No. 11-2410

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

D.F., a minor, individually and by his parent and legal guardian, A.C.,
Plaintiff, Appellant

v.

Collingswood Public Schools,
Defendant, Appellee

BRIEF OF AMICI CURIAE

On Appeal from Order Entered in the United States District Court for the District of New Jersey (No. 10-594 (JEI/JS) May 23, 2011)

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BRIEF OF AMICI CURIAE

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THE ARC OF NEW JERSEY

CHILDREN'S VOICES

DISABILITY RIGHTS NEW JERSEY

DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, INC.

NEW JERSEY SPECIAL EDUCATION PRACTITIONERS

THE PUBLIC INTEREST LAW CENTER OF PHILADELPHIA

THE SPECIAL EDUCATION CLINIC

AT RUTGERS UNIVERSITY SCHOOL OF LAW-NEWARK

SPECIAL EDUCATION LEADERSHIP COUNCIL OF NEW JERSEY

STATEWIDE PARENT ADVOCACY NETWORK

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STATEMENT OF INTEREST

Education Law Center is a not-for profit law firm which advocates on behalf of the educational rights of low-income children, and children with disabilities. ELC frequently litigates groundbreaking educational cases; indeed, ELC is class counsel in *Abbott v. Burke*, 164 N.J. 84 (2000), the landmark public school funding case. ELC assists hundreds of clients annually, who often seek relief from public school district denials of educational services. ELC, thus, maintains a strong interest in ensuring that children with disabilities receive a free and appropriate public education ("FAPE") and all appropriate relief under the Individuals with Disabilities Education Improvement Act ("IDEA").

STATEMENTS OF OTHER AMICI

Advocates for Children of New Jersey ("ACNJ") is a statewide non-profit child advocacy organization, dedicated to advancing children's rights and to improving programs and policies for New Jersey's children and families. ACNJ conducts its advocacy efforts through public policy analysis, research, community outreach, and education. Since 1996, ACNJ staff attorneys have assisted low-income parents, residing throughout New Jersey, in their efforts to assert their children's educational rights. Annually, ACNJ provides these services to over 250 families and professionals. A large part of ACNJ's advocacy efforts are on behalf of indigent children with disabilities and their need to attain FAPE.

The **Arc of New Jersey** ("The Arc") is the largest statewide advocacy organization for individuals with intellectual and developmental disabilities. The Arc was founded in 1947 by a group of parents, who had a vision of building a better quality of life for people with intellectual disabilities and their families. The Arc has an affiliated local Chapter in every county of New Jersey, serves over 18,000 member families statewide, and advocates on behalf of more than 200,000 individuals with developmental disabilities in New Jersey. The Education Advocacy Department at The Arc advocates on behalf of students with developmental disabilities to ensure that they receive a free and appropriate public education in the least restrictive environment, and at all times seeks to ensure that those children who have been denied their right to such an education have the remedy of compensatory education available to them.

Children's Voices is a non-profit law firm that advocates on behalf of school-age children in Colorado for equal access to a high quality public education. The focus of Children's Voices' work is on improving the education of all students, placing a special emphasis on children of poverty, children of color, children with disabilities, children in rural communities, and English language learners, who are often the most severely affected by the state's lack of financial resources and support for education. Since 2005, Children's Voices has led the fight in the courts to affirm and enforce the constitutional right to a "thorough and

uniform" system of free public education and to assure the funding necessary to uphold that guarantee. Children's Voices also provides individual case representation on behalf of students with disabilities and their parents to ensure that they receive a free and appropriate public education. As counsel for students with disabilities, many of whom are low income, Children's Voices has an interest in safeguarding the rights of children with disabilities under the Individuals with Disabilities Education Act, including the right to compensatory education.

Disability Rights New Jersey ("DRNJ") is responsible for protecting and advocating for the human, civil, and legal rights of persons with disabilities under the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §§ 15041-45; the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801-51; and the Vocational Rehabilitation Act, 29 U.S.C. § 732 (Client Assistance Program), § 794e (Protection and Advocacy of Individual Rights Program) and § 2201 *et seq*. (Assistive Technology Advocacy Center). DRNJ provides special education legal and advocacy assistance to students and their parents, in the southern parts of New Jersey. DRNJ also participates in state-wide coalitions that advocate for the full panoply of remedies available to special education students under the IDEA.

Disability Rights Education and Defense Fund, Inc., ("DREDF") is a national disability civil rights law and policy organization dedicated to protecting

and advancing the civil rights of people with disabilities. Founded in 1979, DREDF pursues its mission through education, advocacy, and law reform efforts. In addition, DREDF is nationally recognized for its expertise regarding federal disability civil rights laws. A significant part of DREDF's work is directed at securing and advancing the educational entitlements of children with disabilities.

New Jersey Special Education Practitioners ("NJSEP") is a statewide association of over 100 attorneys and other advocates who practice in the area of special education. NJSEP advocates in a host of areas affecting the rights of students with disabilities and has appeared as *amicus curiae* in numerous special education cases before this and other Courts. NJSEP is primarily focused on matters related to the representation of parents and children under the IDEA, including matters where a child seeks compensatory education as a result of a school district's denial of FAPE.

The Public Interest Law Center of Philadelphia ("Law Center") is one of the original affiliates of the Lawyers' Committee for Civil Rights Under Law, and has a long history of representing children with disabilities to ensure their rights to education, including obtaining compensatory education awards. The Law Center was counsel in the landmark decision of *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 343 F. Supp. 279 (E.D. Pa 1972) which lead to the Congressional passage of the initial version of the IDEA. The

Law Center has devoted substantial resources to protecting the rights of children with disabilities, especially poor children who are more likely to seek the remedy of compensatory education than parents who may have the ability to pay for private education and seek reimbursement. More specifically, the Law Center helps to ensure that children with disabilities receive compensatory education to replace the educational services school districts illegally denied them.

The Special Education Clinic at Rutgers University School of Law-Newark ("Clinic") was created in 1995, with a grant from the New Jersey State Bar Foundation, to address the critical shortage of legal assistance available to indigent parents of children with disabilities in New Jersey. Since its inception, the Clinic has developed into an influential program with three goals: (i) to provide free legal representation and advocacy to indigent parents and caregivers of children with disabilities seeking to obtain appropriate early intervention and special education programs and services; (ii) to train law students in this vital area; and (iii) to educate parents, advocates, and others involved in the lives of children with disabilities. The Clinic seeks to ensure that all children with disabilities have available to them the all remedies afforded under state and federal law.

Special Education Leadership Council of New Jersey ("SELC-NJ") is a statewide organization comprised of special education parent leaders and advocates. The goal of SELC-NJ is to advocate for the rights of students with

disabilities and their families throughout New Jersey. SELC-NJ works to accomplish this by providing educational programs and advocacy to enable parent leaders to better support students and families. SELC-NJ is greatly concerned that the much-needed remedy of compensatory education remains good law so that children with disabilities, who are denied FAPE, may receive an adequate remedy.

Statewide Parent Advocacy Network ("SPAN") is New Jersey's federally funded Parent Training and Information Center for families of children with disabilities. SPAN provides information, training, technical assistance, advocacy and support to tens of thousands of parents in New Jersey on issues affecting their children with special education and healthcare needs. SPAN is particularly interested in the outcome of this litigation as it potentially affects the statutory right to a free and appropriate education and the remedy of compensatory education of the many families SPAN serves who, for reasons of hardship, are forced to re-locate, during the course of long-term litigation.

PRELIMINARY STATEMENT

Relying on questionable authority, the District Court incorrectly decided that Plaintiff's compensatory education claim was moot merely because he moved from New Jersey to Georgia. *See D.F. v. Collingswood Public Schools*, No. 10-594, 2011 WL 2038741 at *3 (D.N.J. May 23, 2011). Even worse, the court supported its decision by reasoning that D.F.'s compensatory education claim was "*subsumed within the education he is currently receiving from Georgia . . . which has assumed responsibility for his education*." *Id.* (emphasis added). *Amici* strongly object to the District Court's flawed reasoning and its alarming consequences.

INTRODUCTION

Ever since this Court decided *Lester H. v. Gilhool,* Third Circuit law has been clear: school districts that fail to provide a free and appropriate public education ("FAPE") must compensate the child for lost educational opportunity through "compensatory education." 916 F.2d 865, 873 (3d Cir. 1990). The decision below vitiates that obligation, essentially reads compensatory education out of existing law, and has cataclysmic implications for children with disabilities.

A key question here is whether continuity of residence is a prerequisite for compensatory education, an equitable remedy meant to redress injuries caused by a school district's failure to meet its legal obligations under the IDEA. Case law and public policy confirm that a child with a disability who has not received FAPE

should receive compensatory education, regardless of the child's prospective residence. The District Court's misguided understanding of compensatory education law provides offending school districts with a windfall, and deprives children with disabilities of their right to redress IDEA violations. At best, they are presented with the Hobbesian choice of exercising their constitutional right to move, or obtaining their federal educational rights. Moreover, the adverse implications of the holding below are more pronounced for low-income families, who are likely to move more frequently than other families.

Most alarming, the rationale for the holding below, that Georgia's prospective obligation to provide FAPE "subsumes" Collingswood's obligation to compensate D.F. for any retrospective failure to provide FAPE, offends the IDEA's underlying purposes, and virtually reads compensatory education out of the law. Indeed, if the "subsumption" theory below was correct, ***no child*** who remains in a public school ***anywhere*** would ever be entitled to compensatory education for a past deprivation of FAPE. This is not, and cannot be, the law.

ARGUMENT

I. The Holding Below Contradicts Settled Law.

The District Court's mootness holding misconstrues the nature of compensatory education, and thus threatens to destroy it. Compensatory education is a prospective award of special education programs or services that a school

district previously denied a child with a disability. Compensatory education may take the form of actual services such as speech therapy, tutoring, counseling, or evaluations (to name a few examples), or a fund to pay for such services. Compensatory education is frequently all that is available to disadvantaged children (who cannot pay for private services and then seek reimbursement) when their school district deprives them of FAPE.

The mootness holding below fundamentally contradicts settled compensatory education law. ***First***, the holding below disregards Third Circuit precedent. *See Ferren C. v. Sch. Dist. of Phila.,* 612 F.3d at 718-19; *M.C. v. Cent. Reg'l Sch. Dist.*, 81 F.3d 389, 397 (3d Cir. 1995); *Lester H.*, 916 F.2d at 873. ***Second***, it ignores the persuasive weight of authority from courts all over the country that have granted compensatory education even if a child leaves a school district. *See, e.g.*, *Indep. Sch. Dist. No. 284 v. A.C.*, 258 F.3d 769, 774-75 (8th Cir. 2001) (ruling compensatory education claim was not moot where child moved out of district); *N.P. v. East Orange Bd. of Educ.*, No. 06-5130, 2011 WL 463037 at *5 (D.N.J. Feb. 3, 2011) (same); *Neshaminy Sch. Dist. v. Karla B.*, No. 96-3865, 1997 WL 137197 at *5-*6 (E.D.Pa. Mar. 20, 1997) (same); *Providence Sch. Dep't v. Ana C.*, No. 96-127-T, 1998 WL 34100801 at *2 (D.R.I. July 17, 1998) (granting

remedy where child left the state). Indeed, the holding below contradicts precedent from a sister court without distinguishing it. *See N.P.*, 2011 WL 463037 at *5.[1]

To avoid conflicts within the Third Circuit, and to prevent overwhelming harm to children with disabilities, this Court should expressly and emphatically reject the District Court's rationale for denying compensatory education.[2]

A. The Right to Compensatory Education Relief Survives a Child's Move from an Offending School District.

Compensatory education is often called the "poor person's remedy" because courts mainly issue the award to children denied FAPE who lack resources to pay for private services. *See, e.g., Miener v. Missouri*, 800 F.2d 749, 753 (8th Cir. 1986) ("Congress did not intend the child's entitlement to a *free* education to turn upon her parent's ability to 'front' its costs."). Because the remedy redresses any service that a district denied a child, its nature varies. *See, e.g.*, *Ferren C.*, 612 F.3d at 718-19 (upholding award requiring annual reevaluations of child with

[1] In *N.P.,* without explanation or authority, the court limited its holding to children moving within New Jersey school districts, rather than out-of-state school districts. *See* 2011 WL 463037 at *5. As fully discussed here, moving out-of-state and moving within a district is a distinction without a difference. *See Neshaminy*, 1997 WL 137197 at *5-*6; *Ana C.*, 1998 WL 34100801 at *2; *see also infra* Part II, C (explaining that the right to move across state lines is constitutionally protected).

[2] This brief focuses on the District Court's erroneous mootness ruling, and its harmful implications. *Amici* offer no opinion on the merits of Plaintiff's IDEA claims, or the alternative basis for the holding below that D.F. was not deprived of FAPE. *See D.F.*, 2011 WL 2038741 at *4 n.6. If D.F. was not deprived of FAPE, then compensatory education is, of course, unnecessary.

disability); *Draper v. Atl. Indep. Sch. Sys.,* 518 F.3d 1275, 1289-90 (11th Cir. 2008) (awarding compensatory education of three years of private school).[3]

Generally, where a child has been deprived of FAPE, courts grant compensatory education even where the child has subsequently moved. *See N.P.*, 2011 WL 463037 at *5 ("[Despite moving out of district, the child] retain[s] a concrete interest in receiving compensatory education from the Board."); *Neshaminy*, 1997 WL 137197 at *6 ("[Denying the remedy] would frustrate the purposes of IDEA"); *Ana C.*, 1998 WL 34100801 at *2 ("[A] school district is obliged . . . to compensate a student who wrongfully is deprived of [FAPE].").

Instead of following settled law, the court below founded its mootness holding upon a single unreported opinion, *S.N. v. Old Bridge Twp. Bd. of Educ.* No. 04-517, 2006 WL 3333138 at *4-*5 (D.N.J. Nov. 15, 2006). In addition to being designated non-precedential, *S.N.* is an outlier in the landscape of compensatory education law.[4] For instance, all of the cases citing *S.N.* in this Circuit actually grant the child's requested relief. *See N.P*, 2011 WL 436037 at *5 (distinguishing *S.N.* and granting compensatory education); *K.B. v. Haledon Bd. of Educ.*, No. 08-4647, 2009 WL 1905103 at *4 (D.N.J. June 30, 2009) (same); *see*

[3] *See also* U.S. Dep't of Educ., Office of Special Educ. and Rehab. Servs., Letter to Kohn, 17 IDELR 522 at 2 (Feb. 13, 1991) (Attached as *Exhibit A*), explaining that summer school programs may be appropriate compensatory education awards if those programs redress harm done to a child deprived of FAPE.

[4] The court below appears to be the only court in the country that has followed *S.N.* to deny compensatory education remedies under the IDEA.

also L.K. v. N.C. State Bd. of Educ., No. 5:08-CV-85-BR, 2008 WL 2397696 at *2-*3 (E.D.N.C. June 9, 2008) (deciding out-of-state move did not moot award).

Additionally, courts grant the analogous relief of tuition reimbursement, and other similar IDEA remedies, where a student leaves an offending school district.[5] Just like cases upholding compensatory education where a child leaves an offending district, these cases grant the remedy to prevent districts from violating the IDEA with impunity, and to satisfy the IDEA's purpose. *See, e.g., Newburyport*, 654 F.3d at 143 ("[The child's subsequent move] owing to financial straits . . . does not on its face moot these claims [because they regard] obligations . . . incurred before the move."). That same reasoning applies here and mandates rejection of the mootness holding.

1. A Child Maintains a Legal Interest in Obtaining Proper Relief Despite Leaving an Offending School District.

The mootness holding below should be rejected because the court incorrectly concluded that D.F.'s move from Collingswood destroyed his legal interest in the relief sought, and that the Court could not grant him any meaningful

[5] *See, e.g.*, *E.D. v. Newburyport Pub. Sch.*, 654 F.3d 140, 143 (1st Cir. 2011) (issuing reimbursement of attorneys' fees where child moved out of state); *Lewis Cass Interm. Sch. Dist v. M.K.*, 290 F. Supp. 2d 832, 838-39 (W.D. Mich. 2003) (concluding out-of-state move did not moot due process hearing for compensatory education); *East Orange Bd. of Educ. v. E.M.*, 2011 WL 601327 at *2, *6 (reasoning court could reimburse child's transportation expenses where child moved out of state); *K.B.,* 2009 WL 1905103 at *4 (deciding student's graduation and enrollment in new district did not moot independent evaluation request).

remedy. Claims generally become moot if a change occurs during the pendency of the case such that: (i) plaintiff's legal interest disappears, or (ii) the court can no longer grant any meaningful relief. *See Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211, 216 (3d Cir. 2003). Graduation, for instance, may moot a student's claims seeking injunctive or declaratory relief where the challenged policies no longer harm the student. *Id.* at 216-17; *but see Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 5 n.3 (1993) (concluding graduation did not moot student's IDEA claim); *C.M. v. Bd. of Educ. of the Union County Reg'l Sch. Dist.*, 128 Fed.Appx. 876, 880 (3d Cir. 2005) (deciding graduation did not moot IDEA claims where student sought compensatory and punitive damages).[6]

Here, because D.F. seeks prospective relief for a past deprivation of FAPE, his compensatory education claim remains live despite his move to Georgia. *See Lester H.*, 916 F.2d at 872-73; *Neshaminy*, 1997 WL 137197 at *5-*6. The claim here does not seek to hold Collingswood responsible for D.F.'s future educational needs. The claim remains live precisely because D.F. seeks compensation for lost educational opportunity related to Collingswood's denial of FAPE. Thus, D.F. retains a vested interest in the disposition of his IDEA claims. *See, e.g.,*

[6] *See* U.S. Dep't of Educ., Office of Special Educ. Prog., Letter to Riffel, 33 IDELR 188 at 2 (Mar. 20, 2000) (Attached as *Exhibit B*) ("A student's graduation . . . would not . . .relieve a school district of its obligation to provide compensatory education to remedy a denial of FAPE.").

Firefighter's Local Union No. 1784 v. Stotts, 467 U.S. 561, 571 (1984) ("[If] the parties have a concrete interest in the outcome . . . the case is not moot.").

2. Under IDEA, Courts Can Grant Compensatory Education Where a Child Leaves an Offending School District.

Plaintiff's move to Georgia also does not moot his compensatory education claim because the Court may still provide him with appropriate relief. *See, e.g., C.M.*, 128 Fed. Appx. at 880; *Ferren C.*, 612 F.3d at 720. Ample precedent shows that the Court may use its equitable powers to grant D.F. compensatory education, if D.F. establishes denial of FAPE. *See* 20 U.S.C. § 1415(i)(2)(C)(iii); *Ferren C.*, 612 F.3d at 718-19. Moreover, rejecting the holding below would impose minimal additional burdens on a district like Collingswood which could, for instance, contract with Georgia providers to offer D.F. compensatory education. *See, e.g.*, *Lewis Cass*, 290 F. Supp.2d at 839 n.3 (indicating district could provide the remedy to student who left state by contracting with student's new district or with private companies).

B. The Holding Below, Taken to Its Logical Conclusion, Virtually Eliminates the Settled Remedy of Compensatory Education.

The District Court's holding undermines settled law, and the IDEA, which authorizes children with disabilities to obtain appropriate educational programs and services. *See* 20 U.S.C. § 1412(a)(1)(A). The IDEA provides children denied

FAPE with few express remedies.[7] But, courts have routinely interpreted the IDEA's remedies to include compensatory education for children deprived of FAPE. *See, e.g.*, *Lester H.*, 916 F.2d at 873 ("Congress empowered the courts to grant a compensatory remedy . . . [because it surely did not] intend to offer a remedy only to those parents able to afford [a] private education."). The holding below would leave countless children with disabilities who were denied FAPE without recourse, and particularly those who subsequently moved out of the offending school district. The law simply does not support that harsh outcome.

This Court has often endorsed awards of compensatory education under the IDEA. For example, this Court held that a child's right to compensatory education begins when a school district knew, or should have known, that a child's Individualized Education Program ("IEP") did not provide FAPE. *M.C.*, 81 F.3d at 395. *In Ferren C.* and *M.C.*, the Court granted compensatory education because, as the court below failed to contemplate, the alternative would leave vulnerable children with a right without a remedy, and would provide blameworthy school districts with an unwarranted windfall. *See Ferren C.*, 612 F.3d at 717-18 (noting

[7] Indeed, the Act's express remedies are limited to attorneys' fees (for prevailing parties) and tuition reimbursement (for families with sufficient means to place their children in private schools). *See* 20 U.S.C. § 1412(a)(10)(C), 1415(i)(3); *Sch. Comm. of Burlington v. Dep't of Educ.,* 471 U.S. 359, 370 (1985). Monetary damages are unavailable under the IDEA or Section 1983. *A.W. v. Jersey City Pub. Sch.*, 486 F.3d 791, 802 (3d Cir. 2007); *Chambers v. Sch. Dist. of Phila. Bd. of Educ.*, 587 F.3d 176, 185-86 (3d Cir. 2009).

that the remedy places children "in the same position they would have occupied but for the school district's violations"); *M.C.*, 81 F.3d at 395 ("[The remedy requires districts to] "belatedly pay expenses [they] should have paid all along.").[8]

Other Circuit courts join this Court in recognizing compensatory education as an equitable remedy that grants prospective relief for past IDEA violations. *Draper*, 518 F.3d at 1289-90; *Pihl v. Mass. Dep't of Educ.*, 9 F.3d 184, 187-89 (1st Cir. 1993); *Mieneri*, 800 F.2d at 753-54. Compensatory education enjoys widespread support precisely because: (i) courts recognize that children denied FAPE must be made whole, *see Miener*, 800 F.2d at 753 ("We cannot agree . . . [the district] should escape liability for these services simply because [plaintiff's parent could not] provide them in the first instance");[9] and (ii) no other comparable remedy is available under the IDEA. *See Chambers*, 587 F.3d at 185-86.

The conceptual basis for the decision below is deeply flawed, and will prejudice children with disabilities, especially those from low-income families. In sum, the District Court held that the consequences of Collingswood's failure to provide FAPE (if any) could be cleaned up by Georgia, because any obligation to

[8] The U.S. Department of Education, which interprets and implements the IDEA, similarly supports the remedy's broad application. *See* U.S. Dep't of Educ., Office of Special Educ. Prog., Letter to Whipple, 54 IDELR 262 at 2 (Oct. 27, 2009) (Attached as *Exhibit C*).

[9] *See* Letter to Kohn, 17 IDELR 522 at 2 (explaining why the Department of Education likewise endorses compensatory education as an appropriate remedy for a denial of FAPE).

compensate D.F. for Collingswood's malfeasance would be "subsumed" by Georgia's prospective obligation to provide D.F. with FAPE. Georgia's prospective obligation to provide D.F. with FAPE, however, does not include an obligation to compensate D.F. for deprivations occurring in another state. Plus, the public education Georgia must inevitably provide D.F. must in some way differ from the proposed compensatory education he would receive there. Under the District Court's erroneous "subsumption" theory, a child who was denied FAPE for five years by her school district and will continue in public school, would ***never*** be entitled to compensatory education (even if she does not move) because the obligation to compensate for past failures would be "subsumed" into the district's prospective obligation to provide FAPE. Categorically, this is not the law.

C. The Holding Below Unconstitutionally Restricts a Child's Right to Interstate Travel

The Constitution confers a fundamental right to interstate travel. U.S. CONST. art. IV § 2, cl. 1; *Saenz v. Roe*, 526 U.S. 489, 499-502 (1999); *Lutz v. City of York Penn.*, 899 F.2d 255, 258 (3d Cir. 1990). Thus, penalizing the free migration between states is unconstitutional absent a compelling state interest. *Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 255-56 (1974). The holding below would prejudice the fundamental right to travel by denying the right to compensatory education to children who would be entitled to the relief if they did not move across state lines. *Cf. Saenz*, 526 U.S. at 506-07.

II. The Holding Below Will Disproportionally Harm Low-Income Children.

Studies analyzing how moving affects a child's educational progress further highlight the probable devastating results of the District Court's mootness holding. Research demonstrates that moving generally exacerbates children's existing social, psychological, and educational issues. Students with disabilities who have been denied FAPE by their former school districts are especially vulnerable to the adverse educational issues moving often creates.

Nearly six million students with disabilities depend on the IDEA to receive special education programs and related services. U.S. DEP'T OF EDUC., OFFICE OF SPECIAL EDUC. AND REHAB. SERVS., 25TH ANNUAL REPORT TO CONG. ON THE IMPLEMENTATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT VOL. 1, 13 (2003), *available at* http://www2.ed.gov/about/reports/annual/osep/2003/25th-vol-1.pdf ("OSERS Report"). Students with disabilities are a racially and economically diverse group. *Id.* at 5, 15-16, 28, 30-32. But, compared with other students, children with disabilities more often come from low-income or poor households, and poor children are likely to move more frequently than their more affluent peers. *Id.* at 32; *see also* Russell W. Rumberger, *et al*., *The Educational Consequences of Mobility for California Students and Schools*, Univ. of Cal., Santa Barbara, Policy Analysis for Cal. Educ., 65-67 (1999), *available at* http://www.eric.ed.gov/PDFS/ED441040.pdf.

Notably, nearly half a million children attend more than three schools between first and third grades. U.S. GEN. ACCOUNTING OFFICE, ELEMENTARY SCHOOL CHILDREN: MANY CHANGE SCHOOLS FREQUENTLY, HARMING THEIR EDUCATION 1, 5 (1994), *available at* http://archive.gao.gov/t2pbat4/150724.pdf (GAO Report). Critically, a study of the relationship between academic achievement and school transfers found that many students who change schools often also qualify for special education services. Patrick Kariuki & Joanna Nash, *The Relationship between Multiple School Transfers During Elementary Years and Student Achievement*, Paper Presented at the Annual Conf. of the Mid-South Educ. Research Ass'n, 18-19 (Nov. 17-19, 1999), *available at* http://www.eric.ed.gov/PDFS/ED436302.pdf.

In addition, household income negatively affects achievement such that poor and low-income students with disabilities repeat grade levels more frequently than students from higher income groups. OSERS Report, 54. Thus, students with disabilities likely comprise a sizeable number of the mobile student population. *See* Kariuki & Nash, 18; GAO Report, 25-27. Low-income children with disabilities, who move more frequently, are at risk of academic regression. *See* OSERS Report, 32; GAO Report, 30. This is especially true of those low-income children who have previously been deprived of FAPE.

Children with disabilities also face many educational challenges when, as here, they move to another school district. *See* Kariuki & Nash, at 16 ("[S]tudents that remain in the same school or transfer only once have better academic achievement than those that transfer more than once."); Patricia A. Popp, *et. al.*, *Students on the Move: Reaching and Teaching Highly Mobile Children and Youth*, Nat'l Ctr. For Homeless Education at SERVE, 13 (2003) *available at* http://center.serve.org/nche/downloads/highly_mobile.pdf ("It may take four to six months to recover academically from a school transfer."). In particular, students who change schools commonly suffer academically. GAO Report, at 6 ("[T]hese children are more likely to be below grade level . . . than those who have never changed schools."); Kariuki & Nash, at 18 (noting the adverse academic implications of moving); Rumberger, at 59 ("There is overwhelming evidence that mobility during high school diminishes the prospects for graduation"). A mobile child's new district is often unprepared to address that child's specific educational needs, which particularly affects children with disabilities who move into new districts after suffering great educational deprivation by their school districts. *See* GAO Report, at 33-34.

Students with disabilities are at the courts' mercy to obtain relief for IDEA violations because they often come from low-income families, and attend schools with few resources. Indeed, because students with disabilities who leave school

districts encounter numerous achievement barriers, their access to adequate remedies for past denials of FAPE is crucial. If this Court affirms the rationale articulated by the District Court for its mootness holding, school districts will be provided an ***incentive*** to violate the IDEA whenever: (i) doing so would be cheaper than compliance (as is often the case); and (ii) they suspect a student might leave their district, or they wager that depriving the student of services will actually cause the student to leave the district. The Court cannot allow the creation of such a perverse incentive to pose as good law in this Circuit.

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Dated: December 9, 2011

COMBINED CERTIFICATIONS

Under 28 U.S.C. § 1746, Rafael Rosario certifies, under penalty of perjury, that the following is true:

Bar Membership

I am member of the bar of the United States Court of Appeals for the Third Circuit and am in good standing.

Word Count

Under Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure, I certify that, according to the Word Count feature of the Microsoft Office Word 2003, this brief contains **3,514 words** and therefore is in compliance with the type-volume limitations set forth in Local Rule 32(a)(7)(B).

Service upon Counsel or Litigants

I certify that on December 9, 2011, I caused an original and nine copies of this brief with the United States Court of Appeals for the Third Circuit, by personal service, addressed as follows:

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21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

I further certify that on December 9, 2011 I caused two copies of this brief to be served upon counsel for the parties, addressed as follows:

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Dated: December 9, 2011

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EXHIBIT A

17 IDELR 522

17 LRP 1319

Letter to Kohn

Office of Special Education and Rehabilitative Services

February 13, 1991

Related Index Numbers

100.005 Compensatory Education, In General

168. EDUCATION FOR ALL HANDICAPPED CHILDREN ACT (EHA)

200.030 Free Appropriate Public Education (FAPE), FAPE Generally

160.045 Due Process Hearings, Scope of Hearing Officer's Authority

Judge / Administrative Officer

Robert R. Davila, Assistant Secretary

Case Summary

Is compensatory education a proper means to provide FAPE to a child with disabilities who was previously denied an appropriate education?

Compensatory education is a proper method to provide FAPE to children with disabilities who were entitled to, but were denied, FAPE. Moreover, compensatory education may be the only means to provide FAPE to children with disabilities who have been forced to remain in inappropriate public placements due to their parents' financial inability to pay for private placements.

Full Text

Appearances:

Ms. Margaret A. Kohn

Bogan and Eig

Attorneys at Law

Suite 330

1400 Sixteenth Street, N.W.

Washington, DC 20036

Text of Inquiry

I am writing for a policy interpretation of the Education of the Handicapped Act concerning compensatory education for handicapped children who have been denied appropriate special education services or programs. Having represented many handicapped children in due process hearings conducted pursuant to the EHA, I seek clarification of the authority of an independent hearing officer to award compensatory education services to a child, upon a finding that the school system failed, in the past, to provide the child a free appropriate public education. In addition, may compensatory education services take the form of summer school programming as well as or instead of additional months or years of special education added on at the end of the child's eligibility for special education.

I have found that it is often most advantageous for a student who has been denied appropriate special education services over an extended period of time to attend a specialized special education summer school program in addition to the school year program. The added content frequently allows the child to catch up on some of the skills and learning she or he would have already been able to master had the previous educational programs been appropriate. The earlier the intervention, the more constructive and profitable the services are likely to be. To require the delivery of compensatory education services be withheld until after age 21 is fiscally imprudent, and counter productive for many children. It is not consistent with the basic tenet of special education---that decisions about programming for a handicapped child be designed to meet his/her unique individual needs. Hearing officers, as well as courts, need a variety of remedial options so that the individual needs of the handicapped student can be met and so that society can benefit most from the education provided.

This issue is especially important in school systems with limited special education summer school offerings. The opportunity to attend a summer school program that is not designed to meet the needs of the handicapped student may be all that is available to a handicapped student, unless a hearing officer has the

power and authority to require the school district to provide compensatory education in the form of special education summer school.

I look forward to your response.

Text of Response

This is in response to your letter to the Office of Special Education Programs (OSEP) concerning: (1) the authority of hearing officers under Part B of the Individuals with Disabilities Education Act (Part B) to award compensatory education services to a child, upon a finding that the school system failed, in the past, to provide the child a free appropriate public education (FAPE); and (2) the provision of compensatory education services in the form of summer school programming as well as or instead of additional months or years of special education added on at the end of the child's eligibility for special education.

Your concerns raise several issues, namely, whether: (1) compensatory education is an appropriate method for providing FAPE to a child with disabilities for whom FAPE has previously been denied; (2) a hearing officer has the authority to award compensatory education to a child with disabilities who has previously been denied FAPE; and (3) a hearing officer, upon awarding compensatory education to a child with disabilities who has previously been denied FAPE, can determine its scope. We will address the above issues separately.

In response to the first issue raised, OSEP's position, which is supported by several court decisions,[1] is that compensatory education is an appropriate means for providing FAPE to a child with disabilities who had previously been denied FAPE. A major purpose of Part B is to insure that all children with disabilities are provided FAPE. 34 C.F.R. § 300.1. Compensatory education effectuates this purpose by providing the FAPE which the child was originally entitled to receive. Further, compensatory education may be the only means through which children are forced to remain in an inappropriate placement due to their parents' financial inability to pay for an appropriate private placement would receive FAPE.

The second issue raised by your letter concerns the authority of a hearing officer to award compensatory education to a child with disabilities who had been denied FAPE.

Under Part B, parents have the right to initiate a hearing on any matter relating to the provision of FAPE for their child. 34 C.F.R. §§ 300.504(a)(1) and (2); 300.506(a). The due process hearing provisions of Part B: (1) enumerate criteria for appointment of impartial hearing officers (34 C.F.R. § 300.507); (2) specify hearing rights (34 C.F.R. § 300.508); (3) require that findings of fact and decisions, with the deletion of personally identifiable information, be made available to the public (20 U.S.C. § 1415(d); and (4) prescribe a 45-day timeline for issuance of hearing decisions, unless an extension of the 45-day timeline is granted (34 C.F.R. § 300.512).

Part B and its legislative history evince the importance attached by the Congress to the procedural safeguards as a method of ensuring that FAPE is made available to children with disabilities. Therefore, OSEP's position is that Part B intends an impartial hearing officer to exercise his/her authority in a manner which ensures that the right to a due process hearing is a meaningful mechanism for resolving disputes between parents and responsible public agencies concerning issues relating to the provision of FAPE to a child.[2] Although Part B does not address the specific remedies an impartial hearing officer may order upon a finding that a child has been denied FAPE, OSEP's position is that, based upon the facts and circumstances of each individual case, an impartial hearing officer has the authority to grant any relief he/she deems necessary, inclusive of compensatory education, to ensure that a child receives the FAPE to which he/she is entitled.

The decision of the impartial hearing officer is binding unless an aggrieved party appeals through applicable administrative or judicial procedures. 34 C.F.R. §§ 300.509-300.511.

The third issue raised by your letter asks whether compensatory education may take the form of summer school programming as well as or instead of additional months or years of special education added on at the end of the child's eligibility for special education.

The scope of compensatory education ordered in an impartial hearing officer's decision must be consistent with a child's entitlement to FAPE, but should not impose obligations that would go beyond entitlement. Therefore, a hearing officer who concludes that a child with disabilities is entitled to compensatory education may order, as a means of redressing the denial of FAPE to that child, that compensatory education include or take the form of summer school programming.

I hope the above information is helpful. If we may provide further assistance, please let me know.

Robert R. Davila

[1] See, *Lester H. v. K. Gilhool and The Chester Upland School District,* 916 F.2d 865 (3rd. Cir. 1990); *Burr by Burr v. Ambach,* 863 F.2d 1071 (2nd. Cir. 1988); *Meiner v. State of Missouri,* 800 F.2d 749 (8th Cir. 1986) and *Campbell v. Talladega County Board of Education,* 518 F. Supp. 47 (N.D. Ala. 1981).

[2] OSEP's position is in concert with recent court and State educational agency decisions. See, *Burr by Burr v. Ambach,* 863 F.2d 1071 (2nd. Cir. 1988); (court of appeals reinstated hearing officer's award of compensatory education to a child with disabilities); and *Auburn City Board of Education,* 16 EHLR 390 (1989) (hearing officer awarded tutorial services to child with disabilities who had been denied FAPE, holding that he had the authority, just as a federal or state court would have, to grant the relief sought).

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EXHIBIT B

34 IDELR 292

101 LRP 85

Letter to Riffel

Office of Special Education Programs

N/A

August 22, 2000

Related Index Numbers

220.015 Discontinuation of Services

100.003 Beyond Age of Entitlement

100.005 In General

Judge / Administrative Officer

Kenneth R. Warlick, Director

Case Summary

The purpose of a compensatory education award is to remedy the failure to provide services the student should have received in high school when he or she was entitled to FAPE, OSEP explained. Compensatory services are often appropriate as a remedy even after the period when a student is otherwise entitled to FAPE because, like FAPE, compensatory education can assist a student in the broader educational purposes of the IDEA, including obtaining a job or living independently.

Full Text

Appearances:

Dear Dr. Riffel:

This responds to your April 27, 2000 letter, in which you sought additional explanation March 20, 2000 letter regarding compensatory education services under Part B of the Individuals with Disabilities Education Act (IDEA). Our March 20, 2000 letter clarified the authority of your office, the Illinois State Board of Education (ISBE), to award compensatory education to a student with disability as a result of adjudicating the complaint filed on the student's behalf. We noted in our March 20, 2000 letter that the student's right to receive compensatory education, as a remedy for a previous denial of a free appropriate public education (FAPE) under the IDEA, is independent of any current right to FAPE.

Specifically, we noted that the remedy was appropriate because ISBE had already determined, under the IDEA, that the student, [ ] had been denied FAPE and had not been provided with the services listed in [ ]'s individualized education program (IEP). We stated that ISBE's mandate to the school district to reconvene her IEP team to determine the appropriateness of compensatory education services, for the period that ISBE determined that [ ] had been denied FAPE, was appropriate. However, we also noted that the student's receipt of a regular high school diploma (a terminating event under the IDEA to the right to FAPE), did not negate the student's independent right to compensatory education services because ISBE determined that the school district denied FAPE to the student. Your April 27, 2000 letter sought further clanification and authority on this last point.

Despite the additional information provided, we find no provision in Part B that limits the authority of the State educational agency (SEA) in identifying the appropriate remedy for a student who has been denied FAPE, including an award of compensatory services. Because the basis of the compensatory services remedy is the past denial of educational and related services that were not originally provided, compensatory education as a remedy is available even after the right to FAPE has terminated. Thus, the student's election to graduate with a regular high school diploma does not alter the student's right to the compensatory education remedy identified by ISBE.

However, we concur with ISBE in its statement that Part B does not authorize a school district to provide a student with compensatory education, through the provision of instruction or services, at the postsecondary level. *See*34 C.F.R. Sec. 300.25. If a student is awarded compensatory education to cure the denial of FAPE during the period when the student was entitled to FAPE, the compensatory education must be the type of educational and related services that are part of elementary and secondary school education offered by the State.

Compensatory educational and related services, as a remedy to redress the denial of FAPE, is available to both judicial officers and SEAs. *See*20 U.S.C. Sec. 1415(e)(2); 34 C.F.R. Sec. 300.660(b)(1) ("corrective action appropriate to the needs of the child"), and 34 C.F.R. Sec. 300.662(c). The independence of the remedy of compensatory services is consistent with the primary statutory and regulatory purpose set forth under the IDEA, namely, "[t]o ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living." *See* 20 U.S.C. Sec. 1400(d); 34 C.F.R. Sec. 300.1(a).

Federal circuit courts of appeal have confirmed the independence of the right to compensatory education as an equitable remedy to address the denial of FAPE from the right to FAPE generally, which latter right terminates upon certain occurrences (including reaching the age at which the right to FAPE ends or graduating with a regular high school diploma). *See generally, Board of Educ. of Oak Park v. Illinois State Board of Educ. et al.,* 79 F.3d 654, 660 (7th Cir. 1996) (noting "[c]ompensatory education is a benefit that can extend beyond the age of 21 [the terminating FAPE age in Illinois]."); *Murphy v. Timberlane Regional School Dist.,*22 F.3d 1186 (1st Cir.) (affirming award of two years of compensatory education to former student after student had reached the [otherwise terminating-FAPE] age of 21 given finding that FAPE had been denied to student), *cert. denied,*115 S.Ct. 484 (1994); *Appleton Area School Dist. v. Benson,*32 IDELR 91 (E.D. WI 2000) (authorizing award of compensatory education to a student who graduated with a regular high school diploma). *See also, School Comm. of Town of Burlington v. Department of Educ.,*471 U.S. 359, 369-70, 105 S.Ct. 1996, 2002-03 (1985).

A student's decision to graduate with a regular high school diploma does not automatically relieve a school district of its responsibility to provide that student with compensatory education and related services awarded to the student. The purpose of the award is to remedy the failure to provide services that the student should have received during [ ]'s enrollment in high school when [ ] was entitled to FAPE. Compensatory services are often appropriate as a remedy even after the period when a student is otherwise entitled to FAPE because, like FAPE, compensatory services can assist a student in the broader educational purposes of the IDEA, namely to participate in further education, obtain employment, and/or live independently. For example, if a student was denied services on [ ]'s IEP (such as speech services or additional reading or math instruction), [ ] may not have ever achieved the proficiency necessary to utilize the skills consistent with the broader purposes of the IDEA. The fact that the student has graduated or reached the age at which the right to FAPE would ordinarily end does not necessarily negate the relevancy of, and the need for, compensatory services.

Regarding your request for further clarification, while we agree that this student no longer is entitled to FAPE, by reason of [ ]'s decision to graduate with a regular high school diploma, we find nothing in the regulation at 34 C.F.R. Sec. 300.122(a)(3) that would relieve a school district of its obligation to provide a student with compensatory education in the form of services that would address the services that [ ] was denied during the period of [ ]'s entitlement to FAPE.

There is nothing in this clarification, however, which requires or authorizes a school district to provide a student with compensatory services at the junior-college level, unless such services also would be considered elementary and secondary school education in Illinois. Rather, we understand the purpose of the ISBE's decision was to mandate that the school district reconvene the IEP team for this student to determine the need for compensatory services based on those services that the student had been denied.

We address here briefly your comments that the student is undergoing due process proceedings as

well. Under Part B, a parent or a public agency may initiate an impartial due process hearing on any matter related to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. *See* 34 C.F.R. Sec. 300.507(a). Within 45 days from the receipt of the hearing request, the hearing officer must provide the parties a copy of the final decision. Although the Part B regulations do not comprehensively list all of the specific remedies available to a hearing officer if he or she finds that a child has been denied FAPE, we have stated that an impartial hearing officer has the authority to grant any relief he or she deems necessary, inclusive of compensatory education, to ensure that a child receives the FAPE to which he or she is entitled. *See, e.g.,* OSEP Kohn Letter (February 13, 1991) reprinted at 17 EHLR 522 (noting "OSEP's position is that Part B intends an impartial hearing officer to exercise his or her authority in a manner which ensures that the due process hearing is a meaningful mechanism for resolving disputes between parents and responsible public agencies concerning issues relating to the provision of FAPE to a child. ..."). A copy of this letter is enclosed.

In this matter, we understand that the student requested a due process hearing after ISBE issued its decision on the complaint filed on behalf of the student under ISBE's state complaint procedures. While we have not reviewed the due process complaint, we assume that the student sought to enforce ISBE's determination, since the student prevailed as a result of the complaint filed on [ ]'s behalf with ISBE. Therefore, there is nothing in the Part B regulations that would permit ISBE to delay enforcement and implementation of its decision.

We hope that you find this explanation helpful in clarifying your concerns. If you would like further assistance, please contact either JoLeta Reynolds, at (202) 205-5507, or Greg Corr at (202) 205-9027.

Statutes Cited

20 USC 1415(e)(2)
20 USC 1400(d)

Regulations Cited

34 CFR 300.25
34 CFR 300.660(b)(1)
34 CFR 300.1(a)
34 CFR 300.122(a)(3)
34 CFR 300.507(a)

EXHIBIT C

54 IDELR 262

110 LRP 32314

Letter to Whipple

Office of Special Education Programs

N/A

October 27, 2009

Related Index Numbers

100.003 Beyond Age of Entitlement

352.20 Individualized Family Service Plan

Judge / Administrative Officer

Patricia J. Guard, Acting Director

Case Summary

A child's exodus from a state, or from Part C eligibility, does not necessarily close the book on that state's duty to provide the child with compensatory education. States must make reasonable efforts to locate children who have moved, or who are no longer eligible for Part C services, and to provide them with compensatory services. OSEP pointed to a prior OSEP letter stating that because the basis for granting such an award is the past denial of early intervention services, compensatory services "could, if determined appropriate, be available even after a child is no longer receiving services under Part C." *Letter to Anonymous*, 4 ECLPR 510 (OSEP 2003). Similarly, courts have found compensatory services under Part B could be awarded to a student who has moved out of the district. *Independent Sch. Dist. No. 284 v. A.C.*, 35 IDELR 59 (8th Cir. 2001). OSEP stated that if a family has moved out of state before the IFSP team has convened to consider whether compensatory services are warranted, the state must still determine whether the child's family wishes to meet to assess the appropriateness of compensatory education. If the family moved after the IFSP team determined that compensatory services were appropriate, "the State must make reasonable efforts to contact the parents to determine if they want to receive the compensatory services indicated in the IFSP," Acting Director Patricia J. Guard wrote. Finally, OSEP noted that states may contract with providers in the parents' new location to supply services.

Full Text

Appearances:

Dear Ms. Whipple:

This letter is in response to your July 16, 2009 electronic mail (e-mail) communication to the Office of Special Education Programs (OSEP) requesting clarification regarding Nevada's obligation under Part C of the Individuals with Disabilities Education Act (IDEA) to locate families and provide compensatory services to children who no longer reside in the State.

In the situation you described, a State complaint was filed under Part C against the Nevada Department of Health and Human Services and the written decision responding to the complaint found that many children in the State were waiting for early intervention services. The decision required all early intervention programs statewide to reconvene individualized family service plan (IFSP) meetings for children and families who have been waiting for services to determine the appropriateness of compensatory services. In your e-mail, you indicated that the State is tracking the compensatory services it is required to provide, and has found that some of the children have moved out of the State. You ask whether the State is obligated to locate those families who have moved out of the State to offer them compensatory services.

Under Part C of the IDEA, each State is required to develop a statewide system to provide early intervention services to infants and toddlers with disabilities in the State from birth through age two. 20 U.S.C. 1432(5) and 1434. The lead agency responsible for implementing Part C in the State must adopt written procedures for resolving any complaints that any public agency or private service provider is violating a requirement of Part C. 34 CFR §§ 303.510-303.512. The Part C regulations provide that, in resolving a complaint in which the lead agency finds a failure to provide appropriate services, it must

address both "(1) how to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and (2) appropriate future provision of services for all infants and toddlers with disabilities and their families." 34 CFR § 303.510(b).

OSEP stated in *Letter to Anonymous,* dated August 19, 2003, that because the basis for compensatory services is the past denial of early intervention services that were not originally provided, compensatory services "could, if determined appropriate, be available even after a child is no longer receiving services under Part C."

Courts have further found that compensatory services under Part B of the IDEA could be awarded to a student who has moved out of the local educational agency (LEA). The United States Court of Appeals for the Eighth Circuit, in *Indep. Sch. Dist. No. 284 v. A.C.,* 258 F.3d 769, 774-776 (8th Cir. 2001), held that a claim seeking a compensatory remedy from the LEA in which the child had lived was not moot even though the student had moved to another school district.

We believe that compensatory services can be awarded to a child who is no longer eligible for Part C services from a State, such as a child who has aged out of the program or a child who has moved out of the State. In the situation you describe, the written decision responding to the State complaint directed all early intervention programs in the State to reconvene IFSP team meetings for families that have been waiting for Part C services to determine the appropriateness of compensatory services. If it is determined that compensatory services are appropriate, they must be provided. If a family has moved out of State before the IFSP team has been convened to determine the appropriateness of compensatory services, the State must make reasonable efforts to locate the child and determine whether the parents are interested in participating in an IFSP meeting to determine whether compensatory services are appropriate. If the family moved out of the State after an IFSP team meeting determined that compensatory services would be appropriate, the State must make reasonable efforts to contact the parents to determine if they want to receive the compensatory services indicated in the IFSP. If the parents elect to receive the compensatory services, the State can provide such services through contractual arrangements where the family currently resides if it is not feasible for the service providers to reach the child in his or her new location.

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.

I hope the information provided in this response is helpful for you as you continue to meet the needs of children and families in the State of Nevada. If you have further questions, please do not hesitate to contact Tammy Proctor at 202-245-7333 or by e-mail at Tammy.Proctor@ed.gov if you would like any further assistance.

Statutes Cited

20 USC 1432
20 USC 1434

Regulations Cited

34 CFR 303.510
34 CFR 303.511
34 CFR 303.512
34 CFR 303.510(b)

Cases Cited

258 F.3d 769

