


Office of the Attorney General  
Maryland State Department of Education  
200 St. Paul Place  
Baltimore, Maryland 21202  
(410) 576-6465

April 5, 2000

TO: Richard Scott  
Specialist, Guidance and Career Development

FROM: Jackie C. La Fiandra   
Staff Attorney

SUBJECT: Special Education for Children in Home Instruction

This memorandum addresses the obligation of local school systems in Maryland to provide special education services to children participating in home instruction pursuant to COMAR 13A.10.01.01.<sup>1</sup> Federal law is silent on the issue of whether local school systems have any obligation to provide special education services to students voluntarily removed from public schools by their parents to receive home instruction. *See Individuals With Disabilities Education Act ("IDEA")*, 20 U.S.C. §1400 *et seq.*, and its implementing regulations, 34 C.F.R. pt. 300. IDEA does, however, set forth a local school system's obligation in providing special education services to children with disabilities enrolled by their parents in private schools or facilities.<sup>2</sup> *See* 20 U.S.C. §§ 1412 and 1413; 34 C.F.R. § 300.450 *et seq.* Subject to certain provisions, local school systems are required to include such children in child find activities and to allow for their participation in special education programs. *See id.*

The United States Department of Education ("Department") has provided some guidance on the responsibility of local school systems regarding the provision of special education services to home schooled students, indicating that the obligation is linked to whether home schooled students are considered enrolled in private school under State law. The Office of Special Education and Rehabilitative Services' "Analysis of Comments and Changes" to the IDEA

---

<sup>1</sup>This memorandum does not address the delivery of special education services to children participating in home and hospital instruction provided in response to a student's disability, as provided for in COMAR 13A.05.01.10(F).

<sup>2</sup>References to children enrolled in private schools and facilities in this memorandum do not encompass private school placements made by the local school system as part of FAPE. Rather, they refer to voluntary enrollment in parochial and other private schools by the students' parents.

regulations provides as follows:<sup>3</sup>

Comment: Several commenters asked that the Department clarify whether children with disabilities who are home-schooled are included in the definition of "private school children with disabilities".

Discussion: State law determines whether home schools are "private schools." If the State recognizes home schools as private schools, children with disabilities in those home schools must be treated in the same way as other private school children with disabilities. If the State does not recognize home schools as private schools, children with disabilities who are home-schooled are still covered by the child find obligations of SEAs and LEAs, and these agencies must insure that home-schooled children with disabilities are located, identified and evaluated, and that FAPE is available if their parents choose to enroll them in public schools.

IDEA Regulations, Attachment 1 -- Analysis of Comments and Changes, 64 Fed. Reg. 12602 (1999). Additionally, the Office of Special Education Programs ("OSEP") has enunciated its position that the determination of whether a particular home education arrangement constitutes the enrollment of a child with a disability in a private school or facility must be based on State law. See *OSEP Letter to Sarzynski*, 29 IDELR 904 (Nov. 27, 1997); *OSEP Letter to Shelton O. Williams*, 18 IDELR 742 (Jan. 22, 1992).<sup>4</sup>

Applying the above reasoning, I conclude that IDEA's requirements governing parentally placed children in private schools are inapplicable to home schooled children in Maryland. Maryland law distinguishes between private schools and home schools such that children

---

<sup>3</sup>The Department proposed new IDEA regulations on October 22, 1997. The regulations were finalized and adopted on March 12, 1999.

<sup>4</sup>It should be noted that the Office for Civil Rights has advised that if a school district has offered a free appropriate public education ("FAPE") to a student who has been identified under the Rehabilitation Act (§ 504), but the parent decides not to enroll the student in a public education program, such as a parental decision to provide the student with home schooling, then the district is not responsible under § 504 for the provision of educational services to the student. See *Letter to Carole Veir*, 20 IDELR 864 (Dec. 1, 1993). Additionally, one regional office for the Office of Civil Rights has upheld a state's policy of excluding home instruction students from special education programs, pursuant to § 504. In Vermont, special education services are provided to home-instructed students only if the student's individualized education program ("IEP") requires home placement, and OCR has deemed this restriction acceptable under § 504. See *OCR Complaint Response, Vermont Department of Education*, EHLR 352:03 (June 28, 1985).

receiving home instruction are not considered enrolled in private school. Pursuant to Maryland law, private schools are referenced as nonpublic schools and are governed by COMAR 13A.09.09. That regulation defines school as:

[A]n educational program which is **provided for an organized group of students, at least two of whom do not have the same parents or legal guardians and at least two of whom are not being instructed on a regular daily basis by the students' parents or legal guardians**, which is governed and operated by an individual or entity, excluding the federal government or any State, county, or municipal agency or division of these.

COMAR 13A.09.09.02B(9) (emphasis added). In contrast, the home instruction regulations contemplate that a parent or guardian provide full-time instruction for his/her child in the home, and not with a group of students in a school as defined above. I conclude, therefore, that a child receiving home instruction is not considered enrolled in a private school or facility under Maryland law.<sup>5</sup> Accordingly, IDEA's provisions for children with disabilities enrolled by their parents in private schools do not pertain to home schooled students in Maryland.

Although IDEA's provisions pertaining to parentally placed private school children do not pertain to home schooled children, local school systems are not relieved of all obligations to home schooled children under IDEA. IDEA requires each school system to provide all children with disabilities between certain ages enrolled in the public school system with FAPE, and to identify, locate and evaluate all children with disabilities who are in need of special education and related services, 20 U.S.C. §§ 1412 and 1413; 34 C.F.R. §§ 300.125 and 300.300. *See also OSEP Policy Letter to Beth E. Wierda*, 213 EHLR 148 (Mar. 17, 1988) (home schooled students must be provided with a genuine opportunity for equitable participation in the public school program). Thus, I believe local school systems must include home schooled students in their child find activities and be willing to provide special education services upon the enrollment of the child in public school. Additionally, I suggest that local school systems provide notice to individuals with disabled children who are receiving special education services through the public schools that the school system will no longer be providing services if the child is voluntarily removed to receive home instruction by the parent.

I hope this information is helpful to you. Please feel free to contact me with any further questions regarding this memorandum.

#### **ADVICE OF COUNSEL -- NOT AN OPINION OF THE ATTORNEY GENERAL**

---

<sup>5</sup>Although some home schooled students take correspondence courses and have their educational program supervised by a nonpublic school pursuant to COMAR 13A.10.01.05, these students are not considered enrolled in private school. Rather, they are still being home schooled with the nonpublic school merely supervising the educational program.

c: Valerie V. Cloutier  
Lynn E. Linde

G:\LAFIANDJWPDATA\ADVICE\Home Instruction\speciald.mem.wpd