



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

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Rebecca A. Fredette, M.Ed.
Director of Special Education
New Hampshire Department of Education
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Dear Director Fredette:

The purpose of this letter is to respond to questions regarding New Hampshire's Education Freedom Accounts (EFAs). While the Office of Special Education Programs (OSEP) previously answered these questions through phone conversations and electronic mail, we are providing a formal response to your questions as requested. We regret the delay in responding.

EFAs are grants from the State of New Hampshire, administered by the State's Children's Scholarship Fund, made available to students of families with incomes at or below 300 percent of the poverty level to fund their education, including tuition, educational supplies, technology, and other educational expenses. EFAs are funded on an individual, per pupil basis. Under New Hampshire State law, parents must agree to use EFA funds only for eligible qualifying expenses used to meet the individual educational needs of the eligible student. RSA 194-F II. Examples of eligible expense categories include: tuition and fees at a non-public/private school; tuition and fees for non-public online learning programs; tutoring services provided by a qualified individual or a tutoring facility and enrollment and education at a district public school that is not the resident district of the student. See [Children's Scholarship Fund Frequently Asked Questions](#). Based on this information, you requested OSEP's response to the following questions.

1. Are students with disabilities participating in the EFA program considered parentally-placed students under the Individuals with Disabilities Education Act (IDEA) when enrolled in another public school within the state besides their resident district?

OSEP's response: No. In IDEA the phrase "parentally-placed" is used when referencing parentally-placed private school children with disabilities. Under 34 C.F.R. § 300.130 the term "parentally-placed private school children with disabilities" means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in 34 C.F.R. § 300.13 or secondary school in 34 C.F.R. § 300.36, other than children with disabilities covered under 34 C.F.R. §§ 300.145 through 300.147. Therefore, children with disabilities enrolling in another public school through the EFA program would not be considered parentally-placed private school children with disabilities under IDEA.

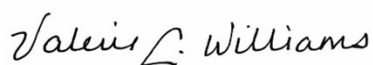
2. What provisions must be provided to a student while enrolled in a public school through the EFA program that is not located in the student's resident district?

OSEP's response: States must ensure that the rights guaranteed to children with disabilities and their parents by IDEA are not diminished by a child's participation in the EFA program and choice to attend another public school in the State. 34 C.F.R. § 300.101. This includes the provision of a free appropriate public education (FAPE) through the provision of special education and related services in accordance with the child's individualized education program. 34 C.F.R. § 300.17. Ultimately, the State must determine whether the responsibility for providing FAPE to these children with disabilities should be transferred from the school district of the child's residence to the non-resident school district of parental choice. The effect of this allocation of responsibility may not operate to deny any of the substantive rights and procedural safeguards guaranteed by IDEA to children with disabilities and their parents. In addition, if the State chooses to transfer the responsibility for FAPE to the attending district, the resident district must make FAPE available if the parents opt out of the EFA program and return to the district of residence.

As outlined in the State's allocation procedures, New Hampshire requires the local educational agency (LEA) where the child resides to retain financial responsibility for the provision of special education and related services, regardless of the location of the school the student attends. RSA 186-C:13. Therefore, in New Hampshire, the LEA of residence will be responsible for the provision of FAPE to children with disabilities who participate in the EFA program and choose to attend a public school in a non-resident school district.

I hope this information is helpful. If you have additional questions, please contact your OSEP State Lead, Jarmaquetia Wrighten at 202-245-6413 or Jarmaquetia.Wrighten@ed.gov.

Sincerely,



Valerie C. Williams
Director
Office of Special Education Programs