



TEXAS EDUCATION AGENCY

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Jim Nelson
Commissioner of Education

March 9, 2001

Tim Lambert, President
Texas Home School Coalition
P.O. Box 6747
Lubbock, Texas 79493

Dear Mr. Lambert:

Thank you for your letter regarding dual enrollment of home schooled students. The special education rule that will take effect July 1, 2001 will eliminate the current requirement that school districts and charter schools provide special education services on a "dual enrollment" basis to private school (including home school) students. Public schools may still choose to provide special education services to private school students on a part-time basis if they wish, but they will no longer be required to do so.

The reason for the rule change is that the reauthorization of the Individuals with Disabilities Education Act (IDEA) in 1997 and the federal regulations issued in 1999 significantly changed the obligations of public schools with respect to students enrolled in private schools by their parents. Specifically, the regulations promulgated under IDEA, prior to its reauthorization in 1997, provided that public schools were required to "provide special education and related services designed to meet the needs of private school children with disabilities residing in [its] jurisdiction". By comparison, the regulations promulgated under the reauthorized IDEA specifically state that "No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school."¹

In place of the individual entitlement to services, IDEA now requires public schools to provide for the participation of private school children with disabilities in special education programs by spending a portion of their IDEA funds to provide for such participation. The types of services provided, and the manner in which they are provided, are to be determined by the local school district based on consultations with appropriate representatives of private school children with disabilities.

Our state special education statute is intended to be limited to the same rights a student enjoys under federal law, although the Legislature has arguably added some additional obligations by statute. The amended rule reflects the same obligations on the part of school districts and charter schools as they have towards private school students under IDEA. There is no basis in state law to continue to require them to expend their local funds to provide services to private school students in light of the change in federal law.

¹Compare prior 34 C.F.R. §300.452 with current 34 C.F.R. §300.454(a)(1) and (b).

I know that this change may cause some hardship for individual private school students and their families. Those students will receive only those services that can be supported with federal funds and the federal government has never seen fit to fund a majority of the cost of its mandate. However, I do not have a basis for requiring the public schools to lessen funding for students with disabilities in their programs for the support of private school students.

Sincerely yours,



Jim Nelson
Commissioner of Education