



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

JAN 12 2015

Honorable John M. Schroder
State Representative – District 77
Louisiana House of Representatives
522 N. New Hampshire Street, Suite 1
Covington, Louisiana 70433

Dear Representative Schroder:

Thank you for reaching out to discuss your questions and concerns about the July 2, 2014 letter from Assistant Secretary Delisle and me to Superintendent John White regarding Louisiana's implementation of Act 833. I am pleased to respond to your letter and apologize for the delay.

I appreciate the opportunity to clarify the content and purpose of the July 2 letter. Accordingly, this letter provides further clarity on the long-standing requirement under the Individuals with Disabilities Education Act (IDEA) to provide a free appropriate public education (FAPE) to students with disabilities so that they can be involved in, and make progress in, the general education curriculum (*i.e.*, the same curriculum that the State adopts for nondisabled students¹).

As you know, the cornerstone of the IDEA is the entitlement of each eligible child with a disability to FAPE that emphasizes special education and related services that are designed to meet the child's unique needs and that prepare the child for further education, employment, and independent living. 20 U.S.C. §1400(d)(1)(A). FAPE has been defined since enactment of the Education for All Handicapped Children Act in 1975 as special education² 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; (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) are provided in conformity with a properly developed individualized education program (IEP). 20 U.S.C. §1401(9).

Since the enactment of the IDEA Amendments of 1997, the requirement for students with disabilities to be involved in, and make progress in, the general education curriculum has been integral to the development and implementation of IEPs for each of our nation's students with

¹ 34 CFR §300.320(a)(1)(i).

² Special education means "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. . . ." 34 CFR §300.39(a)(1). Section 300.39(b)(3) defines specially designed instruction as adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and 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).

disabilities. Based on the individual needs of the student, the IEP must include, among other required content: (1) a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum;³ (2) a statement of measurable annual goals, including academic and functional goals, designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum;⁴ and (3) the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to advance appropriately toward attaining the annual goals, and to be involved in and make progress in the general education curriculum in accordance with the student's present levels of performance.⁵ Therefore, the IEP of each student with a disability, regardless of the nature or severity of the student's disability and the setting in which the student is educated, must address how the student can be involved in, and make progress in, the general education curriculum.⁶

In 2001, when Congress amended the Elementary and Secondary Education Act of 1965 (ESEA), a provision was included that requires each State to apply the same challenging academic content and achievement standards to all schools and all students, including students with disabilities. 20 U.S.C. §6311(b)(1)(B).⁷ When the IDEA was reauthorized by the IDEA Improvement Act of 2004, Congress made several amendments that aligned Part B of the IDEA with the ESEA. In addition, consistent with the provisions in the ESEA, Congress continued to emphasize the importance of "having high expectations for children with disabilities and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible." 20 U.S.C. §1400(c)(5)(A).

A State (or its local educational agencies (LEAs)) adopts a general education curriculum based on the State's academic content standards, and measures students' progress in that curriculum in a variety of ways, including through grades and performance on State assessments. In general, States have promotion and graduation requirements that are based, in part, on demonstrating some level of achievement or mastery of the State's academic content standards. Louisiana's Act 833, which may

³ 34 CFR §300.320(a)(1)(i).

⁴ 34 CFR §300.320(a)(2)(i)(A).

⁵ 34 CFR §300.320(a)(4)(i) and (ii).

⁶ Assistance to States for the Education of Children with Disabilities and Early Intervention Program for Infants and Toddlers with Disabilities, Final Rule, 64 Fed. Reg. 12406, 12472 (March 12, 1999).

⁷ As required under the ESEA, a State's academic content and achievement standards are grade-level standards. 34 CFR §200.1(a)-(c).

permit IEP Teams to lower those requirements for some students with disabilities, must be implemented in a manner that ensures that FAPE is made available to all students with disabilities.⁸

States have the authority and the responsibility to set State academic content and achievement standards, and IEPs must be aligned with the State's academic content standards. The purpose of the July 2, 2014 letter was to explain the consequences that may occur if a State permits all students with disabilities to be promoted to the next grade, or to graduate from high school and receive a regular high school diploma, as that term is defined in the IDEA,⁹ without meeting the same State-established academic achievement standards that all other students must meet. We are concerned that Louisiana's Act 833 may permit IEP Teams to set lower standards for promotion and graduation for students with disabilities. This may lead to annual IEP goals that are not aligned with the State's academic content standards,¹⁰ and the IEPs for these students would then not contain the content required by the IDEA to enable the students to be involved in, and make progress in, the general education curriculum based on the State's academic content standards.¹¹

Therefore, in order to ensure that a State makes FAPE available to all eligible students with disabilities,¹² an IEP Team may not lower promotion or graduation requirements for a student with a disability if doing so means including goals, special education and related services, and

⁸ In addition, as noted in section 608(b) of the IDEA, State laws may not detract from the ability of a student with a disability to meet the State's academic achievement standards. "State rules, regulations, and policies . . . shall support and facilitate local educational agency and school-level system improvement designed to enable students with disabilities to meet the challenging State student academic achievement standards."

⁹ To be treated as a "regular high school diploma" under the IDEA, the diploma must be fully aligned with the State's academic standards. 34 CFR §300.102(a)(3)(iv).

¹⁰ In the Analysis of Comments and Changes accompanying publication of the August 14, 2006 final IDEA Part B regulations, the Department stated: "With regard to the alignment of the IEP with the State's content standards, §300.320(a)(1)(i) clarifies that the general education curriculum means the same curriculum as all other children. Therefore, an IEP that focuses on ensuring that the child is involved in the general education curriculum will necessarily be aligned with the State's content standards." See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540, 46662 (Aug. 14, 2006).

¹¹ In the Analysis of Comments and Changes accompanying publication of the August 14, 2006 final IDEA Part B regulations, the Department clarified the meaning of participation in the general education curriculum for children with disabilities served under the Act. The Department stated that "as the term 'general education curriculum' is used throughout the Act and in these regulations, the clear implication is that there is an education curriculum that is applicable to all children and that this curriculum is based on the State's academic content standards." Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540, 46579 (Aug. 14, 2006).

¹² States and their public agencies must develop and implement IEPs to ensure that FAPE is made available to all students with disabilities, including students with the most significant cognitive disabilities. The ESEA permits States to define, for students with the most significant cognitive disabilities, through a documented and validated standards-setting process, alternate academic achievement standards that are aligned with the State's academic content standards, promote access to the general curriculum and reflect the professional judgment of the highest achievement standards possible. 34 CFR §200.1(d). The IDEA prescribes certain requirements for IEPs for students who take alternate assessments aligned to alternate academic achievement standards. 34 CFR §§300.160(c)(2)(iii), 300.320(a)(2)(ii), and 300.320(a)(6)(ii). This approach addresses the educational and assessment needs of a relatively small percentage of students with the most significant cognitive disabilities, estimated at approximately 1% of all students in a State (approximately 10% of students with disabilities), who cannot be held to the same academic achievement standards as students without the most significant cognitive disabilities.

supplementary aids and services and other supports in a student's IEP that are not designed to enable the student to be involved in, and make progress in, the general education curriculum based on the State's academic content standards. Accordingly, we expect that Louisiana will ensure that its LEAs instruct IEP Teams, in carrying out the provisions of Act 833, that students with disabilities are to receive the special education and related services, and supplementary aids and services and other supports they need, to enable them to be involved in, and make progress in, the general education curriculum, and receive the education they need to meet the academic content standards that are applicable to all other students in the jurisdiction of the LEA.¹³

Based on section 607(e) of the IDEA, we are informing you that this 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.

The Office of Special Education and Rehabilitative Services shares the same goal as States, LEAs, educators, and parents of students with disabilities – that these students receive an education designed to permit them to graduate prepared to enter postsecondary education and the workforce so that they are able to lead successful and productive lives. Students with disabilities deserve no less. We look forward to continuing to work with parents, educators, LEAs, and States to achieve this goal.

Sincerely,



Michael K. Yudin
Acting Assistant Secretary
Office of Special Education and Rehabilitative Services

¹³ Please note that this office does not have complete information at this time about the manner in which the Louisiana Department of Education (LDOE) is implementing Act 833. However, we are pleased that the Louisiana Board of Elementary and Secondary Education published final regulations on December 20, 2014, that address some of the same matters discussed in this letter. These regulations provide, in relevant part, that

Pursuant to the Elementary and Secondary Education Act (ESEA), the state academic content standards shall apply to all public school students in the state and include the same knowledge and skills expected of all students and the same level of achievement expected of all students, with the exception of the students with the most significant cognitive disabilities who may access alternate academic achievement standards and achievement levels. Only diplomas earned by students who have pursued the regular academic state standards and who have earned all state-required Carnegie credits shall be considered regular diplomas in the state and district accountability system, pursuant to federal laws and regulations. La. Admin. Code tit. 28, pt. XCVII, §405 D (2014). *Louisiana Register, Vol. 40, No. 12, 2532 (December 20, 2014).*

This office is available to provide technical assistance to the LDOE as it works to implement Act 833.