



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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January 28, 2013

Ms. Susan K. Haberstroh
Education Associate
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 16 DE Reg. 691 [DOE Proposed Driver Education Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to revise its driver education regulation to conform to H.B. 264 which was enacted in April 2012. In a nutshell, the legislation is designed to provide flexibility for IDEA-classified students in enrollment in driver education courses. The material authorization is as follows:

(b) A student who is receiving special education services under an active student's individualized education plan (IEP) will be authorized until age 21 to complete their driver education certification through a State-approved driver education course. Pursuant to Department of Education regulation, the student may be authorized to subsequently enroll in another driver education course if the student fails the driver education course during the regular school year.

SCPD has the following observations on the proposed regulation which was published as 16 DE Reg. 691 in the January 1, 2013 issue of the Register of Regulations.

First, in §1.1, SCPD recommends inserting "and related services" after the term "specialized instruction". For example, a student may need special hand controls or vehicle modifications to be successful. Such assistive technology could be considered either specialized instruction or a related service. Moreover, a student may need OT services to address seating, gripping, and access to controls in a vehicle.

Second, in §1.1.3, SCPD recommends deletion of the term "for taking the course one additional time". Our rationale is as follows:

A. The relevant IDEA regulation requires that special education and related services be provided “at public expense” and “without charge”. See 34 C.F.R. §300.17. The State statute and regulation specifically envision IEP team involvement in students’ participation in driver education course work. IEP-included education must be free.

B. The statute does not literally limit an IDEA-identified student to retaking driver education only once. The student is simply authorized to enroll in another course. See also §1.1, referring to “multiple opportunities to take the driver education course”. Interpreting the statute as limiting an IDEA-classified student to only two attempts to pass a driver education course is precluded by federal law. Special education must be individualized and enrollment in courses which are part of “FAPE” cannot be “capped”.

C. OSEP interpretations support enrollment in a third or fourth driver education class with IEP team approval at no charge. OSEP allows parents to be charged minor incidental or “maintenance fees” (e.g. for art, chemistry, or lab supplies). See attached OSEP Policy Letter to Anonymous, 20 IDELR 1155 (October 8, 1993). OSEP does not permit parental liability for tuition costs. See attached OSEP Policy Letter to Neveldine, 22 IDELR 630 (January 25, 1995). The cost of a driver education course is conceptually a tuition charge, not an incidental fee.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

Sincerely,



Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Mark Murphy
Dr. Teri Quinn Gray
Ms. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
Mr. John Hindman, Esq.
Mr. Charlie Michels
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor’s Advisory Council for Exceptional Citizens

20 IDELR 1155

20 LRP 2370

Letter to Anonymous
Office of Special Education Programs

N/A

October 8, 1993

Related Index Numbers

200.005 At No Cost

135.015 Closing of Case

200.020 Definition Under Federal Law

415.070 Transportation

515.015 Methods/Mean of Transportation

Judge / Administrative Officer

Thomas Hehir, Director

Case Summary

What is the meaning of the word "free" as used in the FAPE requirement of Part B of the IDEA? Specifically, are expenditures for items like art supplies, pencils, and paper permissible expenditures for parents of students with disabilities within the definition of this word?

In order to qualify as "free" under Part B, special education and related services must be provided at no cost to parents. However, a public agency is not precluded from charging certain "incidental" fees to the parents of students with disabilities for items such as art, chemistry, or lab supplies, provided that similar fees are also charged to the parents of nondisabled students as a part of the regular education program.

Full Text

Appearances:

Inquirer's Name Not Provided

Text of Inquiry

As the [] Tourette Support Group and the Attention Deficit Disorder Association of [] I am frequently asked to provide information to our readers relating to federal laws, specifically 94-142, dealing with our handicapped children.

The term "Free and Appropriate Education" (FAPE) seems simple enough. However, I would like some interpretation from your office relating to each of these terms. I have been told by a representative of the La. State Department of Education that it is the sole responsibility of the school system to define what is appropriate. I have a problem with this. It is like turning the hen house over to the fox. I have also been told by outside advisers that it is the responsibility of the IEP committee. If this is so then the parent should have some say in just what is appropriate. However, as a parent who has been to many IEP meetings what is offered seems to have always hinged on what the school system wishes to make available and that is usually contingent upon what they have chosen to offer system wide within their budget. Money seems to always be the driving force and never the needs of the children.

One would think that the word FREE would be simple to define. Either something is without cost or it isn't. However, my child seems to always need "fees" for this, that, or the other. As an example, he has been charged a "fee" for art supplies. It could be chemistry lab supplies or shop supplies. I have been told by one outside advisor that "art supplies" is not education. I have been told by another advisor that so long as nonhandicapped children are charged then the handicapped can also be charged. What about those who do not have the money? There was a time when all children not only got free books but they also got paper and pencils. Today you must buy your own paper, pencils and other supplies that the teacher dictates.

Another critical problem for children which are ADHD is transportation. The system is supposed to furnish transportation and it does. However, for an ADHD child that is asked to get on a bus at not long after six in the morning and ride for an hour or more to some distant school that has the program that they need is an invitation to serious trouble and disaster. The child, especially one in BD, is being set up for failure. The return ride in the evening is just as bad. Can a long bus ride for such a child be considered

appropriate. How long is long? What are the alternatives for the child and parent?

I have been forced to shoulder the expense of private transportation to school for my child for years in order to avoid all of the problems attendant with his using the school transportation system. This seems to be neither FREE or APPROPRIATE. The school system says take it or leave it.

We as parents of handicapped children did not write these laws and neither did the school systems. I can understand that they do not like these laws since they make extra demands on their resources. But the fact of the matter is, if the congress says FREE it would seem to be all inclusive. FREE should be FREE. It should not be NEARLY FREE or sometimes FREE or FREE when the school system wants it to be. If the congress did not mean FREE they should not have said FREE. I do not wish to be picky, but I will be the devil's advocate.

If the congress wanted to provide handicapped children with special rights and privileges under these laws it should not be up to the school systems to take those rights away no matter how they may feel about the laws and the demands that they place upon the systems. Those of us who have to live with these laws are not asking for special interpretations or special privileges. All we want is what the laws say we are entitled to. We just need to know what we are entitled to by your definition and not by the definition of the school system or the state department of education who may find it onerous to comply with the laws and wish to evade and avoid as much of the responsibility placed upon them by the laws as they can get away with.

I will appreciate your providing me with interpretations relating to FREE and APPROPRIATE which I can pass on to our readers and members which they might use in dealing with a recalcitrant school system that might not wish to fulfill its obligations under the laws. Your response to the bus problem will also be appreciated.

Text of Response

This is in further response to your letter to former Assistant Secretary Robert R. Davila regarding the free appropriate public education (FAPE) requirements of Part B of the Individuals with Disabilities Education Act (Part B). You are requesting this Office's interpretation of the terms "free" and "appropriate" as used in Part B. Also, you express concern about the transportation services to and from school being provided to your child who has a disability, and to other children with disabilities, by your local school district. A copy of the Part B regulations at 34 CFR Part 300 is enclosed for your information. I hope you will excuse the delay in my reply.

Under Part B, States and local school districts have an ongoing responsibility to make FAPE available to all eligible children with disabilities within the State. 20 U.S.C. § 1412(2). FAPE is defined in Part B as:

special education and related services that:

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the State educational agency, including (Part B requirements);
- (c) Include preschool, elementary school, or secondary school education in the State involved, and
- (d) Are provided in conformity with an individualized education program that meets the requirements under §§ 300.340-300.350.

34 CFR § 300.8; *see also* 20 U.S.C. § 1401(a)(18).

You indicate that your child has had to pay "fees" for such things as art supplies and that today parents must even supply their children with paper, pencils and other supplies. You question whether these expenditures are permissible expenditures for parents of students with disabilities, and would like to know how the word "free" is defined under Part B.

Under Part B, special education and related services must be provided at public expense. Therefore, in order for education to be "free" under

Part B, special education and related services must be provided at no cost to parents. The Part B regulations define the term "at no cost" to mean that all specially designed instruction is provided without charge, but does not preclude charging incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program. Thus, it is permissible under Part B for public agencies to charge parents of children with disabilities for certain "maintenance fees," such as for the art, chemistry, or lab supplies mentioned in your letter, provided they are incident fees normally charged to parents of nondisabled children as part of regular education programs.

Your letter also asks whether Part B defines the term "appropriate." While there is no specific definition in Part B for the term "appropriate," Part B requirements are designed to ensure that each child with a disability receives an educational program that addresses that child's unique educational needs. Specifically, Part B requirements for determining what constitutes FAPE for an individual child include evaluation and placement procedures at 34 CFR §§ 300.530-300.534; least restrictive environment procedures at 34 CFR §§ 300.550-300.556; individualized education program (IEP) procedures at 34 CFR §§ 300.340-300.349; and procedural safeguards available to children with disabilities and their parents at 34 CFR §§ 300.500, 300.502-300.515.

The goal of the requirements cited above is to provide a method for determining what is an appropriate program in light of each child's individual needs. Through the Part B procedural safeguards, parents and school districts may challenge what constitutes an "appropriate" special education program for an individual child. The Part B due process procedures at 34 CFR §§ 300.506-300.508 are also available to parents who disagree with a local educational agency (LEA) proposal or refusal regarding the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. Another avenue available to individuals in Louisiana who believe that a violation of Part B has

occurred is to file a complaint with the Louisiana State Department of Education (LSDE). LSDE must investigate and resolve any complaint that it receives within 60 calendar days, in accordance with the complaint provisions applicable to Part B at 34 CFR §§ 300.660-300.662. The complaint provisions can be found on Page 44829 of the enclosure.

To request a due process hearing, or to file a complaint, you can contact the State educational agency official listed below, at the following address and telephone number:

Leon L. Borne, Ph.D.
Assistant Superintendent
Office of Special Educational Services
Louisiana State Department of Education
P.O. Box 94064
Baton Rouge, Louisiana 70804-9064
Telephone: (504) 342-3633

Finally, your letter also expresses concerns about your school district's provision of transportation services to children with disabilities. The Part B regulations define transportation as a related service, where that transportation is required to assist a child with a disability to benefit from special education. 34 CFR § 300.16(b)(14). Transportation includes---

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings, and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

If a child with disabilities needs transportation to benefit from special education, then transportation must be provided as a related service. In all instances, the child's need for transportation as a related service and the type of transportation to be provided are issues to be discussed and decided during the evaluation process and IEP meeting. If the transportation arrangement decided upon is provided

as a related service, it must be included in the IEP. If agreement cannot be reached in the IEP meeting, then the issue may be taken to a due process hearing.

You indicate that in your LEA in order for some students with disabilities to obtain transportation to and from school, the students have to board the bus shortly after 6 a.m. and ride for an hour or more in order to attend classes, with a lengthy return trip. Because of this transportation arrangement, you indicate that you have had to pay for your child to use private transportation to attend school.

In addition to the requirements of Part B relevant to transportation for children with disabilities, discussed above, your letter also may be raising issues that relate to the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504). Section 504 is a civil rights statute that prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. The Department's Office for Civil Rights (OCR) is the branch of the Department that enforces Section 504. For further information about applicable Section 504 requirements regarding transportation, you may wish to contact:

Mr. Taylor D. August
Regional Civil Rights Director
Office for Civil Rights, Region VI
U.S. Department of Education
1200 Main Tower Building
Suite 2260
Dallas, Texas 75202-9998

I appreciate your taking the time to express your concerns regarding these important issues. I hope that the information contained in this letter is helpful to you and to the other members of your organization. If this Office can be of further assistance, please let me know.

Thomas Hehir
Director

Office of Special Education Programs

Statutes Cited

20 USC 1412(2)
20 USC 1401(a)(18)

Regulations Cited

34 CFR 300.340-300.350
34 CFR 300.8
34 CFR 300.530-300.534
34 CFR 300.550-300.556
34 CFR 300.500
34 CFR 300.502-300.515
34 CFR 300.506-300.508
34 CFR 300.660-300.662
34 CFR 300.16(b)(14)

22 IDELR 630

22 LRP 3101

Letter to Neveldine

Office of Special Education Programs

N/A

January 25, 1995

Related Index Numbers

365.110 Persons Qualified for Placement Decision

355.025 In General

365.130 Preschool

373. PRESCHOOL PROGRAMS

285.060 Preschool

Judge / Administrative Officer

Thomas Hehir, Director

Case Summary

Did a state's provision, which required that an appropriate professional employed by the district as well as a chair of the Committee on Preschool Special Education be members of a multidisciplinary team, comply with the requirement that members of the multidisciplinary team responsible for developing a child's IEP be qualified to provide, or supervise the provision of, special education?

A state's provision, which required that an appropriate professional employed by the district as well as a chair of the Committee on Preschool Special Education be members of a multidisciplinary team, complied with the requirement that members of the multidisciplinary team responsible for developing a child's IEP be qualified to provide, or supervise the provision of, special education. The state department of education had consistently taken the position that an appropriate professional was an individual qualified to provide special education.

Full Text

Appearances:

Mr. Thomas B. Neveldine

Assistant Commissioner

Office for Special Education Services

New York State Education Department

Education Building Annex, Room 1073

Albany, New York 12234

Text of Inquiry

This is in response to your letter of April 15, 1994 regarding the provision of special education to preschool students with disabilities. Specifically, you requested that the New York State Education Department (NYSED) revise its policy to ensure that the State is providing appropriate services to these students. It is the position of NYSED that, based on the following information, such policy revisions are unnecessary. For purposes of clarity, I have repeated the issues raised in your letter along with our response.

1. The membership of the CPSE must meet the requirements of 34 CFR § 300.344 when meetings are held to develop or review an IEP. Specifically, you stated that New York State's regulations do not appear to require that the professional employed by the district or the professional employed by the county be qualified to provide or supervise the provision of special education. In addition, you stated that it is unclear whether other people, at the discretion of the school district, may attend IEP meetings.

Response: Although Part 200 of the Regulations of the Commissioner of Education does not address the issue you raise, they are specifically addressed in § 4410 of the Education Law and in previously published memoranda. Section 4410 requires that an appropriate professional employed by the school district be a member of the Committee on Preschool Special Education. This individual must serve as the Chairperson of the Committee. The Department has consistently taken the position that an appropriate professional is an individual qualified to provide or supervise special education.

Also, according to information in an October 1989 memorandum (see attachment A) to the field under my signature, we have advised that the

representative of the municipality should hold an appropriate license or certificate in a field relating to the education of students with disabilities. Such individuals could hold a license or certificate in special education, occupational or physical therapy, psychology, social work or education administration.

In regard to the second concern, a school district may invite other non-CPSE members to IEP meetings when special expertise is needed to provide information to assist the CPSE in making a determination and recommendation regarding the child's eligibility for special education programs and services. This information was communicated by me to the field in January 1990 through a field memorandum (see attachment B).

As such, the composition of the CPSE meets the requirements of 34 CFR 300.344 including a person qualified to provide or supervise special education and allows others at the discretion of the CPSE to attend the meeting.

2. the public agency must provide FAPE in the least restrictive environment to all eligible preschool students with disabilities, even if the local educational agency does not provide free preschool programs or regular education to non-disabled preschool students. When a public agency places a child in a private preschool program for the purpose of receiving FAPE, the child's entire educational program during the time the child is placed by the public agency must be provided at no cost to the parent.

Response: As stated in my letter of November 12, 1993, when the CPSE recommends the placement of an eligible preschool student with a disability in an approved private preschool for the purpose of providing specially designed instruction, the entire program is offered at no cost to the parent.

Consistent with federal requirements, school districts make available a FAPE to all eligible preschool students with disabilities. Under 20 USC 1401(a)(18) "FAPE means special education and related services that--(A) have been provided at public expense. . . . " Further, pursuant to 20 USC

1412(2)(b), States must provide FAPE to "all children with disabilities between the ages of three and eighteen within the State not later than September 1, 1980, except that, with respect to children with disabilities aged three to five . . . the requirement . . . shall not be applied in any state where the application of such requirements should be inconsistent with state law or practice. . . . Consistent with federal law, 34 CFR 300.300(b)(5) provides that a state need not make available a FAPE to 3-5 year olds if "(i) state law expressly prohibits, or does not authorize the expenditures of public funds to provide education to non-disabled children in that age group." Since New York law does not provide a free universal system of preschool education for three and four year olds, a local school district meets the FAPE requirements by making available special education and related services at no cost in accordance with student's individualized education program.

In addition, the Office of Special Education Programs has indicated that school districts that do not operate programs for non-disabled preschool children are not required to initiate new programs solely to satisfy federal LRE requirements. The school district is also not responsible for services not included on the student's IEP. As described in the attached memorandum of April 1991 (see Attachment C) school districts that do not operate free preschool programs are encouraged to pursue a number of ways to provide appropriate opportunities to meet a student's needs in the least restrictive environment.

As described in the April 1991 memorandum, the preschool continuum of services includes a special class program in an integrated setting. This program option, which requires application to the State Education Department for approval, is a special class of no more than 12 preschool children which is staffed by at least one special education teacher and one paraprofessional. Eligible preschool students who are placed in such programs receive their education at no cost. Special class in an integrated setting can be provided in the following ways:

in a class of no more than twelve preschool

children, which includes both non-disabled and disabled children; or

in a class of no more than twelve preschool children with disabilities staffed by a special education teacher and a paraprofessional and housed in the same classroom space as a preschool class of non-disabled children taught by another teacher.

3. A placement team which meets the requirements at 34 CFR 300.533(a)(3) must place the child in the least restrictive environment necessary to implement the IEP. The natural setting may be the child's placement only if it meets all Part B requirements, including LRE requirements at 34 CFR 300.550—300-556.

Response: According to Section 4410 of the Education Law and Part 200.16 of the Regulations, Committees on Preschool Special Education must define the extent to which the preschool student will participate in programs in the least restrictive environment appropriate to the student within the individualized education program. This information is determined upon consideration of information included in the individual evaluation of the student. While the wishes of the parent are considered in making this placement determination, the CPSE's placement decision must be made in a manner consistent with the LRE requirements under Part B. Further, each agency that submitted an application to be considered a preschool special education provider, included a description of how programs and services operated by the agency would be provided in a manner consistent with LRE requirements. Therefore, based on this information, it is not necessary to revise state policy regarding this matter.

Since every program is currently required to offer their services in the least restrictive environment to the child, whenever the IEP indicates that the placement be with non-disabled peers, it is the obligation of the CPSE to provide such opportunities for the child.

4. If the placement team determines, based on the child's IEP, that in addition to what you define as

stand-alone services, the child needs interaction with non-disabled peers, the public agency is responsible for making available an appropriate program and ensuring that tuition costs associated with that placement for the period of time necessary to implement the IEP are at no cost to parents.

Response: We do not agree with your position on this matter. However, I indicated above and in my previous letter of January 29, 1993 to [], and above, if the CPSE determines that the special instruction must be provided in an integrated setting, New York's system can provide such opportunities. For those children who are educated in a special class in an integrated setting, the total cost of the program is at no cost to the parent. In addition, where the public agency offers free preschool education, that program would be available to the child with a disability at no cost, to the extent the CPSE deemed it appropriate.

It is our firm belief that New York's preschool special education system provides the flexibility needed to allow for the delivery of special education and related services in the child's natural environment, wherever that may be. It meets both the spirit and intent of federal law. Since this information resolves all of the issues raised in your April 15, 1994 letter, we await the timely receipt of New York State's fiscal year 1995 Part B and Section 619 funds. Please notify us of your[r] final determination regarding this issue.

Text of Response

Staff from the Office of Special Education Programs (OSEP) have completed their analysis of New York's policies and procedures regarding placement of preschool-aged children with disabilities in the least restrictive environment (LRE). This letter presents the issues and our response in the same order as presented in your letter of July 1.

ISSUE 1: Membership of the multidisciplinary team responsible for developing a child's IEP.

OSEP's concern was that the New York regulations did not appear to require that either the professional employed by the school district, or the

appropriately certified or licensed professional appointed by the chief executive officer of the municipality, be qualified to provide, or supervise the provision of, special education. Further, it was unclear whether other people at the discretion of the agency may attend the meetings.

The New York State Education Department (NYSED) responded that Section 4410 of the State Education Law requires that an appropriate professional employed by the school district be a member, as well as the Chair, of the Committee on Preschool Special Education (CPSE) (Section 4410(3)). Your response states that NYSED has consistently taken the position that an appropriate professional is an individual qualified to provide special education. Finally, section 4402 of the State Education Law states that a committee on special education may include "other persons as the board of education or the board of trustees shall designate."

This information satisfactorily addresses OSEP's concerns.

ISSUE 2: The public agency must provide FAPE in the least restrictive environment even if the LEA does not provide free preschool programs to all preschool-aged children. Further, when the public-agency places a child in a private preschool program for the purpose of receiving FAPE, the child's entire educational program during the time the child is placed by the public agency must be provided at no cost to the parent.

New York's response states that when the CPSE places a preschool child with a disability into a private preschool program for the purpose of providing specially designed instruction, the entire program is offered at no cost to parents. It then states that "consistent with federal requirements, school districts must make a FAPE available to all eligible preschool students with disabilities" and that "a local school district meets the FAPE requirements by making available special education and related services at no cost in accordance with a student's IEP." We believe that this information clarifies that the public agency must provide FAPE to a

preschool-aged child with a disability in the least restrictive environment where the child's unique needs as contained in the IEP can be met, regardless of whether the LEA provides regular education or free preschool programs to nondisabled children.

It is important to note, however, that the regulatory provision at 34 CFR 300.300(b)(5)(i), that a State is not required to provide FAPE to a preschool-aged child with a disability if "State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to nondisabled children in that age group," does not apply to New York. As we have previously stated, this regulatory provision does not apply if the State is required to provide FAPE to all preschool-aged children with disabilities. As indicated in New York State law and regulations, the April 1991 memorandum submitted with the July 1, 1994 letter, as well as policies in the Part B State plan and participation in the Preschool Grants program, New York State has chosen to provide FAPE to all preschool-aged children with disabilities.

ISSUE 3: A placement team which meets the requirements at 34 CFR § 300.533(a)(3) must place the child in the least restrictive environment necessary to implement the IEP. The "natural setting" may be the child's placement only if it meets all Part B requirements including LRE requirements at 34 CFR § 300.550-300.556.

New York's response states that based on section 4410 of the Education Law and Part 200.16 of the regulations, the team must "define the extent to which the preschool student will participate in programs in the LRE appropriate to the student within the individualized education plan (IEP). . . . While the wishes of the parent are considered in making a placement determination, the CPSE's placement decision must be made in a manner consistent with the LRE requirements under Part B. . . . Since every program is currently required to offer their services in the LRE the child, whenever the IEP indicates that the placement be with nondisabled peers, it is the obligation of the CPSE to provide such opportunities

for the child." We believe that this information clarifies that the natural setting may be the child's placement only if it meets all Part B requirements.

ISSUE 4: If the placement team determines, based on the child's IEP, that in addition to what you define as stand-alone services, the child needs interaction with nondisabled peers, the public agency is responsible for making available an appropriate program and ensuring that tuition costs associated with that placement for the period of time necessary to implement the IEP are at no cost to parents.

In its July 1, 1994 response, New York specifically disagrees with OSEP on this issue, but states "if the CPSE determines that the special instruction must be provided in an integrated setting, New York's system can provide such opportunities." Our concern is that it appears that if the CPSE determines that special instruction must be provided in an integrated setting and a child's "natural setting" already provides contact with nondisabled children, the CPSE believes that it can meet its obligation to provide FAPE by paying only for the specially designed instruction and has no obligation to pay any of the tuition costs associated with the child's natural setting. It is inconsistent with Part B for the parent to pay the tuition costs associated with providing the opportunity for interaction necessary to implement the child's IEP simply because the child is already in a setting that provides for interaction with nondisabled peers.

As previously stated by OSEP, there may be circumstances where a placement team determines that a specific service needed by a child could be provided in a variety of settings and would not require interaction with nondisabled peers, assuming all other Part B requirements are met. In those instances where the placement team has determined that provision of that service is all that is required to provide FAPE to the child, the public agency is only responsible for providing the required service and that service could be provided in a variety of settings, including the child's natural setting. However, if the placement team determines, based on the child's IEP, that in

addition to what you define as stand-alone services, the child needs interaction with nondisabled peers, the public agency is responsible for making available an appropriate program in the least restrictive environment, and ensuring that tuition costs associated with that placement for the period of time necessary to implement the IEP are at no cost to parents.

As indicated in the discussion above, OSEP continues to have concerns about New York's policy on "stand-alone services." Therefore, we are requesting an assurance from NYSED that if a placement team determines based on a child's IEP that, in addition to what you define as stand-alone services, the child needs interaction with nondisabled peers, the public agency is responsible for making available an appropriate program and ensuring that tuition costs associated with that placement for the period of time necessary to implement the IEP are at no cost to parents. If you have any questions, please contact this Office at (202) 205-5507. *

Thomas Hehir

Director

Office of Special Education Programs

Statutes Cited

20 USC 1401(a)(18)

20 USC 1412(2)(B)

Regulations Cited

34 CFR 300.533(a)(3)

34 CFR 300.550-300.556

34 CFR 300.300(b)(5)(i)