



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

August 23, 2016

Martha Goodman
Coordinator
Maryland Special Needs Advocacy Project
The Louise D. and Morton J. Macks Center
for Jewish Education
5708 Park Heights Avenue
Baltimore, Maryland 21215-3930

Dear Ms. Goodman:

This letter responds to your inquiry addressed to the U.S. Department of Education (Department), Office of Non-Public Education (ONPE), regarding certain provisions of Part B of the Individuals with Disabilities Education Act (IDEA or the Act) and parentally-placed private school children with disabilities. ONPE staff shared your inquiry with the Department's Office of Special Education Programs (OSEP) as OSEP is responsible for administering the IDEA. We appreciate the opportunity to respond to your questions.

Specifically, you asked for clarification regarding the calculation of the proportionate share of IDEA funds that must be used by a local educational agency (LEA) to provide special education and related services to parentally-placed private school children with disabilities when that LEA is required to reserve a portion of its IDEA funds to provide comprehensive coordinated early intervening services (CEIS) because it has been identified with significant disproportionality. You also inquired about whether Medicaid reimbursement is permitted for special education and related services provided to parentally-placed private school children and the potential impact on equitable services to such children.

Question: Can an LEA identified with significant disproportionality under Part B of the IDEA take off the top expenses related to providing comprehensive CEIS before the State or LEA calculates the proportionate share of IDEA funds that must be used by the LEA to provide special education and related services to parentally-placed private school children with disabilities?

OSEP Response: No. The calculations for both comprehensive CEIS and the proportionate share must be based on the total amount of the subgrant the LEA receives under 34 CFR §§300.705 and 300.815. If a State identifies an LEA as having significant disproportionality based on race and ethnicity in the identification, placement, or discipline of children with disabilities, the LEA must reserve the maximum amount of IDEA Part B funds under section 613(f) of the Act for comprehensive CEIS. See 34 CFR §300.646(b)(2). That maximum amount is 15 percent of the total amount of Part B (section 611 and section 619) funds awarded to the LEA. See 34 CFR §300.226(a). An LEA that is not identified as having significant disproportionality, but

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voluntarily chooses to use IDEA Part B funds for CEIS, may use up to 15 percent of the total amount of IDEA Part B funds awarded to the LEA, less any funds reduced by the LEA pursuant to 34 CFR §300.205. See 34 CFR §300.226(a). Please note that an LEA that is required to use IDEA Part B funds for comprehensive CEIS or voluntarily uses up to the maximum amount of IDEA Part B funds for CEIS cannot adjust its local maintenance of effort (MOE) pursuant to 34 CFR §300.205, because the MOE reduction provision and the authority to use IDEA Part B funds for CEIS are interconnected. See 34 CFR §§300.205(d) and 300.226(a).

In addition to calculating the amount of IDEA Part B funds the LEA is required to reserve for comprehensive CEIS or the amount that an LEA voluntarily reserves for CEIS, the LEA must calculate the proportionate share of IDEA section 611 and section 619 funds that it must spend for parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools in the LEA. This calculation must be based on an amount that is equal to a proportionate share of the LEA's total subgrant award under section 611(f) of IDEA and the LEA's total subgrant award under section 619(g) of IDEA. See 34 CFR §300.133(a) and Appendix B to 34 CFR Part 300. Therefore, an LEA may not deduct the funds that it is required to reserve for comprehensive CEIS or voluntarily reserves for CEIS before calculating the amount of funds it is required to spend on equitable services for children with disabilities parentally-placed in private schools. See Response to Question 22 in *OSEP Memo 08-09, Coordinated Early Intervening Services Under Part B of the Individuals with Disabilities Education Act (IDEA)*, July 28, 2008 available at:

<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep08-09coordinatedearlyinterveningervices.doc>.

Question: Are States or LEAs allowed to receive Medicaid reimbursement for parentally-placed private school children with disabilities selected to receive special education or related services through services plans? If so, can that reimbursement be used to offset the proportionate share amount that the LEA must expend?

OSEP Response: The proportionate amount of IDEA Part B funds that each LEA must expend on the provision of special education and related services for parentally-placed children with disabilities attending private schools located in the LEA is calculated based on an LEA's total subgrant under IDEA section 611(f) (Grants to States) for children with disabilities aged three through 21 and IDEA section 619(g) (Preschool Grants) for children with disabilities aged three through five. Therefore, reimbursements available from other Federal funding sources may not be used to offset or reduce the proportionate amount of IDEA Part B funds that the LEA is required to expend on equitable services. See 34 CFR §300.133.

Further, we are not aware of any authority in the IDEA that would authorize an LEA to bill Medicaid for the cost of providing special education and related services to parentally-placed private school children with disabilities receiving special education or related services pursuant to services plans. According to section 612(e), "Nothing in [Title 20] permits a State to reduce medical or other assistance available, or to alter eligibility, under Titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education (FAPE) for children with disabilities in the State." See also section 612(a)(12)(A) (Methods of ensuring services); and 34 CFR §300.154(d) (Children with disabilities covered by public insurance). Further, under section 612(a)(12)(A) and 34 CFR §300.154(a), the financial responsibility of the

State Medicaid agency or other public insurers of children with disabilities must precede the financial responsibility of the LEA or State agency responsible for developing the child's individualized education program (IEP). Because parentally-placed private school children with disabilities who are designated to receive services are not entitled to FAPE in connection with their parental private school placement and do not have IEPs, and Medicaid funds are intended to provide financial relief to school districts in meeting their responsibilities to provide FAPE to children with disabilities, we do not believe school districts are authorized under the IDEA to claim Medicaid reimbursement for services provided to parentally-placed private school children with disabilities included in services plans. We note, however, that this Office administers the IDEA and does not administer or interpret the Medicaid authorizing statute or its implementing regulations. Therefore, if you would like to obtain further information regarding this matter, we suggest that you contact the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services at <https://www.cms.gov>.

Based on 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 to the specific facts and questions presented.

If you have any questions, please do not hesitate to contact Dwight Thomas at 202-245-6238 or by email Dwight.Thomas@ed.gov, or Pamela Allen at 202-205-9012 or by email at pamela.allen@ed.gov.

Sincerely,

/s/

Ruth E. Ryder
Acting Director
Office of Special Education Programs

/s/

Maureen Dowling
Director
Office of Non-Public Education