



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

NOV -7 2012

Michael L. Boswell, Esq.
Advocate's Legal Clinic
813 Deltona Boulevard, Suite A
Deltona, Florida 32725

Dear Mr. Boswell:

This is in response to your January 5, 2012 letter to Dr. Alexa Posny, former Assistant Secretary for the Office of Special Education and Rehabilitative Services, in which you posed questions related to the Office of Special Education Programs' (OSEP's) letter to Pinellas County School Board Attorney, John W. Bowen, dated March 30, 2001 (Bowen Letter). The Bowen letter contained the Department's interpretation of the applicability of Part B of the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act (Title II) to students with disabilities participating in Florida's Opportunity Scholarship Program, referred to in your letter, and here, as the McKay Scholarship Program.

OSEP administers Part B of the IDEA. We have reviewed your inquiry and concluded that the Department's interpretation of the IDEA, as set out in the Bowen letter, continues to reflect the Department's position regarding the obligations of the Florida Department of Education to students with disabilities enrolled in participating private schools through the McKay Scholarship Program. Because you also seek clarification regarding applicable due process rights under the IDEA, we are enclosing previous guidance that the Department has issued regarding the IDEA's requirements related to parentally-placed private school students with disabilities. The enclosed document, *Questions and Answers on Serving Children with Disabilities Placed by Their Parents at Private Schools*, (April 2011), addresses due process rights in section L and also can be found at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C1%2C>.

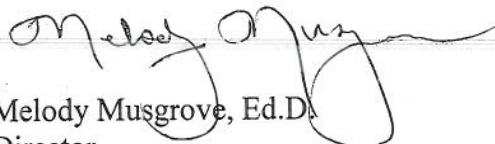
Your inquiry also raises questions about the requirements of Section 504 and Title II. The Department's Office for Civil Rights (OCR) enforces Section 504, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also shares enforcement responsibility with the U.S. Department of Justice for Title II, which prohibits discrimination on the basis of disability in State and local government services, programs, and activities, regardless of whether they receive Federal financial assistance. OSEP has referred the portions of your inquiry that seek clarification of the requirements of Section 504 and Title II to OCR for a direct response.

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Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have additional questions, please do not hesitate to contact Dr. Ken Kienas, at 202-245-7621 or by email at Ken.Kienas@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove", is written over a horizontal line.

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

Attachment

cc: State Director of Special Education