



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

THE ASSISTANT SECRETARY

Lee Warne
President
Association of Educational Service Agencies
801 North Quincy Street, Suite 750
Arlington, VA 22203

MAR 23 2007

Dear Mr. Warne:

This letter is in response to your correspondence received on October 2, 2006, by the Department of Education's General Counsel. This response is based on information from your letter along with conversations that a member of my staff had with Kari Arfstrom, your associate director. You requested the Department of Education's opinion on the specific provisions of the Individuals with Disabilities Education Act (IDEA) as amended by the Individuals with Disabilities Education Improvement Act of 2004, regarding the child find provisions for children with disabilities enrolled by their parents in private schools. In particular, you requested information regarding the role of the sending and receiving local educational agencies (LEAs) in completing child find activities and implementing equitable services for such children. As discussed below, educational service agencies (ESAs) may also have a role in meeting private school requirements. I have sent a similar reply to Dr. Talbott, who also signed your letter.

Under IDEA, significant changes were made to the child find process for parentally placed private school children. Section 612(a)(10)(A) of IDEA and 34 CFR §§300.130 through 300.144 now require the LEA where a private elementary school or secondary school or facility is located, rather than the LEA in which the parents of such children reside, to initiate child find activities, complete initial evaluations, consult with private school representatives, determine a proportionate share of its total Part B subgrant, and offer equitable services to parentally-placed private school children with disabilities. 34 CFR §§300.131(a) and 300.132. These provisions are applicable even if parentally placed private school children do not reside in the State where the private school they attend is located. 34 CFR §300.131(f).

Under section 602(19) of IDEA and 34 CFR §300.28, the term LEA includes an educational service agency. Educational service agency is defined at 34 CFR §300.12 as a regional public multi-service agency authorized by State law to develop, manage, and provide services or programs to LEAs; and recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools within the State. As your October 2, 2006 letter notes, ESAs carry out different responsibilities depending on State law. Some ESAs establish their eligibility under section 613 of IDEA and receive a subgrant from the State in accordance with the formula for allocating Part B funds in section 611(f) and section 619 (g) of IDEA. Because the definition of LEA includes an ESA, if an ESA

receives a subgrant from the State educational agency (SEA) under section 611 or section 619 of IDEA, the ESA is responsible for conducting child find, determining the proportionate share of its total Part B subgrant, consulting with representatives of private schools, and offering equitable services to parentally-placed private school children with disabilities who attend private schools located in the ESA. If the ESA does not receive a subgrant from the SEA under Part B of IDEA, the ESA is not responsible under IDEA for meeting the private school requirements. Therefore, depending upon how an ESA operates in a particular state, consultation with the SEA as to how that particular ESA should be included in the procedures discussed below would be necessary. Therefore, if questions arise regarding a specific ESA in a certain state, it would be advisable to contact the appropriate SEA for clarification.

A summary of the requirements of an LEA's role in both child find procedures and equitable services appears below. As noted above, the definition of LEA includes an ESA. If the ESA establishes its eligibility under section 613 of IDEA and receives a subgrant from the SEA under section 611 or section 619 of IDEA, it is the ESA that is responsible for meeting the requirements discussed below. Pursuant to 34 CFR §300.131, if a parentally-placed child with a disability is suspected of having a disability, the LEA where the private school is located must conduct the child's initial evaluation, subject to informed parental consent, and consistent with 34 CFR §300.504(a), provide the parents with a copy of the procedural safeguards notice. The child find activities and timelines for children placed in private schools by their parents should be comparable to the process in place for public school children and must include timely and meaningful consultation with private school representatives. 34 CFR §§300.131(c) and (e), and 300.134.

If a parentally-placed private school child is identified as a child with a disability, that child does not have an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. 34 CFR §300.137(a). With regard to the "sending LEA" or the parents' LEA of residence, the child retains the right to a free appropriate public education (FAPE) in that LEA. Because most States assign the responsibility for making FAPE available to the LEA in which the child's parents reside, if the parents of the privately-placed child wish to have FAPE made available to their child, they would need to contact the LEA where they reside. Once the parents make clear their intention to keep the child enrolled in the private elementary school or secondary school located in another LEA, the LEA of residence need not provide FAPE to that child.

The school district in which the private elementary school or secondary school is located is not responsible for making FAPE available to a child with a disability whose parents reside in another school district, but must include the child in the population of children considered for equitable services. The LEA where the private school is located must implement a services plan for a child with a disability who has been designated to receive special education and related services from an LEA. 34 CFR §300.137(c). This plan must be developed in a meeting initiated to develop, review and revise a services plan, and the LEA must ensure a representative from the religious or other private school attends the

meeting. 34 CFR §300.137(c). To the extent appropriate, the plan must be developed, reviewed and revised in accordance with IEP requirements. 34 CFR §300.138(b)(2). The services may be provided at the private school to the extent consistent with law. If necessary for the child to benefit from or participate in the services provided under the services plan, the LEA must provide transportation to the location of services from either the private school or the child's home, depending on the timing of the services. 34 CFR §300.139.

Finally, IDEA retains the requirement that each LEA must spend a proportionate amount of the subgrant it receives from the SEA under Part B of IDEA for the provision of special education and related services to children with disabilities enrolled by their parents in private elementary schools and secondary schools. The formula used to calculate the proportionate share is found in 34 CFR §300.133(a)(1) and (2)(i):

(1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.


(2)(i) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

Appendix B to the final Part B regulations contains examples of how the proportionate share is calculated.

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.

We hope that you find the responses to your questions helpful. If you need further assistance, please feel free to contact my office.

Sincerely,



John H. Hager