



CALIFORNIA
DEPARTMENT OF
EDUCATION

1400 N STREET
SACRAMENTO, CA
95814-5901

JACK O'CONNELL
State Superintendent of
Public Instruction
PHONE: 916-319-0800

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To: Special Education Local Plan Area (SELPA) and State-operated Programs (SOP) Directors/Administrators

From: Mary Hudler, Director, Special Education Division

Subject: Special Education and Related Services/Designated Instruction and Services Required to Ensure a Free Appropriate Public Education for Individuals with Exceptional Needs, Including Interagency Responsibilities

This policy memorandum supersedes the July 28, 1998, memorandum issued by the State Director of Special Education to reflect recent changes in federal law and regulations in the subject area.

Public Law 108-446, a measure reauthorizing the Individuals with Disabilities Education Act (IDEA), was signed into law by the President on December 3, 2004. The United States Department of Education's Office of Special Education and Rehabilitative Services promulgated regulations, governing the Assistance to States for Education of Children with Disabilities Program and the Preschool Grants for Children with Disabilities Program, that were needed to implement changes made to the IDEA in 2004. The final regulations became operative on October 13, 2006.

The purposes of the Act and the IDEA regulations are:

(A) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(B) To ensure that the rights of children with disabilities and parents of such children are protected; and

(C) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

- To assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families.
- To ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and
- To assess, and ensure the effectiveness of, efforts to educate children with disabilities.
[20 U.S.C. 1400(d) and 34 C.F.R. 300.1]

The California Legislature passed, and the Governor signed, Assembly Bill 1662, Chapter 653, as urgency legislation in 2005, a measure sponsored by the State Superintendent of Public Instruction, to bring the *California Education Code* into alignment with the Individuals with Disabilities Education Improvement Act of 2004. This year, the State Superintendent of Public Instruction is sponsoring an urgency measure and a technical bill to align the *California Education Code* with the IDEA regulations of 2006.

In the area of related services for individuals with exceptional needs, AB 1662 amended Section 56363 of *California Education Code* to specify that “designated instruction and services” means “related services” as that term is defined in paragraph (26) of Section 1401 of Title 20 of the *United States Code* and Section 300.24 (renumbered by the 2006 IDEA regulations as Section 300.34). Section 56026(a) of the *California Education Code* defines an “individual with exceptional needs” to mean those persons who are identified by an individualized education program team as a “child with a disability”, as that phrase is defined in subparagraph (A) of paragraph (3) of Section 1401 of Title 20 of the *United States Code*. “Child with a disability” is defined by the IDEA to be a child with one of the 13 federal disability designations, and “who, by reason thereof, needs special education and related services.”

Since 1984, the *California Government Code*, at Chapter 26.5, Division 7, Title 1, (commencing with Section 7570), has specified that interagency responsibilities for the provision of services to children with disabilities are the joint responsibility of the State Superintendent of Public Instruction and the Secretary of Health and Human Services Agency (formerly Secretary of Health and Welfare). The California Legislature assigned some of those related services to other state and local noneducational agencies. If, for example, a child with a disability (individual with exceptional needs), requires assistance in the area of mental health, the California Department of Mental Health (DMH) would assist in the provision of appropriate services as determined by an individualized education program team that includes a representative of a responsible public agency that provides the mental health service. [GC 7572(e)] Should the DMH or other noneducational public agency not be able to fulfill its obligation in a timely manner, the LEA must still ensure provision of special education and related services under the law. Individuals with exceptional needs may not be denied access to programs and services due to any agency’s failure to act or due to an issue of fiscal resources. [20 U.S.C. 1412(a)(12) and 34 C.F.R. 300.154]

In the event that an LEA is forced to provide related services/designated instruction and services due to lack of action by a public, noneducational agency, the LEA, under federal law, may claim reimbursement for related services/designated instruction and services required to provide the child with a free appropriate public education. [20 U.S.C. 1412(a)(12)(B)(ii) and 34 C.F.R. 300.154(b)(2)]

Section 300.154(b)(2) of Title 34 of the *Code of Federal Regulations* states that if a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of the section, the LEA, or State agency responsible for developing the child’s IEP must provide or pay for these services to the child in a timely manner. “The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section.” [See also 20 U.S.C. 1412(a)(12)]

Each of the State Interagency Cooperative Agreements between the California Department of Education and other State departments, covering special education and related services administered by those entities, includes language citing the financial responsibility and conditions and terms of reimbursement now contained in 34 C.F.R. 300.154(a)(1) and (b)(1). [Formerly 34 C.F.R. 300.142(a)(1) and (b)(1)]

Although the lists of related services and designated instruction and services are not exhaustive, the 2004 IDEA statute added “school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child” to the list. The law also clarified that the “related services” term “does not include a medical device that is surgically implanted, or the replacement of such device.” [20 U.S.C. 1401(26)] The 2006 IDEA regulations added “interpreting services” to the list of related services and specified what those interpreting services include. Additional information was added to the regulations to clarify the exception of services that apply to children with surgically implanted devices, including cochlear implants. [34 C.F.R. 300.34(a) and (b)]

The IDEA regulations, at 34 C.F.R. 300.39, make it clear that “speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards, is included in the definition of ‘special education.’” Another example is physical education, including “special physical education, adapted physical education, movement education, and motor development.” They are considered special education under federal and state law even though “adapted physical education” is listed as a designated instruction and service in the *California Education Code*. [34 C.F.R. 300.39(b)(2)(ii) and EC 56363(b)(5)]

The related services specified in 34 *C.F.R.* 300.34 are considered developmental, corrective, and other supportive services that are required to assist a child with a disability to benefit from special education. They may not be offered separately from special education unless State standards consider the service to be special education [34 *C.F.R.* 300.8(a)(2)(i) and (ii)]:

1. Speech-language pathology and audiology services.
2. Interpreting services.
3. Psychological services.
4. Physical and occupational therapy.
5. Recreation, including therapeutic recreation.
6. Early identification and assessment of disabilities in children.
7. Counseling services, including rehabilitation counseling.
8. Orientation and mobility services.
9. Medical services for diagnostic or evaluation purposes.
10. School health services and school nurse services.
11. Social work services in schools.
12. Parent counseling and training.
13. Transportation.

[20 *U.S.C.* 1401(26) and 34 *C.F.R.* 300.34]

In California, designated instruction and services are also considered to be developmental, corrective, and other supportive services as are required to assist an individual with exceptional needs (also defined as a “child with a disability”) to benefit from special education, and are not offered separately from special education unless State standards consider the service as special education. [34 *C.F.R.* 300.8(a)(2)(i) and (ii)]

Pursuant to Section 56363 of the *Education Code*, “designated instruction and services” means “related services” as that term is defined in paragraph (26) of Section 1401 of Title 20 of the *United States Code* and Section 300.34 (formerly 300.24) of Title 34 of the *Code of Federal Regulations*. They include, but are not limited to, the following:

1. Language and speech development and remediation.
2. Audiological services.
3. Orientation and mobility services.
4. Instruction in the home and hospital.
5. Adapted physical education.
6. Physical and occupational therapy.
7. Vision services.
8. Specialized driver training instruction.
9. Counseling and guidance services, including rehabilitation counseling.
10. Psychological services other than assessment and development of the individualized education program.
11. Parent counseling and training.
12. Health and nursing services, including school nurse services designed to enable an individual with exceptional needs to receive a free appropriate public education as described in the individualized education program.
13. Social worker services.
14. Specially designed vocational education and career development.
15. Recreation services.
16. Specialized services for low-incidence disabilities, such as readers, transcribers, and vision and hearing services.
17. Interpreting services.

[*EC* 56363(b)(1)-(17)]

Like related services, as specified in federal law, designated instruction and services, in California, do not include a medical device that is surgically implanted, or the replacement of that device. [34 C.F.R. 300.34(b) and EC 56363(c)]

I hope that this updated policy memorandum has clarified how some of the recent changes in federal law and regulations impact the provision of special education and related services/designated instruction and services. If you have any questions or need further clarification, please contact your Focused Monitoring and Technical Assistance (FMTA) consultant.

Last Reviewed: Thursday, February 04, 2010