial Before the Honorable Michael M. Baylson, May 29, 2012 pp. 201 and 206. Thus, even though the United States is not a party to this lawsuit, as the Federal agency responsible for administering IDEA, the U.S. Department of Education (Department) has an interest in ensuring that eligible students with disabilities are not denied FAPE, and that States and school districts meet all of their statutory and regulatory obligations under IDEA.

As you also know, under IDEA, the Federal government makes grants to participating States to assist them in providing a public education to eligible children with disabilities. See generally 20 U.S.C. § 1400(d). The Secretary of Education, in providing grants of IDEA funds to PDE, has received assurances from the State agency that it "has in effect policies and procedures to ensure that it meets" IDEA's requirements. These include but are not limited to, assurances addressing: the provision of a FAPE to all eligible children with disabilities residing in the State; the requirement that IEPs are properly developed, reviewed and revised; the education of students with disabilities with their nondisabled peers in the least restrictive environment (LRE); and

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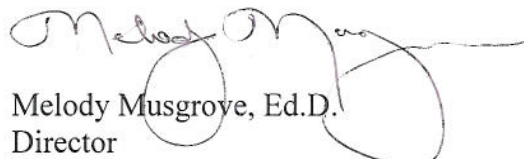
ensuring that children with disabilities and their parents are afforded specific procedural safeguards. See 20 U.S.C. §§ 1412(a)(1), (4), (5) and (6). IDEA, in combination with the General Education Provisions Act, requires that the State exercise general supervision over all educational programs for children with disabilities administered within the State to ensure that all such programs meet State education standards and the requirements of IDEA, monitor compliance of each of its local educational agencies with the requirements of IDEA, and require timely correction of any noncompliance identified by the state educational agency (SEA). 20 U.S.C. §§ 1232d(3)(A) and (b)(3)(E); 20 U.S.C. §§ 1412(a)(11) and 1416(a), and 34 CFR §§300.149 and 300.600.

Because Pennsylvania has chosen to participate in the IDEA program, it is responsible for ensuring that all public agencies in the State, including public school districts, comply with IDEA's requirements. This includes monitoring compliance and taking appropriate actions to ensure that each participating school district is carrying out the requirements of IDEA. Moreover, in situations where the State agency is on notice that students with disabilities in a participating school district were, or will soon be, denied FAPE due to the district's actions or inactions, the State agency must take the necessary steps to address and, as appropriate, redress the situation. These are part of the State agency responsibilities under IDEA.

The Department is following the developments in this case and will consider this and other relevant information to help ensure that PDE takes appropriate actions to ensure that CUSD students with disabilities receive FAPE as required by IDEA.

We are glad to respond to your questions and we appreciate your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Melody Musgrove", written in black ink over a white background.

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

cc: The Honorable Ronald J. Tomalis