



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

**THE ASSISTANT SECRETARY**

NOV 4 2003

Mrs. Barbara Gantwerk  
Director  
Office of Special Education Programs  
New Jersey Department of Education  
P.O. Box 500  
Trenton, New Jersey 08625-0500

Dear Mrs. Gantwerk:

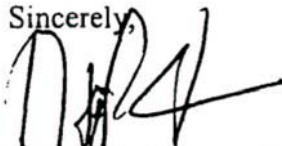
This letter is in response to your electronic correspondence with questions and concerns regarding parental choice and the least restrictive environment (LRE) provisions of the Individuals with Disabilities Education Act (IDEA). In your letter, you note that children are sometimes placed in segregated schools for children with disabilities based on an agreement between parents and the other participants in the group of persons making the placement decision that a free appropriate public education can best be provided in a private school. You ask whether this type of parent agreed-to placement will be viewed favorably by the Department as an example of parent choice and whether the Department will continue to look at data on rates of placements in segregated settings (whether parent agreed-to or not) as a State factor warranting further monitoring inquiry by the Department.

The Department of Education fully supports the IDEA and the LRE provisions in the statute and its implementing regulations (20 U.S.C. 1412(a)(5); 34 C.F.R. §300.550-300.556). The LRE provisions provide that to the maximum extent appropriate, children with disabilities are to be 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. The placement decision must be based on the child's individual needs as identified in the child's individualized education program (IEP), and unless the IEP requires some other arrangement, the child must be educated in the school that he or she would attend if not disabled (34 C.F.R. §300.552). However, the IDEA also requires that each public agency have available a continuum of alternative placements to meet the individual needs of children with disabilities. Thus, under the IDEA, for those children with disabilities who need such a placement, segregated private schools are the least restrictive environment appropriate to their needs. Public agencies can only offer parents choice about the type of placement consistent with the LRE requirements.

The Office of Special Education Programs (OSEP) is currently targeting its monitoring efforts on those performance issues most closely related to improving results for children with disabilities and on those States most in need of improvement on those performance issues. One of the performance issues that we are looking at is educational environments and current monitoring activities include identifying those States with high percentages of children in more segregated settings. We believe that examining this issue can be an important tool for targeting sites for further investigation, especially given limited resources for monitoring and enforcement activities. However, we recognize that it is important to ensure that while focusing on performance data, the individual rights of children with disabilities are protected.

OSEP has found that a high percentage of children in separate programs is frequently an indicator of a lack of supports and services available in less restrictive placements and/or inappropriate procedures in making placement determinations for children with disabilities. Therefore, in States with a high percentage of children with disabilities in restrictive placements, OSEP works with the State to further examine the data to determine if appropriate supplementary aids and services to support children with disabilities in less restrictive placements are available and that appropriate procedures are being followed in making placement determinations. For example, is the regular classroom in the school the student would attend if not disabled the first placement option considered before a more restrictive option is considered? Can the child's IEP be satisfactorily implemented with the provision of supplementary aids and services in a regular classroom or in a less restrictive setting? Are such supports and services available in the less restrictive setting? Are the school district and parent in agreement that a more restrictive setting is needed by the child? In addition, OSEP will work with the State to analyze the data to determine if children from certain racial/ethnic groups or certain disability categories are more likely to be placed in separate placements leading to disproportionate representation of certain groups in restrictive placements.

I hope this letter answers your questions. If you have any further questions, please do not hesitate to contact me.

Sincerely,  
  
Robert H. Pasternack