



January 20, 2021

Rebecca Walawender
U.S. Department of Education
400 Maryland Avenue SW, Room 5145
Washington, DC 20202-5076

Dear Ms. Walawender:

The Consortium for Citizens with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of society. As co-chairs of the CCD Education Task force, we write with comments and recommendations on the U.S. Department of Education (ED) proposed guidance addressing State and local responsibilities under Part B of the Individuals with Disabilities Education Act (IDEA) for providing equitable services to parentally placed private school children with disabilities (Guidance).

Due to the expansive national reach of our coalition, we are aware of the need for further clarification regarding State and Local Education Agency (LEA) responsibilities under IDEA when parents choose to place their child in a private school. Overall, we find the Guidance helpful as it addresses an issue we know is challenging and of great importance to families. We appreciate the opportunity to comment and offer the following comments and specific recommendations for your consideration:

General Recommendations

CCD urges ED to include language in the preamble of the Guidance to clarify the following:

1. The Guidance is focused on the category of students with disabilities who are placed in private schools by their parents, 34 C.F.R. 300.130-147.
2. The Guidance *does not apply* to the category of students with disabilities who are placed in a private school by their parents, and the parent is seeking school district reimbursement (known as a unilateral placement). A unilateral placement occurs when a child is placed by a parent in a private educational program and the parent seeks school district reimbursement by claiming the public school district did not provide or offer the student with a free appropriate public education. 34 C.F.R. 300.130-148. Such students have not been withdrawn from the public school system and continue to enjoy all the rights and be subject to the requirements of the IDEA. Notwithstanding that fact, such unilaterally placed children also may benefit from equitable services.

Specific Recommendations

Question A-13: If the LEA where the private elementary school or secondary school is located conducts an individual evaluation on a child and the parent disagrees with that evaluation and wishes to request an independent educational evaluation (IEE) at public expense, which LEA is responsible for the IEE?

Recommendation: Revise the last sentence of the answer, consistent with § 300.502(b)(5) to (edits in *bold italics*):

A parent is entitled to only one independent educational evaluation at public expense *each time the public agency conducts an evaluation with which the parent disagrees*. 34 C.F.R. § 300.502(b)(5)

Rationale: The proposed answer needs clarification to make clear that the parent has a right to an IEE each time the public agency conducts an evaluation with which the parent disagrees, consistent with IDEA 34 C.F.R. § 300.502(b)(5). As proposed, the answer might be interpreted to mean that there could only be one IEE during the child’s entire time of IDEA eligibility..

Question B-3: Does IDEA define “representatives of parents of parentally-placed private school children with disabilities” who must be included in the consultation required by 34 C.F.R. § 300.134?

Recommendation: Revise the second sentence of the answer to (edits in ~~striketrough~~ and **bold italics**):

...Determinations of which individuals should be designated as representatives of parentally-placed private school children with disabilities are best made at the State and local level. ***The State or LEA must ensure any interested parents have the opportunity for meaningful consultation and may not elect to forego representatives of parents under any circumstances.*** ~~This is so the LEA, or SEA if appropriate, along with private school officials and representatives of parents can identify and acknowledge the respective roles of those participating in the consultation process. There is nothing in IDEA that would prevent parents of parentally-placed private school children with disabilities from representing themselves in the consultation process.~~

Rationale: CCD believes further clarification is required to make clear that the SEA or LEA may NOT take any action to forego representatives of parents. Finally, given the history of parents not being given an opportunity to provide “meaningful” (and sometimes any) consultation, we want the Guidance to clarify that parental consultation may be not be limited under these or any circumstances where their involvement is guaranteed by IDEA.

Question B-6: What must the consultation process include?

Recommendation: Revise the answer consistent with 34 C.F.R. § 300.134(a)–(e) (edits in **bold italics**):

Apart from specifying certain topics that must be addressed during consultation, the regulations offer LEAs and private schools flexibility in conducting the consultation process. However, in accordance with 34 C.F.R. § 300.134, discussions between public school, ***parents and representatives of parentally-placed private school children*** and private school officials must address—

Rationale: ED must ensure the Guidance includes language consistent with the law.

Question K-3: May a State require a parent of a child with a disability to revoke consent for their child to receive any special education and related services from the LEA, as a condition of participation in a State-funded private school choice voucher or scholarship program?

Recommendations: Add clarifying language that States and districts must inform parents that any use of a state voucher or voucher-like program means they forfeit important rights, legal protections, and services guaranteed by IDEA.

We also urge ED to work with states utilizing publicly-funded programs to do all they can to provide access to the services, supports and interventions students need, regardless of setting.

Rationale: CCD policy reinforces that federal education funds must remain in public schools and are not used for any voucher or voucher-like programs, whether designed for students or educators (including but not limited to traditional vouchers, education savings accounts, tuition tax credits/scholarships, or microgrants). ED must work with states to ensure they make every effort to ensure students with disabilities have access to the services, supports and interventions they may need.

Question K-5: If a child with a disability who received a State school choice voucher or scholarship re-enrolls in a public school, is the child considered a child with a disability?

Recommendation: Add additional language regarding a child previously determined to be a child with a disability but the determination is not current at time of re-enrollment in a public school.

Rationale: The current answer does not address a child previously determined to be eligible under IDEA and the district's decision has lapsed. Given that a child may matriculate back into public school for various reasons and at certain transition points in the school career (e.g. elementary to middle school, middle school to high school etc.), CCD believes additional language from ED would be useful to both families and schools.

Again, we appreciate the opportunity to comment on the Guidance. Should you have any questions, please feel free to reach out to any of the CCD Education Task Force co-chairs listed below.

Sincerely,

CCD Education Task Force Co-Chairs:

Kim Musheno, Autism Society of America

kmusheno@autism-society.org

Meghan Whittaker, National Center for Learning Disabilities

mwhittaker@ncld.org

Aaron Goldstein, Learning Disabilities Association of America

agoldstein@ldaamerica.org

Laura Kaloi, Council of Parent Attorneys & Advocates

lkaloi@stridepolicy.com

and Natl. Center for Special Education in Charter Schools

The Consortium for Citizens with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The Education Task Force of CCD monitors federal legislation and regulations that address the educational needs of children and youth with disabilities and their families, including regulatory efforts under federal law such as the Individuals with Disabilities Education Act (IDEA), the Every Student Succeeds Act (ESSA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA). The Education Task Force advocates for high expectations for children with disabilities under these and other laws.

www.c-c-d.org