

# SUPERINTENDENT OF PUBLIC INSTRUCTION

DR. TERRY BERGESON OLD CAPITOL BUILDING • PO BOX 47200 • OLYMPIA WA 98504-7200 • <http://www.k12.wa.us>

July 16, 2004

Cassie Johnson and Cecile Lindquist  
WEE CARE Coalition  
6138 Waldron Dr. SE  
Olympia, WA 98513

Dear Ms. Johnson and Ms. Lindquist,

I have received your letter of June 14, 2004 seeking clarification of four specific issues related to the provision of services to children with disabilities ages birth to three. Please consider this letter as my response to each of the four issues you have identified.

**Issue 1: Are school districts who serve children birth to three with disabilities by direct services or contracting for services responsible for providing FAPE (free appropriate public education)?**

**Answer:** No. School districts who serve children birth to three with disabilities by direct services or contracting for services are not responsible for FAPE. Under the Individuals with Disabilities Education Act (IDEA), the school district obligation for a free appropriate public education begins at age three. In fact, statutory language in Part C of IDEA states, "Nothing in this subsection shall be construed to require a provider of services under this part to provide a child served under this part with a free appropriate public education."

**Issue 2: Are school districts serving children birth to three with disabilities by direct services or by contracting for services required to be payor of last resort?**

**Answer:** No. School districts are not required to be the payor of last resort when serving children birth to three with disabilities by direct services or by contracting for services. Payor of last resort status currently rests with the designated state lead agency (DSHS).

**Issue 3: If school districts serve children with disabilities birth to three by direct services or contracting for services required to follow Part B or Part C of IDEA in administering the program?**

**Answer:** School districts serving children with disabilities birth to three by direct services or contracting for services are required to follow Part C of IDEA. Please see WAC 392-172-176.

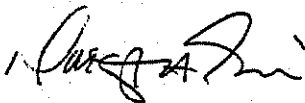
**Issue 4: How are school districts who serve children birth to three with disabilities funded?**

**Answer:** If a school district elects to serve children with disabilities in this age range, school districts may claim in state funding, an amount equal to 1.15 times the district's annual average full time equivalency (FTE) through state apportionment. Please note that if a district elects to serve children with disabilities aged birth to three, the state apportionment generated by this election does not count against the district's 13% of total k-12 enrollment index that is applied to children with disabilities aged 3-21. Federal funding available for students with disabilities aged birth to three are distributed to the state lead agency for Part C (DSHS). These funds are then distributed to locally designated lead agencies to assist in the implementation of services defined in Individualized Family Service Plans (IFSPs).

I hope that the answers I have provided to the issues raised in your letter are clear. If not, please do not hesitate to seek additional clarification. Thank you very much for your continued commitment and services to all children with disabilities in our state.

Sincerely,

SPECIAL PROGRAMS



Douglas H. Gill, EdD, Director  
Special Education Operations

Cc: Bob Harmon  
Lou Colwell  
Karen Walker