



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

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Mr. Lawrence C. Gloeckler  
Deputy Commissioner  
Office of Vocational and Educational Services for  
Individuals with Disabilities  
Room 1606 One Commerce Plaza  
Albany, New York 12234

Dear Mr. Gloeckler:

The issue of the status of charter schools in New York has come to our attention in the context of a recent audit conducted by the Office of the Inspector General (OIG). The purpose of the audit was to determine whether the New York State Education Department (NYSED) and the local educational agencies (LEAs) provided new or expanding charter schools with timely and meaningful information about funding under Part B of the Individuals with Disabilities Education Act (IDEA) for which these schools might have been eligible and whether NYSED and LEAs had management controls that ensured that charter schools were allocated the proportionate amount of those IDEA funds in instances where charter schools were eligible.

As a result, we have questions about the status of charter schools under New York law for purposes of Part B of the IDEA. The starting point of analysis for determining how students with disabilities attending a charter school are provided a free appropriate public education and how a charter school may access IDEA funds or services for students with disabilities enrolled in the school, is the determination of whether the charter school is established under State law as an LEA, a school of an LEA or some other entity. See 34 CFR §300.312. Under 34 CFR §§300.18, 300.711 and 301.30, if the charter school is an LEA, it is eligible to receive a subgrant under the Grants to States and Preschool grants program and, under 34 CFR §300.312(b), it is responsible for ensuring that the requirements of the IDEA are met, unless State law assigns that responsibility to some other entity. Under 34 CFR §300.312(c), if the charter school is a school of an LEA, the LEA is responsible for ensuring that the requirements of the IDEA are met, unless State law assigns that responsibility to some other entity. Under 34 CFR §300.312(d), if the charter school is not an LEA or a school that is part of an LEA, the State educational agency (SEA) is responsible for ensuring that the requirements of the IDEA are met. In this instance, the State may assign initial responsibility for ensuring the requirements of the IDEA are met to another entity; however, the SEA must maintain ultimate responsibility for ensuring that the IDEA requirements are met.

It is OSEP's understanding that under New York's charter school law, charter schools are not LEAs for purposes of Part B. The charter school may enroll students from more than one school district. That is, any child who is qualified under the laws of the State for admission to a public school is qualified for admission to a charter school. See N. Y. Educ. Law §2854(2)(b). The New York charter schools law also states that:

special education programs and services shall be provided to students with a disability attending a charter school in accordance with the individualized education program recommended by the committee or subcommittee on special education of the student's school district of residence. The charter school may arrange to have such services provided by such school district of residence or by the charter school directly or by contract with another provider.

N. Y. Educ. Law §2853(4)(a). In addition, "the school district shall also pay directly to the charter school any federal or state aid attributable to a student with a disability attending a charter school in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly." N. Y. Educ. Law §2856(1).

The Department is also in receipt of a May 31, 2001 memorandum from Deputy Commissioner James A. Kadamus to charter school principals and school district superintendents stating that:

New York's Charter School Law provides that federal funds for services for students with disabilities flow from the school district of residence to charter schools... For purposes of the IDEA, however, the school district of residence serves as the LEA, with charter schools treated as schools of the school district.

This memorandum suggests that New York views a charter school as a school of an LEA for purposes of 34 CFR §300.312. Our review of New York law and understanding of the practices of school districts in the State raises concerns regarding this conclusion. Specifically, OSEP needs further clarification regarding the relationship of school districts of residence to charter schools and how the State is ensuring that the requirements of 20 USC §1413(a)(5) and 34 CFR §300.241 are being met.

Under the IDEA, an LEA is defined as a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. 34 CFR §300.18. Because New York law allows charter schools to enroll students from more than one LEA, it is not clear how the numerous LEAs are able to exercise administrative control or direction of, or perform a service function for, the charter school; i.e., it is not clear if New York views a charter school as the school of a particular LEA when students who reside in the attendance areas of more than one LEA attend the charter school.

If a charter school is considered a school of an LEA, the LEA must meet the requirement of 34 CFR §300.241 to serve children with disabilities attending charter schools in the same manner as it serves children with disabilities in its other schools and to provide funds under Part B of IDEA to its charter schools in the same manner as it provides Part B funds to its other schools. It appears that LEAs are providing services to children with disabilities in their non-charter schools and a combination of funds and services to charter schools based on the level of services the charter school is providing to its students with disabilities. Therefore, it is not clear now the requirement of 34 CFR 300.241 is being met.

We would appreciate your providing New York's position on the status of charter schools under 34 CFR 300.312. If New York considers a charter school to be a school of an LEA, please explain which LEA fills that function where students of more than one LEA attend the charter school and how the requirements of 34 CFR 300.241 are being met. We note that if New York determines that a charter school is not a school within an LEA but some other entity under §300.312(d), to which 34 CFR 300.241 does not apply, the State would not be precluded from assigning responsibility to the school district of residence. If you have any questions, please contact Martin Benton at (202) 205-9028 or Dr. JoLeta Reynolds at (202) 205-5507 (press 3 and ask to be transferred to Dr. Reynolds).

Sincerely,



Stephanie S. Lee  
Director  
Office of Special Education  
Programs