



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

4/18/2013

Marsha Johnson, Chairperson
Utah Provider Consortium
565 East 4500 South, Suite A 220
Salt Lake City, Utah 84107

Dear Ms. Johnson:

This letter is in response to your May 30, 2012 letter to me and the July 16, 2012 telephone conversation with my staff requesting clarification of information provided by the U.S. Department of Education's (Department), Office of Special Education Programs (OSEP) June 7, 2005 letter to Ms. Sandy Morris (Letter to Morris) regarding settings that constitute natural environments for infants and toddlers with disabilities. In your correspondence, you inquire if the following statement from Letter to Morris remains OSEP's current position –

“Many center-based programs that formerly served only children with disabilities have now integrated children without disabilities, creating a daycare or preschool program constituting a natural environment. [Individualized Family Service Plans (IFSPs)] are not required to include a justification for services in such a setting.” (Letter to Morris)

In addition, during the July 16, 2012 call with my staff, you asked if there is a specific point at which a center-based program serving children with disabilities would become a natural environment consistent with the requirement at 34 CFR §303.26.

The Letter to Morris continues to reflect OSEP's policy that, in general, providing early intervention services in a group setting limited exclusively to infants and toddlers with disabilities would not constitute a natural environment, however, a justification would not be required in the IFSP if an IFSP team determines that a center-based program, which formerly served only children with disabilities and now has integrated children without disabilities, is a community-based setting and the natural environment for a particular child. Although, OSEP promulgated new Part C regulations in 2011 based on the 2004 amendments to the Individuals with Disabilities Education Act (IDEA), the new regulations regarding natural environments remain substantively unchanged from those referenced in the Letter to Morris. In particular, the definition of natural environments in 34 CFR §303.26 and the provision in 34 CFR §303.126 that requires a State to have policies and procedures to ensure that early intervention services are provided to the maximum extent appropriate in natural environments, unless the IFSP team determines that the early intervention services cannot be achieved satisfactorily in a natural environment, have not been changed. The provisions in 34 CFR §303.344(d)(1)(ii) requiring that the IFSP team determine the service setting for each child and, in cases where the IFSP team determines that a service cannot be delivered in the natural environment, include a justification in the IFSP based on the child's outcomes for not providing that service in the natural environment, also remain unchanged.

You also asked whether there is a specific point at which a center-based program serving children with disabilities could become a natural environment. A center-based program that meets the definition of a community-based setting for data collection purposes may be considered a natural environment. Natural environments are defined as “settings that are natural or typical for a same-aged infant or

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toddler without a disability ... [and] may include home or community settings.” 34 CFR §303.26. To understand the context of the definition of community-based settings, it is helpful to review prior and current Part C data collection instructions that have defined these terms for State reports. In addition, it is also instructive to review the definition of least restrictive environment under Part B of the IDEA, which serves a similar purpose of ensuring that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled.

Beginning with the 2006 IDEA data collections for Part C service settings (former Table 2), the instructions for the States’ IDEA Part C Section 618 “Report of Program Settings Where Early Intervention Services are Provided to Children with Disabilities and their Families in Accordance with Part C” refer to “community-based settings” as settings “where children without disabilities typically are found,” and include examples such as child care centers (including family day care), preschools, regular nursery schools, early childhood centers, libraries, grocery stores, parks, restaurants, and community centers (*e.g.*, the YMCA, Boys and Girls Clubs).¹

Prior to 2006, the IDEA Part C data collection form for service settings used the term “Programs Designed for Typically Developing Children,” instead of “community-based settings,” and States were instructed in 2006 to cross-walk those categories. The term “Programs Designed for Typically Developing Children” in the pre-2006 IDEA Part C Table 2 collections was defined as “services ... provided in a program regularly attended by a group of children. Most of the children in this setting do not have disabilities.” (*Emphasis added*) The purpose of ensuring that most of the children in either programs for typically developing children or community-based settings do not have disabilities is to ensure that infants and toddlers with disabilities have the opportunity to interact on a regular basis with typically developing children.

The purpose under Part C of integrating infants and toddlers with disabilities with their peers who are not disabled is similar to the purpose of the “least restrictive environment” requirement under IDEA, Part B, which states a strong preference for educating children with disabilities to the maximum extent appropriate in regular classes alongside their peers without disabilities. While the Part B and Part C early childhood programs differ in some aspects, they both serve to ensure that young children with disabilities interact with peers who are not disabled, to the maximum extent appropriate. Under IDEA Part B, the term “Regular Early Childhood Program” is defined for data collection purposes as a program that includes a majority (at least 50 percent) of nondisabled children (*i.e.*, children without IEPs).² The purpose of this definition is to ensure that this preschool setting provides preschool children with disabilities the opportunity to interact on a regular basis with their typically developing peers.

We hope this information is helpful. If you would like further information, the Department supports many early childhood research and demonstration projects to assist states and local programs in the implementation of Part C. One such project that provides extensive information

¹ Beginning in September 2012, the Part C service settings data collection was moved to the Department’s *EDFacts Metadata and Process System (EMAPS)* and was renamed “IDEA Part C Child Count and Setting.” See <http://www2.ed.gov/about/inits/ed/edfacts/index.html>

² *See*, OSEP Dear Colleague Letter February 29, 2012, which states “For data collection purposes, the Department defines a Regular Early Childhood Program as a program that includes a majority (at least 50 percent) of non-disabled children... and may include, but is not limited to, Head Start, kindergartens, preschool classes offered to an eligible pre-kindergarten population by the public school system, private kindergartens or preschools, and group child development centers or child care.”

regarding promising practices in implementing the Part C natural environment requirement is the Early Childhood Technical Assistance Center at www.ectacenter.org

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 Frank Miller, of my staff, at 202-245-7065 or by email at Frank.E.Miller@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is fluid and cursive, with the first name "Melody" and last name "Musgrove" clearly distinguishable.

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

cc: State Part C Coordinator