



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

FEB - 1 2008

Ms. Roberta Wohle, Director
Office of Special Education Programs
New Jersey Department of Education
PO Box 500
Trenton NJ 08625-0500

Dear Ms. Wohle:

This letter is in response to your June 14, 2007 letter to the U.S. Department of Education, Office of Special Education Programs (OSEP), regarding requirements under the Individuals with Disabilities Education Act (IDEA) for educating children with disabilities in the least restrictive environment (LRE). We apologize for the delay in responding.

Your letter asks for guidance related to the reporting requirements for indicators 5 and 6 of the State Performance Plan (SPP) and Annual Performance Reports (APRs). Specifically, your letter asks:

- (a) whether there is a specific percentage of students with disabilities that must be educated with non-disabled peers for more than 80% of the school day; and
- (b) the acceptable percentage of students with disabilities that are educated in separate special education settings.

Under 34 CFR §300.601(a)(3), as part of its SPP, each State must establish measurable and rigorous targets for the indicators established by the Secretary for the priority areas described in §300.600(d). One of these priority areas is the provision of FAPE in the LRE. 34 CFR §300.600(d). IDEA does not prescribe the number or percentage of children with disabilities who must be educated in any particular environment. You are correct that indicators 5 and 6 are results indicators, not compliance indicators, and States are not required to establish 100 percent targets for these indicators. Further, as you also point out in your inquiry, targets for these indicators are set by the State with broad stakeholder input. States should consider local circumstances in establishing targets for these indicators in assessing local performance against statewide targets.

Let me also emphasize that IDEA's LRE principle expresses a strong preference, not a mandate, for educating every child with a disability in the regular educational environment. To meet the LRE requirements in the IDEA statute and the implementing regulations for Part B of IDEA, each State must have policies and procedures that ensure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are 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 when 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. 34 CFR §300.114. Thus, the IDEA establishes a presumption that children with disabilities will be educated in classes and settings with their nondisabled peers unless the education of children with disabilities cannot be achieved satisfactorily in those classes and settings with the use of supplementary aids and services.

Recognizing that the regular educational environment may not be the appropriate placement option for each child with a disability, IDEA also requires that each public agency make available a continuum of alternative placements, or a range of placement options, to meet the needs of children with disabilities for special education and related services. This continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and must make provision for supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement. 34 CFR §300.115. Accordingly, in selecting the placement option that is appropriate for each disabled child, the IDEA requires that the placement decision for each child with a disability be based on the child's individualized education program (IEP) and be determined at least annually 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. 34 CFR §300.116(a)(1) and (b)(1) and (2). Finally, public agencies also must ensure that children with disabilities are not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum. 34 CFR §300.116(e).

In setting rigorous targets for SPP results indicators including indicators 5 and 6, OSEP has encouraged broad stakeholder involvement in the development of performance goals, indicators, and annual objectives for children with disabilities. OSEP has provided guidance in its August 9, 2005 memorandum to States, *Submission of Part B State Performance Plans and Annual Performance Reports*, (OSEP Memo 05-12), located at <http://www.ed.gov/policy/speced/guid/idea/bapr/index.html>, which directs States to provide information, in the overview section of the SPP, clarifying how the State obtained broad input from stakeholders on the SPP. In addition, 34 CFR §§300.167 through 300.169 clarify the State's responsibility to establish and maintain an advisory panel, whose membership consists of broad and diverse representation, to advise States on many issues, including developing evaluations and reporting on data to the Secretary. You may find helpful the questions and answers for Part B Indicator 5 that are posted on the Federal Resource Centers website at http://www.rrfcnetwork.org/images/stories/FRC/spp_mat/2007_December/indicator%20%20b%205to%20frfc11.30.07.doc

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.

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 Susan Falkenhan at (202) 245-7242.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia J. Guard". The signature is written in a cursive style with a large initial "P".

Patricia J. Guard
Acting Director
Office of Special Education
Programs