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Free Appropriate Public Education

DEPARTMENT OF EDUCATION

Office of Special Education

Office for Civil Rights

34 CFR Part 104 and 300

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance; and Assistance to States for Education of Handicapped Children.

AGENCY: Department of Education.

ACTION: Notice of Interpretation.

SUMMARY: The Secretary of Education interprets Part B of the Education of the Handicapped Act, as amended, and Section 504 of the Rehabilitation Act of 1973 as amended, concerning the use of parents' insurance proceeds to pay for required services. It is the Secretary's interpretation that these statutes and their implementing regulations do not permit an educational agency responsible for the education of a handicapped child to require the parents of that child to use private insurance proceeds to pay for required services where the parents would incur financial loss. This interpretation is issued in response to public inquiries regarding Departmental policy on the matter. **EFFECTIVE DATE:** This interpretation is expected to take effect 45 days after it is transmitted to Congress. Interpretations are usually transmitted to Congress several days before they are published in the **Federal Register**. The effective date of interpretations that are subject to the transmittal requirement is changed if Congress takes certain adjournments. Although the interpretation of Section 504 is not subject to this requirement, the Secretary has decided to set its effective date for the same day that the interpretation of Part B of the Education of the Handicapped Act becomes effective. If you want to know the effective date of this interpretation, call or write the Department of Education contact persons. **FOR FURTHER**

INFORMATION CONTACT: Ms. Shirley A. Jones, Office of Special Education, Department of Education, Donohoe Building, Room 4030, 400 Maryland Ave. S.W., Washington, D.C. 20202, telephone: (202) 472-7921. Mr. Edward A. Stutman, Office for Civil Rights, Department of Education, Switzer Building, Room 5430, 300 C St., S.W., Washington, D.C. 20202, telephone: (202) 245-0781. **SUPPLEMENTARY INFORMATION:**

The Issue

The issue is whether Part B of the Education of the Handicapped Act, as amended, ("Part B"; 20 U.S.C. 1411-1420) and its regulations (34 CFR Part 300; formerly 45 CFR Part 121a) and Section 504 of the Rehabilitation Act of 1973, as amended ("Section 504"; 29 U.S.C. 794) and its regulations (34 CFR Part 104; formerly 45 CFR Part 84) permit an educational agency responsible for the education of a handicapped child to require the child's parents to file insurance claims and use the proceeds to pay for services that must be provided to the child under Part B and Section 504.

The Interpretation

Both Part B and Section 504 prohibit a public agency from requiring parents, where they would incur a financial cost, to use insurance proceeds to pay for services that must be provided to a handicapped child under the "free appropriate public education" requirements of those statutes. The use of parents' insurance proceeds to pay for services in these circumstances must be voluntary on the part of the parents.

Discussion

Under Section 612(2)(B) of Part B (20 U.S.C. 1412(2)(B)), each participating State must make available to all handicapped children within specified ages a free appropriate public education. "Free appropriate public education" is defined in Section 602 (18) of the Education of the Handicapped Act, as amended, (20 U.S.C. 1401 (18)) as "special education and related services which are provided at public expense, under public supervision and direction, and without charge..." The requirement to provide these services is implemented in 34 CFR 300.300 et seq.

Similarly, the Department's regulations implementing Section 504 require any recipient of Federal financial assistance that operates a public elementary or secondary education program to "provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap." 34 CFR 104.33 (a). The provision of a free education is defined as "the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian." 34 CFR 104.33 (c).

The Secretary interprets the requirements that a free appropriate public education be provided "without charge" or "without cost" to mean that an agency may not compel parents to file an insurance claim when filing the claim would pose a realistic threat that the parents of handicapped children would suffer a financial loss not incurred by similarly situated parents of non-handicapped children. Financial losses include, but are not limited to, the following:

- (1) A decrease in available lifetime coverage or any other benefit under an insurance policy;
- (2) An increase in premiums or the discontinuation of the policy; or
- (3) An out-of-pocket expense such as the payment of a deductible amount incurred in filing a claim.

Financial losses do not include incidental costs such as the time needed to file an insurance claim or the postage needed to mail the claim.

The statutory and regulatory provisions relating to a free appropriate public education guarantee freedom only from financial loss as described above. Therefore, when the educational agency pays the financial costs related to filing a claim and no other cost (such as those listed above) is imposed, the parent suffers no financial loss. In addition, an agency may insist that parents file a claim when they would incur only minor incidental costs such as the time required to complete the form. The agency may require the parents to file a claim if it ensures that parents do not have to bear even a short-term financial loss. For example, if benefits begin only after a \$50.00 deductible, the agency may insist that the parents file a claim if it pays for the services and the deductible in advance.

(20 U.S.C. 1401, 1411-1420; 29 U.S.C. 794)

The responsibility to make available a free appropriate public education does not mean that a public educational agency must use only its own funds for that purpose. An agency may use whatever State, local, Federal, and private sources of support are available to pay for required services. See 34 CFR 300.301(a) and 34 CFR 104.33(c)(1). Moreover, nothing in the Part B or Section 504 regulations relieves an insurer or similar third party from an otherwise valid obligation to provide or pay for services to a handicapped child. See 34 CFR 300.301(b) and 34 CFR 104.33(c).

Call for Public Comment

The Secretary is interested in receiving public comments on the extent to which the Department should provide further guidance on the use of insurance proceeds or other sources of funds to pay for services to handicapped children, and on the relationship between educational agencies and insurance carriers. These comments may be sent at any time to the Department contact persons identified in the beginning of this document.

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education

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