



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAR 31 2000

Mr. Lawrence Gloeckler Deputy Commissioner for Vocational
and Educational Services For Individuals with Disability State
Education Department 111 Education Building Washington
Avenue Albany, New York 12234

Dear Mr. Gloeckler:

This is in response to your memorandum written to Lois Taylor of the Office of Special Education Programs (OSEP) dated October 8, 1999. Your inquiry concerns the regulations for Part B of the Individuals with Disabilities Education Act (Part B) that are applicable to public charter schools.

The regulations implementing Part B at 34 CFR 300.312 identify three types of public charter schools: (1) a public charter school that is a local educational agency (LEA), (2) a public charter school that is a school of an LEA, and (3) a public charter school that is not an LEA or a school that is part of an LEA.

Under 34 CFR 300.711, State educational agencies must distribute Part B flow-through funds "to LEAs in the State that have established their eligibility under section 613 of the Act". Therefore, the only public charter schools that are eligible to receive subgrants from the SEA are charter schools that have been established as LEAs under State law, and meet the Part B definition of LEA at 34 CFR 300.18 of the Part B regulations.

Section 613(a)(5) of Part B and 34 CFR 300.241 address the responsibilities of an LEA to charter schools that are public schools of the LEA. These provisions provide that the LEA:

- (a) serve children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and
- (b) provide Part B funds to those schools in the same manner as it provides Part B funds to its other schools.

Nothing in the statutory or regulatory provision would require an LEA to distribute Part B flow-through funds to charter schools that are public schools of the LEA unless the LEA distributes such funds to its other schools. The LEA is not required to distribute its Part B flow-through funds to charter schools that are not established as public schools of the LEA.

Under 34 CFR 300.312(d), if a public charter school is not an LEA receiving Part B funds under 34 CFR 300.711-714, or a school that is part of an LEA receiving funds under 34 CFR 300.711-714, the SEA is responsible for ensuring the requirements of Part B are met. The State may assign initial responsibility for ensuring that the requirements of Part B are met to another entity; however, the SEA must maintain ultimate responsibility for ensuring compliance with Part B.

Your memorandum asks whether a public charter school that has not been established as an LEA under State law and is not a public school of an LEA may receive flow-through funds from an LEA. You refer to this type of charter school as an independent charter school. As discussed above, the LEA is not required to provide its Part B flow-through funds to an independent charter school. However, nothing in Part B prohibits an LEA from providing Part B flow-through funds to an independent charter school as long as those funds are used by the independent charter school for allowable Part B expenditures

Finally, nothing in Part B would preclude a State from requiring LEAs to make payments to independent charter schools for the provision of special education and related services to children with disabilities. The State is not precluded by Federal law from requiring an LEA to pay an independent charter school that provided special education and related services to a child with a disability the amount of funds the LEA received under Part B for that child. As we stated in a November 24, 1999 letter to you concerning payments to private schools, the LEA could use any source of funds to pay that amount. Part B funds could be used to make the payment so long as the funds are used by the private school or independent charter school in accordance with the provisions of Part B and are used only for allowable costs in accordance with the general cost principles in OMB Circular A-87. However, the State cannot require the LEA to use its Part B flow-through funds to make that payment to the private school or the independent charter school.

We hope that you find this explanation helpful in resolving the status of public charter schools under your State's charter school statute. If we can be of further assistance, please contact JoLeta Reynolds or Rhonda Weiss of OSEP at (202) 205-5507 or (202) 205-9053, respectively, or Carolyn Smith, the Part B State contact for New York in the Monitoring and State Improvement Planning Division at (202) 205-8159.

Sincerely,

Kenneth R. Warlick
Director
Office of Special Education
Programs