



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

MAR 30 2009

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Dear [REDACTED]

This letter is written in response to your electronic mail (email) communication to me on November 26, 2008. I apologize for the delay in my response. In your email, you asked three questions pertaining to 34 CFR §300.115, the requirement that each public agency have a "continuum of alternative placements" available. Your questions and our responses are below.

1. Would full inclusion for all and/or most students within a public school district, regardless of their needs, etc., be a violation of this regulation (34 CFR 300.115)?

OSEP's Response: Under 34 CFR §300.115, each public agency must ensure that a continuum of alternative placements *is available* to meet the needs of children with disabilities for special education and related services [emphasis added]. This continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services such as resource room or itinerant instruction, to be provided in conjunction with regular class placement. There is no requirement that each of the placements on the continuum be utilized. Rather, under 34 CFR §300.114(a)(2), each public agency must ensure 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; and 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.

Moreover, placement decisions for children with disabilities must be made on an individual basis, based on the unique needs of each child, 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. 34 CFR §300.116(a)(1).

The group that makes the placement decision must do so in conformity with the least restrictive environment provisions (LRE) of 34 CFR §§300.114-300.118. The child's placement must be determined at least annually, be based on the child's individualized education program (IEP), and be as close as possible to the child's home. Unless the child's IEP requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled and, in selecting the LRE, consideration must be given to any potential harmful effect on the child or on the quality of services that the child needs. In addition, the child must not be removed from

education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. 34 CFR §300.116(a)(2)-(e).

2. If yes [the answer to question 1], then I would like to know if the answer is the same for charter schools that are run by the state department of education?

OSEP's Response: Regardless of whether a public charter school is: (1) a school of the local educational agency (LEA) that receives funding under 34 CFR §300.705; (2) an LEA that receives funding under 34 CFR §300.705; or (3) not a school of the LEA that receives funding under 34 CFR §300.705 or an LEA that receives funding under 34 CFR §300.705, children with disabilities who attend public charter schools and their parents retain all rights under Part B of IDEA. 34 CFR §300.209(a). Accordingly, the provisions in 34 CFR §300.115 regarding the availability of a continuum of alternative placements apply to public charter schools.

3. Are charter schools run by the State required to follow the same regulations as regular public school districts?

OSEP's Response: As indicated in the answer to question 2, children with disabilities who attend public charter schools and their parents retain all rights under Part B of IDEA. 34 CFR §300.209(a).

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.

I hope this information is helpful to you. If you have further questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education
Programs

cc: Director of Special Education