


January 5, 2010

(X) ACTION REQUIRED
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TO: Chancellor, District of Columbia Public Schools (DCPS)
Principals, DCPS
Public Charter School Board
Public Charter School Directors

FROM: Kerri L. Briggs, PhD 
State Superintendent of Education

RE: Related Services

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This Memorandum serves to clarify the expectation of the Office of the State Superintendent of Education (OSSE) regarding related service provision requirements as outlined in the Individuals with Disabilities Education Act (IDEA) 2004 and Title 5, Chapter 30 of the District of Columbia Municipal Regulations (DCMR). Local Education Agencies (LEAs) must provide related services to all eligible students with disabilities when such services are required in order for a child with a disability to benefit from special education. This Memorandum supersedes all previous policy, memoranda and/or guidance promulgated by the State Education Agency (SEA).¹ This policy takes effect on January 2010.

¹ This Memorandum is not intended to be a restatement of the requirements of the IDEA and the District of Columbia Code of Municipal Regulations (DCMR) in regard to related services. LEAs are responsible for knowing and implementing the requirements of IDEA and the DCMR applicable to LEAs.

Background

It is the responsibility of the OSSE, as the SEA, to ensure that all children with disabilities within the District of Columbia receive a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE). As defined in the IDEA, FAPE includes both special education and related services, and must be provided to each child with a disability in accordance with the child's Individualized Education Program (IEP) at no cost to the parent.²

In order to be eligible for related services under the IDEA, a child must be identified as a child with a disability and the IEP team must determine that the related service(s) are required to assist the child with a disability to benefit from special education.³ To be appropriate, related services must be designed to meet a child's individual needs. Each child's IEP must include a statement of the special education, related services, and supplementary aids and services to be provided to the child, or on behalf of the child. In order to address the educational needs of the child, the IEP must also contain a statement of the program modifications or supports for school personnel that will enable the child to advance toward attaining the annual goals, be involved in and make progress in the general education curriculum, participate in extracurricular and other nonacademic activities, and be educated and participate with non-disabled peers.⁴

The implementation of appropriate related services is one of many LEA responsibilities in providing FAPE. The IDEA specifies that LEAs are also accountable for other responsibilities such as conducting Child Find activities, evaluating students, developing IEPs, and providing the full continuum of service that ensures that the special education and related service needs of each child with a disability are provided in the LRE.⁵ The OSSE expects LEAs to comply fully with all local and federal law in designating and implementing related services.

Key Terms

The key terms outlined below have specific meanings assigned by IDEA (34 C.F.R §300.34), and/or DCMR 5-3001. This is not an exhaustive list of the developmental, corrective and supportive services that a child with disabilities may require. However, to provide clarity on typical types of related services, definitions are provided below.

² 34 C.F.R. §300.17

³ 34 C.F.R. §300.34

⁴ 34 C.F.R. §300.320(a)(4)

⁵ 34 C.F.R. Part 300

- *Audiology*. Audiology services include: (a) the identification of children with hearing loss; (b) determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; (c) provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; (d) creation and administration of programs for prevention of hearing loss; (e) counseling and guidance of children, parents, and teachers regarding hearing loss; and (f) determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- *Counseling/behavioral support services*. Counseling/behavioral support services include supportive therapeutic services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel to improve a child's social-emotional, interpersonal, and academic functioning.
- *Early identification and assessment of disabilities in children*. Early identification and assessment refers to the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- *Interpreting services*. Interpreting services include: (a) the following, when used with respect to children who are deaf or hard of hearing: oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and (b) special interpreting services for children who are deaf-blind.
- *Medical services*. Medical services are services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.
- *Occupational therapy*. Occupational therapy services are services provided by a qualified occupational therapist that include: (a) improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; (b) improving ability to perform tasks for independent functioning if functions are impaired or lost; and (c) preventing, through early intervention, initial or further

impairment or loss of function.

- Orientation and mobility. Orientation and mobility services are services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and which include teaching children in the following, as appropriate: (a) spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g. using sound at a traffic light to cross the street); (b) to use a long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision; (c) to understand and use remaining vision and distance low vision aids; and (d) other concepts, techniques, and tools.
- Parent counseling and training. Parent counseling and training includes: (a) assisting parents in understanding the special needs of their child, (b) providing parents with information about child development, and (c) helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
- Physical therapy. Physical therapy is a service provided by a qualified physical therapist to increase mobility, dexterity, and overall range of physical movement/functioning.
- Psychological/behavioral support services. Psychological/behavioral support services are services that may include: (a) administering psychological and educational tests and other assessment procedures; (b) interpreting assessment results; (c) obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; (d) consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations; (e) planning and managing a program of psychological services, including psychological counseling for children and parents; and (f) assisting in developing positive behavioral intervention strategies.

- Recreation. Recreation services are services that may include: (a) assessment of leisure function; (b) therapeutic recreation services; (c) recreation programs in schools and community agencies; and (d) leisure education.
- Rehabilitation counseling. Rehabilitation counseling services are services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, independence, and integration in the workplace and community for a child with a disability.⁶
- School health and school nurse services. School health and school nurse services are services designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person. These services may include the administration of medication required during the school day if needed to assist the child to benefit from special education. Specific instructions regarding the administration of medication must be documented in the child's IEP.⁷
- Social work/behavioral support services. Social work/behavioral support services in schools include: (a) preparing a social or developmental history on a child with a disability; (b) group and individual counseling with the child and family; (c) working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; (d) mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and (e) assisting in developing positive behavioral intervention strategies.
- Speech-language pathology services. Speech-language services include: (a) identification of children with speech or language impairments; (b) diagnosis and appraisal of specific speech or language impairments; (c) referral for medical or other professional attention necessary for the habilitation of speech or language

⁶ 34 C.F.R. §300.34(c)(12); the term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

⁷ See Guidance document from OSEP: Letter to Anonymous, November 13, 1996 (25 IDELR 531)

impairments; (d) provision of speech and language services for the habilitation or prevention of communicative impairments; and (e) counseling and guidance of parents, children, and teachers regarding speech and language impairments. A child with a disability does not need to be identified or diagnosed as having speech and/or language disorders in order to receive speech-language pathology as a related service. Any child eligible for special education may receive speech-language therapy if the IEP team formally determines that the child requires the related service of speech-language services in order to benefit from special education.⁸

- Transportation. Transportation includes: (a) travel to and from school and between schools; (b) travel in and around school buildings; and (c) specialized equipment (such as special or adapted buses, lifts, and ramps), as required for a child with a disability.

Transportation

Not all children with disabilities are eligible to receive transportation as a related service. Transportation is an appropriately designated related service only when it is needed in order for the child to benefit from special education. If transportation to and from school for the general student population is provided, then transportation must be provided for a child with a disability in order to not discriminate against the child with a disability. If transportation is not provided for the general student population, then the issue of transportation for children with disabilities must be decided on a case-by-case basis by the IEP team. If the IEP team determines that transportation services are necessary, a statement to that effect must be included in the IEP, along with relevant details and arrangements.⁸ Additionally, if the team determines that the parent will provide transportation, that determination, as well as the specific arrangements, should also be indicated on the IEP to ensure that it is provided at no cost to the parent if it is a related service.

Speech-Language Pathology Services as Special Education

The term specially designed instruction refers to the adaptation of content, methodology, or delivery of instruction, as appropriate to meet the unique needs of a child with a disability in order to ensure access to the general curriculum, so that the child can meet the educational standards that apply to each child within the District of Columbia.⁹ Speech-language pathology

⁸ 34 C.F.R. §300.320(a)(4)

⁹ 34 C.F.R. §300.39(b)(3)

services that fall under specially designed instruction may be provided to a child as the only service on the IEP if it is determined that the child requires no other special education services due to a lack of deficit in the academic performance.¹⁰

Exception to Related Services

Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g. mapping), maintenance of that device, or the replacement of that device. However, nothing in this exception limits the right of a child with a surgically implanted device to receive related services that are determined by the IEP team to be necessary for the child to receive FAPE; limits the responsibility of LEAs to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly.¹¹

Eligibility for Related Services

To be eligible for related services, a child must be a child with a disability. To be considered a child with a disability, a child must: (1) have one of the specified disabilities and (2) because of the disability, need special education and related services.¹² The related service must also be required in order to assist a child with a disability to benefit from special education.¹³ Additionally, a child can be found eligible for special education and related services if he or she is evaluated and determined to have a developmental delay.

The District of Columbia has adopted the term developmental delay to apply to a child aged 3 through 7 who (a) experiences severe developmental delays of at least two years below his or her chronological age and/or at least two standard deviations below the mean, as measured by appropriate standardized diagnostic instruments and procedures, in one or more of the following areas: 1) physical development, 2) language and communication development, 3) social or emotional development, 4) cognitive development, or 5) adaptive development; and (b) due to the delay(s) described above, requires special education and related services.¹⁴ Note

¹⁰ In such cases, the speech-language pathology services must be documented formally as specially designed instruction under special education services.

¹¹ 34 C.F.R. §300.8(a), 34 C.F.R. §300.113(b)

¹² 34 C.F.R. §300.34

¹³ 34 C.F.R. §300.34(a)

¹⁴ DCMR: Title 5, Chapter 30, Section 3001.1. No child shall be classified as having "Developmental Delay" based solely on deficits in the area of social and/or emotional development. "Developmental Delay" does not apply to

that an LEA is not required to adopt and use the term developmental delay, but if an LEA uses the term, the LEA must conform to the District of Columbia's definition.¹⁵

Parental Consent

Initial Consent for Services. An LEA that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provisions of special education and related services. If a parent(s) refuses to provide consent or fails to respond after an LEA's reasonable attempts to obtain informed written consent, the LEA may not use the due process procedures or mediation to obtain consent for the initial provision of special education and related services.¹⁶ Furthermore, the LEA is not required to hold an IEP meeting or create an IEP¹⁷ and is not in violation of providing FAPE to the child.¹⁸

Parent's Right to Revoke Consent. The December 2008 IDEA regulations strengthen parental rights to unilaterally revoke consent to special education and related services.¹⁹ Specifically, it was revised to require that parental revocation of consent for the continued provision of special education and related services must be in writing and that upon revocation of consent, a LEA must provide the parent(s) with prior written notice in accordance with 34 CFR Section 300.503. Additionally, if at any time subsequent to the initial provision of special education and related services, the parent(s) of a child revokes consent in writing for the continued provision of special education and related services, the LEA:

1. May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 34 CFR Section 300.503 before ceasing the provision of special education and related services.
2. May not use the procedures in subpart E of the regulations (including the mediation procedures under 34 CFR Section 300.506 or the due process

children with the following disabilities: (a) autism; (b) traumatic brain injury; (c) mental retardation; (d) emotional disturbance; (e) other health impairment; (f) orthopedic impairment; (g) visual impairment, including blindness; (h) hearing impairment, including deafness; or (i) speech/language impairment.

¹⁵ 34 C.F.R. §300.111(b)(2)

¹⁶ 34 C.F.R. §300.300(b)(3)

¹⁷ 34 C.F.R. §300.300(b)(4)(ii)

¹⁸ 34 C.F.R. §300.300(b)(4)(i)

¹⁹ 34 C.F.R. §300.300(b)(4)

procedures under 34 CFR sections 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child.

3. Will not be considered to be in violation of the requirement to make a free appropriate public education (FAPE) available to the child because of the failure to provide the child with further special education and related services.
4. Is not required to convene an individualized education program (IEP) team meeting or develop an IEP under 34 CFR sections 300.320 and 300.324 for the child for further provision of special education and related services.
5. In accordance with 34 CFR Section 300.9 (c)(3), if the parent(s) revoke consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

Designation of Related Services

The designation of related services must be based on relevant, current data which indicate that the services are required to ensure that the child with a disability will benefit from special education. Relevant, current data may include a full spectrum of evaluation tools ranging from formal and informal assessments, progress reports provided by related service providers, teacher and parent observations, and all other relevant sources of information. The related service must relate to the child's educational needs and annual goals.

When determining appropriate related service(s), the IEP team members must consider the educational impact related services may have on both the child's academic achievement, but also on the child's functional performance such as social interactions, emotional development, communication, and behavior. To assist IEP teams in such tasks, LEAs are responsible for inviting and including related service providers on the IEP team. Related service providers play a critical role in designating services in addition to interpreting the child's evaluation results. Additionally, all IEPs must specify the following:

- The projected date that the related service(s) will begin;
- The anticipated frequency and duration of the related service(s); and

- Where the related service(s) will be provided.²⁰

Procedures Regarding Missed Related Services

LEAs are required to provide related services in a manner consistent with the frequency, location, and duration of related services as specified in a child's IEP. LEAs are responsible for ensuring that service providers implement and document all instances of actual and attempted service delivery.²¹ The occasional missed related service session may be unavoidable; however, the LEA must always consider the impact of the missed session on the child's progress and performance and ensure the continued provision of FAPE. Every LEA should develop its own related service policy that explains the procedure for missed services. This policy must be accessible to parents at all times and should detail the steps taken by the LEA to ensure that missed sessions are rescheduled in a timely manner.

Missed service due to provider absence. When related services are missed due to a provider's absence, the LEA must ensure that a substitute provider is available and a make-up session is scheduled. All make-up sessions must be delivered in accordance with the provisions in the child's IEP. Extended absence on the part of a related service provider is unacceptable and may lead to a denial of FAPE.

Missed service due to child's absence. Whether an interruption in service could be deemed a denial of FAPE is an individual determination that must be evaluated on a case-by-case basis by the IEP team. The IEP team must consider the impact of a provider's absence or a child's absence on the child's progress and performance, and determine appropriate next steps to ensure the provision of FAPE and that the child continues to progress towards meeting the annual goals in his or her IEP.²² If the IEP team believes that the missed session(s) may be deemed a denial of FAPE, the LEA must ensure that missed session(s) are available to the child and the make-up session are conducted in the timeliest manner possible.

Interruption in service. Under no circumstances should a LEA cease service provision. Related services must remain available and accessible as specified by

²⁰ 34 C.F.R. §300.320(a)(7)

²¹ 34 C.F.R. §300.154(b)(2) ("if a public agency other than an educational agency fails to provide or pay for the special education and related services... the LEA... shall provide or pay for these services to the child in a timely manner.")

²² Guidance document from OSEP: Letter to Clarke, March 8, 2007 (48 IDELR 77)

the IEP regardless of the frequency or cause of missed sessions; even when student absence occurs more than occasionally or is predictable. In addition, the provision of a related service to a child with disabilities who is subject to discipline must be in accordance with the IDEA.²³ LEAs should consult with the parent(s) when a child repeatedly misses related service provision due to frequent/chronic absences or student/parent refusal of services. Any change in the provision of a related service to a child with disabilities is a change in the IEP and may only be made in accordance with the revision/amendment provisions in the IDEA.

Due Diligence and IEP Amendment

A LEA must demonstrate its due diligence in providing related services to each child according to his or her IEP. To demonstrate due diligence, LEAs must maintain and provide accurate and clear documentation of all instances of attempted service provision, this includes the date, time, and explanation behind each missed session.

If a child's interests are potentially best served through revising the existing IEP, then team members can convene an IEP team meeting in a timely manner or when appropriate, utilize the IEP amendment process to consider and/or make changes to existing services, the frequency of those services, or the location or provider of those services. Prior to meeting, the LEA must follow the parent participation requirements in the IDEA for IEP meetings, including issuing the meeting notice or, if applicable, obtaining the agreement of the parent(s) not to convene the IEP team meeting for the purposes of amending the IEP.²⁴

Additional Guidance

Please direct any questions regarding the content of this Guidance to **Grace Chien, Charter LEA Policy and Implementation Specialist**, at (202) 741-5098 or by email at Grace.Chien@dc.gov. The OSSE has the authority as the State Education Agency (SEA) to issue additional guidance regarding policy and related practice implementation to ensure that all LEAs are complying with the law in providing related services to students with disabilities in the District of Columbia.

²³ 34 C.F.R. §300.530(d)

²⁴ 34 C.F.R. §§300.322 and 300.324(a)(4)