



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

July 9, 2008

Martha Frank
Lead Family Consultant
Vermont Parent Information Center
600 Blair Park Road, Suite 301
Williston, VT 05495

Dear Ms. Frank:

This is in response to your electronic mail (email) correspondence to me, dated April 30, 2008. You request clarification regarding the use of funds provided under the Individuals with Disabilities Education Act (IDEA) to pay for classes for a high school senior at Landmark College. On the College's website, Landmark College is described as the "premier college for students with learning disabilities and AD/HD." The student's parents believe that these courses are necessary for him to fulfill his individualized education program (IEP) and transition goals. In order to attend Landmark College, the student would need to reside there. His parents are willing to fund room and board if the school district where his parents reside would fund the cost of the classes.

Under Part B of IDEA, each State and its local school districts must make a free appropriate public education (FAPE) available to all children with specified disabilities residing in the State, in mandatory age ranges, in the least restrictive environment (LRE). 34 CFR §§300.101 and 300.114 through 300.117. FAPE means special education and related services that:

- (a). Are provided at public expense, under public supervision and direction, and without charge;
 - (b). Meet the standards of the State educational agency (SEA), including the requirements of Part B,
 - (c). Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
 - (d). Are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR §§300.320 through 300.324.
- 34 CFR §300.17.

LRE means that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114(b)(1)-(2). The child's IEP forms the basis for the child's placement. 34 CFR §300.116(b)(2). Further, unless the child's IEP requires some other arrangement, the child must attend the school he or she would attend if not disabled. 34 CFR §300.116(c). Thus, where a student's parents are seeking placement for their child at a private postsecondary institution, exclusively for students with disabilities, a local educational agency (LEA) would not be required to fund that placement if the LEA believes it would not constitute the least restrictive placement for the child.

States must expend Part B funds in accordance with the requirements of 34 CFR Part 300. 34 CFR §300.162(a). Similarly, amounts awarded to an LEA must be expended in accordance with the applicable provisions of 34 CFR Part 300. 34 CFR §300.202(a)(1). FAPE, by its terms, is limited to an appropriate preschool, elementary school, or secondary school education in the State involved, and does not include postsecondary education. 34 CFR §300.17(c). Accordingly, States and LEAs may expend Part B funds for preschool, elementary school and secondary school education and may not expend Part B funds for postsecondary education.

Under 34 CFR §300.36, secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12. We presume that most education provided at postsecondary institutions would be considered education beyond grade 12, and would not be considered secondary school education. However, the Department has advised States that in some very limited circumstances, Part B funds could be used for services provided outside of a public or private elementary or secondary school if, under State law, the education would be considered secondary school education. Unlike the situation prompting your inquiry, this clarification has been provided in situations where students have dropped out of high school or have graduated from high school and are seeking transition services or are entitled to compensatory education pursuant to an administrative or judicial order.

You may wish to consult officials of the Vermont Department of Education to determine whether there are any circumstances in which courses offered at a postsecondary institution would be considered secondary school education under your State law. Even if this were so, Part B funds can be used only to fund services that could be considered special education and related services, as defined at 34 CFR §§300.34 and 300.39, respectively, that meet the education standards of the SEA and Part B requirements that are provided in the least restrictive setting to implement the child's IEP.

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 further questions, please do not hesitate to contact Matthew Schneer, of my staff, at 202-245-6755.

Sincerely,



William W. Knudsen
Acting Director
Office of Special Education Programs

cc: Ms. Karin Edwards