UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATTVE SERVICES

Ms. Sharon M . Crary
Director
Special Education Services
Special Education Department
6550 Sevenoaks Avenue
Baton Rouge, Louisiana 70806

NOV 15 1999

Dear Ms. Crary:

This is in response to your letter dated September 1, 1999, written to Dr. JoLeta Reynolds of the Office of Special Education Programs (OSEP) concerning the method for calculating the amount of expenditures for parentally-placed private school children with disabilities under Part B of the Individuals with Disabilities Education Act (Part B). Your letter was written as a follow-up to two telephone conversations that you had with Ms. Linda Whitsett, the Part B State contact for the Louisiana Department of Education in the Monitoring and State Improvement Planning Division. We appreciate the opportunity to restate the statutory and regulatory requirements and the Department's longstanding position with regard to your specific concerns.

As we understand your inquiry, you object to the statutory requirement for public agencies to expend a proportionate share of available Federal funds on the provision of special education and related services for parentally-placed private school children with disabilities, when districts can only count for purposes of generating Part B funds those parentally-placed private school students with disabilities who they are serving. Let me say first, that while the IDEA Amendments of 1997 make explicit that States must expend a proportionate share of available Federal funds on services for parentally-placed private school children with disabilities, those Amendments do not represent, in the Department's view, a change in what was previously required by law. It has been the Department's longstanding position that expenditures of such proportionate amounts are required for the population of parentally-placed private school children with disabilities. See 49 Fed. Reg. 48520, 48522 (Dec. 12, 1984). Therefore, all school district should have been using this formulation in determining the amount of funds that had to be expended for services for the parentally-placed private school children with disabilities even prior to the enactment of the IDEA Amendments of 1997.

In fact, a number of Federal courts, prior to the 1997 Amendments, were interpreting the Federal statute to impose greater obligations on school districts regarding services to parentally-placed private school students with disabilities than those to which you now object.

Section 612(a)(10)(A) addresses the eligibility conditions that States must meet in providing for the participation of parentally-placed private school children with disabilities in programs assisted or carried out under Part B of the Act.

As is alluded to in your inquiry, there is a distinction between the obligation to expend funds for the provision of special education and related services to parentally-placed private school children with disabilities and the criteria governing counting of those children for purposes of generating a State's Part B grant award. Actually, there are two separate child counts that are required, and both counts are conducted on either December 1 or the last Friday in October, at State discretion.

Under 34 CFR §300.753(a)(3), parentally-placed private school children with disabilities who receive special education or related services under §§300.452-300.462 that meet State standards, may be counted for purposes of generating Federal funds under Part B of IDEA. However, the amount of Federal funds that a school district is required to expend on services for its population of parentally-placed private school children with disabilities is based on the number of all parentally placed private school children eligible for services under Part B of IDEA -- whether or not they are receiving services. This number is based on the count required by 34 CFR §300.453 (b) of the Part B regulations. This count, which must be conducted on an annual basis in consultation with representatives of parentally placed private school children, must be used to determine the amount that the LEA must spend on special education and related services to parentally-placed private school children with disabilities in the next fiscal year. 34 CFR §300.453(b).

Therefore, the count under §300.753 of the number of actual children served and the count required by §300.453 (b) of the number of eligible parentally-placed private school children with disabilities are conducted for different purposes,.-the former for purposes of generating the State's Part B grant award and the latter for purposes of determining the amount of funds to be expended on the school district's population of

parentally-placed private school children with disabilities in the next fiscal year. Thus, the expenditure requirement may exceed the amount generated by the count of eligible parentally-placed private school children with disabilities who received services as provided in a services plan. However, there are some options for States in addressing this situation. For example, a parentally-placed private school child with a disability can be included in the annual child count conducted for purposes of generating the State's Part B grant award, even though the child receives only a related service from the public agency. (See §300.753 (a)(3)) The greater the number of eligible parentally placed children who receive special education or related services as provided in a services plan, the greater the number of such children who can be included in the count to generate the State's Part B grant award.

We hope that you find this explanation helpful. If we can be of further assistance, please contact Ms. Linda Whitsett, Louisiana's Part B State contact in the Monitoring and State Improvement Planning Division at (202) 205-8013.

Sincerely,

Patricia J. Guard
Acting Director
Office of Special Education Programs

CC: Virginia C. Beridon Louisiana Department of Education