



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

AUG 19, 2003

Ms. Beth Davis-Wellington
Children's Advocacy Network
P.O. Box 831325
Miami, Florida 44283-1325

Dear Ms. Davis-Wellington:

Thank you for your letter on behalf of the Children's Advocacy Network of Florida regarding concerns over the education of children in Florida. Specifically you raised several questions that related to the Florida Statutes, F.S. 1008,2002 as follows:

1. Can the State take the decision of whether to promote a child with a disability out of the hands of the IEP [individualized education program] team?

Part B of the Individuals with Disabilities Education Act (IDEA) does not specifically address standards for retention or promotion of students with disabilities. Rather, the establishment of standards for promotion and retention for all students, including students with disabilities, is a State and/or local function. Generally, the IDEA would not require that the IEP team make decisions regarding promotion or retention of a child with a disability. However, the IDEA does not prevent a State or local educational agency from assigning this decision-making responsibility to the IEP team. It is also important to note that a retention or promotion decision is not synonymous with a placement decision for IDEA purposes.

2. For students with or without disabilities, does the use of one measure, the FCAT, in determining whether a student will graduate with a regular diploma violate these students' right to a free appropriate public education (FAPE) under IDEA? Does the use of the FCAT to determine graduation violate any other provision of IDEA?

Florida's requirement mandating that students pass the FCAT in order to graduate with the standard high school diploma is not inconsistent with the IDEA. Neither Part B of the IDEA nor its implementing regulations specifically address the establishment of proficiency standards for a regular high school diploma. However, the IDEA does address factors that are directly related to a student's ability to pass the State-wide assessment. These primarily include: 1) individual accommodations needed for the child to participate in State-wide assessments of student achievement, consistent with appropriate State guidelines; and 2) supplementary aids and services and appropriate supports to allow the student's involvement and progress in the general curriculum. If there has been a denial of FAPE with regard to the provision of accommodations in assessments, then the student must be given the opportunity to retake the assessment with appropriate accommodations, in order to determine whether he or she can pass and receive a regular high school diploma. If there has been a denial of FAPE with regard to the provision of supplementary aids and services and appropriate supports to allow involvement and progress in

the general curriculum, then the student may be entitled to appropriate compensatory services that allow for involvement and progress in the general curriculum. Because States are responsible for ensuring that appropriate accommodations are provided in the administration of State-wide assessments, it is crucial to ensure that guidelines for these assessments offer the widest possible range of accommodations, so that students with disabilities for whom the regular assessment is appropriate, are able to participate. In fact, the regulations for Title I require that the State's assessment system be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities. 34 CFR §200.2(b)(2). It is also important to provide the training and technical assistance necessary for public agency staff to properly implement such guidelines.

3. Does the lack of a timeline for evaluations and the serious wait for evaluations in the most populated parts of Florida deny students with disabilities their right to a free appropriate public education under IDEA since those students are unable to be considered eligible for services until an evaluation is completed and appropriate meetings are held?

Although Part B of IDEA does not set forth specific standards for the timing of initial evaluations, States must ensure that the right of each student with a disability to receive a free appropriate public education is not denied or delayed due to school district's failure to conduct an initial evaluation within a reasonable period of time. The determination of whether a school district has failed to conduct a timely evaluation of a child with a disability in accordance with Part B and applicable State standards and, as a result, has denied the child FAPE must be made on a case-by-case basis.

Two Federal laws that are also relevant to your inquiry are Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans With Disabilities Act of 1990 (Title II). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department, and Title II prohibits discrimination on the basis of disability by public entities, including public elementary and secondary school systems, regardless of receipt of Federal funds. The Department's Office for Civil Rights (OCR) enforces Section 504 and Title II, as it applies to public elementary and secondary school systems.

It is our understanding that the Department's OCR Atlanta Office is currently investigating several allegations involving the FCAT and students with disabilities pursuant to Section 504 and Title II. If you have any questions with respect to Section 504 and Title II or the OCR FCAT cases, please contact the OCR Atlanta office at the following address and telephone number:

Mr. Gary S. Walker, Director
Office For Civil Rights, Atlanta Office
U.S. Department of Education
61 Forsyth Street, S.W., Suite 19T70
Atlanta, Georgia 30303-3104
Phone: (404) 562-6350
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Page 3 Ms. Beth Davis - Wellington

We hope that this information will be helpful. If you have further questions regarding Part B requirements, please do not hesitate to contact Ms. Sheila Friedman, the Florida State Contact, at (202) 205-9055.

Sincerely,



for

Stephanie Smith Lee

Director

Office of Special Education Programs

cc: Ms. Shan Goff
Florida Department of Education
Mr. Gary S. Walker
Office for Civil Rights Atlanta Office