

59 IDELR 170

112 LRP 37475

**Letter to Chambers
Office of Special Education Programs**

N/A

May 9, 2012

Related Index Numbers

200.050 Right to FAPE

265. INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Judge / Administrative Officer

Melody Musgrove, Director

Case Summary

Just because the specialized instruction a student with a disability requires is already part of the general curriculum in a particular district or state doesn't mean the student doesn't need an IEP. A district must develop an IEP that provides a student with a disability specially designed instruction that meets his or her unique needs, regardless of whether the same instruction is provided to other children with disabilities, or to nondisabled children, in the child's classroom, grade, or building, OSEP stated. OSEP was responding to a special education advocate's concern that districts in Massachusetts consider that some services or types of instruction, such as counseling, social skills training, and modified teaching methodologies, are not special education because they constitute best teaching practices. As a result, the advocate stated, districts deny IEPs to children who have been determined eligible and in need of those services. OSEP noted that the IDEA requires a district to develop an IEP that includes a statement of the special education and related services and supplementary aids and services the individual child will receive. 34 CFR 300.320(a)(4). "The fact that some of those services may also be considered 'best teaching practices' or 'part of the district's regular education program' does not preclude those services from meeting the definition of 'special education' or 'related services' and being included in the child's

IEP," OSEP Director Melody Musgrove wrote.

Full Text

Appearances:

Dear Ms. Chambers:

This is in response to your December 5, 2011 letter to me, in which you request guidance on how to apply the definitions of "specially-designed instruction" and "related services." You indicate that school districts in Massachusetts state that services or types of instruction, such as counseling, social skills training and modified teaching methodologies, are not special education because they constitute best teaching practices and are part of the district's regular education program. You state that districts argue that children with disabilities, evaluated, and determined eligible in accordance with 34 CFR §§ 300.304 through 300.311 and who need such services or instruction, are not eligible for an individualized education program (IEP) because such services or instruction do not meet the "legal definition" of "special designed instruction" or "related services."

Under 34 CFR § 300.39(a)(1), "special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. Specially designed instruction means adapting, as appropriate to the needs of an eligible child under Part B of the Individuals with Disabilities Education Act (IDEA), the content, methodology, or delivery of instruction: (1) to address the unique needs of the child that result from the child's disability; and (2) to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. 34 CFR § 300.39(b)(3). Under 34 CFR § 300.34, "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. Under 34 CFR § 300.39(a)(2), special education includes speech-language pathology services, or any other related services, if the service is considered special

education rather than a related service under State standards, and if the services otherwise meet the requirements of 34 CFR § 300.39(a)(1). You indicate that in Massachusetts, related services that are necessary to allow the student to access the general curriculum are considered special education under State standards.

Once the child has been determined eligible for special education and related services under the IDEA, the local educational agency (LEA) is required to develop an IEP for the child, consistent with the requirements in 34 CFR §§ 300.320 through 300.324. The IEP must include, among other things, a statement of the special education and related services and supplementary aids and services the child will receive, as well as the program modifications or supports or school personnel that will be provided, to enable the child to advance appropriately toward attaining his or her annual goals and to be involved in and make progress in the general education curriculum. 34 CFR § 300.320(a)(4). The IEP Team is responsible for determining what special education and related services are needed to address the unique needs of the individual child with a disability. The fact that some of those services may also be considered "best teaching practices" or "part of the district's regular education program" does not preclude those services from meeting the definition of "special education" or "related services" and being included in the child's IEP. The LEA must provide a child with a disability specially designed instruction that addresses the unique needs of the child that result from the child's disability, and ensures access by the child to the general curriculum, even if that type of instruction is being provided to other children, with or without disabilities, in the child's classroom, grade, or building.

OSEP recognizes that classrooms across the country are changing as the field of special education responds to innovative practices and increasingly flexible methods of teaching. While the needs of many learners can be met using such methods, they do not replace the need of a child with a disability for

unique, individualized instruction that responds to his or her disability and enables the child to meet the educational standards within the jurisdiction of the public agency that apply to all children.

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.

I hope this information is helpful to you. If you have additional questions, please do not hesitate to contact Dr. Ken Kienas at 202-245-7621 or by email at Ken.Kienas@ed.gov.

Regulations Cited

- 34 CFR 300.304
- 34 CFR 300.39(a)(1)
- 34 CFR 300.311
- 34 CFR 300.39(b)(3)
- 34 CFR 300.34
- 34 CFR 300.39(a)(2)
- 34 CFR 300.320
- 34 CFR 300.320(a)(4)