



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

NOV - 3 2004

Louis H. Geigerman
National ARD/IEP Advocates
P.O. Box 16111
Sugar Land, Texas 77496-6111

Dear Mr. Geigerman:

This letter is in response to your request for clarification regarding the provision of physical therapy and occupational therapy under Part B of the Individuals with Disabilities Education Act (Part B) in light of the Office of Special Education Programs' (OSEP) April 28, 2004, *Letter to Janet D. Gully of the Illinois Department of Human Services*. OSEP's *Letter to Gully* provided guidance on the provision of physical therapy services to infants and toddlers with disabilities under Part C of the Individuals with Disabilities Education Act. Specifically, you ask: "What is OSEP's opinion on when a therapy is/is not educationally relevant when the deficit that needs remediation impacts behavior and learning?"

Under Part B, each State and its local school districts must make available a free appropriate public education (FAPE) to all eligible children with specified disabilities in mandatory age ranges. 34 CFR §§300.121 and 300.13. FAPE is defined as:

Special education and related services that –

- Are provided at public expense, under public supervision and direction, and without charge;
- Meet the standards of the SEA [State educational agency], including the requirements of this part;
- Include preschool, elementary school, or secondary school education in the State; and
- Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.340-300.350. 34 CFR §300.13.

The term "related services" is defined broadly under Part B as including "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education." 34 CFR §300.24(a).

Examples of related services identified in Part B include "occupational therapy" (34 CFR §300.24(b)(5)), "physical therapy" (34 CFR §300.24(b)(8)) and medical services for diagnostic and evaluation purposes (34 CFR §300.24(b)(4)). Medical services provided by a licensed physician that are not for diagnostic and evaluation purposes are specifically excluded. *See* 34 CFR §300.24(b)(1)-(15).

The determination as to whether physical therapy or occupational therapy is a related service that is necessary to assist the child to benefit from special education must be

made by the child's IEP team on a case-by-case basis in light of the child's unique needs. Under 34 CFR §300.300(a)(3)(ii), the services and placement needed for a child to receive FAPE must be based on the child's unique needs, and not on the type of disability. Related services, including occupational therapy and physical therapy, that the IEP team determines are necessary to assist the child to benefit from special education must be included in the child's IEP and provided to the child at no cost to the parents.

With regard to your inquiry, Part B would not require an IEP team to include occupational therapy or physical therapy, or any other related service in a child's IEP based on a parental request for those services, unless the IEP team determines that the services are required to assist the child to benefit from special education. Parents can utilize Part B's due process procedures at 34 CFR §§300.506-300.514 if they disagree with the determination about the special education and related services that are appropriate and necessary for their child.

I hope this information is helpful. If you have any further questions, please feel free to contact Dale King at 202-245-7405.

Sincerely,

 for

Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Mr. Gene Lenz
Deputy Associate Commissioner for Special Education
Texas Education Agency