

SPED noncompliance rages on

Feds cite Massachusetts, again

On June 3, 2010, the U.S. Office of Special Education Programs (OSEP) issued its finding that Massachusetts “needs intervention” because of its failure to fully implement the requirements of the federal Individuals with Disabilities Education Act (IDEA.) This is not the first time the Commonwealth has had its wrist slapped. Not by a long shot. Similar findings were issued against Massachusetts in 1991, 1995, 1997, 2000, 2003, 2004, 2005, 2006, 2007, 2008, and 2009. Read OSEP’s 2010 letter of finding here:

<http://www2.ed.gov/fund/data/report/idea/partbspap/2010/ma-apr1tr-2010b.pdf>

OSEP’s ‘take’ on noncompliance

To understand how such an abysmal compliance record has been allowed to continue unchecked, it helps to understand OSEP’s guiding philosophy on the matter which is, simply, ‘noncompliance happens, get used to it.’ SPEDWatch’s recent conversation with Dr. Ken Kienas at OSEP (see ‘A Chat with OSEP’ below) underscores the agency’s attitude about noncompliance. It’s an attitude that has created a federal monitoring and enforcement system that actually has an allowance for noncompliance built right into it! According to OSEP, school districts are free to break the law, as long as they correct noncompliance within one year of its discovery. When Massachusetts submits its yearly application for \$280 million in federal IDEA funds, OSEP requires only a written assurance that the state *intends* to comply with the law. *Actual* compliance is not a prerequisite for receiving this funding.

ESE ‘pleased’ with district performance in special education

Meanwhile, the Massachusetts Department of Elementary and Secondary Education (ESE) is pleased with how well our school districts are doing in the area of special education. On May 25, 2010, ESE issued its own findings on how well our schools are doing in their implementation of the letter and the spirit of special education law. ESE gave 371 of the Commonwealth’s 391 school districts (95%) its highest rating. Read about ESE’s findings here:

<http://www.doe.mass.edu/news/news.aspx?id=5545>

A Chat with OSEP

Between March and May of this year Ellen Chambers of SPEDWatch and Dr. Ken Kienas of OSEP shared the following email exchange:

SPEDWatch:

Can you please let me know: is it still OSEP’s position that a state need not actually comply with IDEA in order to receive IDEA funding, and that states need only give an assurance that they intend to comply? This was the case in 2008 when SPEDWatch last commented on our state’s annual funding application. Click here to continue ...

OSEP:

I wouldn't phrase our position as you have stated. It has always been the Department's position that the law requires 100% compliance. This is a standard that we expect States to maintain. However, we must also recognize that in implementing these laws districts will make mistakes, oversights will occur, imperfect humans will make errors, people won't always act in the best interest of the students they serve, etc.

SPEDWatch:

I met with MA Senator John Kerry's office recently. The policy advisor I met with, Colleen Coburn, was sympathetic but also felt that parents of students with special needs actually put themselves at a disadvantage because they don't take the time to learn about the regulations that are designed to protect their child's special education rights, so really part of the blame lies with parents themselves. This continues to be a mental block for a lot of people and agencies, including OSEP.

Imagine if you had a blood transfusion and then discovered that you had AIDS because the treating hospital violated regulations concerning the safe collection and handling of blood products. You call your US Senator to complain. They listen to you but then tell you that you can't lay all of the blame on the hospital because you, as a patient, also had a responsibility to educate yourself about applicable regulations before submitting to the transfusion. Then they do nothing. Would you accept that? Of course not. It's preposterous.

Apply the same thinking to your last communication to me about sped regulatory compliance, part of which was:

"It has always been the Department's position that the law requires 100% compliance. This is a standard that we expect States to maintain. For example, in the Annual Performance Report all States are required to maintain a target of 100% for compliance indicators. However, we must also recognize that in implementing these laws districts will make mistakes, oversights will occur, imperfect humans will make errors, people won't always act in the best interest of the students they serve, etc."

Imagine receiving the following reply from a government regulatory authority upon finding out you got AIDS from a tainted blood transfusion:

"It has always been the Department's position that the law requires 100% compliance. This is a standard that we expect hospitals to maintain. However, we must also recognize that in implementing these laws hospitals will make mistakes, oversights will occur, imperfect humans will make errors, people won't always act in the best interest of the patients they serve, etc."

I would really appreciate an explanation from OSEP as to why its position with regard to special education regulatory noncompliance is sound. To whom should I address a request for a policy letter on this question?

OSEP

I certainly don't think parents are to be blamed for not knowing their rights, although clearly parents can and are the best advocates for their children. Through the years, most of the teachers, administrators, and state personnel that I have met do their best to make sure kids with disabilities get an education that meets the letter, as well as the spirit of the law. I think of a high school teacher I recently met of a fairly involved class of disabled students who made sure his graduating students got the opportunity to attend their prom, including ensuring they had the right clothes, transporting them in his own vehicle, and escorting them that night because he thought they should have that experience. This was an act of kindness and caring that clearly was not in his job description.

I've picked up the paper, as I'm sure you have also, and read about instances where

blood supply has been tainted resulting in person who receives the transfusion catching a deadly disease. Errors occur. People decide to go over the speed limit. Systems break. This is why there are checks and balance are in place, like federal and state monitoring, due process, and complaints.

We hold to the standard that the law must met. When errors and violations occur they must be corrected. I don't believe we will say anything less. If you wish a policy statement or interpretation, you can write: Alexa Posney, Assistant Secretary, Office of Special Education and Rehabilitative Services, 550 12 St., SW, Washington, DC 20202

SPEDWatch

I will write to Alexa.

I rather think that if people were getting sick from tainted blood transfusions as frequently as students with disabilities are denied a FAPE, there would be a national outcry and the government would do something about it.

Our special education system has been broken for 35 years. The checks and balances don't work. I expect that Massachusetts will soon receive another finding from OSEP that we are not fully meeting our legal obligations to our students with disabilities, just as we did in 1991, 1995, 1997, 2000, 2003, 2004, 2005, 2006, 2007, 2008, and 2009. Meanwhile children continue to suffer and fail needlessly as a direct result of a system that cannot protect their right to a FAPE.

SPEDWatch will never accept the rationale that we need to tolerate the suffering and failure of children because, after all, systems break and errors occur. That's tantamount to accepting child abuse.