



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

December 20, 2013

Deborah Pergament
Clinical Instructor, Special Education Advocacy Clinic
DePaul University, College of Law
14 East Jackson Boulevard, Suite 100
Chicago, Illinois 60604

Dear Ms. Pergament:

This is in response to your October 11, 2012 letter to me regarding the responsibilities of a local educational agency (LEA) to “make up” special education and related services that a child with a disability did not receive because schools were closed during a district-wide seven-day teachers’ strike. Your letter distinguishes between a child with a disability who attends a regular public school in the LEA and a child with a disability who attends a charter school that is a public school of the LEA. In the case you present, the charter schools in the LEA remained open during the teacher’s strike and continued to provide general education services to all children. However, no related services were delivered in the charter schools because the LEA in question had the responsibility to provide special education and related services to students with disabilities attending the charter school.

As an initial matter, we emphasize that we are not familiar with the particular circumstances of the district-wide seven-day teachers’ strike and how that strike may have affected the delivery of special education and related services to children with disabilities. Rather, this letter provides information of general applicability. The Individuals with Disabilities Education Act (IDEA), and its implementing regulations at 34 CFR Part 300, do not specifically address a situation in which elementary and secondary schools, whether public schools of the LEA, or a charter school that is a public school of the LEA, are closed or otherwise affected by a short-term teachers’ strike. Generally, if the functioning or delivery of educational services is significantly disrupted for all or nearly all students due to a short-term teachers’ strike, then the LEA is not required to provide services to the affected children with disabilities during that same period of time. This would include students with disabilities attending a charter school where the LEA is responsible for the provision of special education and related services that are disrupted due to the teachers’ strike.

Generally, the decision to provide “make up” or compensatory education when there is a disruption in the provision of educational services, and the nature and amount of the special education and related services that are to be provided as compensatory education, is an individualized determination made by the individualized education program (IEP) Team in accordance with the requirements in 34 CFR §§300.320-300.324. That is, the IEP Team must determine whether the child was denied educational benefit because of the disruption in educational services and whether compensatory education is needed to “make up” for the denial including addressing any skills that may have been lost. The parent and the LEA may agree not to convene an IEP Team meeting for the purposes of making changes to a child’s IEP after the

annual IEP Team meeting for the school year has already occurred, and instead, address changes, such as the provision of compensatory education, by developing a written document to amend or modify the child's current IEP. 34 CFR §300.324(a)(4)(i). If the latter occurs, and the parents and the LEA agree to changes to the child's IEP to provide for compensatory education, the LEA must ensure that the child's IEP Team is informed of those changes. 34 CFR §300.324(a)(4)(ii). See Questions and Answers on Providing Services to Children with Disabilities during an H1N1 Outbreak, December, 2009, <http://www2.ed.gov/policy/speced/guid/idea/h1n1-idea-qa.pdf> for a more detailed discussion of these issues.

If an IEP Team decides not to provide compensatory education services to a child with a disability and the parent believes that his or her child is entitled to those services, the parent may pursue dispute resolution options provided under Part B of the IDEA. Parents of children with disabilities may resolve disputes with public agencies regarding the provision of a free appropriate public education to their children by: (1) filing a State complaint directly with the State educational agency, in accordance with 34 CFR §§300.151 through 300.153; (2) requesting mediation pursuant to 34 CFR §300.506; and (3) using the due process provisions pursuant to 34 CFR §§300.507 through 300.516.

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.

If you have additional questions, please do not hesitate to contact Jennifer Wolfsheimer, at 202-245-6090 or by email at Jennifer.Wolfsheimer@ed.gov.

Sincerely,



Melody Musgrove, Ed.D.
Director
Office of Special Education Programs