



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

NOV - 3 2004

Helen S. Carroll, Esq.
Whalen and Compton
565 Wolf Ledges Parkway
P.O. Box 2020
Akron, Ohio 44309-2020

Dear Ms. Carroll:

This is in response to your letter to the Office of Special Education Programs (OSEP), written on behalf of the Amherst Exempted Village Board of Education (District). In your inquiry, you request clarification regarding whether a student with a cognitive disability has a right under the free appropriate public education (FAPE) requirements of Part B of the Individuals with Disabilities Education Act (Part B) "to experience each grade level in sequence...despite the recommendation of the IEP team that [the student] be assigned to a grade level with his same age peers."

As described in your letter, the District has offered this student, now 14 years old, a fifth and sixth grade curriculum in science and social studies in a junior high school setting serving fifth and sixth-grade students. However, the parent has requested that the student be able to advance to fifth grade and receive the services deemed appropriate for him in a middle school setting serving fifth and sixth-grade students.

Under Part B, public agencies have an ongoing responsibility to ensure that a FAPE is made available to all children with disabilities residing in the State in mandatory age ranges. 34 CFR §§300.121 and 300.8. While each child is entitled to have available a program of FAPE in the least restrictive environment, Part B does not address whether a child has the right to experience each grade level in sequence. Under Part B, individualized determinations must be made about the education program that is appropriate for each child through the individualized education program (IEP) and placement processes. 34 CFR §§300.340-300.350 and 34 CFR §§300.550-300.552.

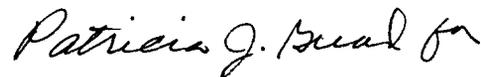
Each child's IEP must include, among other components, a statement of the special education and related services and supplementary aids and services to be provided to the child or on behalf of the child, the extent that a child will participate with other children with disabilities and nondisabled children in the general curriculum and in extracurricular and other nonacademic activities. 34 CFR § 300.347(a)(3)-(4). Each child's placement must be determined by a group of persons knowledgeable about the child, the meaning of evaluation data, and placement options, and this group must include the child's parents. 34 CFR §300.552(a)(1) and 300.501(c). The placement must be made in conformity with Part B's least restrictive environment requirements and must be based on the child's IEP. 34 CFR §300.552(a)(2) and (b)(2). Further, under Part B, a child may not be removed

from age appropriate regular classrooms solely because of needed modifications to the general curriculum. 34 CFR §300.552(e). While, in general, building or classroom assignment issues, including grade level assignments, may be matters that are governed by other State or local criteria and decision-making mechanisms, those determinations must be made consistent with a child's IEP or placement.

Based on the information provided in your inquiry, it appears that the issue of grade level assignment for this student is a longstanding one. Should the current dispute not be resolved informally, and the parents exercise their right to initiate a due process hearing under 34 CFR §§300.506-300.514, the hearing officer would have jurisdiction to decide whether, under the particular facts and circumstances, the grade and classroom assignment issue relates to the identification, evaluation, educational placement, or provision of FAPE to this student.

I hope that you find the above explanation helpful. If this office can be of further assistance, please do not hesitate to contact Dale King at (202) 245-7405.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs