



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

JUL 11 2006

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This letter is in response to your letter dated March 10, 2006, regarding your efforts to remove the "Mental Retardation" label from the California regulations and replace it with a different term, such as "Cognitive Impairment." Your letter asks four questions that the Office of Special Education Programs (OSEP) will address below.

1. **"Our research indicates that the following states do not currently use the term 'Mental Retardation' as a label in identifying children for special education eligibility: Idaho, Michigan, New Jersey, Indiana, Wisconsin, Georgia, Minnesota, Montana, Nebraska, Colorado, Delaware, Kentucky, North Carolina, South Carolina, South Dakota, Utah, West Virginia and Wyoming. Are these states being funded for students who meet the Federal definition for Mental Retardation? Have there been any problems or issues related to funding for these states since they replaced the Mental Retardation label?"**

A State's decision to use different terminology from that used in the Federal definition to describe disability categories does not affect its eligibility for funds under Part B of the Individuals with Disabilities Education Act (Part B). The term "child with a disability" under Part B includes children with specified impairments who are evaluated and determined to need special education and related services by reason of those impairments. Mental retardation is one of the impairments listed in the Federal definition of "child with a disability" in section 602(3)(A) of the Act. 20 U.S.C. 1401(3)(A). A State is not required to use the precise terminology in the Federal definition of "child with a disability" in describing children who meet criteria for that definition, provided that all children who are in need of special education and related services who have impairments listed in the Part B definition of "child with a disability" receive appropriate instruction and services.

In order for a State to be eligible to receive assistance under Part B, it must provide assurances to the Secretary of Education that the State has in effect policies and procedures that ensure that it meets the eligibility conditions in section 612 of the Act and its implementing regulations in 34 CFR Part 300.\* The assurances that are relevant to your inquiry require a State to ensure that all children with disabilities residing in the State who are in need of special education and related services, are identified, located, and evaluated (20 U.S.C. 1412(a)(3)) and that a free appropriate public education (FAPE) is available to all eligible children (20 U.S.C. 1412(a)(1)). In addition,

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\* Final regulations implementing the changes to the statute in 2004 have not yet been published and further clarification may be included in the final regulations when they become available. The citations contained in this letter are to the current regulations issued March 12, 1999 and may change when final regulations are published.

a State must provide an assurance in its application for funds under Parts B and C of the IDEA that it will provide data to the Secretary of Education on any information that may be required by the Secretary. 20 U.S.C. 1418(a)(3). Consistent with this assurance, States receiving assistance under Part B must provide data to the Secretary and to the public on an annual basis on the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are receiving FAPE. 20 U.S.C. 1418(a)(1). This is true regardless of whether the State uses the terminology in the Federal definition of “child with a disability,” substitutes different terms for the terminology used in the Federal definition, or does not classify any eligible children in the State by disability category.

**2. “What process did these States go through with OSEP in order to make this happen?”**

Whenever a State makes revisions to its policies and/or procedures, it must initiate the public participation process. The public participation requirements are set forth in §441 of the General Education Provisions Act (GEPA) at 20 U.S.C. 1232d(b)(7)(B) and in Part B at 20 U.S.C. 1412(a)(19). The Part B provision states that “[p]rior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.” Therefore, before a State can make changes to its policies and procedures needed to comply with Part B of the Act, including definitions of disability categories, the State must comply with these public participation requirements.

**3. “With regard to OSEP’s current position on the Federal eligibility criteria of Mental Retardation, would it jeopardize funding for California if the California State Legislature passed legislation to merely replace the label ‘Mental Retardation’ with another similar, less stigmatizing label such as ‘Intellectual Disability’ while keeping the definition exactly as it is in the Federal language?”**

With regard to the funding implications of your inquiry, please see our response to question 1. In general, it would not be inconsistent with Part B for California to amend its statutes, regulations, or policies to replace the term mental retardation with some other appropriate term, provided that California makes FAPE available to all eligible children who fit within the Federal definition. However, the decision of what term would be appropriate to use to describe children currently classified in the mental retardation category, or any other disability category used in Part B, is a matter of State discretion. Nothing in Part B requires that children be classified by their disability so long as each child who has an impairment listed in section 602(3) of the Act and who, by reason of that impairment, needs special education and related services is regarded as a child with a disability under this part. 20 U.S.C. 1412(a)(3)(B). A child’s entitlement under Part B is to FAPE and not to a particular label. Under Part B, an eligible child with a disability must receive a set of particular services to address that child’s identified special educational needs. In the evaluation process, 34 CFR §300.532(b)(1) of current regulations requires the use of a variety of assessment tools and strategies to gather relevant functional and developmental information about the child, that may assist in determining whether the child is a child with a disability and the content of the child’s individualized education program (IEP). Under 34 CFR

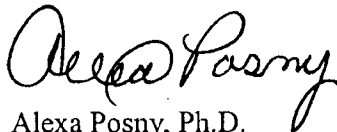
§300.300(a)(3)(ii) of current regulations, “[t]he services and placement needed by each child with a disability to receive FAPE must be based on the child’s unique needs, and not on the child’s disability.” These provisions underscore that the child’s identified needs, not the child’s disability category, determine the services to be provided to the child.

4. **“With the knowledge that in our culture, outside of the professional realm the words ‘Mental Retardation’ have become a common insult that is used by children and adults (i.e. “retard” “that’s retarded” “you’re mental”) and in our media, is OSEP taking steps to consider changing this label at the Federal level?”**

The IDEA was recently reauthorized and amended by the Individuals with Disabilities Education Improvement Act of 2004, and the term “mental retardation” was retained in the Federal definition of “child with a disability” in section 602(3) of the Act. OSEP is not considering changing the designation for children with mental retardation at this time. If you continue to believe that there is a need to change the IDEA designation for children with mental retardation, we suggest that you share your concerns with members of Congress.

This response regarding a policy, question, or interpretation under Part B is provided as informal guidance, is not legally binding, is issued in compliance with the requirements of 5 U.S.C. 553, and represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented. We hope that you find the above explanation helpful. If you have any further questions regarding the requirements of Part B that have been discussed in this response, please contact Perry Williams, the California State contact for Part B in the Monitoring and State Improvement Planning Division, at (202) 245-7575.

Sincerely,



Alexa Posny, Ph.D.  
Director

Office of Special Education Programs