UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

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**MEMORANDUM**

TO: Chief State School Officers

FROM: Troy R. Justesen
Acting Director
Office of Special Education Programs

SUBJECT: Obligations of States and local educational agencies to parentally-placed private school children with disabilities

The obligation of States and local educational agencies (LEAs) to children with disabilities enrolled by their parents in private elementary schools and secondary schools will change beginning July 1, 2005, the effective date of these provisions in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004). The focus of this memorandum is to provide guidance to States and LEAs in complying with the following requirements in 20 U.S.C. 1412(a)(10) of IDEA 2004: (1) regarding the agency responsible for providing equitable special education and related services to parentally-placed private school children with disabilities, and (2) determining the proportionate amount of Federal funds to be expended by the LEA for such children attending private schools located in their district.

IDEA 2004 retains the provision in IDEA that each LEA spend a proportionate amount of the required subgrants it receives from the State educational agency (SEA) under 20 U.S.C. 1411 and 20 U.S.C. 1419 for special education and related services to children with disabilities enrolled by their parents in private elementary schools and secondary schools (20 U.S.C. 1412(a)(10)(A)(i)(I)). However, under IDEA 2004, to calculate the proportionate amount of Federal Part B funds, the LEA, after timely and meaningful consultation with representatives of private schools, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools *located in the*

*LEA* [emphasis added] (20 U.S.C. 1412(a)(10)(A)(i)(II)). In addition, the obligation to spend a proportionate amount to provide services to children with disabilities enrolled by their parents in private schools now refers to children enrolled by their parents in private elementary schools and secondary schools in the LEA. (20 U.S.C. 1412(a)(10)(A)(i)). These are significant changes from the current regulations in which the responsibility to conduct child find (34 CFR 300.451) and provide equitable services to parentally-placed private school children rests with *the LEA in which the children reside* [emphasis added] (34 CFR 300.453).

Therefore, beginning July 1, 2005, each LEA must conduct child find, determine the proportionate share of Part B funds, and provide equitable services to parentally-placed private school children with disabilities who attend private schools located in the LEA without regard to where the children reside. This change means that LEAs consult with representatives of the private schools located in the district, thereby eliminating the need for LEAs to contact private school representatives outside of their jurisdiction. The change also means that representatives of private schools have only one LEA to consult with to ensure that children with disabilities enrolled in their schools can participate in IDEA equitable services.

The Department recognizes that States and LEAs may not have accurate data at this time to calculate the proportionate amount of Federal funds consistent with the requirements of IDEA 2004. Therefore, the Secretary is exercising the transition authority under IDEA 2004, which allows the Secretary to take necessary steps for an orderly transition from the current regulatory requirements to the requirements under IDEA 2004 (20 U.S.C. 1400 note) as discussed in the following paragraph:

> The Secretary will allow, for the 2005-06 school year only, States and LEAs to use the best available data to calculate the proportionate amount of their IDEA Part B funds that must be expended on services for parentally-placed private school children with disabilities attending private schools located in their jurisdiction, rather than requiring new child counts of parentally-placed private school children with disabilities by the district of the private school's location. The State must use the same method across all LEAs within the State.

Please note, that this flexibility does not affect the obligation of States and LEAs to meet the child find requirements in 20 U.S.C. 1412(a)(3) to identify, locate, and evaluate parentally-placed private school children with disabilities attending schools located in their area of jurisdiction (20 U.S.C. 1412(a)(10)(A)(ii)). Nor does the flexibility affect the obligation of LEAs to expend the proportionate share of funds for services, including direct services, to parentally-placed private school children with disabilities attending schools located in their area of jurisdiction.

The Department wants to stress that States are bound by all other provisions of IDEA 2004, and until the final regulations are issued, the existing regulations that are not inconsistent with IDEA 2004. For example, IDEA 2004 requires that LEAs, or where appropriate, an SEA, consult with representatives of private schools and representatives of parents of parentally-placed private school children with disabilities regarding:

(a) The child find process and how parentally-placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

(b) The determination of the proportionate amount of Federal funds available to serve parentally-placed private school children with disabilities including the determination of how the amount was calculated;

(c) The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(d) How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms; how such services will be apportioned if funds are insufficient to serve all children; and how and when those decisions will be made; and

(e) How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services, the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract. (20 U.S.C. 1412(a)(10)(A)(iii))

States and LEAs are expected to comply with these consultation requirements beginning July 1, 2005.

The Department anticipates posting a list of "Frequently Asked Questions" regarding the responsibilities of States and LEAs under IDEA 2004 to serve parentally-placed private school children with disabilities. Should you have any questions, please contact your State contact in the Office of Special Education Programs at 202-245-7459 or JoLeta Reynolds, Office of Policy and Planning, Office of Special Education and Rehabilitative Services, at 202-245-7468.

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