



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

FEB 25 1998

Ms. Linda Maron  
Acting Assistant Executive Director  
for Unified Services  
Minneapolis Public Schools  
925 Delaware Street, SE  
Minneapolis, Minnesota 55414-3017

Dear Ms. Maron:

This is in response to a letter to the Office of Special Education and Rehabilitative Services' (OSERS) Assistant Secretary Judith E. Heumann, dated September 29, 1997, from Paul McMahan, formerly with the Minneapolis Public Schools (MPS), as well as a letter to me dated November 24, 1997 from Dr. Douglas Marston and Dr. Andrea Canter of MPS. These letters concern an alternative assessment model developed by MPS, referred to as the Problem Solving Model (PSM), for evaluating students suspected of having learning disabilities and mental impairments. Both letters seek clarification regarding whether the PSM is in compliance with the requirements of Part B of the Individuals with Disabilities Education Act (Part B).

In addition to questions regarding the PSM, Mr. McMahan's letter asks whether child count data must be reported by disability category if a State has implemented a non-categorical model. As you know, under Part B, the entitlement of each disabled child is to a free appropriate public education (FAPE), and not to a particular label. Although the child count used for allocating Part B funds need not be by disability category, States must also submit an annual report of children served, which includes the number of children aged 6 through 21 within each disability category, to meet the data collection requirements of §618 of the statute. See 34 CFR §§300.750 & 300.751(a)(1)&(3). This Office is available to provide technical assistance, if required by your State Department, in connection with its submission of child count data to the U.S. Department of Education.

Regarding the PSM, in 1993, in response to a previous inquiry from MPS, this office explained that, under Part B, evaluations of students suspected of having learning disabilities and mental

impairments could be accomplished through testing or by means other than testing, provided that the testing or other evaluation materials were selected and administered in a nondiscriminatory manner, and that the other requirements of 34 CFR §300.532 regarding the conduct of evaluations were met. In the letter of September 29, 1997, Mr. McMahan indicated that, based on our 1993 clarification, the District was able to obtain a waiver from Minnesota State rules that require the use of IQ tests when assessing children for learning disabilities and mental impairments, as well as implement its PSM on an experimental basis for three years. Dr. Marston's and Dr. Canter's November 24th, 1997 letter to OSEP poses four questions regarding the consistency of the PSM with the requirements of Part B. The November 24th letter also sets forth responses explaining why MPS believes that the PSM model meets Part B requirements.

This Office has carefully reviewed the materials submitted with Mr. McMahan's letter, as well as additional materials transmitted with Dr. Marston's and Dr. Canter's letter, and finds that MPS has provided insufficient information to address the specific concerns about the PSM previously raised by the Minnesota Department of Children, Families and Learning (MDCFL). Any alternative assessment model must comply with all applicable requirements for evaluations and reevaluations set out in the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97), which was signed into law on June 4, 1997 by President Clinton.' Further, based on the limited information that has been provided, we have the following additional concerns.

It is our understanding that the PSM has three components: problem identification, clarification, and analysis; intervention design and implementation; and ongoing monitoring and evaluation of intervention effects. The proposal emphasizes that a number of steps must take place prior to special education assessment. For example, it appears that prior to special education referral, a number of interventions in the regular classroom must occur before formal evaluation can take place. This raises concern as to whether the PSM will be able to ensure that timely evaluations are conducted of students suspected of having disabilities, as

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<sup>1</sup> On October 22, 1997, the Department published in the Federal Register a Notice of Proposed Rulemaking (NPRM) to implement the amendments. Copies of IDEA '97 as well as the NPRM are enclosed for your information.

required by Part B. §612(a)(3) and §613(a)(1) of IDEA '97. That the formal assessment apparently does not occur until the third stage, the monitoring and evaluation phase, is of particular concern. For example, we found no provision requiring that a full and individual special education evaluation be conducted prior to the third stage, even if there is evidence that interventions in the regular classroom are not working.

Any alternative assessment model must be consistent with the Part B requirement that timely evaluations of a student suspected of having a disability are provided. 34 CFR §§300.128 and 300.220. There is no indication from the materials that we reviewed that, if further interventions are being considered, timely evaluations which meet all Part B requirements would be conducted even if a parent or teacher requests such evaluation and the LEA suspects that the child has a disability.

The proposal also explains that the PSM utilizes functional and multidimensional processes but fails to demonstrate that comprehensive evaluations that address all areas identified in Part B for assessing students suspected of having mental impairments or learning disabilities are performed. Specifically, under Part B, a student must be "assessed in all areas related to the suspected, disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities." 34 CFR §300.532(f) and §614(b)(3)(C) of IDEA '97.

Dr. Marston's and Dr. Canter's letter makes reference to "similar" assessment models developed by other States. If OSEP's approval of such proposals had been obtained, the relevant State Educational Agencies (SEA) would have had to endorse the proposal and demonstrate to OSEP that all applicable Part B requirements were met. In accordance with its general supervisory responsibility, each SEA must ensure that all education programs for children with disabilities administered within a State meet all applicable Part B requirements. §612(a)(11) of IDEA '97. Since the MDCFL must ultimately approve MPS's proposal, we strongly recommend that MPS work with the MDCFL to address and eliminate the MDCFL's concerns with the PSM. Given our above concerns, we cannot advise MDCFL that the MPS waiver request should be extended at this time.

We hope that you find this explanation helpful. If you have further questions, please contact Dr. JoLeta Reynolds or Ms.

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Rhonda Weiss of the Office of Special Education Programs (OSEP)  
at (202) 205-5507.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Hehir".

Thomas Hehir  
Director  
Office of Special Education  
Programs

Enclosures .

Dr. Douglas Marston  
Dr. Andrea Canter

Mr. Wayne Erickson  
Minnesota Department  
of Education