



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

MAY 26 1999

Mr. John B. Heskett
Assistant Commissioner
Division of Special Education
Department of Elementary and Secondary Education
P.O. Box 480
Jefferson City, Missouri 65102-0980

Dear Mr. Heskett:

This is in response to your letter dated March 17, 1999, written to the Office of Special Education Programs (OSEP), concerning the requirements in Part C of the Individuals with Disabilities Education Act (Part C) for providing early intervention services to infants and toddlers with disabilities in natural environments. In your letter, the Missouri Department of Elementary and Secondary Education (DESE), Missouri's Part C lead agency, is seeking answers to the following questions because the Missouri legislature is considering proposed legislation applicable to First Steps, Missouri's early intervention program. We appreciate the opportunity to clarify the requirements of Part C that are relevant to your concerns. Your specific questions and OSEP's responses follow.

1. Does a program which provides early intervention services in a classroom-based environment which only has infants and toddlers with disabilities in attendance meet the definition of a natural environment, as defined in 34 CFR 303.18 "natural environment means settings that are natural or normal for the child's age peers who have no disability"?

Response: Part C defines "natural environments" as "settings that are natural or normal for the child's age peers who have no disabilities." 34 CFR §303.18. Part C requires that, to the maximum extent appropriate to the needs of the child, early intervention services are provided in natural environments, including the home and community settings in which children without disabilities participate. 34 CFR §303.12(b). Part C requires that the setting in which the service is to be provided must be individually determined as to whether the location is a natural environment for the offering of a particular service for that child.

In all instances, individual determinations must be made by the participants on the Individualized Family Services Plan (IFSP)

600 INDEPENDENCE AVE., S. W. WASHINGTON, D.C. 20202

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

team, which includes the parent(s), regarding the services to be provided to an infant or toddler, including the location in which appropriate services will be provided. Therefore, to comply with Part C's natural environments requirement, States must ensure that, to the maximum extent appropriate to the needs of the child, infants and toddlers with disabilities receive services in settings that include typically developing age peers. In general, providing infants and toddlers with disabilities with early intervention services in a setting limited exclusively to infants and toddlers with disabilities would not constitute a natural environment. However, if a determination is made by the IFSP team that, based on a review of all relevant information regarding the unique needs of a particular infant or toddler, the child cannot satisfactorily achieve identified early intervention outcomes in natural environments, that infant or toddler could receive specific services outside of a natural environment. In the most basic terms, if a natural environment is not appropriate for a particular child, then it would not be an appropriate location for the service to be provided. In that case, the IFSP must include a justification of the extent to which services will not be provided in a natural environment. 34 CFR §303.344 (d) (1) (ii) .

2. May an Individual Family Service Plan (IFSP) team make service arrangements for an individual child who requires early intervention services in a program which provides services only for infants and toddlers with disabilities, without a determination that such an environment is necessary to satisfactorily achieve appropriate outcomes for the child?

Response: As explained in response to question 1 above, early intervention services must be provided in natural environments, to the maximum extent appropriate to the needs of the child. However, it is permissible under Part C for early intervention services for any infant or toddler to be provided in a setting other than a natural environment if an infant's or toddler's identified early intervention outcomes cannot be achieved satisfactorily for the infant or toddler in a natural environment. 34 CFR §303.167(c)(2). For the provision of services in a setting outside of a natural environment to occur, the Part C regulations require a determination by the IFSP team that an infant or toddler cannot achieve identified early intervention outcomes satisfactorily if services are provided in a natural environment, and a justification for such an exception in the child's IFSP.

3. May a family choose to receive early intervention services in a centered-based program which provides services only for infants and toddlers with disabilities, if that family determines the centered-based program is best for their child and family?

Response: Under Part C, The IFSP team, which includes the parent(s), has the decision-making responsibility to identify early intervention services that meet the unique developmental needs of the child and the needs of the child's family related to enhancing the child's development. These decisions are based on information from completed evaluations and assessments, including information provided by the family. 34 CFR §§303.340-303.344. Although Part C recognizes the importance of, and requires, parent involvement throughout the IFSP process, Part C does not relieve the State Lead agency of its responsibility to ensure that other regulatory and statutory requirements, including the natural environments provisions, are met. While the family provides significant input regarding the provision of appropriate early intervention services, ultimate responsibility for determining what services are appropriate for a particular infant or toddler, including the location of such services, rests with the IFSP team as a whole. Therefore, it would be inconsistent with Part C for decisions of the IFSP team to be made unilaterally based solely on preferences of the family.

The parents are free to reject any service in the IFSP, including the frequency, intensity, or location, by not providing written consent for that service(s) or by withdrawing consent after first providing it. If the parents do not provide consent for a particular early intervention service, which also includes the location, that service may not be provided. 34 CFR §303.342 (e) and §303.344 Note 2.

4. If a family makes a choice referenced in question #3, is the First Steps (Part C) System obligated to pay for the services chosen by the family?

Response: If the parents do not consent to a particular location for a service specified in the IFSP, the State may not use Part C funds to provide that service in a location different from that identified on the IFSP. After rejecting a service on the IFSP (e.g., a service location), parents are free to independently select services or a service location for their child. The State bears no responsibility under Part C for services that are selected exclusively by the parent; however, the State must still provide all other services on the IFSP for which the parents did consent.

If the parents disagree with the IFSP Team and believe a requirement of Part C has been violated, they may file a State Complaint consistent with 34 CFR §§303.510-303.512. Parents may also request a due process hearing and mediation consistent with 34 CFR §§303.419-303.425. In addition, if Missouri chooses to offer mediation prior to a r-equest for a due process hearing, some parents may wish to participate in mediation in an effort to reach agreement in a less formal way before requesting a due process hearing. However, such mediation cannot be used to deny or delay a parent's right to a due process hearing.

5. If a state has appropriated nonfederal funds to support its early intervention system, may the state use nonfederal funds to support the costs of early intervention services provided in settings which do not meet the requirements of the natural environment provisions of Part C of the IDEA?

Response: All funds used to implement the early intervention system under Part C, including Federal, State, or local funds, must be used consistent with Part C. Thus, the State must meet the Part C requirement to provide early intervention services in natural environments in using State funds that are budgeted for early intervention services under Part C and used to satisfy the nonsupplanting requirement.

We hope that you find this explanation helpful. If we can be of further assistance, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss at (202) 205-5507 or (202) 205-9053, respectively, or Jackie Twining Martin, the Missouri Part C contact in the Monitoring and State Improvement Planning Division at (202) 2058258.

Sincerely,

Thomas Hehir
Director
Office of Special Education
Programs

cc: Representative Ken Legan

Ms. Paula Goff
Part C Coordinator