



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAY 10 2007

Doris O. Matsui  
Member of Congress  
Congress of the United States  
House of Representatives  
2310 Rayburn House Office Building  
Washington DC 20515

Dear Congresswoman Matsui:

Your September 26, 2006 letter requested the Office of Special Education Programs (OSEP) to respond to the questions posed by Christopher Slaton, Executive Director of Save Our Youth in California. Your constituent's inquiry expresses concern about the education provided to poor, minority, high-need, and special-need children in the Elk Grove Unified School District. We share his concern that all children receive an education that enables them to learn effectively and become contributing members of society. Our response will address the four questions you pose based primarily on the Individuals with Disabilities Education Act (IDEA), the Federal program administered by this Office, as well as some of the requirements of the Vocational Rehabilitation (VR) Act. The VR Act is administered by the Rehabilitation Services Administration, another component of the Office of Special Education And Rehabilitative Services (OSERS). Before responding to the specific questions your inquiry poses, we thought it might be helpful to provide a brief description of Part B of IDEA (Grants to States program) authorized under 20 U.S.C. 1401, and 1411-1420 and the VR program, funded under Title I of the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

One of the purposes of Part B of IDEA (Part B) is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. 34 CFR §300.1. Part B of IDEA (Under Part B, the Department provides assistance to States, and through them to local school districts, to assist in providing FAPE to children with disabilities in preschool, elementary school, and secondary school programs beginning at age 3 and possibly lasting to the student's 22<sup>nd</sup> birthday, depending on State law or practice. 34 CFR §§300.101 and 300.17. Beginning at age 16, or younger if determined appropriate, and updated annually thereafter, appropriate measurable postsecondary goals must be developed for children with disabilities based on age appropriate transition assessments related to training, education, and employment and, where appropriate, independent living skills, and transition services (including courses of study) needed to assist the child in reaching those goals. 34 CFR §§300.320(b) and 300.43. The purpose of the VR program is to assist individuals with disabilities to prepare for and engage in gainful employment that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Once an individual is determined eligible for VR services, the VR agency provides services, pursuant to a written and agreed-upon Individualized Plan for Employment (IPE), that are required by the individual to achieve an employment outcome. As such, the VR program serves primarily adults with disabilities. However, the Rehabilitation Act Amendments of 1998 put greater emphasis on

the need for the VR program to serve students with disabilities who were in transition from school to post-school activities, including post-secondary education, vocational training, and integrated employment.

Your specific questions and the Department's responses follow.

**1. What criterion is established for determining eligibility status for special education classes and vocational rehabilitation services?**

It is not clear whether your question is referring to how determinations are made regarding a child's eligibility for special education and related services under Part B or how determinations are made as to where eligible children receive required services. Therefore, our response will address both aspects of this question. In order for a child to be eligible for special education and related services under Part B, a child must meet the definition of "child with a disability" under 34 CFR §300.8. To meet this definition, a child must be evaluated in accordance with 34 CFR §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness),... "emotional disturbance," an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness or multiple disabilities, and who, by reason thereof, needs special education and related services." 34 CFR §300.8(a). The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 34 CFR §300.8, must, after providing appropriate notice to the parents in accordance with 34 CFR §§300.503 and 300.504, obtain informed consent, consistent with 34 CFR §300.9, from the parent of the child before conducting the evaluation. 34 CFR §300.300(a). Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior, to determine whether the child is a child with a disability, as defined in 34 CFR §300.8, and the educational needs of the child. 34 CFR §300.306(a) and (c)(i).

Children determined eligible for services under Part B must receive a program of special education and related services in accordance with an individualized education program (IEP) developed at a meeting of the child's IEP Team, including school officials and the child's parents. 34 CFR §§300.320-300.324. The IEP, which addresses the child's unique educational needs arising from the child's disability also forms the basis for the child's placement decision. 34 CFR §300.116(b)(2). Part B expresses a preference for placing children with disabilities in regular classes with nondisabled children if the child with a disability can be educated satisfactorily in the regular educational environment with the use of supplementary aids and services. 34 CFR §300.114. Although experience has demonstrated that many children with disabilities can be educated satisfactorily in the regular classroom along with children without disabilities, unless their IEP calls for some other arrangement, IDEA also recognizes that the regular classroom may not be the appropriate placement for some disabled children. Therefore, each public agency must 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. The options on this continuum include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 CFR

§300.115(a) and (b)(1). Thus, the group responsible for making the placement decision, which includes persons knowledgeable about the child and the child's parent, selects the option on the continuum in which the child's IEP can be appropriately implemented. 34 CFR §300.116(a)-(b).

The regulations for the State VR program at 34 CFR §361.42(a)(1) require that an applicant's eligibility for VR services be based on the following requirements: (1) a determination by qualified personnel that the applicant has a physical or mental impairment; (2) a determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment; and (3) a determination by a qualified VR counselor, employed by the designated State unit, that the applicant requires VR services to prepare for, secure, retain, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The designated State unit for the State of California is the Department of Rehabilitation Services (DORS). In addition, it is important to note that individuals who have been determined eligible for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits are presumed eligible for VR services (see 34 CFR 361.42(a)(3)). Federal regulations at 34 CFR §361.22 provide more detailed information about the provision of VR services to students in transition.

**2. Which entities are accountable for determining the assessment and methodology for special education cases?**

Under Part B, the State educational agency (SEA) must ensure that evaluations are conducted that meet the requirements of 34 CFR §§300.300 through 300.311. These evaluation requirements are applicable to public agencies in the State, including local school districts. As part of the initial evaluation and any reevaluation, under 34 CFR §300.305, the IEP Team and other qualified professionals, as appropriate, must review existing evaluation data on the child, including evaluations and information provided by the parents of the child; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers. On the basis of that review, and input from the child's parents, the IEP Team and other qualified professionals, as appropriate, identify what additional data, if any, are needed to determine whether the child is a child with a disability, as defined in 34 CFR §300.8, and the educational needs of the child, the present levels of academic achievement and related developmental needs of the child and whether the child needs special education and related services.

If assessments are administered as part of any evaluation or reevaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability under Part B and the content of the child's IEP. 34 CFR §300.306(b)(1). Further, no single measure can be used as the sole criterion for determining whether the child has a disability and for determining an appropriate educational program for the child. 34 CFR §300.306(b)(2). While Part B does not specify what evaluation tools and assessment measures must be used, public agencies must select technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 CFR §300.304(b)(3). Once a child is determined eligible for services under Part B, if a decision

needs to be made about whether a child with a disability should be provided a particular instructional methodology in order for that child to receive an appropriate education, such matters are the responsibility of the child's IEP Team.

For individuals in California seeking VR services, the California DOR is required to conduct an assessment for determining eligibility for the VR program. The eligibility determination is based on a review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, particularly information used by education officials and determinations made by officials of other agencies. In the event that existing data are insufficient to make this determination, another assessment of additional data, resulting from the provision of VR services, is conducted, including trial work experiences, assistive technology devices and services, personal assistance services, and any other support services that are necessary to determine eligibility. (See 34 CFR §361.42(d))

**3. Is there a current standard for addressing children who come from a family suffering from substance abuse?**

There is nothing in Part B or the Part B regulations that explicitly addresses services for children who come from a family suffering from substance abuse. Children from these families would be eligible for special education and related services under Part B if they meet the criteria for "child with a disability" in 34 CFR §300.8. See our response to question #1 above. For example, if a child has experienced birth defects as a result of the substance abuse in the family, it is possible that the child could be eligible for services under Part B as a child with an "other health impairment," as defined at 34 CFR §300.8(c)(9), a disability category which includes children with chronic or acute health problems resulting in limited strength, vitality, or alertness, that adversely affect educational performance. Children found eligible for services under Part B may be provided an array of related services if the IEP Team determines that the child requires those services in order to benefit from special education. Some of the related services available to children with disabilities under Part B, which may be appropriate for children from families with substance abuse, could include counseling services, parent counseling and training, psychological services, and social work services in schools. See 34 CFR §300.34(c)(2), (8), (10), and (14).

Similarly, for the VR program, children who come from families suffering from substance abuse are not addressed in the Rehabilitation Act, or in the implementing VR regulations. Therefore, these individuals must meet the eligibility criteria under 34 CFR §361.42(a)(1), as described in our response to question #1 above.

**4. [Are] family history and medical records taken into consideration when assessing a child's eligibility?**

For children seeking special education and related services, following the review of existing evaluation data on the child under 34 CFR §300.305 and the completion of any evaluation or assessment instruments under 34 CFR §300.304, The eligibility determination is made by a group of qualified professionals and the parent of the child. 34 CFR §300.306(a). This group draws upon information from a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, as well as information about the child's physical condition, social and cultural background and adaptive behavior. 34 CFR §300.306(a) and (c).

As part of the review of existing evaluation data on the child, if the child's parent chooses to provide evaluations and information in accordance with 34 CFR §300.305(a)(1)(i), these would be included in the information that is considered in determining whether the child has a disability and the educational needs of the child.

For individuals seeking VR services, as stated in our response to question #2 above, the eligibility determination is based on a review and assessment of existing data, including information provided by the individual and the individual's family. In addition, the determination by qualified personnel that the applicant has a physical or mental impairment described in our response to question number one above is the first of the three VR Services Program eligibility requirements.

Further information regarding Vocational Rehabilitation can be obtained from the California Department of Rehabilitation Services at:

Gary Kuwabara  
Acting Director  
Department of Rehabilitation  
2000 Evergreen Street  
Sacramento, CA 95815

In addition to your request for our responses to the questions above, the correspondence from Dr. Slaton that you forwarded with your letter to this Office also requested that the U.S. Department of Education conduct a formal investigation of the Elk Grove Unified School District. In general, this Office does not conduct investigations of special education programs in local school districts. However, under Part B, each SEA must have procedures for resolving complaints filed by an individual or organization alleging that a public agency in the State has violated a requirement of Part B or the Part B regulations. 34 CFR §§300.151 through 300.153. The SEA must issue a final decision that addresses each allegation in the complaint within 60 days of the date that the complaint is filed (34 CFR Section 300.152(a)), unless the timeline is extended in accordance with 34 CFR §300.152 (b)(1).

If your constituent would like more information about the Part B complaint procedures in California, he should contact:

Ms. Mary Hudler  
Special Education Division  
California State Department of Education  
1430 N Street, 2<sup>nd</sup> Floor  
Sacramento, California 95814

Your constituent has also expressed concerns about the education provided to minority, high needs, and special needs children by the Elk Grove Unified School District. The Department's Office for Civil Rights (OCR) enforces laws that prohibit discrimination on the basis of race, color, national origin, age, sex, and disability. OCR also investigates complaints against local school districts alleging violations of these laws. For more information about the laws that OCR enforces, your constituent may wish to contact the OCR field office that has jurisdiction over school districts in California:

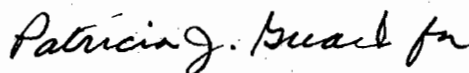
San Francisco Office  
Office for Civil Rights

U.S. Department of Education  
50 Beale Street, Suite 7200  
San Francisco, CA 94105

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 further questions, please do not hesitate to contact my office or the California State contact, Mr. Perry Williams, at 202-245-7575 for special education and Mr. Charles Sadler, at 202-245-7514 for vocational rehabilitation.

Sincerely,



Alexa Posny, Ph.D.  
Director  
Office of Special Education Programs

cc: Mary Hudler  
Gary Kuwabara