



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

NOV 30 2007

Mr. Tom Trigg
Chapman Management Group
100 North Stone Avenue, Suite 1100
Tucson, Arizona 85701

Dear Mr. Trigg:

This letter is in response to your correspondence received on September 28, 2007, inquiring about placement and location of services under the Individuals with Disabilities Education Act (IDEA). In your letter, you requested clarification of the Department's November 26, 2001 *Letter to Veazey* which states, "The public agency should exercise caution in making such a determination [location of services] so that the placement of the child with a disability is not based on factors such as the category of disability, configuration of the service delivery system and the availability of staff and instead is based on the factors stated in §300.552¹." In particular, you asked, in the event the home school does not provide the required services, to what extent is a district required to provide the child with access to facilities that do, even if they are understaffed? Is the district able to comply with §300.522(b)(3) if they have mandated the child travel past two or more schools to obtain the same services because of staffing availability or would they be required to remedy the staffing at one of the institutions in proximity? Lastly, you requested the authority under which the statement in the *Letter to Veazey* was made.

The requirements for determining the placement of a child with a disability are included in the current Part B regulations at 34 CFR §300.116. This regulation requires placement decisions be made 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. This decision also must be made in conformity with the least restrictive environment provisions, including §§300.114 through 300.118. Additionally, a 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.

These requirements are consistent with section 612(a)(5) of IDEA which requires, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, be educated with children who are not disabled. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The overriding rule is that placement decisions must be

¹ Section 300.552 refers to the IDEA Part B regulations issued on March 12, 1999. The most recent Part B regulations were issued on August 14, 2006. Section 300.116 of the current regulations provides the current placement procedures and will be referenced in this letter. There are no substantive changes between the procedures in §300.552 of the 1999 regulation and §300.116 of the current regulations.

determined on an individual, case-by-case basis, depending on each child's unique needs and circumstances and based on the child's IEP. In all cases, however, placement decisions must not be made solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience. Historically, we have referred to "placement" as points along the continuum of placement options available for a child with a disability and "location" as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services. Public agencies are strongly encouraged to place a child with a disability in the school and classroom the child would attend if the child did not have a disability. However, a public agency may have two or more equally appropriate locations that meet the child's special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement.

With regard to your questions regarding staffing of placements and the placement of a child in a school that is not closest to the child's home, the Department has consistently maintained that a child with a disability should be educated in a school as close to the child's home as possible, unless the services identified in the child's IEP require a different location. Although IDEA does not require that each school building in a local educational agency (LEA) be able to provide all the special education and related services for all types and severities of disabilities, the LEA has an obligation to make available a full continuum of alternative placement options that maximize opportunities for its children with disabilities to be educated with nondisabled peers to the maximum extent appropriate. In light of the above, the Department cannot speculate as to the appropriateness of a particular program, based on the proximity of that program to the child's home. If a child's IEP requires services that are not available at the school closest to the child's home, the child may be placed in another school that can offer the services that are included in the IEP and necessary for the child to receive a free appropriate public education. If the child is placed in a school that is not the school closest to the child's home, transportation, if needed for the child to benefit from special education, must be provided as a related service at no cost to the parent, to the location where the IEP services will be provided.

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 IDEA in the context of the specific facts presented.

We hope that you find the responses to your questions helpful. If you need further assistance, please feel free to contact my office.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education
Programs