



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

JAN 28 2009

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Dear Mr. Eig:

This is in response to your September 29, 2008 letter in which you request guidance from the Office of Special Education Programs (OSEP) at the U.S. Department of Education (Department), Office of Special Education and Rehabilitative Services, regarding the following situation.

A student resides in Montgomery County, Maryland, but attends the Lab School of Washington - a private special education day school located in the District of Columbia. The student has never received special education services from Montgomery County Public Schools (MCPS). In April, 2008, his mother requested the necessary forms to begin the special education process (evaluation, eligibility, individualized education program (IEP), placement) with Montgomery County. After submitting the forms, a representative of MCPS informed the parent that, because the student is parentally-placed in a private school located in the District of Columbia, the District of Columbia Public Schools (DCPS) is responsible for the eligibility determination, not MCPS.

As you mention in your letter, the Department has offered guidance on this issue in the Questions and Answers On Serving Children with Disabilities Placed by Their Parents in Private Schools (January 2007). The guidance provides that parents can request that their child be evaluated by the local educational agency (LEA) of residence for purposes of having a free appropriate public education (FAPE) made available to the child and by the LEA in which the private school is located for purposes of considering the child for equitable services. While the Department generally discourages parents from requesting evaluations from two LEAs, if a parent chooses to request evaluations from the LEA responsible for providing the child with a program of FAPE and a different LEA that is responsible for considering the child for the provision of equitable services, both LEAs are required to conduct an evaluation.

Each LEA must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the LEA. 34 CFR §300.131(a). This includes parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located. 34 CFR §300.131(f). The purpose of this child find activity is designed to ensure the equitable participation of parentally-placed private school children and an accurate count of those children.

When a State delegates the responsibility for conducting child find for purposes of having a program of FAPE made available to the child to its LEAs, as is the case in Maryland, the LEA must ensure that all children with disabilities residing in its jurisdiction, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located and evaluated. 34 CFR §300.111(a)(1). The State is responsible for making FAPE available to all children with disabilities residing in the State. 34 CFR §300.101(a). Most States, including Maryland, assign the responsibility for making FAPE available to the LEA in which the child's parents reside. 34 CFR §300.201. The determination that a child is eligible under the Individuals with Disabilities Education Act (IDEA) must be made on an individual basis by the parent of the child and a group of qualified professionals responsible for making eligibility determinations within the child's LEA. 34 CFR §300.306(a)(1).

If a parent requests that the LEA responsible for providing FAPE to the child evaluate their child for the purpose of having a program of FAPE made available to the child, the LEA cannot refuse to conduct the evaluation and determine the child's eligibility for FAPE because the child attends a private school in another LEA. Therefore, the MCPS must evaluate the child described in your situation above. The parent is requesting the evaluation from MCPS, not DCPS, and is requesting the evaluation for the purpose of the provision of FAPE, not the provision of equitable services. Because the parent resides in Maryland, specifically in Montgomery County, it is MCPS that is responsible for ensuring the availability of FAPE to this child.

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.

I hope this information is helpful to you. If you have questions, please contact Dr. Deborah Morrow at 202-245-7456.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education
Programs

cc: Carol Ann Baglin