



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

APR 20 2000

Ms. Marlyn Langley  
Deputy Superintendent for Management and Finance  
Louisiana Department of Education  
P.O. Box 94064  
Baton Rouge, Louisiana 70804-9064

Dear Ms. Langley:

This is in response to your letter to the Office of Special Education Programs (OSEP) regarding distribution of capacity-building and improvement subgrants and State set-aside funds under Part B of the Individuals with Disabilities Education Act (Part B of IDEA) to charter school local educational agencies (LEAs) in Louisiana.

Your letter requesting clarification from this Office refers to OSEP memorandum 99-12, dated June 25, 1999. That memorandum addressed the proposed regulations published on May 18, 1999 to implement section 10306 of the Elementary and Secondary Education Act of 1965 (ESEA), a provision added by the Charter School Expansion Act of 1998, Pub. L. 105-278. On December 22, 1999, the Department published in the Federal Register final regulations implementing section 10306 of ESEA, at 64 Fed. Reg. 71964, and a copy of these final regulations is enclosed for your information. Please excuse the delay in issuing this response, but it was necessary to await publication of the referenced final regulations before responding. The following explanation of the requirements of Part B of IDEA and pertinent provisions of the Charter School Expansion Act reflect oral advice provided by members of my staff to Louisiana Department of Education, Special Education Director Virginia Beridon.

Your specific inquiry concerns distributions of local capacity building and improvement funds (sliver grants) and funds set aside for State-level activities (State set-aside funds) to charter schools which meet the definition of an LEA under 34 CFR §300.18(b)(2) of the Part B regulations. It is our understanding that, previously, Louisiana had awarded sliver grant funds to LEAs based on a graduated scale according to the disabled child count in the district, and State set-aside funds were awarded as a "base amount to each LEA, i.e., \$20,000 to each LEA regardless of child count."

According to your letter and a subsequent telephone conversation with your State Special Education Director, your State Board of Education was proposing to give charter school LEAs a lesser amount of the sliver grants and State set-aside funds than it gives other LEAs in the State. The SEA does not distribute set-aside or sliver grant funds on a competitive basis. Under the proposed distribution scheme that is being considered, it is our understanding that not only would charter school LEAs receive a lesser amount of funds than other LEAs in the State, but these amounts would be distributed to charter school LEAs on a different basis than that used for other LEAs.

Most Part B funds provided to States must be passed on to local educational agencies (LEAs) by formula. However, a portion of the funds may be used for State-level activities such as administration, monitoring, mediation, direct and support services, developing plans for the State Improvement program, and helping LEAs address personnel shortages. The SEA may use the funds it retains for State level activities directly, or may distribute them to LEAs on a competitive, targeted, or formula basis. 34 CFR §300.370(c).

Section 611(f)(4) of the IDEA Amendments of 1997 created a new category of subgrants that SEAs, under certain circumstances, can make to LEAs for capacity-building and improvement. These funds can be used in accordance with statutorily-described purposes, including for direct services for children with disabilities in charter schools. 34 CFR §300.622(a). States may establish priorities in awarding these funds competitively or on a targeted basis. 34 CFR §300.624. This flexibility is necessary to enable States to design these subgrants to suit particular State needs that are not readily addressed through formula assistance. Thus, provided that a State uses its set-aside and sliver grant funds for activities that are consistent with the requirements of Part B, States have discretion in determining the manner in which those funds are used. 34 CFR §300.370 and 34 CFR §§300.622-300.624.

As noted previously, the final regulations implementing section 10306 of the ESEA also are relevant to your inquiry, and Part B of IDEA is a "covered program" within the meaning of 34 CFR §76.787 of these final regulations. Part B of IDEA (which includes the Grants to States program authorized by section 611 of IDEA and the Preschool Grants program authorized by section 619 of IDEA) is a program that requires SEAs to allocate a majority of funds on a formula basis, but also allows SEAs to distribute a portion of funds on a discretionary basis. Section 10306 of ESEA requires each State to take measures to ensure that every charter school receives the Federal formula grant funding for which the charter school is eligible within five months of the date that the charter school opens for the first time or significantly expands its enrollment in a subsequent year. However, these criteria do not apply to allocations of funds that are made to eligible entities on a discretionary basis.

Section 76.794 of the final regulations implementing provisions of the Charter School Expansion Act, which addresses allocations by an SEA or LEA of funds that are distributed on a discretionary basis, provides in part:

(a) *Competitive programs.*

- (1) For covered programs in which the SEA awards subgrants on a competitive basis, the SEA must provide each eligible charter school LEA in the State that is scheduled to open on or before the closing date of any competition under the program a full and fair opportunity to apply to participate in the program.
- (2) An SEA is not required to delay the competitive process in order to allow a charter school LEA that has not yet opened or significantly expanded its enrollment to compete for funds under a covered program.

(b) *Noncompetitive discretionary programs.* The requirements in this subpart do not apply to discretionary programs or portions of programs under which the SEA does not award subgrants through a competition.

34 CFR §76.794

It appears from your inquiry that the SEA distributes both State set-aside and sliver grant funds to LEAs on a discretionary, noncompetitive basis. Thus, in the situation prompting your inquiry, we believe that §76.794(b) would apply, and these distributions would not be subject to the Charter School Expansion Act. The Analysis of Comments and Changes in the final regulations implementing statutory changes to the Charter School Expansion Act provides the following pertinent discussion of §76.794(b):

For these programs [including Part B of IDEA], the SEA would not be required to comply with these final regulations when distributing the discretionary portion of the funds on a noncompetitive basis. If the SEA distributes the discretionary portion of the funds on a competitive basis, §76.794(a) would apply.

As stated in the preamble to the NPRM, the Secretary encourages SEAs and LEAs to consider charter schools on the same basis as other LEAs and public schools when providing funds on a discretionary, but noncompetitive, basis. Nevertheless, it is not the intent of these regulations to restrict in any way the discretionary authority of SEAs and LEAs with respect to these funds.

See Appendix to the final regulations for state-administered programs, Analysis of Comments and Changes, at 64 Fed. Reg. 71971 (Dec. 22, 1999).

While your proposed method for distributing IDEA set-aside and sliver grant funds does not violate Part B of IDEA or the Charter School Expansion Act, we would encourage the State, as noted in the Appendix to the final regulations implementing statutory changes to the Charter School Expansion Act, to distribute its set-aside and sliver grant funds to LEA charter schools on the same basis as it provides those funds to other LEAs.

We hope that you find this explanation helpful. If we can be of further assistance, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss of OSEP at (202) 205-5507, or (202) 205-9053, respectively.

Sincerely,



Kenneth R. Warlick  
Director  
Office of Special Education  
Programs

cc: Ms. Virginia Beridon  
Louisiana Dept. of Education