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

FEB - 4 2013

Dr. George V. Corwell
Director
Office of Education
New Jersey Catholic Conference
149 North Warren Street
Trenton, New Jersey 08608

Dear Dr. Corwell:

This is in response to your correspondence to the Office of Non-Public Education in the Office of Innovation and Improvement in the U.S. Department of Education (ED) that was forwarded to ED's Office of Special Education Programs (OSEP). We appreciate your patience as we consulted with our colleagues to develop this response. In your correspondence, you explain that there has been an influx of students whose parents live in another country and ask whether these students, "if classified" are "eligible for IDEA services?"

We assume that your question concerns the requirements in Part B of the Individuals with Disabilities Education Act (IDEA or Part B) that apply to States and their local educational agencies (LEAs) when children from other countries are enrolled in private schools by their parents. Under 34 CFR §300.130, "parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in §300.13 or secondary school in §300.36, other than children with disabilities covered under §§300.145 through 300.147." Under the IDEA, the LEA where the private schools the children attend are located must provide for the equitable participation of parentally-placed private school children with disabilities in programs assisted or carried out under the IDEA, by providing those children special education and related services, including direct services, consistent with their numbers and needs. 34 CFR §§300.130 through 300.144.

Neither the IDEA nor its implementing regulations distinguish between parentally-placed private school children with disabilities whose parents reside in other countries and those whose parents reside in the United States with respect to the requirements in 34 CFR §§300.130 through 300.144. OSEP's longstanding position regarding equitable participation for children from other countries enrolled in private elementary schools and secondary schools by their parents is that the obligation to consider children with disabilities for equitable services extends to all children with disabilities in the State who are enrolled by their parents in private schools within each LEA's jurisdiction, regardless of whether or not the parent resides in that State. See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46591 (Aug. 14, 2006). Therefore, if the international students with disabilities are enrolled in private elementary schools or secondary schools that meet the definitions in 34 CFR §300.13 and

§300.36, respectively, the LEAs where the private schools those children attend are located must consider them for equitable services in accordance with the requirements in the IDEA.

Under those requirements, the LEA only has an obligation to provide parentally-placed private school children with disabilities an opportunity for equitable participation in the services funded with Federal Part B funds that the LEA has determined, after consultation, to make available to its population of parentally-placed private school children with disabilities. 71 Fed. Reg. 46595. Therefore, consistent with the regulations regarding children with disabilities enrolled by their parents in private schools in 34 CFR §§300.130 through 300.139, the LEA must develop and implement a services plan only for those parentally-placed students with disabilities designated by the LEA in which the private school is located to receive special education and related services. This is because, as provided in 34 CFR §300.137(a), no parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a 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.

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

Sincerely,

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

cc: State Director of Special Education