



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

JUL 25 2000

[REDACTED]
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Dear [REDACTED]

I am writing in response to your e-mail dated July 18, 1999 to President Clinton. Your correspondence was referred to this office, the Office of Special Education Programs for a response as we administer Part B of the Individuals with Disabilities Education Act (Part B). I have enclosed for your reference a copy of the Part B regulations and this letter identifies (by using C.F.R.) the specific sections that you may wish to review.

You identified three concerns relating to your two youngest children who both have autistic spectrum disorder. Specifically, your letter addressed: 1) the unavailability of Applied Behavior Analysis (ABA) as an instructional methodology for your children; 2) the lack of adequate qualified professionals to provide services in your local community; and 3) the need to establish a separate school for children with autism.

Regarding your first concern, you indicated that your children and other children with autism are not receiving the programs and services that you believe they need from their local school districts, including, specifically, Applied Behavior Analysis (ABA). You stated that schools cite the time-consuming nature (and thus cost) of ABA as reasons for not providing ABA as the choice of methodology for the treatment of autism. Our response, which is discussed further below, is summarized to note that if your child is eligible for Part B services, those services must be individualized and provided at no cost and further, that you as a parent, have an opportunity to provide input into the educational program process.

Under Part B, States and local school districts receiving Part B funds are required to make available to all eligible children a free appropriate public education (FAPE). 34 C.F.R. §300.300. The school district must conduct a meeting to develop an individualized education program (IEP) for each eligible child. 34 C.F.R. §300.343. The IEP must describe the special education and related services that are individualized to ensure that the child receives FAPE. 34 C.F.R. §300.13(d). Special education is defined as "specially-designed instruction" which means "adapting as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction (i) to address the unique needs of the child that result from the child's disability; and, (ii) to ensure access of the child to the general curriculum, so that he or she can meet the educational standards . . . that apply to all children. 34 C.F.R. §300.26(b)(3).

Once an IEP is developed for the child, the IEP must be implemented as written and the child's placement must be based upon the IEP. 34 C.F.R. §300.552(b). Whether a specific instructional methodology is addressed in an IEP is the IEP team's decision. The IEP team includes the parent and it reaches its decisions by consensus. However, school districts must ensure through the IEP process that each eligible child with a disability receives a program that is designed to address his or her unique needs. 34 C.F.R. §§300.26(a) and 300.300(a)(3)(ii).

If the IEP identifies the services that comprise FAPE for a child, those services are to be provided at no cost to the parent. 34 C.F.R. §300.13(a). Cost cannot be the determinative factor in identifying the appropriate instructional methodologies and educational services under the IEP.

As a parent, you have input in both the IEP process and placement decision. 34 C.F.R. §§300.345 and 300.552(a)(1). When a school district conducts an IEP meeting, you, as a parent, are a member of the IEP team and must be invited to participate. 34 C.F.R. §300.345. Parents play a key role along with school personnel in: (1) developing, reviewing or, if necessary, revising a child's IEP; (2) determining the nature and extent of the child's special education and related service needs; and (3) the placement decision. 34 C.F.R. §§300.343 through 300.345 and 300.552(a)(1).

If you believe that the educational services that are being provided under a current IEP for either of your children are not appropriate, you may request a review of, or revision to, the IEP for that child. Through the IEP and placement processes, you can request school officials to consider different approaches, such as ABA, that you believe would appropriately meet your child's unique needs. This discussion of approaches could also include considering the provision of needed services in a private school, if the local school district is unable to provide the needed services in the public setting.

If the local school district staff and a parent cannot agree on the content of the IEP or if the school does not review or revise the IEP (if requested by a parent), a parent may request a due process hearing. 34 C.F.R. 300.507. If a hearing is requested, an impartial hearing officer issues a final decision regarding any disagreements. 34 C.F.R. §§507 through 300.511. If the parent believes there is a violation of Part B requirements, the parent may file a complaint under the State complaint procedures, described at 34 C.F.R. §§ 300.660 through 300.662. These regulations require each State educational agency (SEA) to develop procedures for receiving and resolving any written, signed complaint that a public agency (including a local school district) has violated a requirement of Part B. For information about this process in your state or to file a complaint with your SEA, the Ohio Department of Education, contact:

Mr. John Herner
Director, Division of Special Education
933 High Street
Worthington, Ohio 43085-4087
Telephone: (614) 466-2650

Regarding your second concern about an inadequate number of qualified professionals to meet the needs of children in your community, the relevant regulations can be found at 34 CFR §§ 300.135 and 300.136 (g)(3)(i) and (ii). Each State must have a mechanism for serving children with disabilities if instructional needs exceed available personnel who meet appropriate professional requirements in the State for a specific profession or discipline. A State that continues to experience shortages of qualified personnel must address those shortages in its comprehensive system of personnel development. Under Part B, lack of adequate personnel or resources does not relieve school districts of their obligation to make FAPE available to students with disabilities in the least restrictive educational setting in which their IEPs can be implemented. You may also contact the Ohio Department of Education for more information regarding its implementation of these requirements.

Regarding your third and final inquiry about establishing a State school for children with autism, it is important to consider Federal regulations that mandate that FAPE be provided in the least restrictive environment. Part B provides that all States receiving Part B funds must have in place procedures assuring that:

[t]o 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.

20 U.S.C. § 1412 (a)(5)(A); 34 C.F.R. §§ 300.550 - 300.556.

This provision states Part B's strong preference for educating students with disabilities in regular classes with appropriate aids and supports. However, the preference for placing a child in the least restrictive environment must be read in conjunction with the mandate to provide each child special education and related services to address that child's unique needs, as noted in response to your first inquiry above.

An individual child with autism may be placed in a separate school if that child's needs cannot be addressed in a less restrictive setting. However, the IEP team is responsible for determining the child's ability to participate with non-disabled peers in both academic and non-academic areas. The IEP team must consider the extent that the student will be able to participate in regular education programs and identify the range of supplementary aids and services that would facilitate the student's placement in that environment. If the

IEP team determines that an eligible child cannot be educated satisfactorily in regular education even with supplementary aids and services, then the child's placement team must select the option on the "continuum" of alternative placements which best meets the child's needs.

I hope this information is helpful. If you need further assistance, please feel free to contact Lena Mills of my staff and the Part B OSEP contact for Ohio, at (202) 205-5386.

Sincerely,



Kenneth R. Warlick
Director,
Office of Special Education Programs

Enclosures

cc: Ms. Sue J. Smith (w/o enc.)
Director, Office of Agency Liaison
The White House

John Herner (w/o enc.)
Ohio Division of Special Education