



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

January 5, 2011

Jan Hungate, Ed.D., Assistant Superintendent
Charles Mikeska, Business Manager
West Independent School District
801 North Reagan
West, Texas 76691

Dear Dr. Hungate:

This is in response to your letter, written on behalf of the West Independent School District (District) regarding the residential facility (RF) located in your district. In your letter, you explain that the District is currently under conservatorship with a district monitor as a result of a lawsuit against Texas Educational Agency (TEA). You state that the only remaining noncompliance issue is the least restrictive environment (LRE) indicator as it relates to the RF, and that TEA will continue to assign a monitor to the District until the attendance data system reflects that a special education student or students who reside at the RF are attending the community middle school or high school near the RF. Based on this scenario, you ask whether:

“TEA can impose guidance and even sanctions that do not correspond to federal law and even our own state policies? Are we following IDEA [Individuals with Disabilities Education Act] by not sending a student to the school he would attend were he not disabled? Are we removing authority from IEP [individualized education program] committees by forcing them to make a decision they would not otherwise make if we were not under conservatorship? Are we failing to follow our own state guidelines by continuing to search for justification to transfer a student even though he is placed in our RF school and ‘the basis for the student’s placement at the RF is determined to be an individualized medical/therapeutic treatment justification or adjudication order?’ In your opinion and from the review of the information presented here, do you think our conservatorship is appropriate? And my highest concern, are we at risk of not following IDEA to the letter?”

While it is not generally the Office of Special Education Programs’ (OSEP’s) practice to comment on matters that are the subject of litigation or State educational agency’s (SEA’s) monitoring findings or its specific methods of ensuring compliance, we are pleased to comment on the underlying questions you raise regarding the IDEA requirements related to the LRE.

Under 34 CFR §300.114, each State and its public agencies must ensure that –

“... Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120. (2) Each public agency must ensure that—(i) 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 nondisabled; and (ii) 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.”

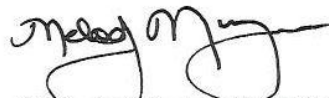
The IDEA does not specify a particular number of children to be placed in any particular setting along the continuum of alternative placements required by 34 CFR §300.115; however, it does require that placement decisions be made on an individual basis, and that, unless the IEP requires a different arrangement, the child is educated in the school he or she would attend if not disabled. We understand that these children are in a residential facility and as you indicate, children not eligible for special education under the IDEA attend the RF school. There is not an option for them to attend the schools they would attend if not placed in the RF. However, that does not alleviate the responsibility of the District to educate the children with disabilities in the RF in the least restrictive environment available, based on each individual’s IEP. You indicate that a community high school campus (West High) and middle school campus (West Middle School) that are not on the grounds of the RF are available as possible education options for children with disabilities who reside at the RF.

In correspondence from TEA to the District dated June 8 and July 5, 2010, TEA clarified its findings indicating in the June 8 letter that TEA “concluded that LRE determinations did not comply with special education requirements because the decisions appeared to be made on a categorical basis, namely the students’ residence in an RF [residential facility].” The letter also indicated that “no RF students attended a general education campus, even though they were able to leave the RF. In addition, the justifications for these students’ removals from a general education setting were the same or very similar, bringing into question individualized decision making for these students.” In the July 5 letter, TEA indicated that there are multiple ways of demonstrating compliance, including providing “evidence that RF students with disabilities (like non-RF students with disabilities) have varying placements along the continuum of placement options,” or “having students move from more restrictive placements to less restrictive placements as they show progress” OSEP does not see evidence in the materials presented that there is anything in the TEA findings, rules, or directives that is inconsistent with the requirements of the IDEA.

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.

If you have questions, please do not hesitate to contact Dr. Marion Crayton at 202-245-6474 or by email at Marion.Crayton@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melody Musgrove', with a stylized flourish at the end.

Melody Musgrove, Ed.D.

Director
Office of Special Education Programs

cc: Kathy Clayton