



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

August 29, 2007

Dr. Michael Mendelson
Director of Special Education
Scarsdale Public Schools
2 Brewster Road
Scarsdale, New York 10583

Dear Dr. Mendelson:

This letter is in response to your correspondence dated May 21, 2007, to the Office of Special Education and Rehabilitative Services. This response is based on information from your letter requesting guidance on a local educational agency's (LEA's) responsibility for meeting the provisions contained in 34 CFR §§300.130-300.144 of the final regulations for Part B of the Individuals with Disabilities Education Act (Part B) regarding parentally-placed private school children with disabilities when a parent enrolls their child in a special education private school.

In particular, you explained in your letter that a parent of a child who resides in your school district, who was denied tuition reimbursement for the cost of her child's placement at an out-of-State private residential facility dedicated to the education of children with learning disabilities, is electing to continue her child's enrollment at that facility for the upcoming school year and requested a services plan for her child from the LEA where that private school is located. You stated that the parent was informed by the LEA where the private school is located that it would not develop a services plan for her child because the LEA believes that the rights for parentally-placed private school children with disabilities are not applicable to children enrolled by their parents in nonpublic special education residential or day schools.

The 2004 Amendments to the IDEA significantly changed the manner in which States and LEAs must meet their obligations to the group of children enrolled by their parents in private elementary schools and secondary schools. Section 612(a)(10)(A) of the IDEA, codified at 20 U.S.C. 1412(a)(10)(A). Under the final Part B regulations implementing this statutory provision at 34 CFR §§300.130 through 300.144, responsibility for providing equitable services to parentally-placed private school children with disabilities has shifted from the LEA where the children's parents reside to the LEA where the private elementary schools or secondary schools or facilities the children attend are located. Thus, the LEA where the private schools the children attend are located must initiate child find activities, complete initial evaluations, consult with private school representatives, determine a proportionate share of its total Part B subgrant to be expended on services for this population, and offer equitable services to parentally-placed private school children with disabilities. 34 CFR §§300.131 through 300.134. These provisions are applicable even if parentally-placed private school children do not reside in the State where the private school they attend is located. 34 CFR §300.131(f)

(clarifying the obligation of the LEA where the private schools the children attend are located to conduct child find for children residing out-of-State).

The term parentally-placed private school children with disabilities “is defined as children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in §300.13 or secondary school in §300.36, other than children with disabilities covered under §§300.145 through 300.147.” 34 CFR §300.130. Note that this definition incorporates IDEA’s definition of elementary school and secondary school. Under 34 CFR §300.13, “elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.” Under 34 CFR §300.36, “secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.” Neither definition specifically excludes schools that provide special education and related services. Therefore, if the special education private school where the child prompting your inquiry otherwise meets the applicable definition of “elementary school” or “secondary school,” the LEA where that private school is located must consider children with disabilities enrolled by their parents in that school as “parentally-placed private school children” as defined in Part B who are subject to the provisions in 34 CFR §§300.130 through 300.144. However, even though the children may meet the definition of “parentally-placed private school children with disabilities” under IDEA, this does not necessarily mean that the child prompting your inquiry will receive special education and related services from the LEA where the private school the child is attending is located or that the responsible LEA must develop a services plan for the child at the parent’s request.

Under IDEA, a parentally-placed child with a disability does not have 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 program. 34 CFR §300.137(a). Further, only those parentally-placed private school children with disabilities whom the LEA elects to serve will receive a services plan. 34 CFR §300.138(a)(2). Before any decisions are made about how the LEA will meet the needs of the parentally-placed private school children with disabilities attending private schools located in the LEA’s jurisdiction, a timely and meaningful consultation must occur between the LEA and private school representatives and representatives of parents of parentally-placed private school children with disabilities. 34 CFR §§300.134 and 300.137(b).

Topics addressed during consultation include how child find will be conducted to ensure the equitable participation of parentally-placed private school children with disabilities, how the proportionate share of Federal funds available for services for these children is determined, how the consultation process itself will be conducted to ensure that children identified through child find can meaningfully participate, and how, where and by whom special education and related services will be provided, including the types of services to be provided. 34 CFR §300.134(a) through (d). Thus, although the LEA where the private school the child attends is located could not refuse to consider the needs of

children with disabilities who are parentally-placed at special education day or residential private schools by virtue of their attendance in such schools if those schools otherwise meet the applicable definitions of “elementary school” and “secondary school,” the responsible LEA, could, after timely and meaningful consultation, elect not to serve children with disabilities who are enrolled by their parents in such private schools.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

We hope that you find the responses to your questions helpful. If you need further assistance, please feel free to contact my office.

Sincerely,

A handwritten signature in black ink that reads "Patricia J. Guard". The signature is written in a cursive, flowing style.

Patricia J. Guard
Acting Director
Office of Special Education
Programs