



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

January 29, 2019

Mr. Joshua Wayne
Director, Non-Public Unit
Office of Teaching and Learning
District of Columbia Public Schools
1200 First Street, N.E., 8th Floor
Washington, D.C. 20002

Dear Mr. Wayne:

This letter responds to your correspondence to the Office of Special Education Programs (OSEP) and follow-up discussions with members of my staff. You ask about a local educational agency's (LEA's) obligation to a parentally placed private school child with a disability when the child's parent does not request a free appropriate public education (FAPE) for the child. In the scenario you present, the LEA made FAPE available through an individualized education program (IEP), and though the parent did not disagree that FAPE was made available, the parent made clear the child would continue attending the private school. You ask whether in this circumstance the LEA is obligated to offer the child an IEP the following year (and annually, thereafter) if the parent does not contact the LEA and request FAPE for the child.

We note that section 607(d) of the Individuals with Disabilities Education Act (IDEA) prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the U.S. Department of Education of the requirements of IDEA in the context of the specific facts presented, and does not establish a policy or rule that would apply in all circumstances.

Under IDEA's child find provisions, the LEA where the child's parents reside has an ongoing, independent responsibility to locate, identify, and evaluate all children in its jurisdiction in connection with its responsibility to make FAPE available to eligible children, including children attending private schools. 20 U.S.C. 1412(a)(3). Further, in accordance with the child find requirements in 20 U.S.C. 1412(a)(10)(A)(ii), the LEA where the private school the child attends is located has an ongoing child find responsibility to locate, identify, and evaluate children enrolled in private, including religious, elementary and secondary schools by their parents in connection with determining eligibility for equitable services (special education and related services). This child find responsibility includes scheduling and holding a meeting to discuss with parents who have consented to an evaluation or reevaluation, the results of the evaluation or reevaluation, the child's educational needs, and whether the child is eligible under Part B, or in the case of a reevaluation, whether the child continues to be a child with a disability. *Assistance to States for the Education of Children with Disabilities and the Early Intervention Program for*

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-2600

www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Page 2 - Mr. Joshua Wayne

Infants and Toddlers with Disabilities, Final Rule, 64 Fed. Reg. 12406, 12601 (Mar 12, 1999); 20 U.S.C. § 1414(c) and 34 C.F.R. §§ 300.300 and 300.303.

If a determination is made through IDEA's child find process that a child needs special education and related services and a parent makes clear his or her intent to keep the child enrolled in the private school, the LEA where the child's parent resides, is not required to make FAPE available to the child. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule*, 71 Fed. Reg. 46540, 46593 (Aug. 14, 2006). However, the LEA where the child's parents reside must make FAPE available and be prepared to develop an IEP if the parent enrolls the child in public school. 20 U.S.C. 1412(a)(1) and 20 U.S.C. 1413(a)(1).

If you have any further questions, please do not hesitate to contact Ms. Lisa Pagano at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Laurie VanderPloeg
Director
Office of Special Education Programs