



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL 7 1998

Ms. Mary Elder
Executive Director
Texas Interagency Council on
Early Childhood Intervention
4900 N. Lamar Boulevard
Austin, Texas 78751-2399

Dear Ms. Elder

This is in response to your letter dated June 18, 1998 regarding Texas' application for FY 1998 funds under Part C of the Individuals with Disabilities Education Act. In your letter, you asked two questions:

1. "If through the IFSP process, the team has determined that early intervention can be satisfactorily achieved in the natural environment, is it a violation of Part C for the state to provide services to the child in a setting selected by the parent, which does not meet the definition of a natural environment even if the parents are incurring the cost of the setting?"

Response:

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. The Part C regulations also require that, to the maximum extent appropriate to the needs of the **child**, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate. 34 CFR §303.12(b). Natural environments means settings that are natural or normal for the child's age peers who have no disabilities. 34 CFR §303.18. Early intervention services for any infant or toddler are provided in a setting other than a natural environment only if early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment. 34 CFR §303.167(c)(2).

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. The parents are free to reject any service(s) on the IFSP 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. The parents may also withhold consent for implementation of the entire IFSP.

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 Texas chooses to offer mediation prior to a request 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.

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. It is important to note that while Part C recognizes the importance of, and requires parent involvement in decisions regarding appropriate early intervention services for their infants and toddlers with disabilities, it 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.

You also asked:

2. "If Part C funds cannot be used to provide services in settings other than those determined in the IFSP to be appropriate, can the state use state funds to provide services in those settings?"

Response:

We recognize that the Texas early intervention system is funded from various State and other Federal sources, in addition to Part C funds. All funds used to implement the early intervention system under Part C must be used consistent with Part C. Thus, the State cannot circumvent the requirement to provide early intervention services in natural environments by using State funds that are budgeted for early intervention services under Part C and used to satisfy the nonsupplanting requirement. State and

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local funds used in a way inconsistent with the requirements of Part C may not be considered in determining whether a State has met the standard regarding supplanting in 34 CFR §303.124(b).

We hope this response to your questions provides the necessary clarification.

Sincerely,

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

Thomas Hehir

Director

Office of Special Education Programs