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ABSTRACT

This report summarizes memoranda issued by the Department of Education's Office for Civil Rights (OCR) to clarify policy applications of Title IX (Education Amendments of 1972), Title VI (Civil Rights Act of 1964), and Section 504 of the Rehabilitation Act of 1973. Cases discussed concern sex discrimination and equal opportunities in school athletics, scholarship awards, and vocational education; minority group employment in educational institutions; and placement and due process for handicapped students. (MJL)

DIGEST OF SIGNIFICANT CASE-RELATED MEMORANDA

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JANUARY THROUGH DECEMBER 1980

VOLUME II

U.S. DEPARTMENT OF EDUCATION
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*Litigation, Enforcement and Policy Services reviews cases and responds to inquiries from within the Office for Civil Rights (OCR), Department of Education, to ensure that compliance determinations are consistent with established policy. This report consists of summaries of significant case-related policy clarification memoranda issued during the months of January through December 1980.

Table of Contents for Volume II

Section 504

Title IX of the
Education Amendments of 1972

ISSUE:

May the inequitable provision of cheerleaders result in a denial of equal athletic opportunity?

FACTS:

OCR investigated a complaint alleging inequities in the girls' athletics program with respect to scheduling, equipment and supplies, travel, opportunity to receive coaching, assignment and compensation of coaches and provision of cheerleaders. OCR found inequities in the opportunity to receive coaching, the assignment and compensation of coaches and the provision of cheerleaders. The district subsequently acted to provide equal athletic opportunity in regard to the assignment and compensation of coaches and opportunity to receive coaching, but refused to provide cheerleaders for girls' non-tournament games, although it provided cheerleaders for all boys' games.

DECISION:

If the inequity is not sufficient for a finding of unequal athletic opportunity in violation of section 106.41(c), the determination is based on whether a school district has the right to pick and choose the inequities it will correct. The findings concluded that the school district was generally giving less priority to the girls' athletics program than to its athletics program for boys. To correct this violation, the district at a minimum must be required to correct all inequities in its athletics program, including those involving the provision of cheerleaders. Although the district may choose to provide fewer cheerleaders for games or sports with fewer spectators, it has no basis for refusing to provide any cheerleaders at all for girls' non-tournament games.

AUTHORITY:

This decision interprets the following sections of the Title IX regulation:

Section 106.31 Education programs and activities.

(b) Specific prohibitions. Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment.

Section 106.41 Athletics.

(c) Equal Opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes.

OLEP Memorandum of July 17, 1980.

Title IX of the
Education Amendments of 1972

ISSUE:

Must a school district offering boys' baseball honor a request to start a girls' softball program when there are limited competitive opportunities?

FACTS:

OCR received a letter of inquiry from the executive secretary of a state high school athletic association asking whether a school which offered boys' baseball must honor a request to start a girls' softball program when there were limited competitive opportunities in the surrounding district.

DECISION:

Title IX requires schools to accommodate the athletic interests and abilities of both sexes on an equally effective basis. There is no requirement that schools offer exactly the same choice of sports to girls and boys. Thus, whether a school offers baseball has no effect on whether that school should offer softball.

When there is no reasonable expectation that competition in a sport will be available within an institution's normal competitive regions, the institution is not required to develop an interscholastic team for that sport. Institutions may be required by Title IX to actively encourage the development of such competition, however, when overall athletic opportunities within that region have been historically limited for the members of one sex. Thus, schools may be required to actively encourage participation in softball or other sports of interest to female students when girls' athletic opportunities have been previously limited in a particular region.

AUTHORITY:

This decision interprets the following section of the Title IX regulation:

Section 106.41 Athletics

(c) Equal opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors;

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.

OCR Letter of December 2, 1980

Title IX of the
Education Amendments of 1972

ISSUE:

Where limited opportunities for female students are alleged, is it discriminatory to reduce the number of sport seasons for girls from four to three when three sport seasons are offered to boys?

FACTS:

OCR received a complaint that a school district discriminated against female student athletes by offering them shorter sport seasons. Specifically, girls had four sport seasons of ten weeks duration while boys had three sport seasons of thirteen weeks duration. OCR informed the district that the complaint, filed by the National Organization for Women (N.O.W.), would have to be investigated unless the sport seasons were equalized. It was possible that the difference in the number and length of seasons did not result in inequitable opportunities for athletes of each sex. However, the school district simply equalized the sport seasons, thus negating the basis for an investigation. N.O.W. appealed OCR's closing of the complaint stating that the change in the number of seasons resulted in fewer participation opportunities for female students.

DECISION:

Clearly, no female student would be able to participate on more than three teams per year where the number of sports seasons was reduced from four to three. This could result in fewer participation opportunities for a few female students. However, lengthening the seasons permits female students more time to develop their skills in each sport in which they participate. Most importantly, male and female students would receive equal treatment in the overall athletics programs, with each sex having the same limitations on participation.

AUTHORITY:

This decision interprets the following section of the Title IX regulation:

Section 106.41 Athletics

(c) Equal opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors;

(iii) Scheduling of games and practice time.

OCR Letter of June 20, 1980

Title IX of the
Education Amendments of 1972

ISSUE:

May a school district assist in the administration of a sex-restrictive scholarship which has been established by a will?

FACTS:

OCR received a complaint that a school district discriminated on the basis of sex by assisting in the administration of a sex-restrictive scholarship established by a will. Specifically, the scholarship awards were to be offered to graduating male students who had received the highest grades. The only other scholarship aid available was also established by a will. This award was also for top graduating students but was not sex-restrictive. The amount of this financial award was significantly less than the scholarship for male graduates. The district limited this scholarship to females to partially offset the scholarship for males.

DECISION:

School districts may administer sex-restrictive scholarships created by certain legal instruments when scholarship monies are available to offset such awards so that, overall, the provision of scholarship aid does not discriminate on the basis of sex. However, in the above case, there were significant differences in the amounts of financial scholarships available to males and females. Therefore, the school district must disassociate itself from the administration of the sex-restrictive scholarship. Further, the district may not advertise the availability of the sex-restrictive scholarship even though it advertises the availability of independent sources of financial aid that do not discriminate on the basis of sex.

AUTHORITY:

This decision interprets the following section of the Title IX regulation:

Section 106.37 Financial assistance.

(a) General. Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate.

(2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or

(3) apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) Financial aid established by certain legal instruments.

(1) a recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; provided, that the overall effect of the award to such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in subparagraph (b)(1) of this paragraph, recipients shall develop and use procedures under which;

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criferia and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under subparagraph (b)(2)(i) of this paragraph; and

(iii) No student is denied the award for which he or she was selected under subparagraph (b)(2)(i) of this paragraph because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

OLEP Memorandum of February 19, 1980

Title IX of the
Education Amendments of 1972

ISSUE:

May a school district assist in the administration of sex-restrictive athletic scholarship awards sponsored by community organizations?

FACTS:

OCR received a complaint that a school district assisted in the administration of sex discriminatory scholarship awards to male and female varsity athletes. A Boosters Club awarded two $400 scholarships to male athletes while a separate organization offered two $100 scholarships to female athletes. The scholarships were not established by domestic or foreign wills, trusts, bequests or similar legal instruments. Furthermore, the school was unable to establish the control necessary to insure that the overall effect of the awards was nondiscriminatory.

The two organizations presented the awards at annual events that were held separately. The Boosters Club sponsored a dinner for all male varsity athletes and their parents and the other organization sponsored a luncheon for the two female award winners and their parents. School facilities were used without charge for the Boosters Club banquet. In addition, the school provided the names and addresses of potential candidates to both organizations and announced the names of the award winners at graduation ceremonies.

DECISION:

The selection process for the scholarships and the awards ceremony would be greatly limited without assistance from the district. Thus the district has violated Section 106.31(b)(7) by providing significant assistance to organizations that discriminate on the basis of sex. The school district also has violated Section 106.31(b)(4) prohibiting different treatment on the basis of sex and Section 106.37 prohibiting discrimination on the basis of sex in the award of financial aid. If the school district had a four-to-one participant ratio of males to females in its athletics program, then a four-to-one ratio of athletics scholarship monies for males and females available from the two clubs would be permitted under 106.37(c).

AUTHORITY:

This decision interprets the following section of the Title IX regulation and Section 412(b) of the Education Amendments of 1976:

Section 106.31 Education programs and activities.

(b) Specific prohibitions. Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees.

Section 106.37 Financial assistance.

(a) General. Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) Financial aid established by certain legal instruments.

(1) a recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; Provided, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in subparagraph (b)(1) of this paragraph, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under subparagraph (b)(2)(i) of this paragraph; and

(iii) No student is denied the award for which he or she was selected under subparagraph (b)(2)(i) of this paragraph because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) Athletic scholarships. (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and §86.41 of this part.

Education Amendments of 1976

Section 412(B)

(8) This section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for student's of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex.

OLEP Memorandum of April 21, 1980

Title IX of the
Education Amendments of 1972

ISSUE:

Does a predominance of students of one sex enrolled in vocational training courses for occupations that have been traditionally associated with persons of the same sex constitute a violation?

FACTS:

During a compliance review, OCR discovered that a community college had a predominance of female students enrolled in its eight career programs, five of which offered a preparation for careers that have been dominated by females - dental hygiene, early childhood education, secretarial science, medical secretary and laboratory technician. Male students enrolled were overrepresented in its liberal arts program. Enrollment statistics showed three percent more female students than would be expected from overall enrollment statistics enrolled in career programs and three percent more male students than would be expected enrolled in the arts and sciences program. In the career programs, there were five programs where the percentages of women were significantly higher than expected and there were three career programs where the percentages of men were significantly higher than expected in relation to their proportion of the overall enrollment.

DECISION:

These statistics on their face do not lead to a determination of a Title IX violation. Rather, they raise questions about whether policies and practices which influence students' participation in certain programs on the basis of sex are in violation of sections 106.31 or 106.36 regarding treatment of students and counseling procedures and materials. Where counseling and recruitment procedures and materials prove nondiscriminatory, a violation is unlikely.

AUTHORITY:

This decision interprets the following sections of the Title IX regulation:

Section 106.31 Education programs and activities.

(a) General. Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) Specific prohibitions. Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment.

Section 106.36 Counseling and use of appraisal and counseling materials.

(a) Counseling. A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) Use of appraisal and counseling materials. A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) Disproportion in classes. Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

OLEP Memorandum of April 14, 1980

Title VI of the
Civil Rights Act of 1964

ISSUE:

Under the circumstances described below does the termination of employment of a Hispanic faculty member by a college in connection with a general reduction in the workforce have an adverse impact on students sufficient to confer jurisdiction over employment under Title VI?

FACTS:

The complainant, a Hispanic faculty member at a college, alleged that the termination of her employment, which resulted from a general reduction in the workforce, constituted discrimination based on national origin under Title VI. The complainant's employment was terminated on a basis other than the basis required in the collective bargaining agreement. The primary purpose of the Federal financial assistance received by the college was not to provide employment. However, the complainant, an assistant professor of Spanish, was well known for her work with the Hispanic academic and cultural community. The complainant had conducted a number of recruitment activities which significantly increased the number of Hispanic and foreign students. She also established scholarship programs for international students, visited Puerto Rican neighborhoods, contacted schools in foreign countries and translated all admissions materials into Spanish. She held the position of foreign student advisor and was active in promoting intercultural understanding through activities such as Latin American Week, the Lecture and Art Exhibit Series, and attracting prominent Hispanic speakers to campus. Moreover, Hispanic faculty were significantly underrepresented at the institution in comparison to their number in the appropriate labor market prior to the termination of her employment.

DECISION:

The college's actions in discriminating against the professor on the basis of national origin resulted in harm to beneficiaries on the basis of national origin. That is, the termination of the complainant's employment resulted in the denial to Hispanic students and applicants of certain educational benefits, services and activities formerly provided by the complainant. (The justifications provided by the college for violating its bargaining agreement in terminating the complainant's employment were found to be pretextual.) The adverse effect on students on the basis of

national origin resulting from the college's action against the professor on the basis of national origin, coupled with the significant underrepresentation of Hispanic faculty members at the college, were sufficient to establish Title VI jurisdiction over employment in this case. Therefore, this employment discrimination was found to result in discrimination against students on the basis of national origin in violation of Title VI.

AUTHORITY:

This decision interprets the following provision of the Title VI regulation:

Section 100.3(c)(3)

Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the foregoing provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

OCR Memorandum dated October 22, 1980

ISSUE:

Are grade placement decisions affecting handicapped students subject to the "impartial hearing" procedural safeguard requirements of Section 504?

FACTS:

The parents of a learning disabled child requested a due process hearing on the issues of the appropriateness of the educational services provided to their child and the decision not to promote the child to the next grade level.

The State Department of Special Education instructed the hearing officer not to render a decision on the issue of grade promotion because this was not an appropriate issue for a due process hearing. The hearing officer found that the district had failed to provide the child with an appropriate education. However, the hearing did not address the issue of whether the child should have been promoted.

The parents subsequently requested an appeal on the issue of grade placement. The State Department of Special Education Programs denied the request on the grounds that grade promotions are determined by local school administrators and that grade placement is not covered by the due process procedures specified by P.L. 94-142.

DECISION:

Decisions concerning promotion, retention, and grade level placement of a handicapped child are educational placement decisions. Under Section 104.36 of the Section 504 regulation, recipients are required to provide parents with an opportunity for a due process hearing and appeal on all educational placement issues including grade level retention and promotion decisions.

AUTHORITY:

This decision interprets the following provision of the Section 504 regulation:

Section 104.36 Procedural Safeguards

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes

notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

OLEP Memorandum of July 16, 1980

Section 504 of the
Rehabilitation Act of 1973

ISSUE:

Do state procedures which permit the selection of an employee of one school district as the hearing officer by another school district violate the requirement of an "impartial hearing" regarding the identification, evaluation, or placement of a handicapped student?

FACTS:

The parent of a handicapped student filed a complaint alleging that state procedures which permitted the selection of an employee of one school district as the hearing officer by another school district violated the Section 504 due process requirement which entitles parents to an "impartial hearing" regarding the identification, evaluation, or placement of handicapped students who need, or are believed to need special instruction or related services.

DECISION:

While the state procedures regarding the selection of hearing officers offer a possibility for abuse, they do not, per se, violate the "impartial hearing" requirement of Section 504.

AUTHORITY:

This decision interprets the following provision of the Section 504 regulation:

Section 104.36 Procedural Safeguards

A recipient that operates a public elementary and secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

OLEP Memorandum of February 28, 1980

Section 504 of the Rehabilitation Act of 1973

ISSUE:

Does Section 504 require a school district to establish intramural athletic programs to accommodate handicapped students who are unable to successfully compete with non-handicapped students for placement in the school district's regular competitive interscholastic athletic program?

FACTS:

OCR received a complaint against a local school district alleging that its athletic program systematically denies handicapped students an opportunity to participate. The school district provides only interscholastic athletic programs and only at the senior high school level. The criteria for participation are skill (competitive try-outs) and academic standing (no failures in course work). There are no intramural programs operated by the District. The complainant requested OCR to require the school district to establish an intramural athletic program to accommodate students, who because of their handicap, are unable to successfully compete for placement in the district's regular competitive interscholastic athletic program.

DECISION:

Section 504 does not require a school district to establish new athletic programs to accommodate students who because of their handicap are unable to successfully compete for placement in the school district's regular competitive interscholastic athletic program.

AUTHORITY:

This decision interprets the following provisions of the Section 504 regulation:

Section 104.37 Nonacademic Services

(c) Physical education and athletics.

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to non-handicapped students only if separation or differentiation is consistent with the requirements of Section 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

OLEP Memorandum of September 10, 1980

Section 504 of the
Rehabilitation Act of 1973

ISSUE:

When does a school district become financially responsible for a placement of a handicapped student in a private institution if such placement was originally made by the student's parents and subsequently affirmed by the school district?

FACTS:

A learning disabled student who had been receiving special educational services from a school district was arrested on felony charges. At the parent's request, the court ordered the student placed in a hospital for psychiatric testing and treatment rather than being placed in a juvenile detention center. Within a week, the school district began to provide the student with educational services through the hospital. Three-and-one-half months later, a multidisciplinary staff conference convened by the school district recommended that the student remain in the hospital until a proper placement was found.

DECISION:

Under Section 504, a school district becomes financially responsible for a parent-initiated placement of a handicapped student in a private institution from the date that it recommends or affirms such a placement.

AUTHORITY:

This decision interprets the following provisions of the Section 504 regulation:

Section 104.33 Free appropriate public education

(c) Free education -- (1) General. For the purpose of this section, the provision of a free education is 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. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in the section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(3) Residential placement. If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

OCR Letter of June 30, 1980