

**2015-16 Exceptional Student Education
Monitoring and Assistance
On-Site Visit Report**

**Broward County School District
November 18-20, 2015**



This publication is produced through the Bureau of Exceptional Education and Student Services (BEESS), Division of K-12 Public Schools, Florida Department of Education, and is available online at <http://www.fldoe.org/e/se/mon-home.asp>. For information on available resources, contact the BEESS Resource and Information Center (BRIC).

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August 18, 2016

Robert Runcie, Superintendent
Broward County School District
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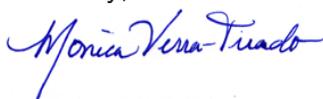
Dear Superintendent Runcie:

The Bureau of Exceptional Education and Student Services (BEESS) is pleased to provide you with the 2015-16 Exceptional Student Education (ESE) Monitoring and Assistance On-Site Visit Report for the Broward County School District. This report was developed by integrating multiple sources of information related to an on-site monitoring visit to the Broward Children's Care Center (BCCC), on November 18-20, 2015. Those information sources included student record reviews, interviews with district and school staff, and classroom walk-through visits.

The BCCC was selected in an effort to continue to monitor the educational status of students with disabilities who are living in nursing homes or skilled medical facilities in Florida. During the on-site visit to the Broward County School District, the decision was made by BEESS to conduct an on-site visit to Kidz Korner, which is another skilled medical facility in this school district that serves children aged 6-21. This report includes results from BCCC and Kidz Korner, and will be posted on the BEESS website at <http://www.fldoe.org/ese/mon-home.asp>.

Ms. Sonja Clay, Director of ESE, and her staff were very helpful to BEESS in preparing for the on-site visit and throughout the visit. In addition, school-level personnel welcomed the on-site team members and demonstrated a continued commitment of the education of students in the school district. Thank you for your commitment to improving services to exceptional education students in the Broward County School District. If there are any questions regarding this report, please contact me at 850-245-0475, or via email at monica.verra-tirado@fldoe.org.

Sincerely,



Monica Verra-Tirado, Ed.D., Chief
Bureau of Exceptional Education and Student Services

Enclosure

cc: Sonya Clay
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**Florida Department of Education
Bureau of Exceptional Education and Student Services**

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Authority

The Florida Department of Education, Bureau of Exceptional Education and Student Services (BEESS), in carrying out its roles of leadership, resource allocation, technical assistance, monitoring and evaluation, is required to oversee the performance of district school boards in the enforcement of all exceptional student education (ESE) laws (sections 1001.03(3), 1003.571 and 1008.32, Florida Statutes [F.S.]) and rules. One purpose of the Individuals with Disabilities Education Act (IDEA) is to assess and ensure the effectiveness of efforts to educate children with disabilities (s. 300.1(d) of Title 34, Code of Federal Regulations [CFR]). BEESS is responsible for ensuring that the requirements of IDEA and the educational requirements of the state are implemented (34 CFR §300.149(a)(1) and (2)).

In fulfilling this requirement, BEESS monitors ESE programs provided by district school boards in accordance with ss. 1001.42, 1003.57 and 1003.573, F.S. Through these monitoring activities, BEESS examines records and ESE services, evaluates procedures, provides information and assistance to school districts, and otherwise assists school districts in operating effectively and efficiently. The monitoring system is designed to facilitate improved educational outcomes for students while ensuring compliance with applicable federal laws, regulations, state statutes and rules.

BEESS conducted an on-site visit to a children's skilled nursing facility for students who are medically fragile to ensure that specially designed services are being provided in the least restrictive environment (LRE).

ESE Monitoring and Assistance Process

In a letter dated September 14, 2015, the superintendent of the Broward County School District was informed that BEESS would be conducting an on-site monitoring visit related to the school district's ESE program at the Broward Children's Care Center (BCCC).

During the on-site visit, the decision was made by BEESS to visit Kidz Korner, another nursing facility in the Broward County School District that serves students who are medically fragile.

On-Site Activities

On-Site Visit Team

The following BEESS staff members conducted the on-site monitoring visit:

- Patricia Howell, Program Director, Dispute Resolution and Monitoring
- Diana McLendon, Program Specialist, Instructional Support Services
- Dianne Mennitt, School Nurse Consultant, Student Support Services
- Annette Oliver, Educational Program Director, Program Accountability, Assessment and Data Systems

Data Collection

On-site monitoring and assistance activities included the following:

- District and school administrator interviews – 12 participants (November 4, 2015)
- Teacher interviews – 14 participants
- School walk-through visits – 11 classrooms

Review of Records

Individual educational plans (IEPs) were reviewed for 28 students with disabilities enrolled in prekindergarten through Grade 12 in the Broward County School District and residing at BCCC. The school district was asked to provide electronic access to the following documents for each student record selected for review regarding procedures related to least restrictive placement:

- Current IEP
- Signature page of current IEP
- Meeting invitation, if applicable
- Medical information related to educational placement
- Additional supporting documentation, as needed

Information from each document was used to determine compliance with those standards most likely to impact the provision of ESE services in the LRE. In addition, homebound and hospitalized (HH) records were reviewed for 21 students with disabilities at Kidz Korner.

Skilled Medical Facilities

BCCC is a free-standing skilled nursing facility for infants, children and young adults who require sophisticated medical treatment in the Southeast United States. BCCC provides a short- and long-term home to technology-dependent children and addresses the educational, social and medical needs of infants, children and young adults. The care is provided until the child is medically stable and can be moved to a less restrictive environment. The goal upon discharge is to send the child home with an array of support services, which will help parents maintain the child in their home environment. (<http://BCCkids.org/compcare>)

Kidz Korner is a specialized healthcare facility. The facility cares for children ranging in age from premature infants to 21 years with medical conditions including: bronchopulmonary dysplasia, critical airways, tracheotomy, mechanical ventilator management and vent weaning needs, trauma injuries, traumatic brain injuries, near drowning, complex seizure disorders, and neuromuscular diseases. (www.plantationkidzkorner.com)

Interviews Conducted

Administrator Interview

On November 4, 2015, the following staff participated in an administrative interview with the BEESS staff for the Broward County School District on-site monitoring visit:

- Sonja Braziel, Principal, Pompano Beach Middle School
- Sonya Clay, ESE Director, Broward County School District
- Karlton Johnson, Principal, Blanche Ely High School
- Ann Kowalski, Principal, Bright Horizons Center
- Carol Levin, Assistant Principal, Bright Horizons Center
- Lori Naslund, ESE Specialist, Bright Horizons Center
- Karen Nesbeth, Assistant Principal, Sanders Park Elementary School
- Nellie Newsome, ESE Specialist, Pompano Beach Middle School
- Rhonda Parris, Principal, Sanders Park Elementary School
- Denise Rusnak, Program Officer, BCCC
- Theresa Spurlock, Curriculum Supervisor for Homebound or Hospitalized Program,

Broward County School District

- Antonio Womack, Assistant Principal, Blanche Ely High School

During this interview, the administrators provided the following information:

- The residents at BCCC are referred for admission from different county school districts throughout Florida as well as out of state. Some of the residents were placed at BCCC as a result of a recent trauma or an established condition.
- BCCC is a 36-bed facility. The current residents are medically fragile and range in age from 2 months to 21 years. The current population is 27 residents.
- All of the residents have medically complex support, which could include tracheostomy, gastrostomy tube (G-tube) feedings and jejunostomy tube (J-tube), continuous oxygen, and respiratory therapy. A respiratory therapist and a nurse are with the students at all times when they are at BCCC. Many of the students require in-wall oxygen, which is a factor in the determination of their ability to attend public school classes in the community. Students are also on ventilators, dependent on respiratory equipment and medical assistance.
- The children's multidisciplinary assessment team evaluates and determines the level of care in all areas.
- The residents are considered to be ESE-eligible students by the Broward County School District. The staff are employees of BCCC.
- There are two classrooms at BCCC that currently serve 21 students. One is in the main building for those students who require in-wall oxygen. For those students who are medically able to leave the main building, but unable to attend a public school off campus, educational services are provided in a classroom located on the BCCC property. The students receive scheduled educational services for five hours a day, five days a week.
- BCCC has a fleet of buses and provides transportation for students to attend public school.
- Student volunteers from schools in the area assist students at BCCC with their homework after the school day. These volunteers also conduct and participate in other extracurricular activities with the students. This provides the BCCC students with an opportunity to interact with nondisabled peers.
- BCCC collaborates with numerous other agencies, including:
 - Agency for Health Care Administration (Medicaid program)
 - Agency for Persons with Disabilities
 - ChildNet (foster care)
 - Children's Diagnostic Treatment Center
 - Children's Medical Services (Department of Health)
 - Community-Based Care (Department of Children and Families)
 - Division of Blind Services
 - Division of Vocational Rehabilitation
 - Florida Diagnostic and Learning Resources System (Child Find)
 - Medicaid Provider (EQ Health Solutions)
 - Similar agencies in other states
- If the children are part of the ChildNet program and the parent's or guardian's rights are terminated, ChildNet is designated as the parent or guardian until the child is assigned a foster parent. BCCC is the designated parent for those students in foster care who reside at this facility.
- As identified on the student's IEP, the Broward County School District provides programs and services for students at BCCC with visual impairments and who are deaf or hard of hearing.

- Students at BCCC, who are medically able to attend a public school off campus, participate in full-day educational services at one of the following public schools:
 - Bright Horizons School (separate day school)
 - Sanders Elementary School
 - Pompano Beach Middle School
 - Blanche Ely High School
- Students are staffed in one of the above-mentioned public schools, based on their medical needs and if they are students with disabilities who require special education programs and services.
 - The IEP team decides if BCCC is the LRE for each student. When the students are staffed from BCCC to attend a public school, the IEP team determines the most appropriate educational environment to match services on the student's current IEP. The students are placed in classrooms, based on their educational needs.
 - BCCC has three registered nurses on staff. In addition, BCCC provides a nurse for each of their students, at all times while at school.
- One student is transported from BCCC to a public school on a regular school bus. All of this student's classes are in a general education classroom. There is a nurse from BCCC with the student at all times, and a teacher assistant is with the student for each class. This student also has an ESE support facilitator who consults with the teacher and helps to work on goals identified on the IEP.
- Four other students who reside at BCCC are in Grade 12 and receive educational services in two separate classroom placements at a public school off campus. One of the four students requires constant nursing supervision.
- One student who resides at BCCC receives full-day educational services in a cluster classroom for students with intellectual disabilities. This student has a nurse from BCCC at all times during the class day, due to complex medical needs.

Teacher Interviews and School Walk-Through Visit at Broward Children's Care Center

- Teachers reported that they have attempted to group the students by age, but because of their medically fragile condition, the students require more one-on-one academics.
- Parents of the students at BCCC are encouraged to participate in the lessons during the school day.
- One of the two classrooms at BCCC had a sensory room. The teachers reported that this room is used for multiple purposes, which include learning to manipulate switches for sounds or lighting, soothing and calming students, and de-escalating inappropriate behaviors.
- Students in both classrooms were able to receive one-on-one assistance during all class periods. The curriculum included discussion of current events.
- As appropriate for positioning purposes, some students were able to use one type of wheelchair for classroom participation and another wheelchair when they are in their bedrooms.
- Educational programs use individualized assistive technology, including a variety of switches for students to answer questions, speak for them, and to turn the pages of books. BCCC routinely uses iPads as after-school incentives. Teachers reported that when the students are determined to have needs for additional technology, this is provided by BCCC.
- Both classes use an interactive portable SMART board (white board).
- Many of the students at BCCC do not participate in field trips away from the center because of their medical needs.

Teacher Interviews and School Walk-Through Visits at Public Schools

- During an observation of a regular classroom at Pompano Beach Middle School, all students were included in the lesson.
- At Sanders Elementary School, in one classroom observed, there was differentiated instruction with frequent individual praising and positive feedback provided to all students.
- At Bright Horizons, all students had binders with their individual activities outlined.
 - During the walk-throughs of the classes, there appeared to be a family-like atmosphere, with positive interactions between students and staff.
 - The school has a horticulturist who is responsible for the school garden. Educational activities incorporate the garden and within the garden there is a wheelchair swing.
 - The school has a sensory room, which is used for multiple purposes, including behavioral interventions.
- During on-site school visits, several teachers reported that there was not enough face-to-face participation in meetings with the BCCC staff. They also reported that they would like the BCCC staff to visit their classrooms and participate in school activities.
- At Blanche Ely High School, students observed in the two ESE classes were completing independent assignments. They were engaged in activities geared toward their needs. These activities were also included in their binders.
 - Students in these ESE classes participate in weekly community-based instruction and activities.
 - In the culinary class there was an intensive inclusion model of teaching.

Teacher Interviews and School Walk-Through Visit at Kidz Korner

- All of the students are medically fragile. They all have medically complex support, which could include tracheostomy, G-tube feedings and J-tube, continuous oxygen and respiratory therapy. All students were observed in the classroom or in their bedrooms.
- Students are served in prekindergarten through Grade 12 classes, up to age 22.
- The occupational therapists and physical therapists are full-time employees of Kidz Korner.
- There are 35 students at this facility. Twenty-one students receive HH services and 14 students attend public school away from the facility.
- One ESE teacher provides services to the 21 students who are unable to leave the Kidz Korner facility, due to medically complex supports.
- The ESE teacher works closely with the recreation department at the facility. Students from a local elementary school are invited to Kidz Korner for extracurricular and social activities. This provides opportunities for interaction with nondisabled students.
- The students were observed to be out of bed for short periods of times, to participate in scheduled activities.

Commendations

1. In the culinary class at Blanche Ely High School, there was an intensive inclusion model of teaching.
2. At BCCC and Kidz Korner, there appeared to be a commitment to send their students to district schools, as their medical conditions allowed.
3. BCCC presented itself as a very family-oriented atmosphere. There was an obvious distinction within the building between the school and home environments. Students

were out of their beds early each morning to prepare for transition to school, teachers frequently said they were at school and alerted them when it was time to return home, even though it was in the facility. It was a seamless transition from school to home. Students were encouraged to participate in after-school activities prior to going home, and after-school activities included homework assistance.

4. BCCC and Kidz Korner had comprehensive recreational activities scheduled for the students when they were not participating in school activities. Both recreational departments used dog therapy with the students.
5. BCCC is actively involved with numerous community agencies.

Next Steps	
Least Restrictive Environment	
Summary	<ul style="list-style-type: none"> • Students with disabilities must be served in the regular education environment unless the nature or severity of the disability is such that education in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. • At BCCC and Kidz Korner, all of the residents have medically complex support. Many of the students require continuous oxygen, which is a factor in the determination of their ability to attend public schools in the community. At both facilities there appeared to be a strong commitment to send their students to district schools, as their medical conditions allowed. Both facilities have teams in place that determine the level of care each child needs, including their LRE for educational services. • At BCCC, the students receive scheduled educational services for five hours a day, five days a week. Students who leave the facility receive a full day of educational services at their respective schools. • Nondisabled student volunteers from public schools in the area assist students at BCCC after the school day with their homework and conduct and participate in other activities with the students. • Several teachers reported that there was not enough face-to-face participation in meetings with the BCCC staff. They reported that they would like the BCCC staff to visit their classrooms and participate in school activities.
Recommendations	<ul style="list-style-type: none"> • BCCC and Kidz Korner should continue to review students' medical and educational needs on a routine basis to determine the LRE for each student. • To help with transition and access to other community agencies, case management services from the applicable agencies are needed for BCCC students who have aged out. • BCCC staff are encouraged to visit the students' classrooms and other school activities to increase educational collaboration.
Required Actions	N/A

Technical Assistance

1. **Implementing a Multi-Tiered System of Support for Behavior: Recommended Practices for School and District Leaders** (Florida’s PBIS Project) may be accessed at http://flpbs.fmhi.usf.edu/pdfs/RTIB%20Guide%20101811_final.pdf and provides an overview of the critical components of an MTSS for behavior. These critical components describe systems changes that are necessary for a results-driven ESE system.
2. **Developing Quality Individual Educational Plans: A Guide for Instructional Personnel and Families**, may be accessed at <http://fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf> on the BEESS’s website. Explanatory information to help students understand the rights and responsibilities that go along with special education services can be found in “Chapter 8 – Procedural Safeguards (Rights and Responsibilities)” of A Parent’s Instruction to Exceptional Student Education in Florida, located at <http://fldoe.org/core/fileparse.php/7690/urlt/0070085-eseparent.pdf>. This document is also available in Spanish and Creole on the BEESS’s website.
3. **Least Restrictive Environment Considerations Related to Individual Educational Plans**, may be accessed at <http://info.fldoe.org/docushare/dsweb/Get/Document-7540/dps-2016-13.pdf> on the BEESS’s website. Provision of services for students with disabilities in the least restrictive environment is a critical component of the Individuals with Disabilities Education Act. Students with disabilities must be served in the regular education environment unless the nature or severity of the disability is such that education in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. The decisions regarding the educational placement, including participation in nonacademic and extracurricular activities, of each student with a disability must be based on the individualized needs of each student as determined and documented through the IEP process.
4. **The Policy and Procedures Manual, Hospital/Homebound Program and Services**, may be accessed at <http://fldoe.org/core/fileparse.php/7590/urlt/hhppm08.pdf>. This resource manual is designed to provide the school districts in Florida with recommendations and suggestions for the development, management, and evaluation of programs for HH students. It is intended to help bring clarity and direction to educational planning for exceptional students in Florida, while being broad enough in scope to meet the varying needs of the students and HH staff in each school district.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES Letter

April 26, 2016

Dear Colleague:

I write today regarding the responsibilities of States, school districts, and other public agencies in addressing the special educational needs of children with disabilities who reside in nursing homes. Although their numbers are small,¹ their medically complex conditions present unique challenges. In addition, because these children live away from their families, and may enter nursing homes from a hospital or through a child welfare or health agency, they may not always be known to responsible educational authorities or be receiving appropriate educational services. States are required under Part B of the Individuals with Disabilities Education Act (IDEA or Part B) to make available to all children with disabilities a free appropriate public education² (FAPE), which emphasizes special education and related services that, among other things, are designed to meet the unique needs of each child, including those children residing in nursing homes. In 2014, the U.S. Government Accountability Office (GAO) highlighted some of the unique educational challenges that may arise in serving this unique population in its report, *Special Education: Additional Federal Actions Could Help Address Unique Challenges of Educating*

Children in Nursing Homes (GAO 14-585).³⁴ Based on the observations and findings made by GAO in this report, the Office of Special Education and Rehabilitative Services (OSERS) recognizes that there is a need for further guidance to ensure that children with disabilities who reside in nursing homes are evaluated in a timely manner and receive appropriate special education and related services. Accordingly, OSERS is issuing this letter to clarify that children with disabilities residing in nursing homes and their parents have the same rights under IDEA that apply to all other IDEA-eligible children, and to highlight some of the IDEA requirements that are especially relevant to the needs of this unique population. This letter will also identify best practices to assist States and their public agencies in meeting the unique educational needs of these children.

¹ According to the Department of Health and Human Services (HHS), children represented less than a half a percent (0.2 percent) of the more than 1.4 million nursing home residents in the United States as of December 31, 2011. See: HHS's Centers for Medicare & Medicaid Services' *Nursing Home Data Compendium*, 2013 available at: https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/nursinghomedatacompendium_508.pdf.

² Under Part B of IDEA, a child's entitlement to FAPE begins at the child's third birthday and could last to the 22nd birthday, depending on State law or practice. 34 CFR §300.102.

³ This report is available at: <http://www.gao.gov/products/GAO-14-585>. Among other things, GAO found that the child find requirement under IDEA and the responsibility for providing special education services was divided generally evenly among the States between the school district where the child's family resides and the school district where the nursing home is located. Additionally, GAO found that a child's medical fragility affected the amount of instructional time they received.

⁴ MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-2600 www.ed.gov *The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

Child Find and Evaluations

Under IDEA and its implementing regulations, each State and its local educational agencies (LEAs) must have in effect policies and procedures to ensure that all children with disabilities residing in the State who need special education and related services, regardless of the severity of their disability, are identified, located, and evaluated. 34 CFR §§300.111 and 300.201. This requirement, known as child find, applies to all children suspected of having disabilities under IDEA, including those who have complex medical needs and who reside in nursing homes because of serious health problems. The IDEA child find requirements permit referrals from any source, including nursing home staff, who suspects a child may be eligible for special education and related services. In general, if a public agency suspects that a child in a nursing home has a disability and needs special education and related services, an initial evaluation that meets the requirements in 34 CFR §§300.304-300.311 must be conducted within 60 days of receiving parental⁵ consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. 34 CFR §300.301(c)(1).⁶ Among other requirements, the evaluation must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent. This information may assist in determining whether the child is a child with a disability, as defined in 34 CFR §300.8, and the content of the child's individualized education program (IEP). 34 CFR §300.304(b)(1); see also 34 CFR §300.304(c)(4) (assessing the child in all areas related to the suspected disability, as appropriate). Additionally, in interpreting evaluation data for the purpose of determining if a child is a child with a disability and the child's educational needs, the public agency must draw upon information from a variety of sources, including parent input, as well as information about the child's physical condition. 34 CFR §300.306(c)(1). Therefore, a parent may choose to share with the public agency an evaluation conducted by nursing home staff or other medical professionals about the child's health and physical condition.

State Responsible for Child Find

Under Part B of IDEA, the State where the child's parents reside is responsible for conducting child find, including individual evaluations, and ensuring that FAPE is provided to an eligible child. Generally, States assign this responsibility to the school district where the child's parents reside.⁷ If the nursing home is located in the State where the child's parents reside, but is within another school district within the same State, the State would need to determine whether it would be appropriate for the school district of the parents' residence to conduct child find; or the State could assign that responsibility to the school district where the nursing home is located, if the school district where the child's parents reside has not

⁵ As defined in 34 CFR §300.30, parent means a biological or adoptive parent of a child; a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with 34 CFR §300.519 or section 639(a)(5) of IDEA.

⁶ The evaluation timeframe does not apply if a child is moved to a nursing home in a new school district after the relevant timeframe has begun and prior to a determination by the child's previous public agency or school district whether the child is a child with a disability under Part B. 34 CFR §300.301(d). In this situation, the new public agency or school district may extend the 60-day or State-established timeframe only if: (1) it is making sufficient progress to ensure prompt completion of the evaluation; and (2) the parent and the new public agency agree to a specific time when the evaluation will be completed. 34 CFR §300.301(e).

⁷ Office of Special Education Programs (OSEP) Letter to Biondi, Oct. 7, 1997.

yet conducted or completed the evaluation. There also could be situations where the nursing home in which the child resides is located in a State that is different from the State of the parent's residence. In these circumstances, the Department's long-standing position is that it is residence that creates the duty under the statute and regulations to make FAPE available, not the location of the child or school. Accordingly, if a child is placed or referred outside the State by an educational or noneducational State or local agency, such as a child welfare, social service, or other similar State agency, whether for educational or treatment reasons, the State initiating the placement or referral (i.e., the "placing State") is responsible for ensuring that the child receives FAPE.⁸ This responsibility would include conducting child find. Therefore, the State where the nursing home is located would need to coordinate with the placing State once the child is identified to determine how the evaluation will be conducted. The placing State could either contract with the school district where the nursing home is located to conduct the evaluation, or ensure that the evaluation is conducted through some other arrangement. When considering best practices related to child find, it is important to note that nothing in IDEA requires that an evaluation of a child suspected of having a disability take place in a school setting. If the child's suspected disability involves a medical condition which would make it difficult for the child to take certain tests or complete parts of the evaluation in a school setting, the evaluator may work with the child's parents and doctors to determine what would be an appropriate setting to conduct the evaluation. In general, the public agency may not refuse to conduct the evaluation because the child is unable to come to a school setting for the evaluation.⁹

Provision of Special Education and Related Services

After a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child within 30 days of the eligibility determination. 34 CFR §300.323(c)(1).¹⁰ As stated above, under Part B of IDEA, the school district in the placing State where the parent resides is responsible for ensuring that FAPE is provided to the child if the nursing home is located in a school district in a different State; however, the placing State could arrange for the school district where the nursing home is located to be responsible for the provision of special education and related services to the child. Even if this were to occur, we emphasize that the placing State retains ultimate responsibility for ensuring the provision of FAPE to its resident children with disabilities whom the State places or refers to nursing homes located in another State. 34 CFR §300.149. Under IDEA, in order to make FAPE available to each eligible child with a disability, the responsible public agency must ensure that an appropriate IEP is developed and implemented for the child. The child's IEP must be designed to enable the child to be involved in and make progress in the general education curriculum. 34 CFR §300.320(a)(1), (2) and (4). As is true for other children with disabilities, the IEP is developed at a meeting of the IEP Team which includes the child's parents and relevant school officials, and whenever appropriate, the child. 34 CFR §300.321(a). Also, the IEP Team could include, at the discretion of the parent or the public agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. 34 CFR §300.321(a)(6). Thus, there are situations where nursing home personnel involved in the care of the child could be members of the child's IEP Team, provided the party (public agency or parents) who invited the individual to be a member of the IEP Team can demonstrate that the individual possesses the requisite

⁸ See OSEP letter to McAllister, June 9, 1994. OSEP explained in response to a subsequent inquiry that this letter does not apply if the child's parents move to another State. See OSEP letter to Moody, Oct. 24, 1995; see also 34 CFR §300.323(f).

⁹ IDEA also includes requirements for periodic reevaluations in accordance with 34 CFR §§300.304-300.311. See 34 CFR §300.303.

¹⁰ IEP requirements are at 34 CFR §§300.320-300.324.

knowledge or special expertise regarding the child. 34 CFR §300.321(c)

Once a proper IEP Team is constituted, we emphasize the importance of ensuring that individualized determinations are made as to the types and amounts of special education and related services to be provided to each child with a disability. In that regard, a State may not have a rule or policy that would restrict or limit the amount of services to be provided to children with disabilities who, because of serious health problems, must receive required special education services in a nursing home. Rather, under IDEA, the amount and types of special education and related services provided to a child must be based on the child's individual needs as set forth in the child's IEP. IDEA's definition of related services includes an array of support services that are provided if they are required to assist a child with a disability to benefit from special education. Among these are school health services and school nurse services. 34 CFR §300.34(c)(13). For example, these services could include the provision of a nurse to assist a ventilator dependent child in a school setting.¹¹

The following best practices could assist in the implementation of these important IDEA requirements. If a child is unavailable for medical reasons during a portion of the school day, the IEP Team should discuss the time or times when services should be provided to the child. Or, for example, if a child is only able to participate in instruction for short periods of time, the IEP Team should discuss the best methods to provide the required special education and related services to the child.

Provision of Special Education and Related Services in the Least Restrictive Environment (LRE)

The requirements for determining the educational placement of a child with a disability, which are included in the Part B regulations at 34 CFR §§300.114 through 300.118, are fully applicable to the education of children with disabilities residing in nursing homes. These regulations provide that to the maximum extent appropriate, children with disabilities are to be educated with children who are not disabled and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The child's placement must be determined at least annually and be made by a group of persons that includes the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. Placement decisions must be made by this group of knowledgeable persons on an individual basis in light of the child's unique needs, and, unless the IEP requires a different arrangement, the child must be educated in the school he or she would attend if not disabled. We understand that children residing in nursing homes may not be able to attend the school they would attend if not placed in the nursing home. However, in these situations, the public agency still must ensure that children with disabilities residing in nursing homes are educated in the least restrictive environment appropriate to the child's needs, based on his or her IEP.¹²

As a best practice, we note that because school-age children living in nursing homes are often medically fragile,¹³ it may be appropriate for the child's physician or other knowledgeable nursing home staff

¹¹ See *Cedar Rapids Community School District v. Garret F*, 526 U.S. 66 (1999).

¹² See OSEP Letter to Anderson (November 30, 2012) OSEP Letter to Hungate (January 5, 2011), and OSEP Memorandum 05-08 (addressing placement requirements for children with disabilities in various residential facilities).

¹³ Nearly 71 percent of children residing in nursing homes have at least two active disease diagnoses, according to analysis of CMS data. See United States Government Accountability Office's *Special Education – Additional Federal Actions Could Help Address Unique Challenges of Educating Children in Nursing Homes*, July 2014 available at: <http://www.gao.gov/products/GAO-14-585>.

familiar with the child to be included as a member of the placement team. This team member can assist in making the determination as to whether the child is too fragile to attend a local school, and could also provide input regarding other factors that may impact placement decisions, such as the child's tolerance for being on a bus and sitting for extended periods of time.

In instances where the placement team determines the child's LRE is instruction in the nursing home, the public agency must ensure that the child receives all of the special education and related services included in his or her IEP in the nursing home. If a child is able to move throughout the nursing home, it may be possible for instruction to take place in a classroom in the nursing home. However, when a child is too fragile to be moved or if the child is prone to infections and must be isolated, the public agency may choose to provide one-on-one services in the child's room.

The IEP Team must review each child's IEP periodically, but not less than annually to determine whether the annual goals are being achieved, and revise the child's IEP, as appropriate, to address, among other matters, any lack of expected progress toward the child's annual goals, and in the general education curriculum, if appropriate. 34 CFR §300.324(b)(1)(i)-(ii). Similarly, the child's placement must be determined at least annually and must be based on the child's IEP. 34 CFR §300.116(b)(1)-(2). If a child's condition changes after the annual IEP Team meeting, it would be appropriate for the IEP Team to consider whether revisions to the child's IEP are necessary. Because the child's placement is based on the child's IEP, if the IEP is changed, the placement team may need to determine whether the child's LRE has changed, and if so, may need to make conforming changes to the child's placement. 34 CFR §300.116(a)(2). For example, if a child's condition stabilizes or improves and the child's doctor believes the child can tolerate additional instruction or be transported to a local school for instruction, the child's IEP Team may need to revise the child's IEP to determine if additional services are warranted and the placement team may need to consider whether the nursing home continues to be the least restrictive setting where the child should receive FAPE.

Dispute Resolution Options

It is important to note that parents of children residing in nursing homes are afforded the same procedural safeguards and due process rights as all other parents of children with disabilities. 34 CFR §§300.500 through 300.536. Therefore, if a parent of a child residing in a nursing home disagrees with the public agency responsible for providing FAPE on any matter regarding the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, the parent may request mediation under 34 CFR §300.506, file a due process complaint under 34 CFR §300.507 to request a due process hearing, or file a State complaint under 34 CFR §300.153.

Qualifications of Personnel Providing Special Education and Related Services to Children Residing in Nursing Homes

Ensuring that personnel serving children with disabilities residing in nursing homes have the requisite qualifications is paramount. To this end, IDEA and its implementing regulations require a State to establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of Part B of IDEA are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. 34 CFR §300.156(a) and 300.201; see also 34 CFR §300.207. Therefore, States must ensure that they establish and maintain qualifications to ensure that personnel serving children with disabilities residing in nursing homes are appropriately and adequately prepared and trained, and possess the content knowledge and skills necessary to serve this unique population of children with disabilities.

Possible Funding Sources

We recognize that serving children with disabilities residing in nursing homes may present unique challenges and may require some school districts to be responsible for a particularly large share of high-cost services because of the large concentrations of children with high needs in those districts. There are several ways that States can assist these school districts. Each fiscal year States may reserve a portion of their IDEA Part B funds for authorized State-level activities, other than administration. 34 CFR §300.704(b)(4). These State-level funds may be used for activities such as support and direct services, including technical assistance, personnel preparation and professional development and training, and to assist LEAs in meeting personnel shortages. 34 CFR §300.704(b)(4)(i) and (vii).

To assist school districts in serving high need children with disabilities, each State has the option of establishing an LEA high cost fund and to reserve for each fiscal year 10 percent of the amount the State reserves for other State-level activities to finance and make disbursements from that fund to its LEAs. The definition of a high need child with a disability is included in the State plan for the high cost fund and must at a minimum address the financial impact a high need child with a disability has on the budget of the child's LEA and ensures that the cost of the high need child with a disability is greater than three times the average per pupil expenditure in that State. The costs associated with educating a high need child with a disability are only those costs associated with providing direct special education and related services to the child that are identified in the child's IEP. Therefore, in order for a public agency to be eligible for a disbursement from the State's high cost fund, (if the State has a high cost fund), the child must meet the State definition of high need child with a disability, and the LEA must meet the requirements included in the State's high cost plan.

Additional Resources

The Office of Special Education Programs (OSEP) funds a large network of technical assistance centers that develop materials and resources to support States, school districts, schools, and teachers to improve the provision of services to children with disabilities. The U.S. Department of Education does not mandate the use of, or endorse the content of, these products, services, materials, and/or resources; however, States and LEAs may wish to seek assistance from some of the OSEP-funded technical assistance centers available at: <http://ccrs.osepideasthatwork.org> and <http://www.tadnet.org/pages/526-find-a-center>.

We encourage States and LEAs to review their policies and procedures to ensure that children with disabilities residing in nursing homes are timely identified and evaluated, and provided with the special education and related services necessary for them to receive FAPE. We ask you to share this information with your local school districts and other public agencies to help ensure all children with disabilities, including children residing in nursing homes, receive a high-quality education. I hope this guidance is helpful to both public agencies and parents. If you have additional questions, please contact Jessica Spataro at Jessica.Spataro@ed.gov. Thank you for your continued interest in improving results for children with disabilities.

Sincerely,

/s/

Michael K. Yudin
Assistant Secretary

/s/

Ruth E. Ryder
Acting Director
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