



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

[REDACTED]

Dear [REDACTED]

June 11 1999

This is in response to your letter written to Secretary of Education Richard W. Riley, regarding the use of the term "serious emotional disturbance" in the Individuals with Disabilities Education Act (IDEA).

In your letter, you express a number of concerns indicating why you believe that the use of "serious emotional disturbance" and the current definition of this disability category in the regulations implementing Part B of IDEA are unacceptable to you. You also request that the Department propose an amendment to IDEA to replace the serious emotional disturbance category with "neurobiological disorders" (NBD).

As you may know, on March 12, 1999, the Department published in the Federal Register, at 64 Fed. Reg. 12406, final regulations to implement statutory changes made by the IDEA Amendments of 1997 and to make other changes to facilitate the implementation of Part B. A copy of these final regulations is enclosed for your information. These final regulations clarify that no substantive changes have been made to the definition of "emotional disturbance."

Following publication of the Notice of Proposed Rulemaking (NPRM) on October 22, 1997; the Department received a number of public comments on the definitions of the various disability categories in 34 CFR §300.7 (definition of child with a disability). With respect to these public comments, the Analysis of Comments and Changes, published as Attachment 1 to the final regulations, contains the following explanation:

While there is merit to many of the proposed changes to definitions and terms, modifications to the substance of existing definitions should be subject to further review and discussion before changes are proposed. For example, as indicated in the preamble to the NPRM (62 FR 55026-55048 (Oct. 22, 1997)), the Department plans to carefully review research findings, expert opinion, and practical knowledge

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over the next several years to determine whether changes should be proposed to the procedures for evaluating children suspected of having specific learning disabilities.

64 Fed. Reg. at 12541.

Attachment 1 also contains the following pertinent discussion regarding the change to the use of the term "emotional disturbance," in lieu of "serious emotional disturbance":.

As indicated in the NPRM, no substantive changes are made to the definition of the term "emotional disturbance" in §300.7(c)(4). With respect to the use of the term "emotional disturbance" instead of "serious emotional disturbance," the Senate and House committee reports on Pub. L. No. 105-17 include the following statement:

The Committee wants to make clear that changing the terminology from "serious emotional disturbance" to "serious emotional disturbance [hereinafter referred to as 'emotional disturbance']" in the definition of a "child with a disability" is intended to have no substantive or legal significance. It is intended strictly to eliminate the pejorative connotation of the term "serious." It should in no circumstances be construed to change the existing meaning of the term under 34 CFR §300.7(b)(9) as promulgated September 29, 1992. (S. Rep. No. 105-17, p. 7; H.R. Rep. No. 105-95, p. 86(1997).)

64 Fed. Reg. at 12442.

In addition, the IDEA Amendments of 1997 and the final regulations also contain a number of provisions which clarify that a child's entitlement under Part B is to a free appropriate public education (FAPE), and not to a particular label. These provisions underscore that under Part B, an eligible child with a disability must receive a set of particular services to address that child's identified special educational needs. In the evaluation process, a new requirement at 34 CFR §300.532(b)(1) requires use of a variety of assessment tools and strategies to gather relevant functional and developmental information about the child, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program. Under 34 CFR §300.300, regarding FAPE, a new provision at 34 CFR §300.300(a)(3) clarifies that the services and placement needed by each child with a disability to receive FAPE must be based on the child's unique needs, and not on the child's disability. These provisions will help to ensure that the child's identified needs, not the child's disability, affect determinations about the services to be provided to the child.

Therefore, at the present time, the Department has no plans either to propose additions to the disability categories identified in the statute or to further alter the definition of the emotional disturbance category defined at 34 CFR §300.7(c)(4) of the Part B regulations. However, should this matter be reexamined at some point in the future, consideration would be given to comments such as yours. Again, we appreciate your taking the time to write and share your comments with us.

I hope that you find this explanation helpful. If you would like further assistance, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss in the Office of Special Education Programs, at (202) 205-5507 or (202) 205-9053, respectively.

Sincerely,

Thomas Hehir
Director
Office of Special Education
Programs

Enclosure

cc: Mike Armstrong
Kentucky Department
of Education