

Iowa Department of Education

Placement of Students Ages 3-21 with Disabilities Under the Individuals with Disabilities Education Act (IDEA): A Policy Discussion

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Placement of Students Ages 3-21 with Disabilities Under the Individuals with Disabilities Education Act (IDEA): A Policy Discussion

I. Overview and Purpose

The provision of free appropriate public education (FAPE), an Individualized Education Program (IEP), and the least restrictive environment (LRE) have been important cornerstones of educating students with disabilities since the enactment of the Education of All Handicapped Children Act (EAHCA), Public Law 94-142, in 1975, and its subsequent reauthorizations, the *Individuals with Disabilities Education Act (IDEA)* in 1990, 1997, and 2004. It is impossible to consider any one of these cornerstones without the others, when determining an appropriate educational placement for a student with a disability. The Iowa Department of Education has identified several practice issues regarding the interplay between FAPE, LRE, and the IEP in placement decisions for students with disabilities.

To that end, this document will provide guidance for administrators of local education agencies (LEAs) and area education agencies (AEAs), as well as IEP teams (or other placement teams) within Iowa LEAs and AEAs when making placement decisions for eligible children with disabilities. This guidance will specifically discuss ten LRE and FAPE placement/program policy questions that have been identified by the Iowa Department of Education as needing attention.

The policy discussions are consistent with the legal provisions of the 2004 reauthorization of IDEA (IDEA 2004) and its 2006 final federal implementing regulations issued by the U.S. Department of Education, Office of Special Education Programs (OSEP). This document is also consistent with the *Iowa Administrative Rules of Special Education* (2007) [hereinafter “Iowa Rules”]. In addition, the term local education agency (LEA) is used interchangeably for school district throughout this document.

Prior to the discussion of specific policy questions, a federal and state legal framework for providing FAPE for students with disabilities within the LRE is briefly outlined. Pertinent FAPE and LRE court decisions that impact Iowa LEAs and AEAs are also included within Section II.

II. Background

1. Federal and State Statutes and Regulations for Educating Students with Disabilities in the LRE

The IDEA 2004 implementing regulations [34 C.F.R § 300.1(a)], and the Iowa Rules [Iowa Rules 281—41.1(1)] require that all children with disabilities have available to them

...a free appropriate public education that emphasizes the special education and related services, included within their individualized educational program (IEP) that are designed to meet their unique needs and prepare them for further education, employment, and independent living.

The Iowa Rules specifically state that public agencies shall provide a free appropriate public education (FAPE) to children with disabilities [Iowa Rules 281—41.101, 41.404(1)], which is defined as:

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet the standards of the [Iowa Department of Education], including the requirements of [the Iowa Rules]; that include appropriate preschool, elementary school, or secondary school education; and is provided in conformity with an individualized education program (IEP)....

[Iowa Rules 281—41.17]

The provision of FAPE includes “children with disabilities who have been suspended or expelled from school.” [20 U.S.C 1412(a)(1)(A); 34 C.F.R. §§ 300.101(a); §300.530(d); Iowa Rules 281—41.101(1), 41.530(4)]

In addition, state and federal law requires that a FAPE be available “...to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.” [20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(c)(1); Iowa Rules 281—41.101(3)]

State and federal law requires public agencies to ensure and maintain sufficient documentation that:

...to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children without disabilities, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily.

[20 U.S.C. § 1412(a)(2)(i)-(ii); 34 C.F.R. § 300.114(a)(2)(i)-(ii); Iowa Rules 281—41.114(2)]

IEP or other placement teams should consider the following checklist of federal and state requirements pertinent to placement of students with disabilities to assure FAPE in the LRE:

- ✓ A continuum of alternative services and placements must be available to meet the needs of children with disabilities for special education and related services, including “instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.” [20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.115; Iowa Rules 281—41.115]
- ✓ The continuum of alternative services and placements must make “provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placements.” [20 U.S.C. § 1412(a)(5); 34 C.F.R. §300.115(b)(2); Iowa Rules 281—41.115(2)”b”]
- ✓ Unless the IEP requires other arrangements, the child is “educated in the school he or she would attend” if not disabled. [20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.116(c); Iowa Rules 281—41.116(1)”c”]
- ✓ “In selecting the LRE, consideration is given to any potential harmful affect on the child or on the quality of services that he or she needs.” [20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.115(d); Iowa Rules 281—41.116(1)”d”]
- ✓ A child “shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.” [20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.116(e); Iowa Rules 281—41.116(1)”e”]
- ✓ The child’s IEP must explain “the extent to which, if any, the child will not participate with nondisabled children in the general class.” [20 U.S.C. § 1414(d); 34 C.F.R. § 300.320(a)(5); Iowa Rules 281—41.320(1)”f”]
- ✓ The child’s IEP must state “the supplementary aids and services” and “program modifications or supports for school personnel that will be provided to enable the child” “to advance appropriately toward attaining” annual goals, “to be involved in and make progress in the general education curriculum,” and to be educated and participate with individuals without and with disabilities. [20 U.S.C. § 1414(d); 34 CFR § 300.320(a)(4); Iowa Rules 281—41.320(1)”e”]
- ✓ Regardless of placement, the child must have access to the general curriculum so that he or she can meet the educational standards that apply to all children. Each IEP must contain a statement about how the child’s disability affects the child’s involvement and progress in the general curriculum. [20 U.S.C. § 1414(d); 34 C.F.R. § 300.320(a)(4); Iowa Rules 281—41.320(1)”a”(1)]
- ✓ The child’s IEP must state “any individual appropriate accommodations to measure the academic achievement and functional performance of the child on State and districtwide assessments.” [20 U.S.C. § 1414(d); 34 C.F.R. § 300.320(a)(6); Iowa Rules 281—41.320 (1)”g”]

2. Court Decisions Regarding the Provision of FAPE within the LRE

United States Supreme Court decisions are binding on all school districts in the nation. However, because the Court has not established a test for LRE, cases from U.S. Courts of Appeals are the next highest level of judicial decisions. States are required to follow decisions made by the applicable Circuit Court within their region (i.e., 12 regional circuits total). States are not bound by a ruling from a different circuit, but may rely upon a decision as guidance or persuasive authority. The State of Iowa is in the Eighth Circuit and, thus, must follow its rulings.

Because there have been many FAPE and LRE cases that have complex and often contradictory decisions across the twelve circuits regarding the interplay between FAPE, LRE, and the IEP, this policy document will limit itself to decisions that are applicable to the Eighth Circuit, as well as other applicable courts within Iowa (i.e., Supreme Court of Iowa, Iowa Court of Appeals, and state and federal trial courts).

Brown and “Separate but Equal”

The landmark case of *Brown v. Board of Education* (1954) held that "separate but equal" schools are inherently unequal and unconstitutional, as they deny both equality and opportunity. While the spirit in the *Brown* decision is important to LRE decisions and its words are often employed in LRE disputes, *Brown* applies only to race-based classifications. There is a different standard for race-based classifications and disability-based classifications.

Some advocates for children with disabilities advanced arguments based on *Brown*'s language and vision of equality. Federal district court cases and settlement agreements, such as *Pennsylvania Association for Retarded Children v. Pennsylvania* (1971) and *Mills v. Board of Education of District of Columbia* (1972), announced a right to free publicly supported education for children with disabilities. The *Mills* court stated:

No child eligible for a publicly supported education in the District of Columbia public schools shall be excluded from a regular public school assignment by a rule, policy, or practice of the Board of Education of the District of Columbia or its agencies unless each child is provided (a) adequate alternative educational services suited to the child's needs, which may include special education or tuition grants and, (b) a Constitutionally adequate prior hearing and periodic review of the child's status, progress, and the adequacy of any educational alternative. Providing educational services will ensure against persons needlessly being forced into institutional settings.

These cases are the foundation of the IDEA, which was first passed in 1975.

Board of Education v. Rowley

In 1982, in *Board of Education v. Rowley*, the United States Supreme Court first interpreted the meaning of a FAPE [458 U.S. 176 (1982)]. In *Rowley*, the parents of a deaf student, who had been receiving instruction in a regular classroom with the help of a hearing aid, claimed that their

daughter had been denied a FAPE when the school district refused to provide her with the services of a sign language interpreter (*Id.* at 184-85). The Supreme Court decided in favor of the district, stating:

By passing the Act, Congress sought primarily to make public education available to handicapped children. But in seeking to provide such *access to public education*, Congress did not impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful.

The Court found that the statute provided merely a "basic floor of opportunity" (*Id.*). In concluding that the statute did not require any requisite level of educational benefit, the Court noted that the intent of the Act was more to open the door of public education to children with disabilities on appropriate terms than to guarantee any particular level of education once inside. The Court developed a two-pronged inquiry for determining whether a school district had provided a student with FAPE:

1. Compliance with the procedural requirements of the statute.
2. Development of an IEP reasonably calculated to enable the child to receive some educational benefit.

In *Rowley*, the dispute involved the appropriateness of the student's special education, and not the restrictiveness of the educational setting. The child was fully included in her first grade class. Thus, the *Rowley* court did not need to adopt a test for LRE. The Court, however, confirmed the importance of the LRE provision.

The Eighth Circuit's LRE test

The United States Court of Appeals for the Eighth Circuit adopted an LRE test in *A.W. v. Northwest School District* (1987). *A.W.* requires special education placement teams to consider the following:

- The school district has the responsibility for comparing the educational benefits in a restricted setting with the educational benefits in a regular classroom setting and demonstrating feasibility (e.g., it is not feasible to provide the same benefits in an inclusive environment that does not separate the child with a disability).
- Where there is no educational benefit to be gained by placing a child with severe disabilities in the regular classroom, the costs of a regular versus segregated setting can be weighed in making placement decisions (e.g., whether such placement would reduce the other students' education without extensive resources).

Following is a discussion of ten FAPE, IEP, and LRE policy issues related to educational placement of students with disabilities under the IDEA. Within these discussions, there will be some duplication of federal and state legal requirements so that the response to each question can stand on its own. In addition, there will be further discussion of relevant Eighth Circuit decisions as well as Iowa due process decisions.

III. Policy Questions for IEP or Other Placement Teams

1. Who are required placement team members if a team or group of individuals other than the IEP team makes educational placement decisions for an eligible individual?

Summary of Response:

Federal and state regulations do not specify who the required members are of a placement team that is not the IEP team in addition to the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. It is recommended, however, that all placement teams include the IEP team members required by IDEA implementing regulations and the Iowa Administrative Rules of Special Education.

Discussion:

The IDEA 2004 and its implementing regulations [20 U.S.C. 1412(a)(5); 34 C.F.R. § 300.116(a)(1)] and Iowa Rules [Iowa Rules 281—41.116] require that placement decisions for students with disabilities be made by a group of persons. This group must include the child's parents and other persons knowledgeable about the child, the meaning of evaluation data, and placement options [34 C.F.R. § 300.116(a)(1)]. This group of individuals may be the IEP team, a separate school or AEA based team, or an interagency team when more than one agency is involved in the placement decisions. The State of Iowa is fairly unique, when compared to other states across the country, in that the Iowa Rules follow a literal interpretation of federal IDEA regulations and allow for another group of individuals or team, other than the IEP team, to make educational placement decisions for students with disabilities [Iowa Rules 281—41.116]. Therefore, this policy question relates to when the placement team is not the IEP team.

Whether the placement team is the IEP team or a separately constituted team or group of individuals, the required members, as noted above, include the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. Although not specifically stated in federal or state administrative regulations, it is recommended that the required members of a placement team be the same as for the IEP team, including:

- The parents of the child;
- Not less than one regular education teacher of the child (if the child is, or may be participating in the regular education environment);
- A representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the public agency;
- An individual who can interpret the instructional implications of evaluation results, who may be one of the members listed above;
- At the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel; and

- Whenever possible, the child, particularly if the purpose of the meeting will be consideration of postsecondary goals for the child and needed transition services.
- [20 U.S.C. § 1414(d)(1)(B)-(d)(l)(D); 34 C.F.R. § 300.321(a)(1)-(6) and (b); Iowa Rules 281—41.321].

Particularly if the placement team is not the IEP team, the required placement team members should have a thorough understanding of the specially designed instruction and related services included within the IEP so that placement decisions are not counter to the IEP.

2. What is required by a placement team when it considers an educational placement requested by the parent that is different from the placement recommendation of the LEA/AEA?

Summary of Response:

Federal and state regulations are silent regarding required activities when a team is considering placement options and the recommended placement of the LEA/AEA differs from that of the parent. Recommended activities for considering a parent's placement preference range from determining if a change in service can be made in the child's current placement to resolve the parent's concerns, to reviewing existing information or contacting the administrator(s) of the preferred parental placement to ascertain whether it meets federal and state legal requirements and the extent to which the placement would provide the services in the child's IEP.

Discussion:

IEP or other placement teams must ensure that all children with disabilities 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 within the LRE. In considering a continuum of alternative services and placements, IDEA 2004 and the Iowa Rules require:

...to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children without disabilities, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily. [20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2); Iowa Rules, 281—41.114(2)]

When the IEP team or other placement team members are determining an appropriate educational placement for a child and a parent requests a placement that is different from the recommendations of the team, the team needs to consider the parent request as part of the placement decision-making because the parent must be a member of any group making a placement decision for his/her child. [20 U.S.C. § 1412(a)(5), 1414(e); 34 C.F.R. §§ 300.116(a)(1), 300.327; Iowa Rules 281—41.116(1), 41.327]

Considering a parental preference means giving careful attention to the request, but not to be controlled by it. Federal and state rules are silent on what must be done to consider the parent preference; however, following are several recommendations:

Checklist of Potential Activities for Considering a Parental Placement that is Different from that of the LEA/AEA.

The IEP or other placement team should:

- ✓ Obtain information from the parent regarding reasons for the requested placement and why the LEA/AEA preference will not meet the needs of the child.
- ✓ Review the current educational placement of the child to determine if the IEP services, including supplementary aids and services, are being carried out in order to provide FAPE in the LRE. If not, the team should determine if some adjustments can be made in the child's current educational program/placement to address the concerns of the parent (e.g., revised behavior intervention plan, additional related services, or changes in the nature or intensity of service provided).
- ✓ Determine whether the parental preferred placement meets federal and state requirements:
 - Unless justified by the IEP, would the child be educated in the school that he or she would attend if not disabled?
 - Are specially designed instruction and related services required by the child's IEP available?
 - Would supplementary aids and services be available for the child?
 - Would the special education teacher be appropriately licensed?
 - Would the child have access to and make progress in the general curriculum?
 - Would the child be included within the state's assessment system with or without accommodations?
 - If the parental preference is a nonpublic school placement within Iowa, is the placement accredited?
 - If the parental preference is an out-of-state nonpublic school placement, has the Iowa Department of Education approved it as meeting the requirements of Iowa Code and IDEA?
- ✓ Review progress monitoring data for the child to determine if the child is making reasonable educational progress within the current educational placement. If the placement under question is an initial placement, the IEP or other placement team should make a judgment whether the child would make reasonable educational progress in both the LEA/AEA and parental placement.
- ✓ If the program under consideration involves a special school setting, answer the following questions on the state-required form.
 - What are the reasons that the eligible individual cannot be provided an educational program in an integrated school setting?
 - What supplementary aids and services are needed to support the eligible individual

- in the special education program?
- Why can't these aids and services be provided in an integrated setting?
 - What is the continuum of services available for the eligible individual? (Iowa Rules 281—41.116(4)"b")
- ✓ Make contact with administrators of the parent-preferred placement if there is insufficient knowledge by the IEP or other placement team members regarding the above. This contact can be in the form of a telephone call, written assurance provided by the administrator(s) of the parent-preferred placement, or visitation.

Based on information that the IEP team or other placement team (if different from the IEP team) has or obtains, including the reasons for the parental preference and whether there is a compelling need for the parental placement preference, a consensus will be reached by the IEP team or other group of individuals/placement team. Parents who do not agree with the team's conclusions or with the recommended special education and related services for their child may voice their concerns through the procedures described in the Iowa Rules (e.g., preappeal conferences, state complaints, due process hearings) (Iowa Rules 281—41.151-153, 41.500-.537) and IDEA 2004 implementing regulations (34 C.F.R. §§ 300.151-.153, 300.500-.537).

3. What is the difference between placement and location and how does this difference impact placement decisions?

Summary of Response:

Considerations of placement are points along the continuum of placement options. The term 'location' is the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services. School administrators have flexibility in assigning a child with a disability if there are two or more equally appropriate locations that meet the child's educational needs, consistent with the child's IEP.

Discussion:

Consistent with OSEP's discussion of comments to the IDEA federal regulations, the term 'placement' means points along the continuum of placement options available for the child with a disability. The term 'location' is the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services. [71 Fed. Reg. 46,588 (Aug. 14, 2006)] OSEP states:

Public agencies are strongly encouraged to place a child with a disability in the school and classroom the child would attend if the child did not have a disability. However, [an LEA] may have two or more equally appropriate locations that meet the child's special education and related services needs, and school administrators have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement.

4. To what extent does the continuum of services and placements have to be entirely available within the State of Iowa?

Summary of Response:

The continuum of available alternative services and placements must be within the State of Iowa, unless the placement team can demonstrate that the child requires specialized services that can only be provided within an out-of-state placement, as required by the child's IEP. Consistent with this expectation, the majority of students with disabilities are currently placed within in-state educational programs. Within its state general supervisory responsibility, the Iowa Department must have a clearly understood process for accessing out-of-district and in- and out-of-state educational placements.

Discussion:

IDEA and the Iowa Rules require:

...to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children without disabilities, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2)(i)-(ii); Iowa Rules 281—41.114(1)

IDEA 2004 and its implementing regulations, as well as Iowa Rules, establish a strong preference for serving students with disabilities alongside students without disabilities and in the school that they would attend if nondisabled, unless the services identified in the IEP require a different location. The IDEA requires that all students with disabilities have access to the general education curriculum, be educated by teachers who are highly qualified, and be included within the state's educational assessment and accountability system.

Children with disabilities must be placed on the points on the continuum available in Iowa, unless the placement team determines that the child needs specialized services that can only be provided within an out-of-state placement, as required by the child's IEP. This expectation is consistent with current practice in Iowa, as only approximately 100 students with disabilities are placed in out-of-state programs.

The development and implementation of interagency agreements may increase the likelihood that an interagency placement supported and funded across agencies can be implemented within the state for a specific student.

Developing and/or arranging for a continuum of alternative services and placements in Iowa and having a clear and consistent process for LEAs to access this continuum is the responsibility of the Iowa Department of Education. [20 U.S.C. §§ 1412(a)(1), 1416; 34 C.F.R. § 300.149; Iowa Rules 281—41.149]. The Supreme Court of the United States emphasized the need for a

publicly available list of approved private schools and a reasonable review and approval process. [*School Comm. v. Massachusetts Dep't of Educ.* (1985)]. A number of decisions in the Eighth Circuit have reinforced this SEA responsibility to provide a continuum of services and placements for students with disabilities [*See, e.g., Pachl v. Seagren* (2006)].

While it is the ultimate responsibility of the Department of Education to ensure that there is a statewide continuum of services and placements, the Iowa Rules require LEAs and AEAs to ensure that a continuum of services from birth to the maximum age provided by the law is available, or shall be made available, to meet the educational needs of eligible students [Iowa Rule 281—41.115]. Within the continuum, the greatest numbers of students are served primarily in general education environments. The smallest number of students is served in more restrictive educational settings, such as a self-contained classroom (Iowa Department of Education 1997). Under the Iowa Rules, each LEA shall develop a system for delivering instructional services; however, whatever system is developed, it must still show proof of a continuum of services and placements [Iowa Rules 281—41.408(2)].

The *Iowa Procedures for the Provision of Early Childhood Special Education* (1993) also provide guidance for making available a continuum of environments or options for preschool children with disabilities. The early childhood continuum includes reverse integration settings in which at least fifty percent of the children enrolled do not have disabilities. Also included are early childhood special education settings designed primarily for children with disabilities, who are below the age of six, and home instruction.

5. How do educational placement decisions need to be documented?

Summary of Response:

Federal and state regulations require that each child's IEP must contain a written explanation of how the child will participate with nondisabled children in the regular class. A written notice must also be provided for parents when the public agency proposes or refuses to initiate or change the educational placement of the child.

Discussion:

The Iowa Rules require public agencies to “ensure and maintain adequate documentation” that “to the maximum extent appropriate” eligible individuals, “including those in public or private institutions or other care facilities, are educated with children who are nondisabled.” [Iowa Rules 281—41.114(2); *see also* 34 C.F.R. § 300.114(a)(2)]

According to the IDEA regulations and the Iowa Rules, each IEP must contain a statement of “how the child’s disability affects the child’s involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children).” For a preschool child with a disability, a statement must be included within the IEP, “as appropriate,” explaining “how the disability affects the child’s participation in appropriate activities,” as well as how the child’s other educational needs that result from the child’s disability will be met. [34 C.F.R. § 300.320(a)(1); Iowa Rules 281—41.320(1)”a”; *see* 20 U.S.C. § 1414(d)(1)(A)] In addition, the IEP must

include a statement of “the special education and related services and supplementary aids and services to be provided … and a statement of the program modifications or supports for school personnel that will be provided to enable the child”:

- To advance appropriately toward attaining the annual goals;
- To be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and
- To be educated and participate with other children with disabilities and nondisabled children.

[20 U.S.C. § 1414(d)(1)(A)(IV); 34 C.F.R. § 300(a)(4); Iowa Rules 281—41.320(1)”e”]

The IEP must also contain a written explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and the general curriculum. [20 U.S.C. § 1414(d)(1)(A), (d)(6); 34 C.F.R. § 300.320(a)(5); Iowa Rules 281—41.320(1)”f”]

Federal and state law also requires that prior written notice be given to the parents within a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE. *A reasonable time for providing written notice to the parent is after the placement decision has been made at the IEP meeting or other placement team meeting and before implementation of the decision.* The written prior notice must include:

- A description of the action proposed or refused by the agency;
- An explanation of why the agency proposes or refuses to take the action;
- A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- A statement that the parents of a child with a disability have protection under the procedural safeguards under IDEA and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- Sources for the parents to contact to obtain assistance in understanding the provisions of IDEA;
- A description of other options that the IEP Team considered and the reasons why those options were rejected; and
- A description of other factors that are relevant to the agency’s proposal or refusal.

[20 U.S.C. §§ 1414(b)(1), 1415(b)(3)-(4), 1415(c)(1); 34 C.F.R. §§ 300.503; Iowa Rules 281—41.503]

6. To what extent should a placement team involve the Department of Education in placement decisions?

Summary of Response:

It is expected that LEA/AEA placement teams will determine the vast majority of placement decisions for students with disabilities without the involvement of the Iowa Department of

Education. It is recommended that the AEA contact the Department when all attempts to find a placement within the continuum have failed, and/or when there is a conflict or difference of opinion between the school and the parents regarding a placement option that cannot be resolved and that might become the subject of a formal state complaint, preappeal conference, mediation, due process complaint (hearing), and/or court appeal.

Discussion:

Consistent with IDEA, the Iowa Department of Education has the oversight responsibility to ensure the provision of FAPE in the LRE for all eligible students within the State. [20 U.S.C. §§ 1412(a)(11), 1416; 34 C.F.R. § 300.149] In carrying out its general supervision responsibility, the Iowa Department of Education has the ultimate duty to ensure the availability of a continuum of alternative services and placements, including providing state approval for state funding of nonpublic school programs and facilities that meet federal and state special education legal requirements.

The Iowa Department of Education has the responsibility to:

- Initiate the establishment of classes for children requiring special education in various locations such as home study, hospitals, nursing, convalescent, juvenile and private homes, in co-operation with the LEAs and AEA boards.
- Cooperate with LEAs and AEAs in arranging for out-of-district programs in an LEA other than the one in which the child resides when there is no available special school, class, or instruction in the resident LEA.
- Cooperate with existing agencies such as the Department of Human Services, the Iowa Department of Public Health, the State School for the Deaf, and other agencies concerned with the welfare and health of children requiring special education.
- Approve the acquisition and use of special facilities designed for the purpose of providing educational services to children, requiring special education.

[Iowa Code § 256B.3] The Iowa Department of Education also has the responsibility for monitoring compliance with the IDEA's LRE requirement, and taking corrective action. [34 C.F.R. § 300.120; Iowa Rules 281—41.120]

The AEAs have the responsibility of ensuring that each child requiring special education in its geographic area receives an appropriate special education program or service. Services are provided to their region according to a special education instruction and support program plan. AEAs also provide each LEA within the area served a special education weighted enrollment count for state funding. [Iowa Code § 273.5]

Each LEA has the responsibility to provide FAPE for students with disabilities in the LRE. Each LEA must provide a FAPE in the LRE to eligible individuals. [Iowa Rules 281—41.114 *et seq.*] Each LEA and AEA must have policies and procedures to ensure provision of FAPE in the

LRE. [34 C.F.R. § 300.114; Iowa Rules 281—41.114, 41.404(1)-(2)] In carrying out these responsibilities, the expectation is that placement teams will make the majority of placement decisions for students with disabilities without the involvement of the Iowa Department of Education. In those instances in which the team does not feel there is an appropriate placement available, the LEA and AEA should work together with other LEAs, AEAs, and their interagency partners to identify an appropriate educational placement in which the student(s) with disability can receive FAPE in the LRE.

If an appropriate placement cannot be identified and/or developed within the continuum of alternative placements, the AEA should contact the Iowa Department of Education for assistance in identifying an appropriate placement option through collaboration with other state agencies. Only if it can be demonstrated that the student's needs cannot be met in a placement options available or created within Iowa, should the Department, AEA, and the LEA look for an out-of-state placement. Consistent with this expectation, fewer than five requests for assistance by AEAs were received by the Iowa Department of Education during FY 2005. The Department is available to provide technical assistance and training to AEAs and LEAs on the IDEA's LRE requirement. [34 C.F.R. § 300.119; Iowa Rules 281—41.119]

In addition, an LEA should also contact its AEA when there is a conflict or difference of opinion between the school and the parents regarding a placement option that cannot be resolved. The involvement of the AEA may help settle a program/placement conflict that might otherwise become the subject of a formal state complaint, preappeal conference or mediation, due process complaint (hearing), and/or a court appeal. The AEA should contact the Iowa Department of Education if the issues involved are particularly sensitive and resolution has not occurred.

7. In what form does the parent provide notice to the LEA/AEA before the parent makes a unilateral change of placement?

Summary of Response:

Parents must provide notice to the LEA/AEA before making a unilateral change of placement.

Discussion:

A unilateral change of placement occurs when the parents make a decision to place their child in a program/placement independent from the decision making process of the IEP or other placement team. The parents are entitled to reimbursement for their unilateral private placement if they demonstrate the public education's proposed placement is inappropriate and their private placement is appropriate. [*Forest Grove Sch. Dist.* (2009); *Florence County Sch. Dist.* (1993); *Burlington Sch. Comm.* (1985)]

The applicable law states that the costs of reimbursement for a parental placement may be reduced or denied if the parents did not inform the IEP Team at the most recent IEP meeting the parents attended prior to their removal of their child from the public school that "they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense."

[20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148(d)(1); Iowa Rules 281—41.148(4)] Additionally, reimbursement may be lowered or denied if the parents did not provide a written notice of their intent to withdraw their child from public school and enroll in a private school, in which they state their concerns. [*Id.*] Notice must be given, either at the most recent IEP meeting or in writing at another time.

While the law does not require written notice in all cases, it would be prudent for parents to provide such written notice. The Iowa Department of Education, AEAs, or LEAs could develop a boilerplate form for parents to utilize that is easily completed and sent or delivered to the school, LEA, or AEA office, or signed at a placement meeting. Iowa parent and advocacy groups can assist in dissemination of such a form to parents as well as information about the requirement to provide written notice.

There have been various court decisions concerning parental unilateral placements. The Eighth Circuit has been very clear that parents who unilaterally enroll their children with disabilities in private schools do so at their own financial risk. [T.F. (2006); Ft. Zumwalt (1997)]

Please note that not every parental placement in an accredited nonpublic school will implicate these rules. Iowa law provides that children with disabilities attending accredited nonpublic schools are entitled to special education services “in the same manner and to the same extent” as children with disabilities attending public schools. [Iowa Code § 256.12(2)] For more information on state and federal law concerning services to private school students with disabilities, see the following guidance document from the Iowa Department of Education: *Iowa Students with Disabilities Enrolled In Accredited Nonpublic Schools: A Summary of State and Federal Legal Requirements* (2009).

8. Is an appropriate educational placement for a student with a disability necessarily the best available placement?

Summary of Response:

An appropriate educational placement for a student with disability may not necessarily be the best available placement. The Rowley standard requires that the IEP be reasonably calculated to provide a meaningful educational benefit, but not necessarily provide the best education possible, nor one that will maximize the child's educational potential.

Discussion:

The IDEA and the Iowa Rules require that all children with disabilities have available to them FAPE within the LRE. [20 U.S.C. § 1412(a)(5); 34 C.F.R. §300.114(a)(2) Iowa Rules 281—41.101 *et seq.*]

The applicable federal and state law, as well as legal precedents governing Iowa LEAs, does not contemplate the provision of FAPE in the LRE as the best available educational placement.

In the *Board of Education v. Rowley* (1982), the Supreme Court set a two-part standard for

reviewing compliance with the IDEA. Courts are to initially determine if the IEP has met the procedural requirements of IDEA. If so, the court then decides whether the IEP is reasonably calculated to enable the child with disabilities to receive an educational benefit. If the IEP meets both requirements, then IDEA has been satisfied.

In *Rowley*, the dispute involved the appropriateness of the student's special education and not the educational setting. The child was fully included in her first grade class. Thus, the issue of LRE was not before the *Rowley* Court and it did not need to develop an LRE test. The Supreme Court, however, confirmed the importance of the LRE provision. The *Rowley* Court also gave deference to a school district's decision in choosing the placement setting.

Subsequent to the *Rowley* Supreme Court Decision, various courts have ruled consistently that the IDEA guarantees a basic floor of opportunity for an education. To provide FAPE, including LRE decisions, an IEP must be reasonably calculated to provide a meaningful educational benefit, but not necessarily provide the best education possible, nor one that will maximize the child's educational potential.

The Eighth Circuit adopted an LRE test in *A.W. v. Northwest School District* (1987), which is consistent with the *Roncker* test. As stated earlier, *Roncker* provided that the school district has the further burden of demonstrating feasibility (e.g., that it is not feasible to provide for the same benefits in an inclusive environment). If this is not met, then despite compliance with the *Rowley* test, the LRE criteria have not been met. The *A.W.* court, however, removed any threshold question and allowed the cost of the inclusive placement to be a relevant factor. Applying the balancing test, the court in *A. W.* stated that the student in question would only receive a marginal benefit from mainstreaming (i.e., participation with nondabled students), and the extensive resources needed for a placement within this setting would lead directly to the reduction of the other students' education. These facts were sufficient for the segregated placement to outweigh the benefits of the general classroom placement. In doing so, the *A.W.* court observed that the IDEA did not require education agencies "to pay for the best possible education for" a child with a disability. [A.W. (1987), citing *Mark A. v. Grant Wood Area Educ. Agency* (1986)].

The Eighth Circuit, in *Fort Zumwalt School District v. Clynes* (1997), *Neosho R-V School District v. Clark* (2003), and *Blackmon v. Springfield R-12 School District* (1999), stated that IDEA does not require that a school either maximize a student's potential or provide the best possible education at public expense. Instead, the requirements of the IDEA are satisfied when a school district makes available individualized education and services sufficient to provide disabled children with some educational benefit. In *T.F. v. Special School District* (2006), it was held that a proposed IEP need not satisfy the child's parents. The LRE test is whether the LEA's proposal provided an "individualized" FAPE in the LRE. In *Schultz v. Lewis Central Community School District* (2006), the United States District Court for the Southern District of Iowa held that Sam, a child diagnosed with auditory neuropathy, was entitled to a basic educational opportunity in a "good but not best conceivable" school setting.

9. Once an educational placement decision is made, how does a placement team coordinate and access multiple funding streams or resources?

Summary of Response:

Although placement teams do not have the responsibility for coordinating and accessing multiple funding streams or resources, LEA and AEA administrators can use the additional flexibility for school-wide programs to assist in coordinating local resources. Administrative directives, leadership, and organizational structure changes can also facilitate intra-district resource sharing. State, regional, and/or interagency agreements can provide a framework, commitments, and mechanisms for coordinating and accessing interagency funds.

Discussion:

Placement teams do not have the responsibility to establish mechanisms and procedures for the coordination of multiple funding streams or resources within the LEAs, AEAs, or across agencies to support educational placements for students with disabilities. This leadership must come from local superintendents and appropriate administrators within the LEAs, AEAs, the Iowa Department of Education, and other agencies.

The following is some guidance for state, regional, and local administrators in carrying out this leadership so that IEP or other placement teams can access multiple funding streams.

A. Intra-District Funding

Coordination of funding streams within the LEAs and the AEAs should be built into general administrative directives and organizational structures and/or based on intraagency agreements across programs.

IDEA 2004 provides additional flexibility to assist administrators in coordinating resources across special education and other special programs. An LEA may use funds received under Part B to carry out a schoolwide program under Section 1114 of the Elementary and Secondary Education Act as long as the amount used in any schoolwide program may not exceed the amount received by the LEA under Part B of IDEA for that fiscal year divided by the number of children with disabilities in the jurisdiction of the LEA; and multiplied by the number of children with disabilities participating in the schoolwide program. A schoolwide program can involve various programs for at-risk students as well as those with disabilities. [20 U.S.C. § 1413(a)(2)(D); 34 C.F.R. §300.206]

A. Interagency Funding

State Interagency Agreements

Multiple funding streams needed to support placements and programs for students with disabilities may come from more than one agency. The IDEA states the SEA has the general supervision responsibility to assure that each educational program for children with disabilities

administered within the State, including each program administered by any other State or local agency, meet IDEA requirements. [20 U.S.C. §§ 1412(a)(11), 1416; 34 C.F.R. § 300.149(a)(2)]

Part B of IDEA does not limit the responsibilities of agencies other than educational agencies for providing or paying for some or all of the costs of FAPE for children with disabilities in the State. [20 U.S.C. § 1412; 34 C.F.R. § 300.149(c)] Other agencies continue to be responsible to support programs and services for students with disabilities within their state legal mandates. Specifically, IDEA 2004 provides that the financial responsibility of public agencies (other than an educational agency), including Medicaid and other public insurers obligated under Federal or State law or assigned responsibility under State policy, must precede the financial responsibility of the LEA. [20 U.S.C. § 1412(a)(12),(e); 34 C.F.R. § 300.154(a)] State interagency agreements need to have policies and procedures for assuring that these interagency commitments are met.

The Iowa Department of Education has interagency agreements to meet the above interagency commitments, procedures for accessing interagency funds, monitoring responsibilities, and mechanisms for delineating interagency commitments, as well as procedures for resolving interagency complaints and conflicts are in place. For example, the Department of Education has a interagency agreement with the Iowa Department of Human Services (2009) that:

- Outlines the financial responsibilities of the LEAs, AEAs, Department of Education and the Department of Human Services relative to the provision of special education and related services for students with disabilities.
- Clarifies overall administrative and programmatic responsibilities, as well as the conditions and terms under LEAs and AEAs shall be reimbursed by DHS for services.
- Outlines coordination activities and efforts that will be carried out by the Department of Education and the Department of Human Services to jointly carry out administrative, programmatic, and funding responsibilities on behalf of services for students with disabilities.

Regional or Local Interagency Agreements

The Iowa Rules require LEAs and state-operated programs to provide or make available FAPE in the LRE. [Iowa Rules 281—41.101 et seq.] LEAs and AEAs have the authority to contract with other entities for the provision of special education and related services. [Iowa Rules 281—41.903; *see also* Iowa Code § 273.3(6)] If an agency contracts with another entity to provide special education services, it must ensure that the other entity complies with the Iowa Rules [Iowa Rules 281—41.903(2)"c"], including the rules concerning LRE [Iowa Rules 281—41.114 *et seq.*].

Similar to state-level interagency agreements, AEAs and LEAs may have similar regional interagency commitments and agreements to ensure that funding streams across agencies are coordinated, as needed, to support placements for eligible students with disabilities.

10. How does NCLB affect placement decisions under IDEA?

Summary of Response:

There is alignment between IDEA and NCLB, in that both statutes focus on improving student outcomes and using proven educational strategies. That alignment is a consideration when making placement decisions.

Discussion:

Since the enactment of the Individuals with Disabilities Education Act, there has been a shift in emphasis from program access to achievement and accountability. That emphasis on achievement and accountability is similar to the purpose of the No Child Left Behind Act (NCLB). Specifically, the IDEA emphasizes access to the general curriculum, promotion of high standards, improvement of academic performance for all students, and inclusion of all students in each state's educational assessment and accountability system.

The IDEA is also aligned with NCLB in requiring that general and special education teachers serving students with disabilities are highly qualified. A memorandum sent in December 2006 by Lana Michelson, Iowa Department of Education, to AEA Directors of Special Education and School District Superintendents discussed certain misunderstandings and improper implementation of LRE and NCLB's the highly qualified teacher (HQT) mandates. This memorandum clarified that both the LRE and HQT mandates must be obeyed. The HQT requirement does not alter the requirement that children with disabilities receive specially designed instruction, or eliminate the crucial role of the special educator. The general educator is an expert on content, and the special educator is the expert on identifying instructional strategies that provide children with special education needs access to the general education curriculum. These areas of expertise are to be blended using consultative teaching and/or co-teaching.

In making placement decisions, teams should be mindful of the alignment of these two statutes.

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