



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

2/13/09

Leigh M. Manasevit, Esq.
Brustein and Manasevit
Attorneys at Law
3105 South Street, NW
Washington, DC 20007

Dear Mr. Manasevit:

This is in response to your September 17, 2008 letter to Tracy R. Justesen, Assistant Secretary for the Office of Special Education and Rehabilitative Services in the U.S. Department of Education. Your letter was forwarded to the Office of Special Education Programs (OSEP) for response. I apologize for the delay in responding to your inquiry. Your questions regarding how population and poverty allocations are calculated for a School for the Blind and a State Department of Juvenile Services and OSEP's responses follow.

1. Are we correct that when funding these institutions under 34 CFR §300.705 we are to use the three part formula that includes a base payment allocation, 85% population allocation, and 15% poverty allocation? If not, what formula are we to use? If so, how do those factors apply in the following scenarios?

OSEP's Response: Yes, assuming that the State educational agency (SEA) has determined these institutions are eligible for funding under 34 CFR §300.705, the SEA would use a base payment, a payment based on population, and a payment based on poverty in calculating the amount of the awards, just as it does for all subgrantees under that section.

2. If the School for the Blind includes children from the entire State, how is the population (85%) of the relative number of children enrolled in public and private elementary and secondary schools calculated for the School for the Blind? How is the relative number of children living in poverty (15%) calculated for the School for the Blind?

OSEP's Response: In calculating the population allocation to an eligible School for the Blind, the SEA would use the number of children enrolled in the School for the Blind. This is so even though the enrollment of the School for the Blind is limited to children receiving special education services, does not include nondisabled children, and is derived from students from across the entire State. In calculating the poverty payment to an eligible School for the Blind, the SEA would use the number of students enrolled at the School for the Blind, who are living in poverty. The SEA would determine, as it does for its other eligible local educational agencies, based on SEA criteria (e.g., parent income, free and reduced lunch, etc.), the numbers of those children enrolled at the School for the Blind who are living in poverty.

3. If the Department of Juvenile Services provides educational services to children from the entire State, how is the population (85%) of the relative number of children enrolled in public and private elementary and secondary schools calculated for the Department of Juvenile Services? How is the relative number of children living in poverty (15%) calculated for the Department of Juvenile Services?

OSEP's Response: We have limited information about the manner in which State Departments of Juvenile Services provide educational programs; that is, whether it is a direct provider of educational services, or whether it places children in other public or private facilities for educational purposes. Assuming that the SEA determines that a State Department of Juvenile Services is eligible to receive a subgrant under 34 CFR §300.705, the population calculation would be based on number of children who are enrolled in elementary or secondary programs operated or funded by the State Department of Juvenile Services. 34 CFR §300.705(b)(3)(i). In calculating the poverty payment, the SEA would use the number of children who are enrolled in elementary or secondary education programs operated or funded by the State Department of Juvenile Services who are living in poverty, as described in response to your second question. 34 CFR §300.705(b)(3)(ii).

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 questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456.

Sincerely,



Patricia J. Guard

Acting Director

Office of Special Education Programs