



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

SEP 9 1997

Dr. Dennis Clarkson
Prickly Pear Educational Cooperative
P.O. Box 1280
East Helena, Montana 59635

Dear Dr. Clarkson:

This is in response to your letter written to the Office of Special Education Programs (OSEP) dated June 16, 1997, in which you request an interpretation of the evaluation procedures in the regulations implementing Part B of the Individuals with Disabilities Education Act (Part B).

The specific regulatory provision at issue, 34 CFR §300.532(a)(3), requires State and local educational agencies (SEAS and LEAs) to ensure that, at a minimum, "testing and other evaluation materials" "Are administered by trained personnel in , conformance with the instructions provided by their producer."

In your letter, you ask whether this requires special education teachers who administer individual standardized achievement tests to have graduate training as stipulated in the test producer's manuals under the criteria of a level B test. You indicate that, because in Montana special education teachers are trained only at the bachelor's level, many do not have course work in assessment. As a result, you are concerned that individuals may be improperly classified as disabled or may not be identified as having disabilities when they should be identified.

Under Part B, States must have procedures for locating, identifying, and evaluating children suspected of having disabilities who are in need of special education and related services, and must ensure that a free appropriate public education is made available to all eligible children in mandatory age ranges. 34 CFR §§300.128, 300.220, and 300.121. The Individuals with Disabilities Education Act Amendments of 1997, (IDEA Amendments of 1997), Pub. L. 105-17, signed into law by President Clinton on June 4, 1997, also contain explicit statutory provisions governing the conduct of initial eligibility determinations and reevaluations. A requirement similar to the regulatory provision found at 34 CFR §300.532(a)(3) has been substantially retained. The IDEA Amendments of 1997 provide that standardized tests must be administered by "trained and knowledgeable personnel" and "in accordance with any instructions provided by the producer of such tests." See section 614(b)(3)(B)(ii)-(iii). This new statutory provision became effective on June 4, 1997.

Under prior law, States also were required to establish policies and procedures to ensure that personnel necessary to carry out the purposes of Part B were appropriately and adequately prepared and trained. 34 CFR §300.153(b)(1). These standards must be based on any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which the person is providing special education or related services. These requirements are retained in section 612(a)(15)(A) and Section 612(a)(15)(B)(I) of the IDEA Amendments of 1997; see also 34 CFR §300.153(b)(2). In addition, Section 612(a)(15)(B)(iii) makes it permissible for "paraprofessionals and assistants who are appropriately trained and supervised, "to provide special education and related services," in accordance with State law, regulations, or written policy." Thus, under this new statutory provision, it may be permissible, under certain conditions, for States to use individuals who do not have established credentials, such as paraprofessionals to participate in the assessment process, if those paraprofessionals are appropriately trained and supervised and their use is consistent with State law or policy.

It is possible that, in the situation prompting your inquiry, it could be permissible for individuals who do not have particular credentials to administer tests under the supervision of knowledgeable and trained personnel. This determination is fact-specific and would have to be made on a case-by-case basis. We understand that the Montana Office of Public Instruction (MOPI) has taken specific steps to ensure that an integrated, multidisciplinary evaluation process occurs in which a school psychologist plays a significant role.

In the situation prompting your inquiry, we believe that the particular facts and circumstances are relevant to making a determination as to whether a requirement of Part B has been violated. As indicated to you during your phone conversation with a member of my staff, Part B contains State complaint procedures at 34 CFR §§300.660--300.662 of the enclosed Part B regulations. These regulations require that, within 60 calendar days of receiving a complaint, the SEA must provide you with a written decision that addresses each allegation in the complaint, and contains (1) findings of fact and conclusions, and (2) the reasons for the final decision.

You may want to contact the Montana Office of Public Instruction for further guidance to be certain that your concerns are being appropriately addressed. Alternatively, you may choose to file a complaint, in which case you should write to the named official of MOPI at the address listed below. Your complaint, which must be written and signed, should include a statement of your allegation that a specific requirement of Part B has been violated and the facts upon which your allegation is based. For

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further information about the complaints in Montana, you should contact:

Mr. Robert Runkel
Director
Division of Special Education
Montana Office of Public Instruction
State Capital, Room 106
Helena, Montana 59620
Telephone: (406) 444-4429

We hope that you find the above explanation helpful. If you need further assistance, please contact Ms. Helen Eano, the Montana State contact, at (202) 205-9583 or Rhonda Weiss at (202) 205-9053.

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas Hehir", with a stylized flourish at the end.

Thomas Hehir
Director
office of Special Education
Programs

cc: Mr. Robert Runkel