



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

December 22, 2006

Mr. Mark Covall
Executive Director
National Association of Psychiatric Health Systems
701 13th Street, NW, Suite 950
Washington, DC 20005-3903

Dear Mr. Covall:

This is in response to your October 2, 2006 letter in which you pose two questions: (1) For children who are placed by a non-educational public agency (e.g., mental health, social services, juvenile justice), which local educational agency (LEA) would be responsible for payment for special education/related services if the sending agency did not pay? Would the LEA where the child/family resides be responsible, or would it be the LEA where the facility is located? and (2) If the LEA where the facility is located is responsible and the child is from out of state, which state's interagency agreement would govern – again, the state where the facility is located or the state of the child's residence?

Under Part B of the Individuals with Disabilities Education Act (IDEA), each State (through its State educational agency (SEA)) must ensure that a free appropriate public education (FAPE) is available to all eligible children with disabilities in mandated age ranges residing within the State¹. FAPE is made available through the LEAs and other public agencies² in the State, under the general supervision of the SEA. 20 U.S.C. 1402(8) and 1412(a)(1)(A); 34 CFR §§300.101 and 300.149. This obligation to ensure that a FAPE is available encompasses children with disabilities who are placed by a non-educational public agency, such as a mental health, social services or juvenile justice agency.

If a public agency determines in an individual situation that an eligible child cannot receive an appropriate education from the programs that the public agency conducts and, therefore, placement in a public or private residential program is necessary in order to provide special education and related services to the child, the program, including non-medical care and room and board, must be at no cost to the parents of the child. 34 CFR §300.104. In addition, each SEA must ensure that a child with a disability who is placed in, or referred to, a private school or facility by a public agency is provided special education and related services in conformance with the child's individualized education program (IEP), and with the standards that apply to

¹ Children whose parents have placed them in a private school or facility even though FAPE was available are an exception to this rule.

² The term "public agency" includes the SEA, LEAs, Educational Service Agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. 34 CFR §300.33.

education provided by the SEA and LEAs (including the requirements of IDEA-Part B). 20 U.S.C. 1402(8) and 1412 (a)(10)(B); 34 CFR §300.146.

For a child placed outside the State by an educational or non-educational State or local agency, the State initiating the placement (i.e., the “placing State”) generally is responsible for ensuring that the child’s IEP is developed and implemented. 34 CFR §§300.101 and 300.149. This is because the obligation to make FAPE available covers all children with disabilities residing in the State. Residence is not the location of the school or facility in the State where the child has been placed. As traditionally interpreted by the Department, a child is a resident of the State in which (1) the parent or guardian legally resides, or (2) the child is a ward of the State.³

Determining the specific school district or LEA in a State that is responsible for the cost of a residential placement is a matter of State law, policy or practice. Although the IDEA does not address which LEA in a State is responsible for the cost of a placement under Part B, the SEA must exercise general supervision over all educational programs for children with disabilities residing in the State, and has ultimate responsibility for ensuring the availability of FAPE to these children. 34 CFR §300.149. Therefore, if there is a question regarding which LEA is responsible for the cost of a placement, the SEA is responsible for ensuring that the issue is resolved.

Each State may use whatever State, local, Federal, and private sources of support are available in the State to cover the cost of serving an eligible child who is publicly-placed in a residential program. However, the State must ensure that there is no delay in implementing a child’s IEP, including any case in which the payment source for providing or paying for special education and related services is being determined. 34 CFR §300.103(a) and (c).

Under the requirements of 34 CFR §300.154, the SEA must also ensure that an interagency agreement or other mechanism for interagency coordination is in effect between the SEA and each non-educational public agency that is otherwise obligated under Federal or State law to provide or pay for any special education and related services necessary for ensuring FAPE to children with disabilities within the State. 34 CFR §300.154(a).

If a public agency other than educational agency fails to provide or pay for these special education and related services, the LEA (or State agency responsible for developing the child’s IEP) must provide or pay for these services in a timely manner. The LEA or State agency may then claim reimbursement for the services from the non-educational public agency that failed to provide or pay for those services, and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism. 34 CFR §300.154(b)(2).

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.

³ Although additional provisions apply in order to ensure that an impartial person acts on behalf of the child when he or she is a ward of the State, that child retains all rights under IDEA. See 20 U.S.C. 1415(b)(2) and 34 CFR §§30.30 and 300.519.

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If you have any other questions, please feel free to contact my office. I hope the information in this letter adequately addresses your questions.

Sincerely,

A handwritten signature in black ink that reads "Patricia J. Guard". The signature is written in a cursive style with a large initial 'P' and a distinct 'G'.

Patricia J. Guard for

Alexa Posny, Ph.D.

Director

Office of Special Education Programs