



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

June 3, 2008

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Dear XXXXXXXX:

This is in response to your January 17, 2008 letter in which you request clarification of the requirements under Part B of the Individuals with Disabilities Education Act (Part B) for serving children who are classified as having a specific learning disability. Your inquiry is prompted because you indicate that some States may be advising their local educational agencies (LEAs) that "...when they use an ability achievement discrepancy methodology, they may only serve the child in the area wherein a discrepancy is documented." Specifically, you pose the following question:

When applying a state's ability achievement discrepancy methodology, can a student who qualifies for specific learning disabilities (LD) placement with a fifteen point discrepancy in either mathematics, reading or language be served for all three areas if the evaluations also document a need for specially designed instruction in those areas?

Part B of IDEA and the Department's final regulations do not impose any limitation on the services to be provided to a child identified as having a specific learning disability based on the areas of severe discrepancy between intellectual ability and achievement that the LEA identifies in making that determination. Note that the final Part B regulations provide that, in determining whether a child has a specific learning disability, a State must not require the use of a severe discrepancy between intellectual ability and achievement; must permit the use of a process based on the child's response to scientific, research-based intervention; and may permit the use of other research-based procedures. 34 CFR §300.307(a).

Although the severe discrepancy is the mechanism the LEA has elected to use in making its determination of whether the child has a specific learning disability (34 CFR §300.307(a)(1)), that determination is one part of a multifaceted evaluation that must be conducted under Part B in accordance with the requirements of 34 CFR §§300.304 through 300.311. Under 34 CFR §300.304(b)(1), the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability under 34 CFR §300.8; and the content of the child's individualized education program (IEP), including information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities). Further, *no single measure or assessment may be used as the sole criterion* for determining whether a child is a child with a disability and *for determining an appropriate educational program for the child.* 34 CFR §300.304(b)(2) [emphasis added].

The Department's longstanding policy is that special education and related services are based on the identified needs of the child and not on the disability category in which the child is classified. 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, 46549 (Aug. 14, 2006). In developing the child's IEP, the factors that the child's IEP Team must consider include the strengths of the child, the concerns of the parent for enhancing the education of their child, the results of the child's initial or most recent evaluation, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a)(1)-(iv). The IEP Team, which is responsible for determining what the child's IEP must contain, consists of the child's parents and public agency personnel, including an individual who can interpret the instructional implications of evaluation results. 34 CFR §300.321(a) and (a)(5). Each child's IEP must contain a statement of the special education, related services, and supplementary aids and services to be provided to the child or on behalf of the child, and a statement of the program modifications and supports for school personnel to enable the child to advance appropriately toward attaining the annual goals, to be involved and make progress in the general curriculum, to participate in extracurricular and other nonacademic activities, and to participate with other children with and without disabilities in those activities. 34 CFR §300.320(a)(4).

In applying the above requirements, each public agency must ensure that each child with a disability is provided with a program of special education and related services that will enable the child to be involved and progress in the general curriculum; that is, the same curriculum as for nondisabled children. If an LEA elects to use a severe discrepancy and assigns point values to particular areas based on a formula, there is nothing in IDEA or the Part B regulations that would require a public agency to make determinations about the services that a child with a disability must receive based on the assigned point values.

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 questions, please do not hesitate to contact Lynne Fairfax at 202-245-7337 or Dr. Deborah Morrow at 202-245-7456, of my staff.

Sincerely



William W. Knudsen
Acting Director
Office of Special Education Program

cc: XXXXXXXXXXXXXXX