



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

March 7, 2011

Diana Autin
Executive Co-Director
Statewide Parent Advocacy Network
35 Halsey Street
Newark, New Jersey 07102

Dear Ms. Autin:

Thank you for your January 18, 2011 electronic mail (email) correspondence to me and Melody Musgrove, Director of the Office of Special Education Programs. Specifically, you requested our views on the proposed establishment of “new segregated schools for students with autism in every [New Jersey] county” and a “new segregated charter school for students with autism” in the state.

As you know, the requirements for determining the placement of a child with a disability are included in the IDEA Part B regulations at 34 CFR §§300.114 through 300.118. These regulations provide that to the maximum extent appropriate, children with disabilities, including in public or private institutions or other care facilities, 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. These regulations also require that the placement decision for each child be made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. A child’s placement must be determined on an individual, case-by-case basis, depending on each child’s unique needs and circumstances, made at least annually, based on the child’s individualized education program (IEP), and be as close as possible to the child’s home. Recognizing that there is no “one size fits all” approach, and that placements in regular classes may not be the least restrictive placement for every child with a disability, the IDEA regulations specify that each public agency is to ensure that a continuum of alternative placements (including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) is available to meet the needs of children with disabilities for special education and related services.

As the regulations make clear, placement decisions must be made on an individual basis. Placements that are determined based solely on the category of a child’s disability are not consistent with the regulations. A child may be placed in a special purpose school for

students with autism only if the placement team, consistent with 34 CFR §§300.114 through 300.117, determines that placement to be necessary to meet the needs of that child and that the child cannot be educated satisfactorily in a less restrictive setting, even with the use of appropriate supplementary aids and services.

Based on section 607(e) 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.

Thank you for your interest in this important issue and your commitment to children with disabilities.

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.