



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

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MEMORANDUM

TO: State Directors of Special Education

FROM: Patricia J. Guard *Patricia J. Guard*
Acting Director
Office of Special Education Programs

SUBJECT: Educational Expenses for Children in Private Residential Facilities

As you may know, the number of children with disabilities in private residential treatment programs continues to rise. For example, data collected by the Office of Special Education Programs (OSEP) regarding services under the Individuals with Disabilities Education Act (IDEA) show that in the 2002-03 school year 21,673 eligible children received special education and related services at public expense in those facilities, compared to 15,941 children in the 1998-99 school year.[†] Such residential placements are often very expensive. In some cases, the total annual cost for placement in a residential facility, including room, board, therapies, and educational services, may exceed \$100,000 for a single child in a school year.

In meetings with representatives of the Youth Services Committee of the National Association of Psychiatric Health Systems (NAPHS), these representatives identified problems they periodically face when a new child enters their facility -- in determining the appropriate educational agency responsible for providing (or paying for) special education and related services, or for evaluating the child. Having this information available at the outset is crucial to staff in residential facilities, in order to ensure that service arrangements are effectively established for the child with the responsible educational agency, and, thus, that appropriate special education and related services are provided to the child in a timely manner.

[†] This number includes children with disabilities who lived in private residential facilities during the school week, and received special education and related services for greater than 50 percent of the school day.

The statute and regulations for IDEA-Part B include a number of relevant provisions that directly relate to the responsibilities of State educational agencies (SEAs) and local educational agencies (LEAs) in providing special education and related services to eligible children who are placed in or referred to private residential facilities. We are including with this memorandum a summary description of those key provisions for your information and use (see Attachment).

To the extent appropriate, we encourage you to share the attached provisions with LEAs and other appropriate public agencies in your State. We have also asked NAPHS to encourage its members -- before accepting a new child in their residential facilities -- to communicate with appropriate public educational officials about the child. Through these efforts, written agreements can be developed in order to clarify respective responsibilities regarding both financial matters and the coordination or provision of services.

Establishing meaningful and effective communication "before the fact" between personnel in all agencies and facilities that are involved with a given child, including educational and non-educational public agencies in the State (e.g., social service and social welfare agencies), if applicable, as well as staff from private residential facilities, should benefit all affected parties, but especially the children who have been placed in or referred to those facilities.

If you have any questions or comments about this memorandum, please contact your Part B State contact in OSEP, or the persons listed on page one of this memorandum.

Attachment

cc: Chief State School Officers
Federal Resource Center
Regional Resource Centers
Independent Living Centers
Parent Training Centers
Protection and Advocacy Agencies
Part C Coordinators
Section 619 Coordinators

Attachment

Responsibilities for Serving Children with Disabilities in Private Residential Facilities Under IDEA-Part B

The following is a description of the key provisions under Part B of the Individuals with Disabilities Education Act (IDEA) ¹ regarding the responsibilities of State and local education agencies and other public agencies in providing for the education of children with disabilities placed in or referred to private residential programs:

A. Free Appropriate Public Education

Under Part B of the 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 in the State.² FAPE is made available through the local educational agencies (LEAs) and other public agencies in the State, under the general supervision of the SEA. 20 U.S.C. §§1402(8) and 1412(a)(1)(A); 34 CFR §§300.300 and 300.600.

If a public agency³ 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 §300.302. 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 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) and 34 CFR §300.401.

B. Out of State Placements

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**”) is responsible for ensuring that the child's IEP is developed and implemented. (Question 16, Appendix A to Part 300).

¹ Please note that statutory and regulatory citations are to the IDEA '97 and its 1999 implementing regulations. The Individuals with Disabilities Education Improvement Act of 2004, which takes effect July 1, 2005, contains similar provisions, but some citations may be different.

² Children whose parents have placed them in a private school or facility even though FAPE was available are an exception to this rule.

³ The term “public agency” includes the SEA, local educational agencies (LEAs), and any other political subdivisions of the State that are responsible for providing education to children with disabilities. 34 CFR §300.22.

It is the child's or parent's **residence** that defines "placing State" and creates a State's duty under the Act and regulations, 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.⁴ Where State law specifically addresses residency, such provisions would apply.

C. Determining Local Residence

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. (Question 16, Appendix A to Part 300). 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 §300.600. 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.

D. Determining Covered Services

Under the IDEA, the term related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes, among other things, counseling services; psychological services; therapeutic recreation services; school health services; and medical services for diagnostic or evaluation purposes (i.e., provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services). Two Supreme Court decisions have set out the proper analysis for determining whether certain services that are medically related fall under the definition of related services in the IDEA. *See, Irving Indep. Sch. Dist. v. Tatro*, 468 US 883 (1983) and *Cedar Rapids Comm. Sch. Dist. v. Garrett*, 526 US 66 (1999).

The determination of whether a child requires therapeutic and habilitation services, including the therapeutic and habilitation components of a residential treatment program, as related services under the IDEA is made on an individual basis by the child's IEP team. In situations where the IEP team determines that the child's educational needs are inseparable from the child's other needs or the child is determined, on an individual basis, to require the therapeutic and habilitation components of a residential program in order to receive a free appropriate public education, in general, these services would be considered to be related services under the IDEA. In such cases, the SEA is responsible for ensuring that the entire cost of the special education and related services provided at

⁴ 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 the IDEA. *See*, 20 U.S.C. §1415(b)(2); and 34 CFR §§300.20 and 300.515.

the residential placement, including the therapeutic and habilitation services, as well as room and board, is provided without cost to the parents. (*See*, 34 CFR §300.302 and the discussion of financial arrangements in Item E, below.)

If, on the other hand, the IEP team determines that the child's therapeutic and habilitation services needs are separate and distinct from the child's educational needs, and the therapeutic and habilitation components of the residential placement are not required in order for the child to receive a free appropriate public education, the responsibility of the SEA, LEA, or other public agency is limited only to the special education and related services listed on the child's IEP.

E. Paying for FAPE—Methods of Ensuring Services

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 §300.301(a) and (c).

Questions regarding which public agency is responsible for the cost of a placement are to be addressed under the provisions of 34 CFR §300.142. Under those requirements, the SEA must 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 §300.142(a).

If a public agency other than an 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 §300.142(b)(2).