



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

JUL 20 2000

Dear [REDACTED]

This letter is in response to your email inquiry of July 2, 1999, in which you ask several questions concerning the status of charter schools in the District of Columbia. Please excuse the delay in issuing this response.

Under the District of Columbia School Reform Act of 1995 (DC Charter School Act), a public charter school must elect whether to be treated as a local educational agency (LEA) or a District of Columbia public school for the purpose of Part B of the Individuals with Disabilities Education Act (referred to as Part B or IDEA interchangeably). Your questions are limited to those public charter schools that elect to be treated as LEAs for the purpose of IDEA.

Under 34 CFR §300.312(b), if a public charter school meets the definition of LEA at 34 CFR §300.18 and receives Part B funds, that charter school is responsible for ensuring that the requirements of Part B and its implementing regulations are met, unless State law assigns that responsibility to some other entity. The regulation provides States flexibility in determining how to ensure that children with disabilities in public charter schools and their parents retain all rights under IDEA, as required by 34 CFR §300.312(a).

As you know, the District of Columbia Public Schools (DCPS) functions as both a State educational agency (SEA) and as an LEA. In its role as an SEA, DCPS must carry out all of the responsibilities of a State under IDEA, including monitoring and establishing a due process and complaint management system. DCPS, in its role as a SEA, must also ensure that children with disabilities attending public charter schools receive a free appropriate public education in accordance with Part B. Under Part B, if a charter school elects to be an LEA, the charter school is eligible for a subgrant under the Grants to States and Preschool Grants programs. In order to establish eligibility for a subgrant, the charter school LEA must demonstrate to the satisfaction of the SEA, in this case DCPS, that it meets the requirements of section 613(a) of Part B. Under 34 CFR §300.220(b), the charter school LEA must have on file with the SEA policies and procedures that are consistent with State policies and procedures established under IDEA. If the SEA determines that an LEA is not eligible under IDEA, the SEA must notify the LEA of that determination and provide the LEA with reasonable notice and an opportunity for a hearing. See: 34 CFR §300.196.

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The amount of Part B funds that an eligible charter school LEA receives is based on the formula for allocation of these funds to LEAs in sections 611(g)(2) and 619(g)(1) of Part B. Charter schools opening for the first time or significantly expanding their enrollment must receive the funds for which they are eligible in accordance with the requirements of the Charter School Expansion Act of 1998 and its implementing regulations at Subpart H of 34 CFR Part 76. 64 Fed. Reg. 71964 (December 22, 1999).

You have asked several questions about the applicability of procedural safeguards to children with disabilities attending public charter schools. Because States have flexibility in determining which entity is responsible for providing procedural safeguards to children with disabilities attending public charter schools, we recommend that you also direct these questions to DCPS.

1. For reporting, monitoring and compliance purposes, isn't the District of Columbia required to report to the Office of Special Education Programs (OSEP) all LEAs (within the District of Columbia)?

Response: DCPS has apprised OSEP of the Charter Schools which have elected to be chartered as LEAs. However, there is no Federal requirement that any SEA inform OSEP of which entities are established as LEAs, including charter school LEAs.

2. The 13 charter schools currently claiming LEA status, are they individually responsible to ensure procedural safeguards, including: parents rights, mediation (the mediation booklet does not address charter schools), due process hearings, etc.?

Response: The IDEA regulations clarify that children with disabilities enrolled in public charter schools and their parents retain all rights under Part B. See: 34 CFR §300.312(a). The due process and procedural safeguards available under Part B to parents of children with disabilities in DCPS must be available to parents of children with disabilities in public charter schools. As part of its general supervisory responsibility under 34 CFR §300.600, DCPS is ultimately responsible for ensuring that children with disabilities attending charter schools are afforded applicable procedural safeguards. 34 CFR §300.129(b).

As noted above, under Part B, a charter school LEA that meets the IDEA definition of LEA at 34 CFR §300.18, is established as an LEA under State law, and receives IDEA funds from the SEA, is responsible for ensuring that the requirements of IDEA and its implementing regulations are met, unless State law assigns that responsibility to some other entity. 34 CFR §300.312(b). DCPS as the SEA must determine who is responsible for implementing each of the due process rights under IDEA. It is our understanding that parents of children with disabilities in public charter schools utilize DCPS's due process system, including its complaint management system, to resolve disputes regarding the identification, evaluation, educational placement or the provision of a free appropriate public education to a child with a disability. As you know, DCPS has a one-tier due process-system; a due process hearing is conducted by DCPS. Any party aggrieved by the final decision made in the due process hearing has the right to bring a civil action.

3. Isn't it unfair that a charter school parent/guardian must petition the court for attorney's fees when they prevail in a special education case, when an attorney representing a DC student under DCPS (LEA status) who prevails in a special education case, just bills direct to DCPS for payment?

Response: IDEA provides that "in any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party." 20 U.S.C. §1415(i)(3)(B); 34 CFR §300.513(a). Because it is our understanding that DCPS is in the process of revising its policies regarding the award of attorneys' fees to parents who are prevailing parties in any action or proceeding brought under section 1415 of IDEA, you should direct your inquiry to DCPS.

- 3.(a) Furthermore, page 8, "How do you make a Formal Complaint"--it instructs the reader to call DCPS' Office of the Ombudsman. It is my understanding that this office is a part of DCPS' LEA, -not SEA.

Response: As you know, DCPS functions as both an SEA and an LEA. One of DCPS's most important responsibilities as an SEA is to establish complaint procedures for resolving any complaint filed by an organization or individual alleging that a public agency has violated the requirements of Part B. See: 34 CFR §§300.660-300.662. The procedures established by DCPS and available to parents of children with disabilities in charter schools require that the complaint be filed with the Ombudsman. The Ombudsman then reviews all the relevant information and makes an independent determination as to whether a public agency, including a charter school LEA, is violating a requirement of Part B.

- 3.(b) On page 8, under, "What do you need to know about mediation?"-in the last check, it instructs one to send the form to Division of Mediation, Due Process and Compliance, Special Education Division, District of Columbia Public Schoolsagain, an office located with DCPS' LEA.

Response: The practice you describe would not be inconsistent with Part B, as long as the mediation procedures provided by the Division of Mediation meet the requirements of section 615 (e) of Part B and 34 CFR 300.506

4. Should "charter schools" and/or "LEAs" be included in, "A Procedural Manual for Parents (as revised Feb. 22, 1999) or, are charter schools with LEA status responsible to produce their own manual?

Response: See response to question #2 above. A copy of the procedural safeguards available to parents of a child with a disability, including parents of a child with a disability attending a public charter school, must be given to the parents at a minimum upon initial referral for evaluation, upon each notification of an IEP meeting, upon reevaluation of the child and upon receipt of a request for a due process hearing. See: 20 U.S.C. §1415(d) and 34 CFR §300.504(a). DCPS, in its role as SEA, must determine the manner in which

these responsibilities are delineated, including who is responsible for producing the manual. As noted above, the charter school LEA is responsible for ensuring that the requirements of Part B of IDEA are met, unless State law assigns that responsibility to some other entity. 34 CFR §300.312(b). As part of its general supervisory responsibility, DCPS must ultimately ensure that parents of children with disabilities are provided the notice required under Part B.

5. To ensure fairness and equality to all LEAs in the District of Columbia, does OSEP require the District of Columbia as the SEA, and DC Public Schools as the Local Education Agency, have separate functions, including offices and personnel?

Response: There is no requirement in Part B of IDEA that DCPS as the SEA, and DCPS as the LEA, have separate office space or separate personnel. Because the same entity, DCPS, currently performs both State and local functions, it is permissible to have a combined SEA/LEA office or separate offices. As noted above, DCPS must carry out all of the responsibilities of an SEA under IDEA including monitoring and establishing a complaint management and due process system.

DCPS, as the SEA, has the discretion to distribute its State set-aside funds or subgrants for capacity building and improvement to LEAs on a competitive basis. While it does not have to set up a separate office, the U. S. Department of Education has recommended that DCPS, as the SEA, ensure objectivity when DCPS as an LEA and charter school LEAs are competing for funds. Several alternatives exist to remove a potential conflict of interest including having another part of DC government perform some of the important functions with regard to the competition.

- 5(a). It is my understanding from several DCPS officials that there are no written SEA guidelines or requirements of charter schools who choose to be an LEA, as to what their specific responsibilities are in the provision of providing FAPE, IDEA and Section 504, - to DC children who attend their school.

Response: There is no requirement in IDEA that the SEA, in this case DCPS, establish written guidelines or requirements specifying the responsibilities of charter schools established as LEAs. However, in order to receive Part B funds from DCPS, a charter school LEA must have on file with the SEA, in this case DCPS, policies and procedures that are consistent with DCPS policies and procedures established under Part B. See 20 U.S.C. §1413(a)(1) and 34 CFR §300.220.

6. Are the 13 charter schools claiming LEA status in the District of Columbia, responsible to set-up their own safeguards and procedures?

Response: See response to questions #2, #4 and #5(a) above.

7. To OSEP's knowledge, are there any documents available to DC charter school LEA parents/guardians, or the public, fully detailing children's rights when attending a charter school, as well as what the charter schools responsibilities are to ensure

FAPE, and WHO at the District of Columbia's SEA level, independent from DCPS' LEA level, is responsible to ensure FAPE?

Response: See our response to questions above. The provisions of the IDEA Amendments of 1997 and their implementing regulations address the rights of children with disabilities attending public charter schools and their parents. As is true for other SEAs, DCPS was required to submit all policies and procedures to OSEP by April 2000 that will demonstrate compliance with the IDEA Amendments of 1997. DCPS has developed proposed policies and procedures relevant to LEA charter schools. OSEP is in the process of reviewing eligibility documentation submitted by all SEAs prior to releasing Part B of IDEA grant awards that will become available beginning July 1, 2000.

8. If DCPS is an LEA, equal to a charter school claiming LEA status, how can DCPS be unbiased in deciding whether a charter school is in violation of IDEA and/or Section 504?
9. Does OSEP have a position as to how a "unitarian" state which functions as an LEA and SEA combined, --can it remain unbiased, when determining that a charter school (LEA status) may have violated IDEA and Section 504?

Response to questions 8 and 9: As noted above, DCPS functions as both a LEA and SEA. One of DCPS' most important functions as a SEA is to establish a due process system that complies with section 615 of IDEA and a complaint management system that meets the requirements of 34 CFR §§300.660-300.662. This is so regardless of DCPS's LEA status for some purposes. The following requirements in IDEA and its regulations were included to ensure that these systems are implemented in an impartial manner. A qualified and impartial mediator must conduct the mediation process; the due process hearing officer must be impartial; and the Ombudsman must review all relevant information and make an independent determination. 34 CFR §300.506(b)(1)(iii), 34 CFR §300.508(a) and 34 CFR §300.661(a)(3).

Thank you for your continued interest in improving results for children with disabilities in the District of Columbia Public Schools.

Sincerely,

Kenneth R. Wariick
Director
Office of Special Education Programs

cc: Ms. Anne Gay
District of Columbia Public Schools