

**Exceptional Children Division
NC Department of Public Instruction**

Q&A: Related Service Delivery

1. Does “*location*” on the IEP (DEC 4) indicate where the student will participate in intervention or instruction?

- “***location***” on service delivery of the IEP (*DEC 4*) must answer two questions:
 - 1) Where, physically, will the student participate in the intervention or instruction?
 - 2) Will the student receive the intervention/instruction with non-disabled peers?
- The purpose of describing “***location***” in the IEP is to document the extent to which the student will participate with non-disabled peers in the general education classroom and in extracurricular and other nonacademic activities. The explanation of location also serves to ensure that parents, educators, service providers, and monitoring personnel *understand the context* in which the student will be served.
- In documenting appropriate services in the least restrictive environment (LRE), service providers may need to use a combination of locations (requiring two or more lines on the *DEC 4*) to document how services will be provided. For example:
 - with non-disabled peers throughout campus,
 - away from non-disabled peers throughout campus,
 - with non-disabled peers in class,
 - away from non-disabled peers in class, or
 - removed from all peers.
- The use of “***total school environment***” does not reflect the context in which the student is receiving services. It generally answers the physical location question but does not answer whether the child will receive instruction with or without non-disabled peers (context question). The LRE is documented by describing the extent to which the child will receive this service while participating with non-disabled peers.
- The LRE and the general education classroom are not synonymous terms. The Individuals with Disabilities Education Act states that students with disabilities must be educated with non-disabled students to the maximum extent appropriate. The LRE is determined individually for each student, depending upon his/her unique educational needs.

2. Should the IEP Team wait until the 3-year reevaluation is due for a student to exit related services?

- Absolutely not. The need for all services and supports, including related services, must be determined by the IEP Team based on individual student need, not administrative convenience. Continuing a related service when it is not required for the student to benefit from special education violates the student’s right to LRE.
- A reevaluation may be conducted if the LEA determines that the educational or related services needs of the student (including improved academic achievement and functional performance) warrant a reevaluation or if the child’s parent or teacher requests a reevaluation.

- The re-evaluation process requires that the IEP Team review existing data to determine what, if any, additional data are needed to determine whether the child continues to need special education and related services and/or the type of services required. Data reviewed must be documented. If existing data are insufficient, needed data are identified. A *Prior Written Notice (DEC 5)* must be given and consent to evaluate obtained at this time. The Team collects the data and re-convenes to review the new data and determine continued eligibility and appropriate services, if eligible.
- When the IEP Team is making a determination whether to terminate a related service for a student, a comprehensive re-evaluation process must be conducted. As a related service is provided to assist the student with a disability to benefit from special education, the Team cannot determine the need for a related service without addressing the primary disability area. The re-evaluation meeting resets the triennial evaluation date and parents should be provided notice of this.

3. What if we are in the middle of an annual review and we find ourselves considering exit of a related service?

- This should happen rarely, if ever, and indicates that the IEP Team should improve communication and/or progress monitoring of the student.
- Efforts must be made to ensure that everyone on the IEP Team, especially parents, completely understand the data and decisions being considered. The parents must agree that it is appropriate to proceed with any decision not listed on the *Invitation to Conference* (prior notice). If parents are not in agreement, another meeting must be scheduled to discuss this issue and come to a decision.
- In this case, documentation should indicate that, although not included on the original *Invitation to Conference*, the IEP Team's review and discussion led to the re-evaluation process. The meeting minutes, dated documentation on the *Invitation* and other appropriate documentation, including the *DEC 5*, would document the IEP Team's decision to conduct a reevaluation (See above discussion on the re-evaluation process.) and that the data were sufficient and the review of existing data led to the IEP Team's decision to continue or exit the related service.
- Effective IEP Team communication and ongoing progress monitoring of all goals and objectives should prevent surprise discovery at the annual review of the IEP. Planning, monitoring, and progress reporting should alert appropriate team members, including the parent, of the need for a reevaluation to address the student's needs.

4. How are we supposed to find the “crystal ball” to determine service type, frequency, duration, and location?

- The IEP Team needs to have valid and reliable formal and/or informal information for decision making.
- Service type, frequency, duration, and location must be determined based on the individual student needs as documented in the present level(s) of academic achievement and functional performance (PLAAFP) and in the annual goal(s) in the IEP. Service delivery must be specifically and accurately documented on the IEP.

- IDEA requires that the IEP include information about the amount of services that will be provided to the child, so that the level of the agency's commitment of resources will be clear to parents and other IEP Team members. The amount of time to be committed to each of the various services to be provided must be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP.
- The determination must not be based on administrative convenience (e.g., the availability of resources or staff). In conformity with the IEP, the determination of the LRE, if made appropriately, provides each student the continuum of services for a free appropriate public education, which is mandated by federal regulations and state policies. If a provider is, on a regular basis, providing more service or less service than is indicated on the IEP, the IEP Team needs to convene to discuss the student's current needs and accurately reflect those needs and services on the IEP.

5. When do services need to be made up?

(Please refer to the attached Balkman letter from OSEP.)

- If the school makes IEP services available to the student at the normally scheduled time, the school is not obligated to make other arrangements to provide services if the student is absent from school because of the family's or physician's decisions, e.g., illness or family vacation. The reason for the missed service session should be documented.
- If the student does not receive services because of the participation in optional school-related activities, the school generally will be responsible for making alternative arrangements for providing IEP services.
- If the student does not receive services because of the participation in mandatory school-sponsored activities, the school is responsible for making up the IEP services.
- If school personnel are not available (e.g., therapist's absence or illness, continuing education, emergency, or logistical trouble), the school is responsible for making up the services.
- Please note that special education and related services *do not* cease or suspend due to the lack of an established schedule for the provision of services at the beginning or end of the school year or an administrative need for special education staff to proctor state test administration.
- If a school is closed or canceled because of adverse weather, the missed session(s) should be provided during the school's scheduled make-up day.

6. Why can't we attach the Individualized Health Plan (IHP) to the IEP to indicate what nursing services are needed?

- The IHP contains personal and medical information that should *not* be available to everyone who has access to the IEP.
- The IHP has very specific information regarding medication dosages and other details that change often and quickly. If attached to the IEP, the IEP Team will have to meet to amend the IEP each time these details are changed.

- The IHP is focused on what the nurse will do/provide to the student. It is not student centered or based on student skills, as the IEP is.
- *If attached to the IEP, the medications, services, supplies, and supports described in an IHP could become the legal/financial obligation of the LEA if the family is unable or unwilling to provide at school.*



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

MAR 11

Dr. John Copenhaver
Director
Mountain Plains Regional Resource Center
Utah State University
1780 North Research Parkway, Suite 112
Logan, Utah 84341

Dear Dr. Copenhaver:

This letter is in response to your electronic mail (email) correspondence dated December 5, 2007, in which you ask whether the guidance provided in an April 10, 1995 letter to Ms. Kathy Balkman (attached) regarding making available a free appropriate public education (FAPE) to children with disabilities remains the Department's position.

Upon review of this letter, with the caveat that, of course, the citations would change pursuant to the 2004 Amendments to the Individuals with Disabilities Education Act (IDEA), the responses to the scenarios presented in this letter remain consistent with IDEA and continue to reflect the Department's position.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have additional questions, please do not hesitate to contact Dr. Deborah Morrow, of my staff, at 202-245-7456.

Sincerely,

William W. Knudsen
Acting Director
Office of Special Education
Programs



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

APR 10 1995

Ms. Kathy Balkman
Director
Special Education Services
Greenwood Public Schools
44 East Gary
Greenwood, Arkansas 72936

Dear Ms. Balkman:

This is in response to your letter of December 16, 1994 in which you request clarification regarding the district's responsibility to provide special education services as specified in Individualized Education Programs (IEPs). Part B of the Individuals with Disabilities Education Act (Part B) requires each local educational agency (LEA), along with the State educational agency (SEA), to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities within the school district. As you know, development and implementation of the IEP in accordance with Federal regulations in 34 CFR §§300.340-300.350 is essential to fulfilling the requirements concerning FAPE. In particular, 34 CFR §300.346(a) states that the IEP for each child must include, among other components, a statement of the specific special education and related services to be provided to the child, the projected dates for initiation of the services, and the anticipated duration of the services.

Your letter presents 4 scenarios and asks about the extent of a school district's responsibility to provide FAPE to students in those situations. A school district's responsibility in the four situations you addressed is to ensure that FAPE is made available in accordance with the IEP. In general, however, decisions regarding the school district's responsibility would be determined on a case-by-case basis in consideration of the facts specific to each case.

Specifically, you presented the following scenarios:

1. The student is ill, not present at school.
2. The student does not attend school because of a field trip or other school related activities.
3. The student does not attend school due to family or parent initiated activities.
4. School personnel such as physical therapists or occupational therapists are attending professional conferences or other school related activities.

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300.320

Scenarios nos. 1 and 3 appear to describe situations where the student is absent from school because of the family's or physician's decision that the student not attend school. In the situations presented by these scenarios, the general rule is that if the school district makes IEP services available to the student at the normally scheduled time, the school district is not obligated to make other arrangements to provide services if the disabled student is absent from school at that time for reasons other than his or her participation in school-sponsored activities. However, Scenario No. 1 could also describe a situation where a student is absent from school for a prolonged period of time, or there is a pattern of repeated short-term absences from school, for reasons associated with the student's disability. In either of these situations, it may be appropriate for school officials to conduct a meeting to review the student's current IEP to determine if it is necessary to modify the student's current program or placement.

Scenarios Nos. 2 and 4 appear to describe situations where the student cannot receive the services in his or her IEP due to reasons associated with participation in school-sponsored activities or the unavailability of needed personnel. In those instances where a disabled student does not attend school in order to participate in school-related activities such as field trips (Scenario No. 2), the school district generally will be responsible for making alternative arrangements for providing IEP services. If participation in the school activity is mandatory, the school district must arrange to provide the services specified in the student's IEP so that the student can receive the IEP services and participate in other required school activities. Similarly, the provision of special education services should not operate to preclude disabled students from participating in optional, school-related programs or activities in which nondisabled students regularly take part. (See 34 CFR §300.306 which requires that disabled students be afforded an equal opportunity to participate in nonacademic or extracurricular activities).

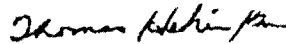
Scenario No. 4 could describe a situation where the unavailability of school personnel means that IEP services are not made available at the regularly scheduled time. If this is so, the school district would be required to make other arrangements to provide the services at that time or reschedule the required IEP services in order to meet its responsibility of providing FAPE to that student in accordance with his or her IEP.

300.107

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I trust that this information is helpful in confirming your previous discussions with Dr. Kienas concerning these same issues. If this Office can be of further assistance, please let me know, or feel free to contact Dr. Kienas at (202) 205-9057.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

Enclosure

cc: Dr. Diane Sydorick