



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

APR 27 1998

Dear :

This letter is in further response to your request for Secretarial review of your complaint against the Texas Interagency Council for Early Childhood Intervention (ECI). Your request for Secretarial review indicates that you believe the ECI did not adequately resolve your complaint.

The regulations for Part H of the Individuals with Disabilities Education Act (Part H) require that each State lead agency adopt procedures for resolving complaints, including the right of the complainant or the public agency that is the subject of the complaint to request the Secretary to review the lead agency's final decision on the complaint. See 34 CFR §§303.510-303.512.

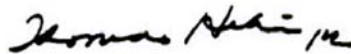
As stated in our earlier correspondence to you, the decision to grant or to deny request for Secretarial review is determined on a case-by-case basis, after a thorough review of all documentation submitted. Based upon our review, we have decided to deny your request for Secretarial review. Our decision is based on the fact that the issues raised in your request focus on allegations that are factual, or that involve matters of State law. As you noted in your letter dated October 31, 1997, your complaint raises several issues of State rather than Federal law. In addition, several of the items in your complaint and rebuttal involve factual questions, such as the current quality, frequency, and availability of early intervention services in Texas. The Department applies the principles in OSEP Policy Memorandum No. 95-2, a copy of which we provided you by letter dated November 13, 1997, to Part H requests for review. As stated in that Memorandum, the Department does not grant review of issues that are primarily factual.

We note that the State did appropriately change its written policies in response to your complaint regarding the lack of a disabled-only group option for early intervention services in Texas (State Report of Findings, pp.4-6, and Attachment A). In its response, "ECI recognizes its obligation to make a full continuum of service alternatives available to the extent necessary to implement each child's IFSP" (Report of Findings, p.4) and states that "[s]ervices must be provided to meet the unique needs of the child and family as described in Attachment A, #12." (Report of Findings, p.5). In reaching its conclusion, the State appears to rely on the IDEA Amendments of 1997. The amendments to Part H (which will be codified as Part C) do not take effect until July 1,

1998. However, the one conclusion is supported by current law. Each IFSP must contain "a statement of the natural environments in which early intervention services shall appropriately be provided," IDEA sec. 677(d)(5), and the Department's regulations clarify that, "to the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments . . ." 34 C.F.R. 303.12(b)(1) (emphasis added). In its response to your complaint, the State correctly states that this determination must be on an individualized basis, and that the decision as to location of services is for the IFSP team to determine, in accordance with the IDEA regulations. .

Thank you for bringing this matter to my attention, and for your continuing work on behalf of infants and toddlers with disabilities.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Hehir".

Thomas Hehir
Director
Office of Special Education
Programs

cc: Ms. Mary Elder
Director, ECI