



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

David Anderson
General Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

DEC - 4 2012

Dear Mr. Anderson:

This letter is in response to your June 1, 2012 correspondence to the Office of Special Education Programs (OSEP) in the Office of Special Education and Rehabilitative Services (OSERS), U.S. Department of Education (Department). On August 17, 2012, Melissa Turner, OSEP State Contact, held a conference call with you to clarify the question posed in your letter. In your inquiry, you request that OSEP provide guidance related to the least restrictive environment (LRE) requirements in the Individuals with Disabilities Education Act (IDEA) for students with disabilities participating in the National Guard Youth Challenge (ChalleNGe) program. Specifically, you ask whether a school district may serve students with disabilities at the ChalleNGe program site as long as the students with disabilities are educated with their nondisabled peers to the maximum extent appropriate.

Based on your letter and conversation with Ms. Turner, I understand that the ChalleNGe program is a program in which youth, with and without disabilities, between the ages of 16 and 18 who have dropped out of high school may choose to enroll. Youth must apply to participate in the ChalleNGe program. An individual may not be placed into the ChalleNGe program by courts, probation officers, local educational agencies (LEA) or other public agencies. While enrolled in the program, students live at the ChalleNGe site and participate in an on-site educational program that is provided in collaboration with the LEA in which the ChalleNGe site is located. I also understand that the LEA in which the ChalleNGe program site is located is responsible for ensuring that children with disabilities in the ChalleNGe program are provided with a free appropriate public education (FAPE) in the LRE.

Given this understanding, I believe that the educational program provided at the ChalleNGe program site is somewhat akin to a charter, magnet, or other specialized school which educates children with and without disabilities and in which children choose to enroll. Just as in those types of schools, instruction in regular classes at the ChalleNGe program site could serve as the less restrictive end of the continuum of alternative placements that must be available to meet the needs of students with disabilities, consistent with 34 CFR §300.115. Whether instruction in regular classes or special classes at the ChalleNGe program site would constitute the LRE for an individual student, or whether some other educational setting is necessary, though, requires an individual determination.

As you know, the requirements for determining the placement of a child with a disability are included in the IDEA Part B regulations at 34 CFR §§300.114 through 300.118. These

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regulations provide that to the maximum extent appropriate, children with disabilities are to be educated with children who are not disabled and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. These regulations also require that the placement decision for each child 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. A child's placement must be determined on an individual, case-by-case basis, depending on each child's unique needs and circumstances, made at least annually, based on the child's individualized education program (IEP), and be as close as possible to the child's home. Recognizing that there is no "one size fits all" approach, and that placements in regular classes may not be the least restrictive placement for every child with a disability, the IDEA regulations specify that each public agency is to ensure that a continuum of alternative placements (including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) is available to meet the needs of children with disabilities for special education and related services.

Because the LEA where the ChalleNGe program site is located is responsible for making FAPE available to children with disabilities, that LEA must ensure that each student enrolled in the ChalleNGe program receives special education and related services in the LRE appropriate to his or her needs, that the continuum of alternative placements described in 34 CFR §300.115 is available to meet the needs of students with disabilities for special education and related services who are participating in the ChalleNGe program, and that placement decisions are individually determined through the process described previously.

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.

If you have any further questions, please do not hesitate to contact Melissa Turner, of my staff, at 202-245-6415 or by email at Melissa.Turner@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove", with a long horizontal flourish extending to the right.

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs