



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

APR 16 2001

Joseph Kinney
Kinney & Associates, Inc.
Chaucer Square,
1691 Rt. 9
Clifton Park, New York 12065

Dear Mr. Kinney:

This is in response to your letter written on behalf of Kinney & Associates, Inc. to former director of the Office of Special Education Programs (OSEP) Dr. Thomas Hehir, regarding use of Federal Medicaid funds to pay for required services under Part B of the Individuals with Disabilities Education Act (Part B) for children with disabilities. Please excuse the delay in issuing this response.

In your letter, you describe situations that you are aware of as a result of the management services you provide to local educational agencies (LEAs) in accessing Federal health insurance funds to pay for required services under Part B. You indicate that "States are successfully shifting their financial responsibilities to LEAs and using Federal health insurance matching funds to reduce their published financial commitment to special education programs. At the LEA level this is increasing the demand for the local resources needed to support the special education program." You indicate that you believe that State practices regarding Medicaid payments are violating the IDEA prohibition on State-level supplanting (34 CFR §300.153), responsibility of other agencies precede that of LEAs (34 CFR §300.142(b)), and the prohibition on reducing the assistance available under other programs (34 CFR §300.601). Essentially you question whether States distributing to LEAs only a portion of the Medicaid reimbursement they receive from the Federal government for services provided through the LEAs is a violation of the IDEA.

We agree that public agencies, which are responsible for ensuring that services are provided at no cost to parents, need the ability to access all available public sources of support to pay for required services under these regulations. A number of provisions of the IDEA, including those mentioned in your letter, are aimed at maintaining funding for special education and related services. However, we do not see any of the provisions you mentioned as controlling in the circumstances you describe.

Section 300.153 prohibits using IDEA funds to supplant the level of Federal, State and local funds expended for special education and related services. This provision would only be

implicated with regard to those Federal Medicaid reimbursement funds that were spent for special education and related services. In the situation you describe, the Medicaid funds are not spent for special education and related services, but are retained at the State for other purposes. Although §300.142(b) establishes that the financial responsibility of other agencies precedes that of LEAs, §300.142(h) provides that proceeds from public and private insurance, such as Medicaid reimbursements, will not be treated as program income, that is, are not required to be spent for IDEA program purposes. Finally, §300.601 stands for the principle that other agencies may not use the availability of services under IDEA to reduce medical and other assistance to children with disabilities. That is not our understanding of the practice you write about.

There remains the question whether the practice you describe is consistent with Medicaid requirements. We note that the General Accounting Office's recent investigation of Medicaid in schools questioned whether the practice of States retaining Medicaid reimbursements for school-based services was consistent with Medicaid requirements. "Medicaid in Schools", April, 2000 GAO/HEHS/OSI-00-69, pp. 31-36. However, you should consult with the Health Care Financing Administration of the Department of Health and Human Services for assistance with your questions regarding the Medicaid requirements.

We hope that you find this explanation helpful.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education
Programs