



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

Leslie S. Margolis, Esq.
Managing Attorney
Maryland Disability Law Center
1800 North Charles Street, Suite 4000
Baltimore, Maryland 21201

JUN 26 2003

Dear Ms. Margolis:

Leslie

This is in response to your letter dated March 27, 2003 regarding the Maryland Disability Law Center's concern about the Maryland State Department of Education's (MSDE) decision to support the construction of a separate, single-use facility to replace Cedar Lane School. Specifically, you are asking that the Office of Special Education Programs (OSEP) determine if MSDE has taken the necessary steps to conclude that there is no viable alternative to construction of a new separate facility.

As you noted in your letter, while OSEP requires the State to develop corrective actions in response to findings of noncompliance, OSEP does not intervene in State decisions regarding construction of new schools. Further, there are no statutory or regulatory provisions that require a State to take certain steps before concluding that there is no viable alternative to construction of a new separate facility.

The Individuals with Disabilities Education Act (IDEA) requires each public agency to 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 non-disabled and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 USC §1412(a)(5)(A); 34 CFR §300.550(b)(1)-(2). Therefore, before a child with a disability can be placed outside the regular educational environment, the group of persons making the placement decision, which includes the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, must consider whether supplementary aids and services could be provided that would enable education of the student in the regular classroom setting to be achieved. 34 CFR §300.550, 552(a)(1). If a determination is made that a particular student with a disability cannot be educated satisfactorily in the regular educational environment, even with the provision of appropriate supplementary aids and services, then that student could be placed in a setting other than the regular classroom. In all cases, placement decisions must be individually determined on the basis of each child's abilities and needs, and not solely on factors such as category of disability, severity of disability, configuration of service delivery system, availability of space, or administrative convenience. Rather,

each student's Individualized Education Program (IEP) forms the basis for the placement decision. 34 CFR §300.552(b)(2).

Further, the regulations implementing the IDEA require that public agencies have available a continuum of alternative placements to meet the needs of children with disabilities for special education and related services. 34 CFR §300.551. This continuum of alternative placements must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions).

OSEP takes its responsibility very seriously in assessing States' compliance in the implementation of the IDEA and assisting States in developing strategies to improve results for children with disabilities. OSEP conducted a review in Maryland in 1999 to assess the State's compliance with the IDEA. OSEP's Monitoring Report was issued to MSDE on July 26, 2001. One area that OSEP identified as an area of noncompliance was Maryland's failure to ensure that students with disabilities are placed in the Least Restrictive Environment. MSDE has developed an Improvement Plan that identifies strategies for implementing correction of this, and other areas of noncompliance, sources of technical assistance, timelines for completing strategies, and methods for evaluating the effectiveness of the Improvement Plan. OSEP continues to collaborate with MSDE and review the State's progress in ensuring that students with disabilities are placed in the least restrictive environment.

I hope the above information has been helpful. If we can be of further assistance, please contact Dale King at (202) 260-1156.

Sincerely,



Stephanie S. Lee
Director
Office of Special Education Programs

cc: Dr. Carol Ann Baglin
Assistant State Superintendent
Maryland Department of Education