



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

APR 12 2007

Paul S. Foreman  
Service Coordinator  
Community Alliance for Special Education  
1550 Bryant Street, Suite 738  
San Francisco, CA 94103

Dear Mr. Foreman:

Thank you for your letter of October 30, 2006 in which you expressed the opinion that the Department's early childhood "stay-put" regulation under the Individuals with Disabilities Education Act (IDEA) in 34 C.F.R. §303.518(c) conflicts with the statutory transition requirements in IDEA sections 612(a)(9) and 637(a)(9). This regulatory provision implements IDEA section 615(j), and was published as part of the final Part B regulations on August 14, 2006 and became effective on October 13, 2006. It states:

If the [due process hearing] complaint involves an application for initial services under this part [Part B] from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency [under Part B] is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency. 34 C.F.R. §300.518(c) [with necessary clarifications].

While I understand and appreciate your concern regarding the potential interruption of services for some children under this provision, it represents the Department's longstanding and continuing position regarding services provided to those children with disabilities who are eligible under Part B when they transition at age three from the Part C early intervention program to the Part B preschool program. Under this provision, public agencies under Part B are not required to, but may, if the public agency and parents agree, continue to provide the early intervention services identified on the child's individualized family service plan (IFSP), pending the resolution of an administrative hearing or judicial decision filed under IDEA section 615. As noted in the Analysis of Comments and Changes section of the final Part B regulations, the programs under Parts B and C of the Act differ in their scope, eligibility, and services available. 71 Federal Register 46540, 46709 (Aug. 14, 2006). In addition, the transition requirements cited in your letter in IDEA sections 612(a)(9) and 637(a)(9) do not address the "stay-put" or pendency provision in IDEA section 615(j).

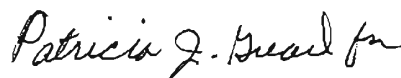
If a parent has provided consent for the initial provision of special education and related services, consistent with 34 C.F.R. §300.300(b) and the parent and the local educational agency agree on

some special education and related services identified on the child's individualized education program (IEP), the public agency must provide those IEP services that are not in dispute. The IDEA 2004 amendments include new provisions in IDEA section 615 for alternative dispute resolution, including resolution sessions and additional flexibility for mediation. We hope that parents and public agencies can successfully utilize the variety of dispute resolution mechanisms to minimize disruptions in appropriate services for children with disabilities under Part B and ensure a smooth and effective transition for young children. If the public agency chooses to continue the early intervention services identified on the child's IFSP but not on the IEP, pending the resolution of an administrative hearing or judicial decision filed under IDEA section 615, there is nothing in the final Part B regulations or the statute that would prevent the public agency from doing so.

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.

Again, thank you for your concern for and dedication to infants, toddlers and children with disabilities. If you have further questions or concerns, please do not hesitate to contact this office.

Sincerely,



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

cc: Mary Hudler  
Special Education Director  
Rick Ingraham  
Manager, Early Start/DDS