



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG 22 2007

Colette Chapman
Exceptional Student Services
Arizona Department of Education
1535 West Jefferson, Bin 24
Phoenix, Arizona 85007-3280

Dear Ms. Chapman:

This letter is written in response to Dr. Lynn Busenbark's electronic mail (email) communication to Debra Jennings, your State contact on my staff, dated March 2, 2007, in which she asked the following question: "Do children enrolled in for-profit private schools qualify for a proportionate share?"

Under 34 CFR §300.130, parentally-placed private school children with disabilities are defined as children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in 34 CFR §300.13 or secondary school in 34 CFR §300.36.

The definition of "elementary school" at 34 CFR §300.13 states: *Elementary school* means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law. The definition of "secondary school" at 34 CFR §300.36 states: *Secondary school* means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12. (Emphasis added.)

Because both definitions require that the schools be nonprofit, children with disabilities placed by their parents in for-profit private schools are not included in the definition of "parentally-placed private school children with disabilities." Therefore, they would not be included in the proportionate share calculation or be eligible for equitable services under 34 CFR §§300.130-300.144.

The child find obligation exists independently from the requirement to expend a proportionate share of IDEA funds to provide services to eligible parentally-placed private school children with disabilities. Under section 612(a)(3)(A) of IDEA and 34 CFR §300.111, a State must ensure that all children with disabilities residing in the State, including children with disabilities attending private schools, and who are in need of special education and related services, are identified, located, and evaluated; this includes children with disabilities attending for-profit private schools. A State determines which public agency is responsible for conducting child find under 34 CFR §300.111 for children suspected of having a disability attending for-profit private schools. Generally, this agency is the LEA in which the child resides.

Under 34 CFR §300.300(a)(1), a public agency must obtain parental consent before conducting an initial evaluation to determine if the child is a child with a disability under IDEA. If parents place their child in a private school at their own expense and do not provide consent for an initial evaluation or reevaluation, or the parents fail to respond to a request to provide consent, the public agency may not override the parents' consent using the procedural safeguards provided in IDEA. (See 34 CFR §300.300(d)(4))

Based on section 607(e) of 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 IDEA in the context of the specific facts presented.

I hope this information is helpful to you. If you have further questions, please do not hesitate to contact Debra Jennings at 202-245-7389.

Sincerely,

A handwritten signature in black ink that reads "Patricia J. Guard". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Patricia J. Guard
Acting Director
Office of Special Education
Programs