



To: Superintendents
From: Kathe Shelby, Ph.D., Director, Office for Exceptional Children
Date: May 24, 2010
Subject: Clarification Regarding O.R.C. 3323.08 (B)(3) Out-of-State Placement

The Ohio Revised Code (O.R.C.) § 3323.08 (B)(3) addresses the ability of a school district, including a community school, to contract with private providers to provide special education and related services that are not provided by the district. The statute provides that the district may arrange by contract with a nonpublic entity for the provision of these services, provided that the special education and related services meet the standards for special education and related services established by the state board and are provided within the state.

In the past, the Ohio Department of Education Office for Exceptional Children (OEC) has implemented this statute as it relates to out-of-state placements by informing inquiring districts that they must file a due process complaint and have the impartial hearing officer (IHO) order the out-of-state placement, even if the district and the parent agreed that the out-of-state placement was necessary. Recently, the U.S. Department of Education Office of Special Education Programs informed OEC that this practice results in the delay of the appropriate placement of these children, and that O.R.C. § 3323.08 (B)(3), if interpreted to forbid out-of-state placements where necessary to provide a free appropriate public education (FAPE), conflicts with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA).

Accordingly, in order to interpret O.R.C. § 3323.08 (B)(3) so that it is consistent with federal law, OEC will no longer require that a district obtain an order from an IHO to place a child out-of-state where the out-of-state placement is necessary to provide FAPE. If the district and the parent agree that an out-of-state placement is necessary to provide FAPE, the district may contract for that placement. If the district and the parent do not agree that the out-of-state placement is necessary to provide FAPE, that disagreement can be resolved through IDEA's dispute resolution procedures, like any other dispute between a parent and a district.

If you have questions regarding this clarification, please contact Ann Guinan, Assistant Director of Procedural Safeguards, at 614-752-1004 or ann.guinan@ode.state.oh.us.

c: Director of Special Education