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DEPARTMENT OF EDUCATION
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Governor

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Commissioner

May 18, 2009

TO: Chief School Administrator
Director of Special Education

FROM: Lucille E. Davy 
Commissioner

SUBJECT: Clarification of Rules Regarding Placements

At two recent legislative hearings, there was testimony from parents and advocates from across the state that school district personnel are significantly misinterpreting regulations that require the Executive County Superintendent to provide information regarding the availability of in-district programs for consideration by the Individualized Education Program (IEP) team members. This memo is intended to clarify the purpose and the role given to the Executive County Superintendent regarding the collection and dissemination of information regarding available in-district programs.

Consistent with federal and state regulations, local school districts must ensure that students with disabilities are educated in the least restrictive environment and that to the maximum extent appropriate, a student with a disability be educated with children who are not disabled. This requires that IEP teams be aware of in-district programs that are available in other districts that may meet the needs of the students. The Department of Education has been working to increase the numbers of students with disabilities educated with their non-disabled peers. As a state with a high percentage of students with disabilities in separate placements, it is critical to make certain that whenever appropriate, in-district options are provided.

The legislation and the implementing regulations are intended to maximize in-district placements, providing students opportunities to be educated with their non-disabled peers. The role and responsibilities of the county office are integral to our work in this important initiative. The legislation charges the county office to both provide districts with information in order to make appropriate decisions and to identify county needs in order to develop needed in-district programs.

The following clarification is provided to avoid misunderstanding of either the intent or implementation of this legislation and regulations:

- **The Executive County Superintendent is charged with providing information about available in-district programs for the consideration of IEP teams. N.J.S.A. 18A:7-8o through 18A:7-8t and the implementing regulations at N.J.A.C. 6A:23A-2.7 have no requirements for the Executive County Superintendent to review, recommend, approve, deny or overturn a determination of placement made by the Individualized Education Program (IEP) team.**
- **As mandated by N.J.A.C. 6A:14-3.7(b), the responsibility for determining the placement of a student with disabilities remains the sole responsibility of the IEP team, including the parent.**
- **The regulations at N.J.A.C. 6A:23A-7 do not limit the program options available for consideration by IEP teams; once it is determined that an in-district program is not available or appropriate to meet the needs of an individual student with a disability, the regulations require the Executive County Superintendent to inform the local district of other available in-district public school options. However, the continuum of program options remains available for consideration by the IEP team. The issue to be determined is where can the programs and services listed in the IEP be delivered in the Least Restrictive Environment.**
- **The Executive County Office of Education is not charged to make a finding of noncompliance or to take any sanction against the local district when the IEP team determines that an in-district program is not the appropriate placement.**

In order to clear up any misunderstandings of the above referenced requirements, I am requesting that this memo be disseminated to each special education administrator and child study team member in your district, and to your board attorney.

Thank you for your cooperation in disseminating this information and ensuring that placement determinations are made in accordance with federal and state requirements.

LED/BG/RW

c: Members, State Board of Education

Willa Spicer

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County Supervisor of Child Study
Administrator of a State Facility
Administrator of a Charter School
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Statewide Special Education Advisory Council
Agencies or Organizations Concerned with Special Education
Members, NJ Lee Group
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