



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

FEB 27 1995

Ms. Sheryl Dicker
Permanent Judicial Commission
on Justice for Children
c/o Pace University School of Law
78 North Broadway
White Plains, New York 10603

Dear Ms. Dicker:

In your letter of July 29, 1994, you requested clarification about "any requirement to fund day care or other programs in natural settings commensurate with a child's IFSP" under Part H of IDEA. Your question stems from a policy letter issued by this Office on April 15, 1994, related to funding for 3-5 year old preschool children in need of special education in inclusive settings. I understand that you have already spoken with Dr. Stettner-Eaton, the federal Part H project officer for New York in this Office, about this matter.

The policy letter to which you refer was an interpretation of the requirements of Part B of IDEA applicable to eligible preschool children with disabilities. Under Part B, in order to meet their obligation to make a free appropriate public education available, public agencies must comply with the least restrictive environment requirements, and must also ensure that a continuum of alternative placements are available to meet the needs of children with disabilities. See, 34 CFR §§300.550 and 300.551.

As noted in the April 15, 1994 letter, an appropriate education for some preschool children requires placement in a setting which will enable them to interact with nondisabled peers. In that case, the public agency must assume the cost associated with the specific services listed on the child's IEP that are delivered in an inclusive environment.

While there are some similarities between the issues of natural environments for early intervention services under Part H and preschool placements in the least restrictive environment, the requirements are not identical. Under Part H, appropriate early intervention services must be available to all eligible children and their families. See, 34 CFR §303.154(a)(3). Following the completion of the requisite evaluations and assessments in accordance with 34 CFR §303.322, a meeting to develop the individualized family service plan (IFSP) is conducted in which the interdisciplinary team, including the parent, identifies the service needs of the child and the child's family. Early

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intervention services "are designed to meet the developmental needs of each child ... and the needs of the family related to enhancing the child's development and are provided in conformity with an individualized family service plan."¹ Examples of types of early intervention services are provided at 34 CFR §303.12(d).

Part H regulations require that "[t]o the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate. As used in [Part H], natural environments means settings that are natural or normal for the child's age peers who have no disability." See, 34 CFR §303.12(b).

Early intervention services needed by a particular child are determined through the IFSP process. The need for such services must be based on the results of the evaluation and assessment of the child, and the child's family (at their discretion). Early intervention services must be designed to meet the unique needs of the child and the child's family, and relate to identified outcomes. Statements related to the frequency, intensity, duration, location, method of service delivery, natural environments, and payment arrangements (if any) of services must also be included in the IFSP. See, 34 CFR §303.344(d) & (f).

The provision of early intervention services in child care settings may be required in some instances under Part H. However, child care itself is not considered to be an early intervention service under Part H. This, of course, does not preclude the possibility of providing and funding needed early intervention services at a child care site by qualified personnel.

¹ Early intervention services means services that (1) are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child's development; (2) are selected in collaboration with the parents; (3) are provided - (i) under public supervision; (ii) by qualified personnel, as defined in §303.21, including types of personnel listed in paragraph (e) of this section; (iii) in conformity with an individualized family service plan; and individualized family service plan; and (iv) at no cost, unless, subject to §303.520(b)(3), Federal or State law provides for a system of payments by families, including a schedule of sliding fees; and (4) meet the standards of the State, including the requirements of this part. 34 CFR §303.12(a)

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In addition, while child care itself is not considered an early intervention service, there may be circumstances in which Part H may fund a portion of child care costs for a particular child. Such a decision would be made by the multidisciplinary team in development of the child's IFSP.

For example, for a child who has been identified as having a significant delay in social/emotional development, the interdisciplinary team might identify interactions with nondisabled peers as the early intervention service to enhance the child's social/emotional development needs. If the team determines that supervised bi-weekly participation in an integrated child care setting with same-age nondisabled peers is the method for the service, it could specify in the IFSP that the natural environment for the service is an integrated child care setting. In that circumstance, the Part H program must assume the financial responsibility, subject to any sliding fees, for that portion of the child care cost specifically associated with the bi-weekly interactions, as articulated in the child's IFSP. However, if the parent decides to place the child in that child care setting for any time beyond that identified in the IFSP, the Part H program would not be responsible for payment of the additional child care costs. We reiterate that early intervention services specified on a child's IFSP are determined based on the results of that child's evaluations and assessments. See, 34 CFR §§303.340(b) and 303.344.

I hope this information provides some additional clarity. If you have further questions, please contact Dr. Bobbi Stettner-Eaton, at (202) 205-8828.

Sincerely,

Thomas Hehir

Thomas Hehir
Director
Office of Special Education Programs

cc: Frank Zollo
Part H Coordinator

Thomas Nevelbine
Assistant Commissioner
Department of Education