

Dated June 7, 2005

Ms. Sandy L. Morris
Program Director
Infant and Toddler Early Intervention Program
PO Box 45201
Olympia, WA 98504-5201

Dear Ms. Morris:

This letter is in response to your email to Jacquelyn Twining-Martin and Rhonda Spence of my staff, dated December 23, 2004. I apologize for the delay in our reply. In your email you requested a response to the position taken by the Guild School in Spokane related to the natural environments provisions under Part C of the Individuals with Disabilities Education Improvement Act (IDEA) of 2004. You also requested clarification about the intent and the impact of the IDEA 2004 reauthorization on the federal requirements, including the use of justification statements, on Individualized Family Service Plans (IFSPs).

While some confusion may exist in the field about the requirements to provide early intervention services in natural environments, this is not a new requirement. The Department's 1989 regulations initially implementing the 1986 Part H laws required that, to the extent appropriate, early intervention services take place in settings in which children without disabilities participate. In the 1991 Amendments to the Part H, Congress added the requirement of "natural environments" as part of the definition of early intervention services as well as making it a required element of the IFSP. The IDEA 1997 Amendments further strengthened the requirements related to provision of services in natural environments by requiring States to: (1) develop and articulate specific policy and procedures for the provision of early intervention services in natural environments (34 CFR §303.167(c)), and (2) include in the IFSPs a justification of the extent, if any, to which the services will not be provided in a natural environment (34 CFR § 303.344(d)(1)(ii)).

Part C requires that "to 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." (See 34 CFR §303.12(b)) By definition, natural environments mean "settings that are natural or normal for the child's age peers who have no disabilities." 34 CFR §303.18. Therefore, the provision of early intervention services in natural environments is not just a guiding principle or tenet, but also a requirement of the law.

The Individuals with Disabilities Education Improvement Act of 2004 amended section 635(a)(16)(B) to read:

(a) A statewide system described in section 633 shall include, at a minimum, the following components:

* * *

(16) Policies and procedures to ensure that, consistent with section 636(d)(5)—

* * *

(B) the provision of early intervention services for any infant or toddler *with a disability* occurs in a setting other than a natural environment *that is most appropriate, as determined by the parent and the individualized family service plan team*, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment. (Italicized words denote amendments to the IDEA).

The Conference Report states:

The legislation amends current law to recognize that there may be instances when a child's individualized family service plan cannot be implemented satisfactorily in the natural environment. The Conferees intend that in these instances, the child's parents and the other members of the individualized family service plan team will together make this determination and then identify the most appropriate setting in which early intervention services can be provided.

H.R. Conf. Rep. No. 108-779, at 238.

The amendment and its legislative history support the Department's longstanding interpretation of the IDEA that early intervention services must be provided in a natural environment, unless a written justification exists for providing these services in other settings. Because Part C services must be tailored to the unique needs of the individual child and family, see 34 CFR §303.344(d), no one setting is appropriate for all services for all infants and toddlers. Many center-based programs that formerly served only children with disabilities have now integrated children without disabilities, creating a daycare or preschool program constituting a natural environment. IFSPs are not required to include a justification for services in such a setting; a justification is needed, however, for services in settings that are not natural environments.

In general, providing services in a group setting limited exclusively to infants and toddlers with disabilities would not constitute a natural environment. However, if a determination is made by the IFSP team that, based on a review of all relevant information regarding the unique needs of the child, the child cannot satisfactorily achieve the identified early intervention outcomes in natural environments, then services could be provided in another environment. In such cases, a justification must be included on the IFSP.

Thus, the provision of early intervention services for any infant or toddler with a disability occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the IFSP team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment. OSEP expects Washington to continue its general supervision responsibilities under 34 CFR §303.501 in the identification and correction of noncompliance with all of the Part C requirements, including the natural environment requirements under current regulations.

Thank you for bringing your concerns to our attention. Please feel free to contact me if you have further questions or concerns.

Sincerely,

/s/

Troy R. Justesen
Acting Director
Office of Special Education Programs