



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

May 6, 2008

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Dear XXXXXXXX:

This is in response to your November 16, 2007 letter in which you request clarification of the requirements governing access to the general education curriculum in the regulations for Part B of the Individuals with Disabilities Education Act (Part B).

In your inquiry, you state that special education teachers in the XXXXXXXXXXXXXXXXXXXXXXXX Department of Education (XXXX) have been instructed to use the grade-level books based on the child's chronological age, rather than their performance level, in providing special education services. It is your view that "access to the curriculum and access to the book are not the same," and that a student with cognitive delays or disabilities who is at the chronological age to be in the fifth grade should not be expected to be successful with a fifth grade book. You suggest that the curriculum should be modified or differentiated in some manner for these students.

In the 2004 reauthorization of the Individuals with Disabilities Education Act (IDEA), Congress recognized that the education of children with disabilities can be made more effective by "having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible...." Section 601(c)(5)(A) of IDEA. Although you specifically ask for a definition of this concept, it cannot be defined precisely, since an individualized determination of the needs of a particular child with a disability is required. The vehicle for making these determinations under Part B is the individualized education program (IEP) process, in accordance with the requirements in 34 CFR §§300.320 through 300.324. The crux of your inquiry is how public agencies apply Part B's definition of "specially designed instruction," a component of the Part B definition of special education in 34 CFR §300.39.

In public comments on the proposed regulations to implement the 2004 reauthorization of IDEA, one commenter asked the Department to strengthen the regulations for ensuring access to the general curriculum because many children still do not have the tools they need or the teachers with expertise to access the general curriculum. In declining the commenter's request, the Department responded as follows:

We believe the regulations place great emphasis on ensuring that children with disabilities have access to the general education curriculum. New §300.39(b)(3)... defines specially designed instruction as adapting the content, methodology, or delivery of instruction to address the unique needs of the child and to ensure access to the general curriculum so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. In addition, ensuring that children with disabilities have access to the general curriculum is a major focus

of the requirements for developing a child's IEP. For example, §300.320(a)(1) requires a child's IEP to include a statement of how the child's disability affects the child's involvement and progress in the general education curriculum; §300.320(a)(2)(i) requires annual IEP goals to be designed to enable the child to be involved in and make progress in the general education curriculum; and §300.320(a)(4) requires the IEP to include a statement of the special education and related services the child will receive, as well as the program modifications or supports for school personnel that will be provided, to enable the child to be involved in and make progress in the general education curriculum. We do not believe additional language is necessary. Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46577 (Aug. 14, 2006).

Through the IEP provisions described above, public agencies could examine whether adaptations in content, methodology, or delivery of instruction to address the child's unique needs resulting from the child's disability are necessary to ensure the child's access to the general curriculum. The IEP Team, which includes the child's parents and school officials, also could consider whether the child should receive additional specialized instruction or related services and supplementary aids and services to make it possible for the student to access the general curriculum. The focus of Part B is how a child with a disability can be involved and make progress in the general education curriculum - that is, the same curriculum as for nondisabled children. See 34 CFR §300.320(a)(1). If issues arise about the appropriateness of textbooks for children with particular disabilities, a number of factors would need to be considered. These could include the nature of a child's disability and how that disability affects the student's ability to learn the material, whether adaptations can be made to content, methodology, or delivery of instruction to make it possible for the student to receive the information, or whether alternate methods of teaching the information are appropriate for the child.

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.

We hope this information is helpful. If you have further questions, please do not hesitate to contact Dr. Michael Slade at 202-245-7527 or Dr. Deborah Morrow at 202-245-7456 of my staff.

Sincerely,



William W. Knudsen
Acting Director
Office of Special Education
Programs

cc: XXXXXXXXXXXX