

Dated September 18, 2000

Honorable Linda Renee Baker
Secretary
Department of Human Services
623 East Adams
P.O. Box 19429
Springfield, Illinois 62794-9429

Dear Ms. Baker:

The purpose of this letter is to follow up on issues related to State guardianship, surrogate and foster parents for eligible children served under the State's Part C program, as stated in the Office of Special Education Program's (OSEP) May 22, 2000 monitoring report of Illinois' Part C program. We are seeking clarification on a number of issues related to children who are wards of the State in Illinois.

Background

The Part C regulations at 34 CFR §303.406(a)(3) and (b) require the lead agency to protect the rights of a child who is the ward of the State and to appoint a surrogate parent, if one is needed. The non-employee provision at 34 CFR §303.406(d) prohibits the lead agency from appointing any of the following persons as a surrogate parent: (1) an employee of any State agency; or (2) a person or an employee of a person providing early intervention services to the child or to any family member. If the lead agency appoints a surrogate parent for an infant or toddler, the surrogate has sole authority to act as the parent in making decisions in the following areas: (1) evaluation and assessments; (2) development and implementation of the child's IFSP; (3) ongoing provision of early intervention services to the child; and (4) other rights under Part C, including procedural safeguards. 34 CFR §303.406.

Under the definition of "parent" in 34 CFR §303.19, a foster parent may serve as the child's "parent" if not prohibited by State law and if the requirements in 34 CFR §303.19(b) are met. In the alternative, a guardian may serve as parent, but not if the State itself is the guardian for a ward of the State. We have enclosed a copy of a letter we sent to Ms. Sheryl Dicker, which clarifies that the term "guardian" in 34 CFR §303.19(a) does not include the State, for a child who is a ward of the State, because of the likelihood of a conflict of interest. Thus, under the regulatory definition of "parent," a guardian is a person who typically serves as such for only one child (or related children), and often has a pre-existing connection to that child or children, as opposed to a State employee serving in the administrative role of State guardian.

It is unclear to us whether there is an internal conflict between Illinois State laws or policies or between State and Federal requirements. The answers you provide to the questions below will help us determine where, if any, conflict occurs. As a part of your written response, please provide us with the specific policies and procedures governing these issues, including any relevant State statutes and regulations.

Questions

1. For purposes of Part C, who serves as the “parent” of a child birth through age 2, who is a ward of the State in Illinois?
2. As it relates to the scope of responsibilities, does the Illinois State guardian have authority to:
 - a) provide consent for a Part C eligible child’s evaluation; or
 - b) sign the IFSP, or otherwise provide consent for provision of early intervention services; or
 - c) authorize payment for Part C services?
3. If the answer to any of the questions above is “no”, then who does have authority?
4. Is it State policy that a foster parent may serve as the “parent”, in accordance with 34 CFR §303.19 of Part C, for a child (birth through age 2)?
5. Is a surrogate appointed for a ward of the State who is eligible for Part C, if the child already has a foster parent? Is a surrogate appointed for a ward of the State who is eligible for Part C, if the child does not have a foster parent?

We would suggest that you involve the Illinois Department of Child and Family Services in clarifying these issues. You may also wish to consult with the Illinois State Board of Education (ISBE) on these issues, as the same issues may also be present with children ages 3 and over who are wards of the State and who are served under Part B of the IDEA. We are sending a copy of this letter to ISBE. If this office can assist you with this matter, please contact Ms. Sarah Willis, the Part C contact for Illinois on my staff, at (202) 205-8658.

Sincerely,

Signed Kenneth R. Warlick/pg

Kenneth R. Warlick
Director
Office of Special Education Programs

Attachment: Letter to Ms. Sheryl Dicker

cc: Ms. Janet Gully
Bureau Chief, Early Intervention
Department of Human Services

Dr. Gordon Riffel
Director, Special Education
Illinois State Board of Education