



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

FEB 12 2002

Honorable George Coleman
Associate Commissioner
Special Education and Pupil Services
Connecticut State Department of Education
25 Industrial Park Road
Middletown, Connecticut 06457-1543

Dear Commissioner Coleman:

An e-mail communication dated January 7, 2001 from George Dowaliby of the Connecticut State Department of Education (CSDE) asked the Office of Special Education (OSEP) to respond to your question regarding the eligibility of charter schools in Connecticut to compete for competitive grants under section 611(f)(4) of the Part B Grants to States program of the Individuals with Disabilities Education Act (IDEA). Under that provision, in any fiscal year in which the percentage increase in the State's allocation of Federal funds under section 611(f) of IDEA exceeds the rate of inflation, the State must make subgrants to local educational agencies (LEAs) to assist them in providing direct services and in making systemic change to improve results for children with disabilities. These subgrants are generally referred to as "sliver grants." The e-mail from Mr. Dowaliby states that "Connecticut charter schools are not LEAs, are not responsible for FAPE, and are not eligible for IDEA entitlement funds," but that State policy requires the CSDE to "treat charter schools as LEAs for the purposes of federal competitive grants." It is our understanding that this is also the position taken in the State's charter school law.

Part B of IDEA and its implementing regulations clarify the status of charter schools and the obligations of States and LEAs with respect to charter schools. *See generally*, 34 CFR §§300.2, 300.18, 300.22, 300.241 and 300.312. The IDEA contemplates a charter school as falling into three possible categories: 1) an LEA that is eligible for subgrants, if established as an LEA under State law and as meeting the definition of an LEA at 34 CFR §300.18; 2) a public school within an LEA; and 3) an entity that is not an LEA or a public school within an LEA. *See* 34 CFR §§300.22 and 300.312(b). Whether, under State and Federal law, a charter school is considered an LEA, a public school within an LEA or some other entity is extremely important because it helps determine both its eligibility for Federal funds and the Part B responsibilities of the charter school.

Where the charter school is an LEA, the Part B regulations specify that the charter school LEA is responsible for ensuring that the requirements of Part B are met, unless State law assigns that responsibility to some other entity. 34 CFR §300.312(b). Where the charter school is a public school within an LEA, the regulations provide that the LEA of which

the charter school is a part is responsible for ensuring that the requirements of Part B are met, unless State law assigns that responsibility to some other entity. 34 CFR §300.312(c). Further, the LEA of which the charter school is a part, must serve children with disabilities attending the charter school in the same manner as it serves children with disabilities in its other schools and provide funds under Part B to those schools in the same manner as it provides those funds to its other schools. 34 CFR §300.241. Where the charter school is neither an LEA nor a school of an LEA, then the State is responsible for ensuring that the requirements of Part B are met. While, in such instances, the State may assign initial responsibility to some other entity, the ultimate responsibility for compliance remains with the State. 34 CFR §300.312(d).

As long as the entity meets the definition of LEA, the Department generally defers to States on the question of whether a charter school is constituted as an LEA, a public school within an LEA, or some other entity. The Part B regulations at 34 CFR §300.18 define LEA to include a public institution or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under State law. The regulations governing State-administered programs, including the Part B Grants to States program, define a charter school LEA as “a charter school that is treated as a local educational agency for purposes of the applicable covered program.” 34 CFR §76.787. However, because the State of Connecticut has chosen to treat its charter schools, not as LEAs, but as public schools within LEAs for purposes of meeting its obligations under the Part B Grants to States program, the question raised here is whether the State can treat charter schools as fitting into more than one of these three categories under the same Part B program.

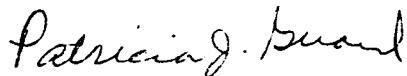
In nonregulatory guidance issued in December 2000 (enclosed), the Department stated that, as a general rule, a charter school cannot be both an LEA and a public school within an LEA under the same Federal definition of LEA. For example, the guidance states that a charter school would have to be treated consistently under the Grants to States and Preschool Grants program since both of these programs are authorized under Part B of IDEA and contain the same definition of LEA. The guidance does allow an exception to the general rule, where State law specifically authorizes charter schools to elect to be treated as an LEA or a public school within an LEA for purposes of a particular program. In order for charter schools in Connecticut to be eligible for “sliver grants,” the charter schools would have to be considered both LEAs and public schools within LEAs under the same definition of LEA and for purposes of the same Federal program. It is the Department’s position that where a State determines that its charter schools do not meet the LEA definition at 34 CFR §300.18 for purposes of receiving a subgrant under the Part B Grants to States program, the charter schools also do not meet the same definition of LEA for purposes of receiving a “sliver grant” under the same Part B Grants to States program.

In addition to the importance of treating entities that fit under the same Federal definition consistently for purposes of the same Federal program, there are important policy reasons that support this interpretation. The purpose of the “sliver grant” is to provide LEAs with additional funds for “local systemic improvement activities or for specific direct

services.” S. Rep. No. 105-17 at 10. One of the specific activities that can be funded with “sliver grants” is providing direct services to children in charter schools. 34 CFR §300.622(a). As noted above, LEA status is significant because it comes with both rights and responsibilities. Generally, unless State law assigns responsibility to another entity, LEAs that have a charter school within their jurisdiction have specific responsibilities with regard to the charter school and the students with disabilities attending that charter school. Therefore, it is appropriate that the responsible entity, in this case, the LEA of which the charter school is a part, also be the entity that is eligible for “sliver grants” under Part B.

I hope this information is helpful to you. If you or your staff need further information regarding this matter, you may contact JoLeta Reynolds at 202-205-5507.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

cc: George Dowaliby, Chief
Bureau of Special Education and Pupil Services