



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

OCT 29 2002

Dr. Perry A. Zirkel
University Professor of Education
and Law
Lehigh University College of Education
Mountaintop Campus
111 Research Drive
Bethlehem, Pennsylvania 18015-4794

Dear Dr. Zirkel:

This is in response to your letter to JoLeta Reynolds of the Office of Special Education Programs. You ask "whether, and it [sic] so to what extent, the requirements of the IDEA and Section 504 (or the ADA), respectively apply to the following three types of overseas schools:

1. Department of Defense overseas schools
2. private international schools overseas that receive limited support from the U.S. Department of State
3. other private international schools that offer the 'American Model' of education but without any support from the Department of State."

In preparing this response, we have consulted with the Office for Civil Rights (OCR) in the Department of Education (Department).

In reviewing your inquiry, we note that the substance of some of your questions is the same as that of questions to which the Department responded in a letter dated December 22, 1994. Based on the information you have provided, the prior response to you still represents the Department's position with regard to the Individuals with Disabilities Education Act. Another copy of the 1994 letter is included for your convenience.

With respect to the application of Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA) to Department of Defense overseas schools, since Department of Defense schools operate under separate statutory authority, you may wish to contact:

Ms. Lorie Sebestyen
Special Education Coordinator
Office of Dependents Education
Department of Defense Education Activity (DoDEA)
4040 North Fairfax Drive, 9th Floor
Arlington, VA 22203-1635
(703) 696-4235

With respect to your questions regarding the application of Section 504 or the ADA to private international schools overseas, OCR in the Department, as you know, enforces Section 504, which applies to recipients of Federal financial assistance, and Title II of the ADA, which applies to public entities whether or not they receive Federal funds. Regarding the Department's position on the application of Section 504, please see the enclosed case closure letter issued by OCR, Arizona State University, 08-01-2047 (2001).

Your inquiry regarding the application of Section 504 to schools receiving "support" from the U.S. Department of State should be directed to:

Barbara Pope
Assistant Secretary for Civil Rights
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

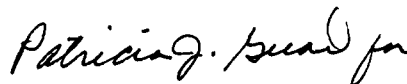
Because your inquiry does not appear to apply to public entities under Title II of the ADA, any specific questions regarding the applicability of other titles of the ADA should be directed to:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Disability Rights Section - NYAVE
Washington, DC 20530

Questions about the obligations or conditions attached to other funding programs would have to be responded to in the context of the particular program at issue.

We hope that this information is helpful to you.

Sincerely,



Stephanie S. Lee
Director
Office of Special Education Programs

Enclosures



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

DEC 22 1994

Professor Perry A. Zirkel
University Professor
of Education and Law
College of Education
Mountaintop Campus
111 Research Drive
Bethlehem, Pennsylvania 18051-4783

Dear Professor Zirkel:

This is in response to your letter in which you ask a series of questions concerning overseas schools and the applicability of the Individuals with Disabilities Education Act (IDEA) to the operation of those schools. I would like to provide the following responses to each question.

1. Does the IDEA apply for American students attending any of these types of overseas schools:
 - a. Department of Defense Overseas Schools [DODDS]?
 - b. American or International schools incorporated in the U.S. (e.g., Delaware)?
 - c. American or international schools not incorporated in the U.S.?

Section 24 of the Individuals with Disabilities Education Act Amendments of 1991, Public Law 102-119, amended the Defense Dependents' Education Act of 1978, see 20 U.S.C. §927(c), to provide that the provisions of Part B of IDEA (Part B), other than the funding and reporting provisions, shall apply to all schools operated by the Department of Defense under Chapter 25A, including the requirement that children with disabilities aged 3 to 5, inclusive, receive a free appropriate public education (FAPE) by academic year 1993-1994.

The same amendments to 20 U.S.C. §927(c) provide that the responsibility to provide comparable early intervention services to infants and toddlers with disabilities and their families in accordance with an individualized family service plan, described in section 677 of IDEA, and to comply with the procedural safeguards set forth in Part H of IDEA shall apply with respect

to all eligible dependents overseas. The implementation of the services that are to be provided to infants and toddlers are phased in over the academic years 1991-1996. See 20 U.S.C. 927(c)(3).

For the purpose of answering your question about the applicability of IDEA's provisions for American students attending American or International schools incorporated in the U.S. (e.g., incorporated in Delaware) and American or International schools not incorporated in the U.S., we assume that these schools are private schools, and not facilities operated by DODDS. Part B requirements with respect to children with disabilities that are placed in private schools would apply to the child if DODDS or a public agency within a State or jurisdiction to which IDEA applies places a child in one of these schools in order to meet its responsibility under Part B. See 20 U.S.C §927(c)(1).

2. If so, do the regulations or their application differ from the procedural and substantive requirements that are applicable to stateside public schools? Please specify the type of overseas schools and the significant differences, if any?

Since DODDS' schools operate under separate statutory authority, i.e., Defense Dependents' Education Act of 1978, see 20 U.S.C. §921, et seq., which is not administered by the Office of Special Education Programs (OSEP), I am forwarding your letter to Mr. Paul Koffsky of the Office of General Counsel (OGC), U.S. Department of Defense, for response with reference to that statute.

3. Does your response to any of the above items change depending on whether the school receives grants or other funding from:
 - a. the U.S. State Department?
 - b. the U.S. Department of Education?

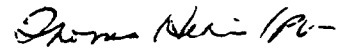
If so, please specify?

Other than their applicability to DODDS schools, both domestic and overseas, Parts B and H of IDEA apply to States and jurisdictions that receive payments under those programs. Questions about the obligations or conditions attached to other funding programs would have to be responded to in the context of the requirements of the particular program at issue.

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I hope that this information is helpful to you. If I may be of further assistance, please let me know.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

cc: Mr. Paul Koffsky
Department of Defense

Ms. Michelle DeSera
Pennsylvania Department of
Education