



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

MAR 25 2009

Teri B. Goldman
Mickes Goldman O'Toole, LLC
555 Maryville University Drive, Suite 240
St. Louis, MO 63141

Dear Ms. Goldman:

This is in response to your December 18, 2008 letter to William Knudsen, former Acting Director of the Office of Special Education Programs at the U.S. Department of Education, regarding the status of children with disabilities who return to public school after being parentally-placed in a private school or home schooled for a period of time.¹ Specifically you ask how the Individuals with Disabilities Education Act (IDEA) treats a child with a disability who “had an [individualized education program] IEP, been home-schooled or enrolled in private school, and then subsequently returns to a public school setting.”

You state that the Missouri Department of Elementary and Secondary Education provided you guidance that if a child with a disability is withdrawn from the public school setting for home schooling or attendance at a private school for any lengthy period of time, and then subsequently returns to a public school setting, the enrolling public school cannot use the transfer procedures provided in 34 CFR §300.323, but must treat the child as nondisabled and ask for parental consent for an initial evaluation and initial provision of special education and related services. Given this guidance, you requested “clarification as to whether the ‘break’ in public schooling necessitates ‘starting over’ with regard to identification, evaluation, and the provision of a free appropriate public education (FAPE) to the student via an IEP.”

Once a child is determined to be a child with a disability and eligible for special education and related services under the requirements of 34 CFR §§300.301 through 300.311, that identification as a child with a disability and eligibility for FAPE remains until one of the following events occurs:

- (1) the student exceeds the age eligibility for FAPE under State law;
 - (2) the student graduates from secondary school with a regular diploma;
 - (3) the student is determined, through an evaluation, to no longer be a child with a disability;
- or
- (4) the student moves to another State.

See 34 CFR §§300.305(e) and 300.323(f).

Assuming that none of those four events occurred, the child in question remains a child with a disability and is eligible for special education and related services.

¹ In Missouri, a child who is home-schooled is considered a private school student.

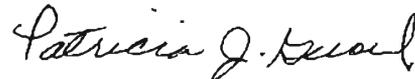
Further, once a child with a disability re-enrolls in the public school, the local educational agency (LEA) has an obligation to convene an IEP meeting and develop an appropriate IEP for the child. 34 CFR §300.324(b). A reevaluation may be necessary if the LEA "determines that the educational and related services needs...of the child warrant a reevaluation or the child's parent or teacher requests a reevaluation" or it has been more than three years since the last evaluation. 34 CFR §300.303(a).

While it is not clear from your letter how long the child was out of the public school system, if it has been less than three years, a reevaluation may not be necessary unless, as mentioned above, the needs of the child warrant a reevaluation or the parent or child's teacher requests one. If the child was parentally-placed in a private school for more than three years, the LEA had an obligation, under 34 CFR §§300.131 and 300.303(b), to conduct a reevaluation while the child was attending the private school. If a reevaluation did not occur during that time period, the LEA *must* conduct a reevaluation upon the child's re-enrollment in public school.

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 provides the information you need. If you have questions about this issue, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456 or Laura Duos at (202) 245-6772.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education
Programs

cc: Heidi Atkins-Lieberman