

Compliance Issues:

Changing Placement (Inclusion) on An Amendment;
Upper Age Limit for FAPE; Private School Students

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1. Question: We would like to begin to serve some of our students in an inclusion setting. The PLP will remain the same, the time of service will remain the same, the goals will remain the same. The only difference will be that the sped teacher and IA will report to the general education classroom to provide the service. Can we make that change on an amendment IEP or do we have to develop a full IEP? We have reviewed the information in the SPED manual and have held discussions amongst ourselves and we are still not sure. Can you share with us your thoughts on this question?

Answer: It is very good to hear that _____ Elementary is making a concerted effort to educate students with disabilities in less/least restrictive environments. However, it is not possible to address your question about using an amendment to change placement without first reviewing related compliance issues:

1. ANY decision involving the education of a child with a disability must be made, *individually*, on a *case-by-case* basis and by the IEP *team*. Educational decisions may never be made, outside the IEP process, for special education students as a *group* or a *class* of individuals. For example, a plan to place *all*, or even *some*, special education students into some program, intervention, or placement, etc., for whatever reason, is prohibited by both federal and state law unless the decision is made *individually*, by the IEP team, and based **ONLY** on an individual student's *unique* educational needs. This is very important to remember as efforts are made to educate students in increasingly less restrictive environments (i.e., "inclusion").

2. Changing the *placement* of a child is one of the most important decisions that an IEP team makes. Placement is at the end of the required sequence of decision-making in the IDEA: All decisions must first be based on data; then, from the data, the present levels of performance are determined; from the deficit area in the present levels of performance the goals and objectives are developed; then services are identified to ensure that the goals are appropriately addressed; and **THEN** the placement is decided. Therefore it *makes no sense* to say that a student's placement is changing, but everything else is staying the same.

3. It is problematic to state that, "The *only difference* will be that the sped teacher and IA will report to the general classroom to provide the service." *This*

is not a description of inclusion in any generally accepted sense of the word. Inclusion generally means that the general education teacher provides direct instruction with accommodations and modifications as written in the IEP. The role of the special education teacher is to collaborate, during his or her conference period, with the general education teacher *and* be a resource to the general education teacher on how to modify for each special education child's needs. The special education teacher and/or IA do *not have* to be physically present. What you are describing is a "class within a class" wherein the general education teacher teaches the general ed students, and the special ed teacher teaches the special education students – which is not inclusion at all. That having been said, team-teaching IS a viable inclusion model wherein *both* teachers provide instruction in the general education classroom to all the students (including special education students) while ensuring that each special education student's IEP is met.

So you can see that the question you asked is complex and cannot be answered with a simple "yes" or "no". Considering that a change in placement is a major change in a student's educational services, I would have to say that an amendment is not an efficient, effective, or even appropriate way of documenting all the information required under the IDEA to support such a change.

2. Question: Please clarify the upper age limit for a student to receive FAPE.

Answer: In New Mexico, a student is eligible for FAPE *through the school year in which he/she turns 22*. However, if the student turns 22 prior to September 1 of the school year, the student is no longer eligible to receive special education and related services. NMAC 6.31.2.11 (G)(6).

3. Question: What are our responsibilities to a student who resides in the district but who attends private school in El Paso and for whom the parent has requested a comprehensive evaluation?

Answer: At parent request, the district *must* conduct an evaluation for a student who *resides* in the district but who attends private school outside the district and is therefore not enrolled in the district. But the district does NOT provide educational services to a student who attends private school outside the district UNLESS the parent enrolls the student in the district. IF, however, the student attends a private school *within* the boundaries of the district, that is a different matter entirely. The district has to meet with representatives of the/each private school located in the district and then determine all private school students' (in the district whether or not they reside in the district) "proportionate share" of the district's IDEA-B (not State) funding. A private school student does NOT have an individual right to receive all of the special education and related services they would have received through the public school system UNLESS the parent chooses to enroll the student in the district.

