

112 LRP 52261

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

N/A

**February 29, 2012**

**Related Index Numbers**

**200.030 FAPE Generally**

**Judge / Administrative Officer**

**Melody Musgrove, Director**

**Case Summary**

A district's obligation to provide special education to children with disabilities, including those with high cognition, does not change simply because a state adopts common core standards, OSEP informed an anonymous writer from Florida. The writer pointed to Florida's adoption of "Sunshine State Standards," which sets statewide expectations for student achievement, and asked whether the use of those standards means that districts need only provide students with high cognition access to the general education curriculum. OSEP explained that districts do not comply with their duty to make FAPE available to all children with disabilities in their jurisdiction solely by making the general education curriculum accessible to them. The IDEA also requires districts to address each child's unique needs that arise from the child's disability -- needs which may go beyond academics to include social skills and classroom behavior. 34 CFR 300.39(b)(3). In addition, districts' obligation to provide FAPE does not end simply because a child meets the state's academic achievement standards or demonstrates strong cognitive abilities. "[R]egardless of their level of cognition, when children with disabilities have been determined eligible for special education, specially designed instruction must be provided at no cost to the parents," OSEP Director Melody Musgrove wrote.

**Full Text**

**Appearances:**

Dear [ ]:

This is in response to your February 14, 2011 letter in which you request clarification of the obligations of school districts under Part B of the Individuals with Disabilities Education Act (IDEA) to serve children with disabilities who have high cognition. Specifically you asked, "Since the State of Florida has adopted Sunshine State Standards to provide expectations for student achievement in Florida, do school districts in our State only need to make the general education curriculum accessible to students with disabilities? Or (a)re school districts in States such as Florida still required 'to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living'?"

School districts do not meet their obligation under the IDEA to make a free appropriate public education (FAPE) available to all children with disabilities within their jurisdiction solely by making the general education curriculum accessible to children with disabilities. School districts in States that have adopted academic achievement standards must ensure that all children with disabilities, including those with high cognition, have available to them 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(a) and 300.101(a). Each State must ensure that FAPE is available to any child with a disability who needs special education and related services, even though the child has not failed or been retained in a course, and is advancing from grade to grade. 34 CFR § 300.101(c). A State has an obligation to take FAPE available to an eligible child with a disability even if that child meets the State's academic achievement standards.

As stated in the U.S. Department of Education's (Department's) Office of Special Education Programs' (OSEP's) Letter to Anonymous, it remains the

Department's position that "the IDEA and its regulations do provide protections for students with high cognition and disabilities who require special education and related services to address their individual needs." Therefore, students with high cognition and disabilities such as Asperger's Syndrome or Autism Spectrum Disorder "could be considered under the disability category of autism and the individualized evaluation would address the special education and related services needs in the affective areas, social skills and classroom behavior, as appropriate." See Letter to Anonymous, (January 13, 2010).

A public agency cannot rely on any single procedure as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. 34 CFR § 300.304(b)(2). In conducting the evaluation of a child suspected of having a disability, including a child with high cognition, a public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, about the child that may assist in determining whether the child is a child with a disability and the educational needs of the child. 34 CFR § 300.304(b)(1). As you referenced, it has been the Department's longstanding position that the educational needs of a child with a disability "include nonacademic as well as academic areas." The term "educational performance" as used in the IDEA "means more than academic standards as determined by standardized measures." See Letter to Lybarger, (September 14, 1990).

A public agency must provide an eligible child with a disability special education and related services. Under 34 CFR § 300.39(a), 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 this part, 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. See 34 CFR § 300.39(b)(3). Therefore, regardless of their level of cognition, when children with disabilities have been determined eligible for special education, specially designed instruction must be provided at no cost to the parents. Specially designed instruction must address both the unique needs of the child that result from the child's disability, which could include classroom behavior and social skills, and ensure access to the general curriculum. The school district's obligation under the IDEA to provide special education is not altered by the adoption of statewide academic achievement standards.

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 Dr. Deborah Morrow, of my staff, at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

**Regulations Cited**

- 34 CFR 300.1(a)
- 34 CFR 300.101(a)
- 34 CFR 300.101(c)
- 34 CFR 300.39(b)(3)
- 34 CFR 300.304(b)(1)

**Cases Cited**

- 55 IDELR 172