



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

NOV 26 2001

Mr. Paul Veazey, Esq.
Stockwell, Sievert, Viccellio,
Clements & Shaddock, L.L.P.
One Lakeside Plaza
Post Office Box 2900
Lake Charles, Louisiana 70602-2900

Dear Mr. Veazey:

This is a response to your letter transmitted via telefacsimile to the Office of Special Education Programs (OSEP) addressed to Ms. Nancy Jenkins. Although your letter does not clearly state a specific inquiry for OSEP to provide a response, we believe the central question of your letter to be whether a public school board has the unilateral discretion under the Individuals with Disabilities Education Act (IDEA) to choose the educational placement of a child with a disability as an administrative matter to the exclusion of any input from that child's parents. Set forth below is our response to this question that provides clarification about the involvement of parents in individualized education program (IEP) process and educational placement decisions of their child with a disability.

Only the child's IEP team may determine the content of the child's IEP, and only the group of individuals specified in §300.552 may determine the educational placement of a child with a disability based on that child's IEP. Thus, a school board may not unilaterally make decisions about the content of a child's IEP or the educational placement of the child. The educational placement of each child with a disability must be based on the individual needs of that child that are written in his or her IEP.

It is important to point out that the parents of a child with a disability must be invited to participate as active members of the IEP team and as members of the group of individuals that determines the educational placement of their child. Specifically, §300.344(a)(1) requires that the parents of the child with a disability are included as members of the IEP team, and §300.552(a)(1) requires that the parents are included as members of the group of persons that determines the child's educational placement. In some states, the IEP team serves as the group making the placement decision. In other states, another group of people may make this decision. In all cases, the parents have the right to be members of the group that decides the educational placement of their child. Either practice does not violate the IDEA so long as the required members of the IEP team and the group that determines the educational placement meet the requirements of the IDEA as set forth in §§300.344 and 300.552.

Further, educational placement decisions must be made according to the IDEA's least restrictive environment requirements. These requirements state that, 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. See §300.550(b)(1). The IDEA

clearly states that special classes, separate schools, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. *See* §300.550(b)(2).

With respect to State or local educational agency policies regarding placement decisions, a policy establishing educational placement based on a particular disability category is inconsistent with the IDEA. Each child's educational placement must be determined on an individual case-by-case basis depending on each child's unique educational needs and circumstances rather than by the child's type of disability. The IEP forms the basis for the placement decision that is made by the group that decides the educational placement of the child. *See* §300.552(b)(2).

Part B of the IDEA requires that a public agency make available a continuum of alternative placements, or a range of placement options, to meet the needs of children with disabilities. The options on this continuum include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. *See* §300.551. However, the placement of an individual student with a disability in a separate school can occur only if an individual placement determination is made that the student's IEP cannot be implemented satisfactorily in a less restrictive placement, and that placement of the student in a separate school is needed to implement the student's IEP.

It is important to point out that if the public agency, for example, has two or more equally appropriate locations that meet the child's special education and related services needs, the assignment of a particular school or classroom may be an administrative determination, provided that determination is consistent with the placement team's decision. The public agency should exercise caution in making such a determination so that the placement of a child with a disability is not based on factors such as the category of disability, configuration of the service delivery system and the availability of staff and instead is based on the factors stated in §300.552.

We hope that this information is helpful. If you need further assistance, you may contact Cynthia Bryant, the OSEP State contact for Louisiana, at (202) 401-4583.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

cc: Ms. Virginia Beridon
Louisiana Department of Education