



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

August 8, 2012

Alex P. Apostle, Ph.D.
Superintendent
Missoula County Public Schools
215 South 6th West
Missoula, Montana 59801

Dear Dr. Apostle:

This is in response to your August 16, 2011 letter to me in which you ask several questions under the Individuals with Disabilities Education Act (IDEA) regarding the local educational agencies' (LEAs') responsibility for providing equitable special education and related services to parentally-placed private school children with disabilities when such children enroll in the private school after the child find process has occurred and the proportionate amount for the school year has been determined.

In your correspondence, you provide the following example:

A LEA consults with a private school in the 09-10 school year within the timeline designated by law and determines that a specific number of students are eligible for services. According to our SEA [State educational agency], those students would not be served until the 10-11 school year based on the proportionate share of funding allocated from the count during the 09-10 school year.

Assuming the same fact pattern, a student comes to the private school in March of 2011, and is identified as a student eligible for services. According to our SEA, the student would not be counted until the count in the 11-12 school year, and therefore would not receive services until the 12-13 school year.

Your first question asked, "Understanding that the school district has a finite amount of proportionate funds to spend on private schools, how does it address the provision of services and/or evaluating students in timely fashion given the SEA's advice?"

Under 34 CFR §300.133(a), each LEA must expend a proportionate share of funds received under Part B of the IDEA (funds received under both sections 611 and 619 of the IDEA) from each year's allocation to provide special education and related services (including direct services) to parentally-placed private school children with disabilities enrolled in private

elementary schools and secondary schools located in the district served by the LEA. The number of parentally-placed private school children with disabilities is used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the subsequent year. 34 CFR §300.133(c)(2). For example, the LEA would calculate the proportionate share for funds received on July 1, 2012 based on its child count from December 1, 2011. This amount would be the proportionate share to be expended during the 2012-2013 school year (or during the carry-over year) for special education and related services to parentally-placed private school children with disabilities. 34 CFR §300.133(a)(3).

Each LEA (or if appropriate, an SEA) must consult, in a timely and meaningful way, with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for parentally-placed private school children. The consultation process must include discussion of how that process will operate throughout the school year to ensure that parentally-placed private school children with disabilities can meaningfully participate in special education and related services. 34 CFR §300.134(c). The process could include conversations about changes that may need to be made based on fluctuations in the population of students to be served that would include the issue of children who are identified during the school year in which the expenditures are being made.

You also asked, “Does the district still need to provide services to this new student using other federal or state or local funds, or can the provision of services to this student wait until the new funding cycle begins?”

The IDEA does not prohibit a State or LEA from using additional State or local funds to provide special education or related services to parentally-placed private school children with disabilities that are in addition to the services required in 34 CFR §§300.130-300.144, consistent with State law or local policy. Additionally, as long as an LEA meets all the other requirements of the IDEA, including providing a free appropriate public education (FAPE) to children with disabilities in public schools, it is permissible for the LEA to spend more than the minimum amount of Part B funds on providing services to children with disabilities placed by their parents in private schools. State and local funds may be used to supplement, but not supplant, an LEA’s proportionate share of Federal funds required to be expended on children with disabilities placed by their parents in private schools.

At the same time, an LEA is not required to expend more than the proportionate share of funds on the provision of equitable services to children with disabilities. Thus, ongoing consultation and careful planning to account for fluctuations in the population of children to be served are critically important.

In your final question, you asked, “Will a school district be found to be liable or responsible if it denies the provision of equitable services to a child because it has expended its required proportionate share?”

Under 34 CFR §300.131, LEAs have an obligation to provide parentally-placed private school children with disabilities an opportunity for equitable participation in the services funded with Federal Part B funds that the LEA has determined, after consultation, it will make available to its population of parentally-placed private school children with disabilities. However, no parentally-placed 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. 34 CFR §300.137. As stated above in response to your second question, the LEA is not required to expend more than the proportionate share of funds on the provision of equitable services to children with disabilities.

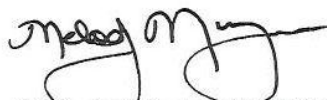
Disputes that arise about equitable services are subject to the State complaint procedures in 34 CFR §§300.151 through 300.153. As provided in 34 CFR §300.140(c), a parent may file a signed written State complaint in accordance with the State complaint procedures alleging that an SEA or LEA has failed to meet the private school requirements, such as failure to provide the services identified in the child's services plan.

It is important that as part of the consultation process, the LEA, private school representatives, and representatives of parents of parentally-placed private school children with disabilities consider the size of the proportionate share of Part B funds (in other words, the amount the LEA is required to spend on services for parentally-placed private school children with disabilities) in determining what services will be provided in order to ensure the LEA has sufficient Part B funds to implement the services plan for each parentally-placed child with a disability who has been designated to receive services. Further information regarding services for children with disabilities placed by their parents in private school can be found at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C1%2C>

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.

If you have additional questions, please do not hesitate to contact me, or Dwight Thomas at 202-245-6238 or by email at Dwight.Thomas@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melody Musgrove', with a stylized flourish at the end.

Melody Musgrove, Ed.D.

Director

Office of Special Education Programs

cc: State Director of Special Education