



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

JUL - 5 2001

Mr. R. David Cousineau, President, and
Mr. David L. Halbett, Manager, Therapeutic Services
Seattle Children's Home
2142 Tenth Avenue West
Seattle, Washington 98119

Dear Mr. Cousineau and Mr. Halbett:

This is a response to the four inquiries set forth in your November 8, 2000 letter and during subsequent telephone discussions between Mr. Halbett and Troy Justesen of our office. You asked for clarification of the child-find, educational and financial responsibilities under the Individuals with Disabilities Education Act (IDEA) for children with disabilities who are Washington residents and placed in the Seattle Children's Home School, a private in-patient/residential psychiatric treatment program. You specifically asked if these responsibilities vary based on (1) whether the placement was made by an agency, a court or the child's parent and (2) the fact that the State is the guardian of a child. Our responses are based on the information provided in your letter and during your follow-up telephone conversations with our staff.

By way of background, Part B of the IDEA requires each State educational agency (SEA) to ensure that all children with disabilities in the State have the right to a free appropriate public education (FAPE). 20 U.S.C. §§1402(8) and 1412(a)(1)(A); 34 CFR §§300.300 and 300.600. The only exception to this rule are children whose parents have placed them in a private school or facility even though FAPE was available. (This point is explained in more detail below). If a public agency determines in an individual situation that the student cannot receive an appropriate education from the programs that the public agency conducts and therefore placement in a public or private residential program is necessary to provide special education and related services to the child, the program, including non-medical care and room and board, must be at no cost to the parents of the child. 34 CFR §300.302.

Furthermore, each SEA shall ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency is provided special education and related services in conformance with the child's individualized education program (IEP) and with the standards that apply to education provided by the SEA and local educational agencies (LEAs) at no cost to the parents. A child placed by a public agency with responsibility for providing education to children with disabilities in a private school or facility has all of the rights of a child with a disability who is served by a public agency. 20 U.S.C. §§1402(8) and 1412(a)(10)(B) and 34 CFR §300.401. *See, e.g., Kerr Center Parents Assn. v. Charles*, 897 F.2d 1463 (9th Cir. 1990).

In situations where a student's educational needs are inseparable from the child's emotional needs and the student is determined on an individualized basis to require the therapeutic and habilitation services of a residential program in order to "benefit from special education", these therapeutic and habilitation services may be "related services" under the IDEA. 34 CFR §300.24. In such a case, the SEA is responsible for ensuring the entire cost of that placement, including the therapeutic care as well as room and board, is without cost to the parents. However, the SEA is not responsible for providing medical care and, thus, visits to a doctor for treatment of medical conditions are not covered as services under Part B. As stated earlier, parents are not required to bear the costs of residential placement where such placement is determined essential to provide FAPE. However, the SEA can and should look to other sources for financial contributions needed to cover such costs. 34 CFR §300.600. Under Part B, the SEA is responsible for identifying methods of ensuring services including clarifying the responsibilities of various State agencies, including both financial responsibility and coordination of services. 34 CFR §300.142. If it is necessary, for example, to place a child with a disability in a residential facility, a State may utilize interagency agreements with other State agencies in order to determine how to share the cost of that placement. *See*, 34 CFR §§300.142 and 300.301. If, on the other hand, the child's emotional disturbance is distinct from the student's academic learning and the habilitation and treatment components of the residential placement are not required in order for the child to benefit from special education, the SEA's responsibility is limited to the educational portion of the residential placement.

The determination of whether the treatment and habilitation components of a residential treatment program are "related services" under the IDEA is made on an individualized basis by the child's IEP team. Your comment that some of the students are placed in your facility based on their having met medical necessity criteria for a State program does not negate the independent requirement under the IDEA that the child's IEP team (or a hearing officer or court decision issued under the IDEA) identify the FAPE requirements for a child. Either before or immediately after a public agency places a child with a disability in, or refers a child to, a private school or facility, an IEP team meeting would need to be convened to develop an IEP for the child (or review and, if necessary, revise an existing IEP). The public agency must ensure that a representative of the private school or facility attends the meeting. 34 CFR §300.344(a). If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. Even if a private school or facility implements a child's IEP, the responsibility for compliance remains with the public agency and the SEA. *See*, 34 CFR §300.349.

An issue underlying the questions stated earlier is which school district in the State is responsible for the cost of these residential placements. This is a matter of State law and, generally, States allocate responsibility for the provision of FAPE based on the school district in which the child's parents reside. Although Part B of the IDEA does not address which school district in a State is responsible for the cost of a placement, under Part B, the SEA must exercise general supervision over all educational programs for

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children with disabilities residing in the State, and has the ultimate responsibility for ensuring the availability of FAPE to these children. 34 CFR §300.600. Therefore, if there is a question regarding which school district is responsible for the cost of a placement, the State is responsible for ensuring that the issue is resolved.

However, when FAPE has been offered that meets the special education and related services needs of a child with a disability, and the parent chooses not to accept the program offered to their child by the LEA, and instead elects to enroll their child in a private school or facility, then the district is not required to pay for that child's private education. *See*, 20 U.S.C. §1412(a)(10)(A) with exceptions set forth at 1412(a)(10)(C); 34 CFR §300.403. Parentally-placed private school children with disabilities have no individual right to special education and related services under Part B of the IDEA and thus, a school district is not required to serve every parentally-placed private school child with a disability. *See*, 34 CFR §§300.403 and 300.450. If a school district elects to serve a particular parentally-placed private school child with a disability, it is not required to provide that child with the full range of services under Part B.

With respect to the identification and evaluation of children suspected of having a disability as defined under the IDEA, such requirements also apply to parentally-placed private school children, including children in private psychiatric treatment programs. This requirement is termed "child find" and applies to all children with disabilities residing in the State. 20 U.S.C. §1412(a)(3)(A) and 34 CFR §300.125. Child find refers to ongoing activities undertaken by SEAs and, as appropriate, to LEAs to locate, identify, and evaluate all children residing in the State who are suspected of having disabilities under the IDEA. Under Part B, each LEA must conduct child find for all children in public and private schools, including religious schools and other private facilities, residing in the jurisdiction of the LEA, regardless of the severity of their disability, who are in need of special education and related services. *See*, 34 CFR §300.451. Once children are identified who are suspected of having disabilities under Part B, LEAs must have procedures for conducting, at no cost to parents, evaluations to determine eligibility for services under the IDEA of such children residing in their jurisdiction within a reasonable period of time.

Regarding your inquiry as to whether the fact that the State is a guardian of the child does not change our discussion above as to the SEA's responsibility to ensure that FAPE is provided at no cost to a child with a disability. Under the IDEA, separate provisions apply when a child is a ward of the State but these provisions are designed to ensure that an impartial person acts on behalf of a child with a disability in, among other things, providing consent, attending IEP meetings, and determining educational placements. *See*, 20 U.S.C. §1415(b)(2) and 34 CFR §§300.20(a)(4) and 300.515.

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We hope that this information is helpful. If you need further information regarding this matter, you may contact Troy Justesen at 202-205-9053, or JoLeta Reynolds at 202-205-5507.

Sincerely,

A handwritten signature in black ink that reads "Patricia J. Guard". The signature is written in a cursive style with a large initial "P" and a distinct "G".

Patricia J. Guard
Acting Director,
Office of Special Education Programs

cc: Dr. Douglas Gill
Washington Department of Public Instruction