



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

September 8, 2017

Mr. Brian Radziwill
Archdiocese of Washington
Post Office Box 29260
Washington, DC 20017-0260

Dear Mr. Radziwill:

This letter responds further to questions raised during your October 18, 2016 conference call with representatives of the U.S. Department of Education (Department), Office of Non-Public Education and the Office of Special Education Programs (OSEP). During that discussion, you requested clarification concerning certain provisions of the Individuals with Disabilities Education Act (IDEA) that pertain to children with disabilities enrolled by their parents in private schools. Your questions and OSEP's responses are provided below. We regret the delay in responding.

Question: What constitutes meaningful consultation under 34 CFR §300.134?

OSEP Response: Under 34 CFR §300.134, to ensure timely and meaningful consultation, a local educational agency (LEA), or if appropriate, a State educational agency (SEA), must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities in the design and development of special education and related services for the children regarding the following topics:

- (a) Child find, and how parentally-placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;
- (b) Proportionate share. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities, including the determination of how the proportionate share of those funds was calculated;
- (c) Consultation process. How the consultation process among representatives of the agency, the private schools, and the parents of parentally-placed private school children will take place, including how the process will operate throughout the school year to ensure that parentally-placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-2600

www.ed.gov

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

(d) Provision of special education and related services. How, where, and by whom special education and related services will be provided, including a discussion of types of services—including direct services and alternate service-delivery mechanisms, as well as how the services will be apportioned if funds are insufficient to serve all children—and how and when those decisions will be made; and

(e) Written explanation by LEA regarding services. How, if the LEA representatives disagree with the views of the private school officials on the provision of services or the types of services whether provided directly or through a contract, the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to adopt the recommendations of the private school.

Apart from this regulatory provision, IDEA does not specify what constitutes “meaningful consultation.” In prior guidance, the Department has provided the following explanation of IDEA’s consultation requirement:

Effective consultation provides a genuine opportunity for all parties to express their views and to have those views considered by the LEA before the LEA makes any decision that has an impact on services to parentally-placed private school children with disabilities. Timeliness is critical to effective consultation and requires collaboration between the LEA and private school officials in developing a timeline and selecting dates for consultation. Successful consultation establishes positive and productive working relationships that make planning easier and ensure that the services provided meet the needs of eligible parentally-placed private school children with disabilities.

A unilateral offer of services by an LEA with no opportunity for discussion is not adequate consultation as such an offer does not meet the basic requirements of the consultation process. Only after discussing key issues relating to the provision of special education and related services with all representatives may the LEA make its final decisions with respect to the services to be provided to eligible private school children with disabilities.

Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, April 2011, Question A-1, available at:

https://sites.ed.gov/idea/files/Private_School_Q_A_April_2011_1.pdf

In order for consultation to be meaningful, it also must be timely. Establishing a timeline for consultation can help ensure that timely and meaningful consultation occurs throughout the school year. The timeline can include meeting dates and times as well as topics to be discussed. Question A-4 of the Department’s April 2011 *Question and Answer* document.

As there is no specific schedule for consultation of the LEA, or SEA, as appropriate, with private school representatives and representatives of parents of parentally-placed private school children with disabilities, States and LEAs are able to determine the appropriate period between consultations based on circumstances in their jurisdictions. OSEP recognizes that the needs of parentally-placed private school children with disabilities, and their number and location, may vary over time, depending on the circumstances in a particular LEA in a particular year. Many

jurisdictions have found that it works well when consultation takes place, at a minimum, to review the child find process, discuss the child count, plan the services being offered and establish a consultation timeline prior to the start of each school year.

In addition, the LEA must maintain documentation that timely and meaningful consultation has occurred, including a written affirmation signed by the representatives of the participating private schools, as required by 34 CFR §300.135. This written affirmation signed by the representatives of the participating private schools should reflect that those officials have indeed participated in timely and meaningful consultation that has continued throughout the school year. Question A-3 of the Department's April 2011 *Question and Answer* document.

Question: What is the definition of “representatives of parents of parentally-placed private school children with disabilities” that must be included in the consultation required by 34 CFR §300.134?

OSEP Response: IDEA does not contain a definition of this term, and does not specify which individuals must be included in the consultation process as representatives of parents of parentally-placed private school children with disabilities. Determinations of which individuals should be designated as representatives of parentally-placed private school children with disabilities are best made at the State and local level so that the LEA, or SEA, if appropriate, along with private school officials and representatives of parents can identify and acknowledge the respective roles of those participating in the consultation process. IDEA would not prevent parents of parentally-placed private school children with disabilities from representing themselves in the consultation process. Whether parents of home-schooled children or other representatives of home-schooled children should be considered “representatives” of parents of parentally-placed private school children with disabilities depends on whether under State law, a child with a disability that is being home schooled is regarded as a parentally-placed private school child with a disability.

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 Department of the IDEA in the context of the specific facts and questions presented.

Finally, on February 24, 2017, President Donald J. Trump signed Executive Order 13777, “*Enforcing the Regulatory Reform Agenda*,” in order to lower regulatory burdens on the American people by implementing and enforcing government-wide regulatory reform. Each Federal agency is required to establish a Regulatory Reform Task Force and conduct a thorough review of existing policy in an effort to alleviate unnecessary regulatory burdens. To comply with the Executive Order, the U.S. Department of Education (Department) has formed a Regulatory Reform Task Force to review existing non-regulatory guidance and existing regulations. Most recently, on June 22, 2017, the Secretary announced the release of the Department's first progress report of the Task Force, as required by Executive Order 13777. One of the duties of the Task Force is to evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement or modification. In addition to conducting an agency-wide regulatory review, the Department is seeking public comment concerning whether regulations and non-regulatory policy guidance should be repealed, replaced or modified.

If you have recommendations concerning any of the Department's guidance related to meaningful consultation or other IDEA provisions, please submit them to docket ID number ED-2017-OS-0074 at the Federal eRulemaking Portal at www.regulations.gov no later than September 20, 2017.

If you have any questions, please do not hesitate to contact Dwight Thomas at 202-245-6238 or by email Dwight.Thomas@ed.gov.

Sincerely,

/s/

Ruth E. Ryder
Acting Director
Office of Special Education Programs