

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

MAR - 9 2007

Ms. Marcia Mittnacht
State Director of Special Education
Massachusetts Department of Education
Special Education Planning and Policy Development Office
350 Main Street
Malden, Massachusetts 02148-5023

Dear Ms. Mittnacht:

This letter is a follow-up to Assistant Secretary Hager's letter of May 16, 2006, and your response in an e-mail to Ken Kienas of my staff, in which you provided some additional information regarding Massachusetts' obligations under Part B of the Individuals with Disabilities Education Act (Part B) to provide and pay for special education and related services for students with disabilities who reside out of State and attend private elementary schools and secondary schools located in school districts in Massachusetts. Assistant Secretary Hager's letter requested that the Massachusetts State Department of Education (MASSDE) provide documentation that it ensures that children residing in school districts located out of State who are enrolled by their parents in private schools in Massachusetts are evaluated and included in the group of children whose needs must be considered by Massachusetts school districts in determining how to spend the proportionate share of funds available under Part B of the reauthorized Individuals with Disabilities Education Act (IDEA) for the provision of special education and related services, consistent with 20 U.S.C. §1412(a)(10)(A)(i).

In your e-mail to Ken Kienas you referenced two documents issued by your office on May 12, 2006, addressing how Massachusetts school districts can meet their obligations to parentally-placed children with disabilities attending private schools located in school districts in Massachusetts pursuant to the reauthorized IDEA. We found this response very helpful in certain respects, and believe that it addresses a major concern that we had about the equitable services requirements for out-of-State students attending private schools in Massachusetts. However, we still have concerns and questions about certain aspects of MASSDE's overall guidance on how school districts meet the Part B requirements regarding children with disabilities who are placed in private schools by their parents. These questions relate primarily to the child find requirements for out-of-State students attending private schools in Massachusetts, the calculation of the proportionate share of Part B funds for providing equitable services, and the consultation process for Massachusetts' resident students attending private schools in Massachusetts.

Clarifications Provided in MASSDE's Documents Dated May 12, 2006. Under 34 CFR §300.131(a), "[e]ach local educational agency (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 school district served by the LEA in accordance with paragraphs (b) through (f) of this section* and 34 CFR §§300.111 and 300.201" (emphasis added).

(Please note that the regulatory citations used in this letter are to the final Part B regulations, which became effective on October 13, 2006.) Section 300.131(f) states that each LEA in which private elementary schools and secondary schools are located must include in its child find for parentally-placed private school children those parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located. In Administrative Advisory SPED 2006-3R, issued on May 12, 2006, MASSDE deleted language that had suggested that school districts in Massachusetts were not required under Massachusetts law to serve parentally-placed children with disabilities who reside outside of Massachusetts and attend private schools located in school districts in Massachusetts. Thus, it is our understanding that MASSDE has revised this guidance to school districts to clarify that the State and its school districts are responsible for considering the needs of out-of-State resident children with disabilities who are enrolled by their parents in private schools located in school districts in Massachusetts. MASSDE also has included, in section I of Administrative Advisory SPED 2006-5, specific guidance to Massachusetts school districts on conducting child find for parentally-placed children who reside outside of Massachusetts and attend private schools located in Massachusetts. As noted above, this responds to a principal concern identified in Assistant Secretary Hager's letter, and we appreciate these actions.

Continuing Concerns. We continue to have the concerns outlined below based on our review of the referenced Massachusetts Administrative Advisories.

(a) Child Find Requirements:

Administrative Advisory SPED 2006-3R appears to address how school districts in Massachusetts meet their child find responsibilities for parentally-placed children with disabilities, including those attending private schools located in school districts in Massachusetts and residing outside of Massachusetts. We are concerned that some of the language from Administrative Advisory SPED 2006-3R, which does not appear to have been deleted or withdrawn, could be in conflict with 34 CFR §300.132(f), as well as the guidance in Administrative Advisory SPED 2006-5. In particular, Administrative Advisory SPED 2006-3R (Section II, paragraph #4 and Section III.2) explains that under State law a student in a private school must be referred to the district of residence when an evaluation for special education eligibility is requested. For students who are not residents of Massachusetts, LEAs are instructed to refer students to their resident out-of-state district for an evaluation. This language appears to suggest that Massachusetts school districts have no child find responsibility for out-of-State residents attending private schools located in school districts in Massachusetts. If this portion of the State guidance is still in effect, it would conflict with the requirements in 34 CFR §300.131(f). We would appreciate it if you could clarify MASSDE's position on this issue.

(b) Proportionate Share Calculation:

The regulation at 34 CFR §300.133(a) provides that each LEA must spend a proportionate amount on providing special education and related services, including direct services to

parentally-placed private school children with disabilities enrolled in private, including religious, elementary schools and secondary schools, located in the school district served by the LEA in accordance with a statutory formula. Administrative Advisory SPED 2006-5 (Section III, paragraph #2) directs a Massachusetts school district to calculate the proportionate share based on the number of “eligible private school students for whom the district is responsible (students residing in the district and out-of-state students attending private schools in the district).”

Under Part B, the school district where the private schools are located must calculate its proportionate share of Part B funds based on children attending private schools located in the school district served by the LEA, regardless of where the students’ parents reside. Massachusetts school districts properly include in their proportionate share calculation, eligible students with disabilities who reside outside of Massachusetts and attend private schools located in Massachusetts. Although Massachusetts school districts include in their proportionate share calculation students who reside in the school district, this practice would not be inconsistent with Part B if those students also attend private schools located in the school district. However, it appears that resident school districts include in their proportionate share calculation students who reside in the school district but who attend private schools located in another school district in Massachusetts, and do not include in their proportionate share calculation students who reside in other school districts in Massachusetts and attend a private school located in a school district which is not their school district of residence. If this is so, resident school districts may be overestimating or underestimating their proportionate share calculation.

In light of these concerns, it would appear that Massachusetts school districts may not be calculating their proportionate share of Part B funds in accordance with the reauthorized IDEA. Thus, we would appreciate it if you could clarify how MASSDE ensures that a Massachusetts school district calculates its proportionate share of Part B funds accurately and in accordance with 34 CFR §300.133, based on the number of students attending private schools in the district, regardless of their parents’ residence.

(c) Consultation Requirements:

School districts in Massachusetts must meet the consultation requirements in 34 CFR §300.134 for all parentally-placed private school children with disabilities attending private schools located in school districts in Massachusetts. Page 2 of Administrative Advisory SPED 2006-5 indicates that Massachusetts conducts an appropriate consultation process for out-of-State residents who attend private schools located in school districts in Massachusetts, and all of the requirements in 34 CFR §300.134 are addressed for these students.

We are concerned that school districts in Massachusetts may not be conducting an adequate consultation process that addresses all of the requirements in 34 CFR §300.134 for Massachusetts’ residents who attend private schools located in Massachusetts. According to pages 1 and 2 of Administrative Advisory SPED 2006-5, the consultation process for

Massachusetts' residents is met through "current practice of working with a private school representative" in meeting the requirement of your State law to develop an IEP for each parentally-placed student. However, it is not clear how the consultation process for Massachusetts' residents attending private schools located in Massachusetts addresses child find (34 CFR §300.134(a)), the determination of the proportionate share of Federal funds available and the calculation (34 CFR §300.134(b)), and a written explanation by the LEA regarding services (34 CFR §300.134(e)). We would appreciate it if you would further clarify how Massachusetts school districts meet these consultation requirements for Massachusetts's residents who are parentally-placed in private schools in Massachusetts.

Conclusion

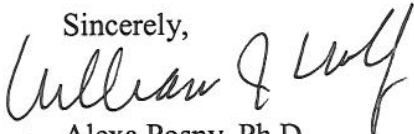

We appreciate the difficulties that may be involved in making Massachusetts' policies and procedures consistent with the reauthorized IDEA in light of the revision in the statute regarding school districts' responsibility for parentally-placed private school children with disabilities. To ensure that all of MASSDE's policies are consistent with the Part B statutory and regulatory requirements in this regard, we request that MASSDE:

- (a) Clarify how MASSDE reconciles the guidance in Administrative Advisory SPED 2006-5 with guidance in Administrative Advisory SPED 2006-3R regarding child find for parentally-placed students who reside out-of-State and attend private schools located in Massachusetts.
- (b) Clarify how a Massachusetts school district calculates its proportionate share of Part B funds and ensure that it does so based on the number of students attending private schools in the district, regardless of their parents' residence.
- (c) Explain how Massachusetts school districts will meet the consultation requirements of 34 CFR §300.134(a), (b) and (e) for Massachusetts residents who are parentally-placed in private schools in Massachusetts.

Please send me these explanations and clarifications within 60 days of the date of this letter.

If you have any questions about any of the matters discussed in this letter, please let me know. I look forward to receiving your responses. Thank you for your continued efforts to provide quality special education and related services to children with disabilities.

Sincerely,


 Alexa Posny, Ph.D.
Director
Office of Special Education
Programs