



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

July 6, 2015

Mr. Edward Sarzynski
Hogan, Sarzynski, Lynch, Surowka and DeWind, LLP
P.O. Box 660
Binghamton, NY 13902-0660

Dear Mr. Sarzynski:

This is in response to your letter to the Office of Special Education Programs (OSEP) regarding children with disabilities from other countries enrolled in private schools by their parents.

First, you ask if all the obligations of 34 CFR §§300.130-300.144 apply to the public school district where a private school is located when the parents of a child with a disability reside outside the country. If so, you raised a question about the meaning of the child find responsibilities in 34 CFR §300.131(f) related to out of State students. OSEP's *Letter to Corwell*, dated February 4, 2013, states that if the international students with disabilities are enrolled in private elementary schools or secondary schools that meet the definitions in 34 CFR §§300.13 and 300.36, respectively, the local educational agencies (LEAs) where the private schools those children attend are located must consider them for equitable services in accordance with the requirements in the Individuals with Disabilities Education Act (IDEA). Further, that letter also states that neither the IDEA nor its implementing regulations distinguish between parentally-placed private school children with disabilities whose parents reside in other countries and those whose parents reside in the United States, with respect to the requirements in 34 CFR §§300.130 through 300.144. These provisions include the child find requirements in 34 CFR §300.131 for parentally-placed private school students. Also, the provision in 34 CFR §300.138(b)(2)(ii), which requires that an equitable services plan must, to the extent appropriate, be developed, reviewed, and revised in accordance with the requirements in 34 CFR §§300.321 through 300.324 for each parentally-placed child with a disability selected to receive services, would also apply. In instances where parents may not be able to attend meetings to develop and review their child's services plan in person, we would expect school districts to use other methods to ensure parent participation as required in 34 CFR §300.322(c). Such methods may include conference calls and video conferences. 34 CFR §300.328.

Second, you ask if Section J, *Out-of-State Children with Disabilities*, of OSEP's *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools* (Questions and Answers) applies equally to international students. Section J of the Questions and Answers references 34 CFR §300.131(f), and as stated above, this regulation applies to parentally-placed private school children who reside out-of-State even if their parents reside outside of the country. Thus, the guidance provided in the *Out-of-State Children with Disabilities* section of the Questions and Answers is applicable to international students, if the child with a disability is enrolled in a private elementary school or secondary school that meets the definitions in 34 CFR §§300.13 and 300.36.

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You also made a statement in your letter that may indicate a misunderstanding of the requirements related to parentally-placed private school children. You stated “If the parentally-placed student were a resident of the same State as the private school, the school district of location, and the public school district of residence, the public school district of location would be able to bill the public school district of residence.” We are unclear what you mean by this statement, but wish to clarify that, under the IDEA, LEAs must use a proportionate share of their Part B IDEA funds to provide special education and related services to children who are parentally-placed in private schools and who attend private schools located in the LEA. 34 CFR §300.133; see also Appendix B for information on how to calculate the proportionate share. The IDEA does not address whether LEAs can bill one another for the reimbursement of IDEA funds to meet the requirements in 34 CFR §§300.130 through 300.144, but we find nothing in IDEA that would prohibit this practice. With regard to other funding sources, a State would have the discretion to determine whether LEAs may spend State and local funds for the provision of special education and related services for parentally-placed private school children with disabilities, as long as those funds supplement, and do not supplant, the proportionate amount of federal funds required to be expended for parentally-placed private school children with disabilities. 34 CFR §300.133(d).

Regarding your question concerning students with disabilities on F-1 visas, the Department of Education does not enforce or interpret Federal laws governing visas. For information on that subject, we recommend that you contact the following agency, which is part of the Department of Homeland Security’s Immigration and Customs Enforcement:

Student and Exchange Visitor Program
DHS/ICE
500 12th Street, SW, Stop 5600
Washington, DC 20536-5600

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.

I hope this information is helpful. If you have additional questions, please feel free to contact Jennifer Wolfsheimer at 202-245-6090, or by email at Jennifer.Wolfsheimer@ed.gov.

Sincerely,

/s/ Melody Musgrove

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs