



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

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Division of Specialized Education
Office of the State Superintendent of Education (OSSE)
Government of the District of Columbia
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Dear Dr. Maisterra,

This letter is in response to your December 8, 2011 and November 28, 2012 electronic mail (email) correspondence to the Office of Special Education Programs (OSEP) in the Office of Special Education and Rehabilitative Services, U.S. Department of Education (Department). In your emails, you asked a series of questions regarding the responsibility of the local educational agency (LEA) where a child's parents reside to provide a free appropriate public education (FAPE), transportation, and monitoring for students attending the Kendall Demonstration Elementary School (KDES) and the Model Secondary School for the Deaf (MSSD). KDES and MSSD are collectively known as the Laurent Clerc National Deaf Education Center (Clerc Center) at Gallaudet University.

The schools housed in the Clerc Center are unique programs for students who are deaf or hard of hearing, and are subject to requirements in the Education of the Deaf Act of 1986, as amended (EDA), 20 U.S.C. 4301 et seq. and certain requirements of Part B of the Individuals with Disabilities Education Act (IDEA Part B) specified in the EDA. These programs are funded through an annual Federal appropriation to Gallaudet University, as authorized by section 212 of the EDA. 20 U.S.C. 4360a(a)(2)-(3). The Clerc Center is not a State educational agency (SEA) or LEA, as those terms are defined in the IDEA. While KDES and MSSD provide services to both children placed in the schools by their parents or guardian pursuant to the EDA, and children referred to or placed in the schools by their LEAs pursuant to the IDEA, the EDA makes several distinctions between requirements that apply to the education these two groups of students.

For students referred to or placed in KDES or MSSD by their LEA to meet its obligation to make FAPE available pursuant to IDEA Part B, the LEA retains responsibility for ensuring that the special education and related services and the rights and procedural safeguards that are provided to the child and his or her parents comply with IDEA Part B. For students who are placed by their parents or guardian at KDES or MSSD, specific provisions of IDEA Part B apply to the Clerc Center, and the Clerc Center is responsible for implementing those provisions. Answers to your specific questions are included below.

Provision of FAPE

Question 1: What are the obligations of the LEA to provide FAPE, including the development and implementation of individualized education programs (IEPs), when a parent enrolls his or her child in one of the demonstration programs?

OSEP's Response: If the parents or guardian chooses to place a child in KDES or MSSD, section 104(b)(4)(C) of the EDA requires that Gallaudet University [through the Clerc Center] "provide the child a free appropriate public education in accordance with Part B of the Individuals with Disabilities Education Act [20 U.S.C. §§1411 et seq.] and procedural safeguards in accordance with.

... provisions of section 615 of such Act [20 USC §1415].” Thus, in this circumstance, the Clerc Center is responsible for providing FAPE to students placed in its programs by their parents or guardian. The LEA is not responsible for providing FAPE or providing the child and parents the applicable procedural safeguards when the parents or guardian place a child at KDES or MSSD.

Question 2: What are the obligations of the LEA to provide FAPE, including the development and implementation of IEPs, when an LEA enrolls a child in one of the demonstration programs?

OSEP’s Response: When an LEA refers or places a child in KDES or MSSD as a means of meeting its obligation to make FAPE available to that child, the SEA and LEA are responsible for ensuring that FAPE is provided to the child, that his or her IEP is appropriately developed and implemented, and that the child and his or her parents are afforded all rights and procedural safeguards, as required in 34 CFR §§300.101, 300.201, 300.320-300.324, and 300.500. Section 104(b)(3) of the EDA specifies that:

If a local educational agency, educational service agency, or State educational agency refers a child to, or places a child in, one of the elementary or secondary education programs to meet its obligation to make available a free appropriate public education under part B of the IDEA [20 USC §§1411 et seq.], the agency or unit shall be responsible for ensuring that the special education and related services provided to the child by the education program are in accordance with part B of that Act [20 USC §§1411 et seq.] and that the child is provided the rights and procedural safeguards under section 615 of that Act. 20 U.S.C. 4304(b)(3).

Transportation

Question 3: What are the obligations of the LEA to provide transportation when a parent or guardian enrolls his or her child in one of the demonstration programs?

OSEP’s Response: If the parents or guardian place a child in KDES or MSSD, section 104(b)(4)(C) of the EDA is clear that the LEA does not retain responsibility for providing FAPE and would not be responsible for paying the cost of the child’s transportation to the Clerc Center programs.

If the IEP of a student placed in KDES or MSSD by their parents or guardian requires special transportation because the student’s IEP Team determines that the student requires special transportation in order to receive FAPE, the Clerc Center would be required by section 104(b)(4)(C) of the EDA to transport that student to KDES or MSSD at no cost to the parents. Under 34 CFR §300.34(c)(16), transportation is a related service required to assist a child with a disability to benefit from special education, and includes travel to and from school and between schools. 34 CFR §300.34(c)(16)(i). Further, under 34 CFR §300.320(a)(4), each child’s IEP must include a statement of the special education and related services and supplementary aids and services to be provided to the child or on behalf of the child.

Note also that according to section VI.C of the Agreement Between the U.S. Department of Education and Gallaudet University for the Operation of Clerc Center Programs (Agreement), all students placed at KDES by their parents or guardian are entitled to the following:

The University will provide transportation to the KDES to students who live within a 15-mile radius of the U.S. Capitol. The University will provide transportation from designated pickup points approximately 15 miles from the U.S. Capitol to KDES students who live beyond that distance, unless inconsistent with a student’s IEP. Agreement at 6.

Question 4: Do transportation obligations change if an LEA determines that the child needs to be enrolled in the program rather than at a neighborhood school, in order to provide FAPE, or does the

Federal funding provided under the EDA include transportation as a necessary related service to access the program?

OSEP's Response: If the LEA refers a child to, or places a child in, KDES or MSSD, section 104(b)(3) of the EDA requires the SEA, the LEA, or the educational service agency to ensure that the student receives FAPE, which includes any needed transportation that constitutes a related service, at no cost to the parents. In addition, section VI.C of the Agreement provides that [the referring or placing] agency shall be responsible for ensuring that transportation between the child's home and the University is provided at no cost to the student and his or her parents of (sic) guardian. Agreement at 6.

Monitoring:

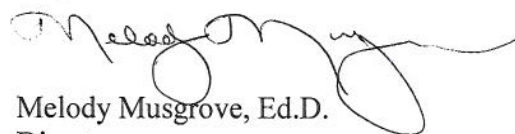
Question 5: What are the LEA's obligations to monitor these programs, as these programs are not LEAs, nonpublic schools, or Private and Religious Office programs?

OSEP's Response: Section 104(b)(3)(B) of the EDA is clear that an SEA and its LEAs are responsible for ensuring that the children with disabilities they refer to or place in Clerc Center programs receive FAPE at those programs in accordance with IDEA Part B, 20 U.S.C. §§1411 et seq. The SEA and the placing LEA must ensure that the children with disabilities are provided FAPE in accordance with applicable regulations, including those requiring that IEPs are appropriately developed and implemented, and that those children and their parents are afforded rights and procedural safeguards, as required by IDEA Part B 20 U.S.C. §1415. See 34 CFR §§300.101, 300.201, 300.320-300.324, and 300.500. Therefore, the SEA and the referring or placing LEA must ensure that the children referred to or placed in the Clerc Center by the LEA are served in accordance with IDEA Part B.

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 any further questions, please do not hesitate to contact Lisa Pagano, of my staff, at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,



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

cc: Dr. Edward Bosso
Annette Reichman