



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

SEP 21
1999

[REDACTED]

Dear [REDACTED]

This is in response to your letter written to the Office of Special Education Programs (OSEP) dated June 24, 1999, in which you seek clarification of the requirements of Part B of the Individuals with Disabilities Education Act (Part B) that govern the provision of services to disabled students in special schools or residential settings. As the parent of

who has autism and mental retardation, you wrote to this Office because you disagree with the determination of the Oklahoma State Department of Education (OKSDE) not to create in the State of Oklahoma a facility that can provide a fulltime residential program for children who have autism and/or mental retardation.

From your inquiry, it is our understanding that [REDACTED] is receiving required services in a facility located in [REDACTED] and that you believe there are no special schools or residential placements in Oklahoma for students who are autistic and/or mentally retarded. In your inquiry, you ask the following question:

"Does an SEA comply with the obligation to provide and maintain a continuum of placement alternatives by sending disabled students to residential facilities out of state, rather than providing and maintaining special schools and residential facilities within its own State?"

In your letter, you express the view that OKSDE is not complying with the "continuum" requirement because of its failure to "maintain a continuum of placement alternatives in Oklahoma." The crux of your inquiry is how the responsible public agency can satisfy the requirement to place a child with a disability in the school or facility as close as possible to the child's home by making available an appropriate residential placement option in an out-of-state facility. 34 CFR §300.551(a).

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

This Office has reviewed the relevant requirements of Part B as well as the other authorities you have cited in support of your interpretation of the obligations of OKSDE in this situation. As explained below, we find nothing in Part B that requires a State educational agency (SEA) to create an appropriate residential placement within a State when an appropriate residential placement is available.

Under Part B, each State and its public agencies must ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing in the State in mandatory age ranges. 20 U.S.C. §1412(a)(2); 34 CFR §300.121. FAPE means special education and related services that

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include preschool, elementary school, or secondary school education in the State; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.340-300.350.

34 CFR §300.13.

Each child's IEP includes, among other components, statements of the annual goals including benchmarks or short-term objectives, special education and related services, and supplementary aids and services to be provided to the child or on behalf of the child. Each child's IEP is developed at a meeting, initiated and conducted by the public agency, of the IEP team, which includes the child's parents. 34 CFR §§300.343-300.345.

Part B also requires that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.550(b)(1)-(2); see also 20 U.S. C. §1412 (a) (5) (A) .

This provision, known as the least restrictive environment (LRE) requirement, means that; to the maximum extent appropriate, disabled students must be educated in regular classes with their nondisabled peers with appropriate supplementary aids and services. However, Part B recognizes that the regular classroom is not appropriate for every disabled child. Therefore, the Part B regulations require public agencies to make individualized determinations regarding each child's placement based on the abilities and needs of the child, and not solely on factors such as category of disability, significance of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience. See Appendix A to 34 CFR Part 300, 64 Fed. Reg. at 12471.

To ensure that individualized placement determinations are made, public agencies must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 CFR §300.551(a). The alternatives on this continuum include "instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions." 34 CFR §300.551(b)(1).

The group that makes the child's placement decision includes the child's parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 CFR §300.552(a)(1). Further, each child's placement must be determined at least annually, must be based on the child's IEP, and must be "as close as possible to the child's home." 34 CFR §300.552(b)(1)-(3). Section 300.302 provides: "If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child."

In the case of a child whose IEP requires a residential placement, a public agency could meet its obligation to ensure that the child has an appropriate placement available by: providing an appropriate residential program for the child on its own; contracting with another agency to provide an appropriate residential program, or utilizing some other mechanism or arrangement that is consistent with IDEA, for providing or paying for an appropriate program for a child with a disability.

We do not interpret the requirement that a public agency ensure that a continuum of alternative placements is available to mean that all placements on this continuum must be maintained in the district's or the State's jurisdiction.

We hope that you find the above explanation helpful in clarifying applicable Part B requirements. If we can be of further assistance, please contact Ms. Maral Taylor, the Part B State contact in the Monitoring and State Improvement Planning Division, at (202) 205-9181.

Sincerely,

Patricia J. Guard
Acting Director
Office of Special Education Programs

CC: Ms. Darla Griffin
Oklahoma State Department of
Education

Mr. John Corpolongo
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