



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

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Sam Sutton
President
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Dear Mr. Sutton and Mr. Rubel,

Thank you for contacting the Office of Non-Public Education (ONPE) in the U.S. Department of Education (Department) asking whether special education and related services for children with disabilities enrolled by their parents in private schools could be delivered using inclusion models that you describe in your letter. ONPE has referred your inquiry to the Office of Special Education Programs (OSEP), the office in the Department responsible for administering the Individuals with Disabilities Education Act (IDEA), for a response.

OSEP recognizes and supports the importance of inclusive educational practices, as you do. Indeed, research has demonstrated that students with disabilities do better when they are given the opportunity to be educated and interact in extracurricular and nonacademic settings with their nondisabled peers. Therefore, as a general matter, we believe that in meeting IDEA's equitable services requirements, it is important for local educational agencies (LEAs) where private, including religious, elementary and secondary schools are located, to ensure that services provided to parentally-placed private school children with disabilities include opportunities for their meaningful participation in the general curriculum and promote student growth. That said, we cannot endorse any particular instructional model, such as the collaborative teaching models you outlined in your letter, because determinations regarding particular instructional models are matters that rest with State and local officials. Further, with regard to equitable services, under IDEA, the consultation process is the vehicle for determining the types and amounts of services, including the manner in which those services are provided. This process and the other IDEA requirements that govern the provision of equitable services to parentally-placed private school children with disabilities are described below.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Assuming that a parentally-placed private school child is an eligible child with a disability, as defined in 34 CFR §300.8, and that such child has been designated to receive services under the equitable services provisions of the IDEA, a services plan must be developed for the child. The services plan must include the specific special education and related services to be provided to the child in light of the services that the LEA has determined, through the consultation process, it will make available to its parentally-placed private school children with disabilities. Further, a services plan, must, to the extent appropriate, reflect the IEP content requirements in 34 CFR §300.320. Under 34 CFR §300.320(a)(4)-(5), the IEP must address the extent to which a child with a disability will participate and be educated with children with and without disabilities in the general education curriculum and in extracurricular and other nonacademic activities.

As you know, under 34 CFR §300.134, the LEA where the private school is located, or if appropriate, the State educational agency (SEA), must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services. The consultation process is very important because discussions between public school and private school representatives and parents must address, among other matters: how parentally-placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services; how, where, and by whom special education and related services will be provided; and the types of services to be provided, including direct services and alternate service delivery mechanisms. 34 CFR §300.134(d)(1). The LEA where the private school is located must make the final decisions with respect to the services provided to eligible parentally-placed private school children with disabilities. 34 CFR §300.137(b)(2). In addition, the special education and related services provided must be secular, neutral, and nonideological. 34 CFR §300.138(c)(2).

In addition, equitable services for parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law. 34 CFR §300.139(a). The Department generally believes that, unless there is a compelling rationale for these services to be provided off-site, LEAs should provide services on-site, at the child's private school, so as not to unduly disrupt the child's educational experience. See Question F-1, [*Questions and Answers on Serving Children with Disabilities Placed By Their Parents in Private Schools*](#) (April 2011).

It is our understanding that you would like to present the six collaborative teaching models described in your letter to public school officials for possible use in connection with the provision of equitable services to parentally-placed private school children with disabilities under IDEA. You believe the first three models presented in your letter may be consistent with the IDEA regulations, and the latter three were designed for children with disabilities, but also may indirectly benefit the general needs of students enrolled in the private school. We assume you are suggesting that you believe that these models would confer what we refer to as an "incidental benefit" on the private school children not receiving equitable services under the IDEA. See generally 34 CFR §300.208 (permissive use of IDEA funds). It is important to note that in providing or arranging for the provision of equitable services, an LEA may not use IDEA Part B funds to finance the existing level of instruction in a private school or to otherwise benefit the private school. Rather, the LEA must use IDEA Part B funds to meet the special education and related services needs of parentally-placed private school children with disabilities, and not to meet the needs of the private school or the general needs of the students enrolled in the private school. 34 CFR §300.141. Therefore, LEAs should use reasonable measures in assessing whether Federal funds are being used to benefit private schools. See 64 Fed. Reg. 12406, 12605

(Mar. 12, 1999).¹ The Department has previously advised that 34 CFR §300.141 would not prohibit other children in the private school from deriving a benefit that is incidental to the provision of the Federally-funded special education and related services to those parentally-placed private school children with disabilities designated to receive services under IDEA. For example, if consultation services are provided to a private school teacher as a means of providing special education and related services to a particular parentally-placed private school student with a disability and that teacher uses the acquired skills in providing education to other children, whatever benefit those other children receive is incidental to the provision of special education and related services and is not prohibited by 34 CFR §300.141. 64 Fed. Reg. 12605.

As noted previously, we cannot endorse any particular instructional model, and therefore express no view as to whether any of the collaborative teaching models described in your letter could be implemented in a manner that would confer only an incidental benefit on the other children in the private school. Rather, we believe a careful analysis of the particular facts and circumstances would need to be undertaken in making such a determination, and therefore suggest that you explore this matter with State and local officials through the consultation process described above.

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 this information is helpful to you as you continue to work with the local public school districts and the State of New York to support the effective implementation of equitable services under IDEA for eligible children with disabilities enrolled by their parents in private schools. Should you have additional questions or require further clarification, please contact Dwight Thomas, Office of Special Education Programs at 202-245-6238, or Pamela Allen, Office of Non-Public Education at 202-205-9012, directly.

Sincerely,

/s/ Melody Musgrove

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

¹ This clarification was provided in a response to a public comment in the Analysis of Comments and Changes to the Department's March 12, 1999 final Part B regulations. See Assistance to States for the Education of Children with Disabilities and the Early Intervention Program for Infants and Toddlers with Disabilities, Final Rule, 64 Fed. Reg. 12406, 12605 (Mar. 12, 1999).