



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

SEP 26 2005

Dr. Paul Ban
Director
Special Education Section
Hawaii Department of Education
P.O. Box 2360
Honolulu, Hawaii 96804

Dear Dr. Ban:

Thank you for your response of June 29, 2005 to the Office of Special Education Programs' (OSEP) March 22, 2005 letter regarding Hawaii's public charter schools. In the March 2005 letter, OSEP requested the following information and determinations: 1) whether a free appropriate public education (FAPE) was made available to students with disabilities enrolled in certain public charter schools with personnel vacancies and, if not, whether any students with disabilities that attended those public charter schools are entitled to compensatory services; 2) whether reimbursements were appropriate in cases where a public charter school with personnel vacancies incurred additional costs for making FAPE available to enrolled students with disabilities. In addition, OSEP expressed concern about whether the proposed changes to Hawaii's New Century charter schools statute were consistent with the Individuals with Disabilities Education Improvement Act (IDEA) of 2004, including the newly enacted provision at Section 613(a)(5)(A) and asked for clarification regarding the State's compliance with 34 CFR §300.241.

The Hawaii Department of Education (HIDOE) reported, in its June 29, 2005 letter, that it identified special education personnel vacancies in 10 of Hawaii's public charter schools for the period between 2000-2004. HIDOE made determinations for each of these charter schools as to whether FAPE was made available to children with disabilities attending these schools and whether the schools incurred additional costs in ensuring the provision of FAPE. As part of that determination, HIDOE reported that it reviewed individualized education programs (IEPs) and other related school records, and conducted interviews with school staff. HIDOE determined that FAPE was made available to children with disabilities attending these public charter schools and therefore, compensatory services were not required. In two of the 10 schools, Kihei Public Charter High School and Kanu O Ka'aina, HIDOE determined that the schools were entitled to reimbursement. Kihei Public Charter High School received reimbursement in the total amount of \$49,121.28 for the periods covering school year (SY) 2002-2003 and SY 2003-2004. Kanu O Ka'aina was reimbursed \$11,914.00 for SY 2001-2002.

HIDOE reported that, in partnership with the National Association of State Directors of Special Education, it is developing a primer to promote communication and collaboration and provide technical assistance and guidance on special education in Hawaii's public charter schools. HIDOE also reported that the State's most recent Annual Performance Report (APR) submission included information pertaining to Hawaii's monitoring system including information on how the State monitors public charter schools. Information and data in the APR will be addressed under separate cover.

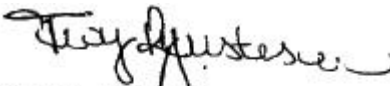
To address OSEP's concern regarding the provisions in the State's statute, *HIDOE* submitted Sections 17 and 18 of Session Bill 1643, the State's revisions to Section 302A-1188 of the Hawaii Revised Statutes. HIDOE indicated that this bill was enacted as Act 87. The submitted language includes a provision specifying that HIDOE shall be responsible for the provision of FAPE and setting out that a New Century charter school that enrolls or identifies an enrolled student with disabilities is responsible for providing the services on the child's IEP, but that where the charter school is unable to provide these services, then HIDOE is to provide the IEP services, through a collaborative process that may include an offer of staff, funding or both. The programs and services are to be determined collaboratively with the student's IEP team that includes the student's parents or legal guardian. Although the submitted revisions appear to address OSEP's previous concerns, it is not clear whether this provision is also intended to cover the distribution of federal Part B funds. Therefore, OSEP is interested in learning more about HIDOE's interpretation and implementation of this provision.

In its June 29, 2005 letter, HIDOE also reported on its review of compliance with the requirement at 34 CFR §300.241 of the current Part B regulations (34 CFR §300.209 of the proposed regulations). Although HIDOE has designated school districts for local administrative purposes, Hawaii is a unitary system for IDEA purposes. Therefore, HIDOE is responsible for meeting the relevant requirements that apply to both the State and local education agency (LEA). Under 34 CFR §300.241, where Part B funds are distributed to other schools of the LEA, Part B funds also must be distributed to its public charter schools in the same manner. Likewise, where the LEA provides services under Part B to its other schools, it must provide services in the same manner to its public charter schools. HIDOE reported that prior to SY 2002-2003, Part B funds were distributed to both charter and non-charter schools in the same manner, consistent with 34 CFR §300.241. For SY 2002-2003, HIDOE offered public charter schools an opportunity to write project proposals for Part B funds, similar to the district offices, in an effort to provide the public charter schools greater fiscal flexibility, but concluded that this was not done in a manner consistent with 34 CFR §300.241. HIDOE indicated that it "will resume distribution of Part B funds to the school districts and provide Part B services in the same manner to both charter and non-charter schools." Because, as noted above, Hawaii is a unitary system, it is not clear what is meant by the statement that HIDOE will "resume distribution of Part B funds to the school districts."

It is important to note that in addressing a 2003 audit of public charter schools in New York by the Office of the Inspector General (ED-OIG/A09-C0025), the Department concluded that it is not inconsistent with the requirements of 34 CFR §300.241, for a State to provide public charter schools that are schools of the LEA greater flexibility than that offered to other public schools of an LEA with regard to the receipt of Part B funds and/or services. For example, where other schools of the LEA receive Part B services from the LEA, the State may allow public charter schools to choose between receiving Part B services in the same manner as other schools of the LEA, and other options such as receiving Part B funds or receiving a combination of services and funds. To the extent that the language in Section 18 of Act 87, above, contemplates the distribution of Part B funds (rather than State funds), it would be consistent with the requirements of 34 CFR §300.241 for HIDOE to allow public charter schools to choose between receiving Part B services in the same manner provided to other schools, and other options such as receiving Part B funds or a combination of funds and services. Regardless of the choice that the public charter schools make, the State must ensure that students with disabilities attending public charter schools and their parents retain all their rights under Part B. Given the longstanding concerns regarding how FAPE is made available to students with disabilities enrolled and attending public charter schools in Hawaii, and the ambiguities in the new State statutes noted above, OSEP staff would like to schedule a teleconference with the State staff to better understand how HIDOE is addressing federal requirements at 34 CFR §300.241 and HIDOE's interpretation and implementation of Section 18 of Act 87.

We appreciate the information provided in the June 2005 letter addressing OSEP's concerns regarding Hawaii's public charter schools. OSEP looks forward to our continued collaboration with Hawaii regarding public charter schools' services to students with disabilities. Please contact Debra Jennings at (202) 245-7389 to schedule the teleconference or if you have questions.

Sincerely,


Troy R. Justesen
Acting Director
Office of Special Education
Programs

cc: Honorable Patricia Hamamoto