



UNITED STATES DEPARTMENT OF EDUCATION

November 7, 2023

The Honorable Katie Jenner
Secretary of Education
Indiana Department of Education
115 West Washington Street, Suite 600 South
Indianapolis, IN 46204

Dear Secretary Jenner:

We are writing in response to inquiries from the Indiana Department of Education (IDE) to the U.S. Department of Education (Department) regarding the provision of equitable services to eligible students enrolled in virtual private schools and, as applicable, their teachers and other educational personnel (hereinafter referred to collectively as educators). Specifically, IDE asked how to determine the location of virtual private schools for purposes of providing equitable services under the Elementary and Secondary Education Act of 1965 (ESEA). Given that similar issues arise within the context of equitable services under Part B of the Individuals with Disabilities Education Act (IDEA), we also address IDE's questions in that context.¹

In order for students and educators to be eligible to receive equitable services, a virtual private school must meet the definition of an elementary or secondary school under applicable Federal law. Under both the ESEA² and the IDEA,³ to be considered an elementary or secondary school, a school must be a nonprofit and provide elementary or secondary education, as determined under State law. If a State educational agency (SEA) establishes that a virtual private school is a nonprofit elementary or secondary school under State law and, thus, has students and educators who may be eligible for equitable services, the SEA must then determine which local educational agency (LEA) will be responsible for providing equitable services to the school's eligible students and educators in accordance with the provisions in the applicable Federal program statutes.

¹ The Office of Special Education Programs (OSEP) previously issued a Dear Colleague Letter (August 5, 2016) (at <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/dcl--virtual-schools--08-05-2016.pdf>) regarding IDEA Part B requirements for SEAs and LEAs in ensuring the provision of a free appropriate public education to children with disabilities attending virtual public charter schools. This guidance is not intended to alter or modify OSEP's previous guidance.

² Sections 8101(19) and (45) of the ESEA define "elementary school" and "secondary school" to mean a "nonprofit institutional day or residential school" that provides elementary and secondary education, as determined under State law.

³ Sections 602(6) and (27) of the IDEA define "elementary school" and "secondary school" to mean a "nonprofit institutional day or residential school" that provides elementary and secondary education, as determined under State law, except that secondary school "does not include any education beyond grade 12."

Under section 1117 of the ESEA, the LEA in which an eligible private school student resides is responsible for providing Title I, Part A equitable services.⁴ Other ESEA programs, however, are subject to the equitable services requirements under ESEA section 8501(a)(1) and (4)(A), which provide that an LEA must provide equitable services to students who are enrolled in private elementary and secondary schools in areas served by the LEA.

Under the IDEA, the responsibility to comply with the equitable services provisions also lies with the LEA where the private school is located. (34 C.F.R. §§ 300.130–300.144). Among other requirements, the LEA where the private school is located is responsible for conducting “child find” to identify, locate, and evaluate children enrolled by their parents in private schools who may be in need of special education and related services. (34 C.F.R. §§ 300.111 and 300.131). This child find obligation extends to children who attend private schools located in the LEA but who reside in another State. (34 C.F.R. § 300.131(f)).

Accordingly, under both the IDEA and Title VIII of the ESEA, an eligible student attending a traditional brick-and-mortar school receives equitable services from the LEA in which the school is located, regardless of where the student resides. Unlike brick-and-mortar schools, however, virtual private schools often do not have a clear physical location. Instead, a student attending a virtual private school may receive educational services while physically located in one LEA or State while their classmate may receive educational services while physically located in another LEA or State.

In these situations, where a virtual private school does not have a clear physical location where students primarily receive instruction, the State has discretion for determining how to meet this requirement. A reasonable option is for equitable services to be provided to an eligible student attending a virtual private school by the LEA in which the student is located while receiving their education (most often the LEA in which the student resides if the student attends virtual private school at their home). Under this approach, it is possible that multiple LEAs, including LEAs in different States, would be responsible for providing equitable services to students enrolled in the virtual private school. In these circumstances, funding would come from each LEA’s allocation under an applicable program. Given the number of LEAs that may be responsible for providing equitable services under this approach, the SEA may wish to assist LEAs in coordinating the funding and delivery of ESEA and IDEA equitable services.

Please note that this is only one possible approach for determining how to provide equitable services to students attending a virtual private school, and there may be other methods of determining which LEA or LEAs should be responsible for the provision of these services depending on the unique circumstances of each virtual private school. In making this determination, we encourage the SEA to consider seeking input from LEAs and relevant stakeholders, including virtual private schools. An SEA should have a reasonable rationale for choosing the LEA or LEAs responsible for providing equitable services to particular students under the IDEA and Title VIII of the ESEA.

⁴ With respect to Title I, Part A, the virtual school’s location does not impact the provision of equitable services to children. The Title I regulations define Title I eligible private school children as those who reside in a participating public school attendance area and are at risk academically, regardless of whether the private school they attend is located in the LEA (34 C.F.R. § 200.62(b)(1)(i)).

This response is provided as informal guidance and is not legally binding. It represents an interpretation by the Department of the requirements of the law in the context of the specific facts presented and does not establish a policy or rule that would apply in all circumstances. Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Further, the Department responds to these matters, generally, and not in the context of any specific due process complaint or State complaint that may be pending or resolved. In addition, section 607(d) of the IDEA prohibits the Secretary of the Department from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, the IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Similarly, section 8541(a)(2) of the ESEA prohibits the Secretary of Education from issuing a regulation without following the rulemaking requirements of section 553 of the Administrative Procedure Act.

As IDE considers what approach to adopt, the Department is available to discuss such options and provide technical assistance. Please contact the Department with any additional questions at: oese.titlei-a@ed.gov.

Sincerely,



Adam Schott
Deputy Assistant Secretary for
Policy and Programs
Delegated the Authority to Perform the
Functions and Duties of the Assistant Secretary
Office of Elementary and Secondary Education



Glenna Wright-Gallo
Assistant Secretary
Office of Special Education and
Rehabilitative Services

cc: Frank Chiki, IDE
Garrett Wilson, IDE
Nancy Holsapple, IDE