



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

August 5, 2010

Robert H. Finch, Ed.D.
Director of Special Programs
Little Cypress-Mauriceville Special Programs
6579 FM 1130
Orange, Texas 77632

Dear Dr. Finch:

This is in response to your February 22, 2010 letter to me, written on behalf of the Little Cypress Mauriceville Consolidated Independent School District (District). In your letter, you ask that the Office of Special Education Programs (OSEP) comment on a monitoring finding by the Texas Education Agency (TEA), made in the Fall of 2009, that your District was not in compliance with 34 CFR §§300.320(a)(2)(i) and 300.323(e) of the regulations for Part B of the Individuals with Disabilities Education Act (Part B). Specifically, you indicate that TEA found:

A review of student eligibility folders and interviews with LEA staff indicated that some transfer students, upon enrollment, were initially provided interim programs that included special education and related services, but the interim programs did not include temporary goals or objectives.

Your letter also indicates that you sought reconsideration of this finding from TEA, and TEA explained that it is implicit in the requirement to provide a FAPE [free appropriate public education] (including services comparable to those described in the child's IEP from the previous district) that the FAPE include goals that are aligned with the goals in the previous IEP."

While it is not generally OSEP's practice to comment on a State educational agency's (SEA'S) monitoring findings, we believe that the TEA finding described above is consistent with applicable Part B requirements.

Under 34 CFR §300.101(a), each State and its public agencies must ensure that a FAPE is made available to all children with disabilities residing in the State in mandatory age ranges. FAPE means special education and related services that: (1) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the SEA, including the requirements of 34 CFR Part 300; (3) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (4) are provided in conformity with an IEP that meets the requirements of 34 CFR §§300.320 through 300.324. 34 CFR §300.17.

Thus, FAPE, by definition, includes the provision of special education and related services in conformity with an IEP that includes measurable annual goals. 34 CFR §300.320(a)(2)(i). The

IDEA was amended in 2004 to include explicit provisions to ensure that students with disabilities who transfer school districts in the same school year do not relinquish their right to FAPE under the IDEA by reason of the transfer. The applicable regulations in 34 CFR §300.323(e)-(g) underscore this point.

Specifically, under 34 CFR §300.323(e), if a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, ***the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency)***, until the new public agency either: (1) adopts the child's IEP from the previous public agency; or (2) develops, adopts and implements a new IEP that meets the applicable requirements in 34 CFR §§300.320 through 300.324. See also 34 CFR §300.323(f).

If a child with an IEP transfers from one public agency to a new public agency in the same State, in the same school year, until the new public agency either adopts the child's IEP from the previous public agency, or develops, adopts, and implements a new IEP, Part B requires that the new public agency, in consultation with the parents, must provide FAPE to the child through the provision of comparable services. The comparable services to be provided to the child must include services comparable to those described in the child's IEP from the previous public agency, which contains measurable annual goals for the services to be provided. It is consistent with Part B for TEA, in carrying out its general supervisory and monitoring responsibilities in 34 CFR §§300.149(b) and 300.600(a), to require that the new public agency provide special education and related services to a transfer student in accordance with temporary goals that are aligned with the child's annual goals for those services as reflected in the child's IEP from the previous public agency, until the new public agency either adopts and implements the child's IEP from the previous public agency or develops, adopts, and implements a new IEP.

Based on section 607(c) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Posny". The signature is fluid and cursive, with the first name "Alexa" written in a larger, more prominent script than the last name "Posny".

Alexa Posny, Ph.D.

Acting Director

Office of Special Education Programs

cc: Kathy Clayton