

November 23, 2015

Michael I. Inzelbuch, Esq.
Santander Bank Building – 2nd Floor
555 Madison Avenue
Lakewood, New Jersey 08701

Dear Mr. Inzelbuch:

This is in response to your June 10, 2015 letter to me requesting guidance from the Office of Special Education Programs (OSEP) regarding the manner in which a local educational agency (LEA) may dedicate an amount of the LEA's proportionate share of Federal funds required to be set aside to provide equitable services to eligible children with disabilities placed by their parents in private schools (proportionate share). Specifically, you ask whether an LEA may dedicate a portion of its proportionate share funds as a part of a settlement agreement without timely and meaningful consultation as required under 34 CFR §300.134 of the regulations implementing the Individuals with Disabilities Education Act (IDEA).

Your letter indicates that an LEA placed a student in a private school as a means of providing special education and related services in accordance with the student's individualized education program (IEP), but the parents initiated the due process procedures because of a dispute about the services provided to their child in the private school placement. Your letter also indicates that the LEA and the student have a proposed settlement agreement whereby the student would withdraw from the LEA and enroll directly in the private school as a parentally placed student, and the LEA would use a portion of their proportionate share to continue providing services. OSEP does not review or interpret settlement agreements, and therefore expresses no view as to the terms of this settlement agreement. In general, settlement agreements are enforced by courts. A settlement agreement reached through a mediation or resolution session may also be enforced through a voluntary mechanism established by a State educational agency, pursuant to 34 CFR §300.537, provided that use of the State mechanism does not deny or delay a party's right to seek enforcement of a settlement agreement in an appropriate State or Federal court.

OSEP has previously provided guidance on the process for making decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities. Specifically, we have stated that timely and meaningful consultation must occur before any decisions are made that will affect the participation of parentally placed children in Part B programs. See Question D-1 of the *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, April 2011* available at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C1%2C>. Thus, decisions about services for parentally-placed students with disabilities and expenditure of Part B funds reserved for equitable services may not be made in advance or in the absence of timely and meaningful consultation. After the LEA has engaged in timely and meaningful consultation with representatives of private schools and representatives of parents of parentally placed private school children with disabilities, the LEA is responsible for making final decisions about all aspects of the services to be provided to parentally placed private school children with disabilities.

See 34 CFR §300.137(b). If the LEA disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the LEA must provide to the private school officials a written explanation of the reasons why the LEA chose not to accept the recommendations of the private school officials. See 34 CFR §300.134(e).

Therefore, it would be inconsistent with the IDEA for an LEA unilaterally to dedicate a portion of its proportionate share funds to carry out the terms of a settlement agreement regarding the provision of services to a particular student with a disability without complying with the consultation requirements of 34 CFR §300.134.

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 questions, please do not hesitate to contact Jennifer Wolfsheimer, at 202-245-6090 or by email at Jennifer.Wolfsheimer@ed.gov.

Sincerely,

/s/

Melody Musgrove, Ed.D.

Director

Office of Special Education Programs