

January 7, 2010

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Dear Ms. Matthews:

This is in response to your October 2, 2009 letter to Ms. Ruth E. Ryder, Director of the Monitoring and State Improvement Planning (MSIP) Division within the Office of Special Education Programs (OSEP). In your letter, you ask whether proposed language in a particular individualized education program (IEP) meets the requirement in 34 CFR §300.320(a)(7) that the IEP include “the projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section and the anticipated frequency, location, and duration of those services and modifications.” The language in the proposed IEP states:

Special education counseling will be provided through a combination of individual therapy (outside of the classroom) and classroom based therapy (in the classroom). The student will receive 600 minutes per semester of counseling in 16 weekly sessions. Session times may vary per session according to the Student’s responsiveness, session activity, and individual needs. Student’s parent understands and agrees to the program frequency, duration and location of therapy.

Specifically, you ask whether: (1) the LEA would be in compliance with its obligation under 34 CFR §300.320(a)(4) and (7) to reflect frequency, location and duration of services through such a statement in a student’s IEP; and (2) the Texas Education Agency’s (TEA) written policy on documenting the “duration” of services by requiring an exact number of minutes per session is consistent with the Individuals with Disabilities Education Act (IDEA).

As you noted in your letter, the Analysis of Comments and Changes to the regulations governing Part B of the 2004 Amendments to the IDEA states:

Comment: One commenter recommended clarifying that the term “duration” in §300.320(a)(7) . . . refers to the length of a particular service session and not the entire IEP.

Discussion: The meaning of the term “duration” will vary, depending upon such things as the needs of the child, the service being provided, the particular format used in an IEP, and how the child’s day and IEP are structured. What is required is 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. 71 Fed. Reg. 46540, 46667 (Aug. 16, 2006).

The IDEA regulations do not specifically require that an IEP include the exact number of minutes to be provided for each session of each related service, although we anticipate that most IEPs would include that information in order to meet the requirement that the level of the agency's commitment of resources be clear. Sixteen weekly sessions totaling 600 minutes equals approximately 37.5 minutes per week (if each session lasts the same amount of minutes). This is a specific amount of time and provides all parties with an understanding of the general commitment of resources by the agency in terms of the number of minutes to be provided over the course of a 16 week semester. However, we agree that there may be special circumstances where the amount of time for each session of related services may vary in order to meet the needs of an individual student and there is nothing in the IDEA that would bar such an arrangement in an IEP. If the student is provided more counseling in the beginning of the semester than anticipated when the IEP was written, and the parent becomes concerned during the semester that the IEP does not provide for a sufficient number of minutes of counseling for his or her child to receive at the end of the semester, the parent may request an amendment to the IEP pursuant to 34 CFR §300.324(a)(6), and may file a due process complaint under 34 CFR §300.507 if the parties do not agree to amend the IEP to include additional minutes.

With respect to TEA's guidance on related services, there is no requirement that State regulations mirror the Federal IDEA regulations, provided that the State regulations are not inconsistent with the IDEA, particularly when a State's requirements are designed to protect the interests of children with disabilities and their families. Accordingly, we believe that States have the discretion to impose some additional requirements on local educational agencies (LEAs) – including a general requirement to document the number of minutes for each session of related services on IEPs. TEA's guidance in this area is found on its Web site at: <http://ritter.tea.state.tx.us/special.ed/guidance/relatedservices.html> and includes the comment to the final Part B regulations as stated above. TEA's guidance includes the following guidelines:

- Frequency – **how often** the child will receive the service(s) (number of times per day or week). If the services are less than daily or weekly then the conditions for the provision of the services must be clearly specified within the ARD [Admission, Review and Dismissal] documents.
- Duration – **how long** each “session” will last (number of minutes) and **when** services will begin and end (starting and ending dates)
- Location – **where** services will be provided (in the general education classroom or another setting such as a special education resource room).

Additionally, TEA provides a series of questions and answers regarding related services and includes the following guidelines in its answer to question #9:

- Frequency: How often will the service be provided (daily, weekly)? If a service is provided less than daily or weekly then the conditions for the provision of the services must be clearly specified within ARD documents.
- Duration: How long will the services be provided? The beginning and ending dates must be specified. How long will each session be (15 minutes, 30 minutes)? If a term (1 class period) is used in the IEP to define duration of service, the term must be defined in the IEP (example: 1 class period = 50 minutes).

We believe that TEA's guidance is consistent with the IDEA, provided the guidance is applied in a manner that takes into account the needs of the individual student and the possibility that, under some circumstances, the number of minutes of a related service to be provided may vary from week to week. Accordingly, TEA could interpret its own guidelines to permit an IEP to state a number of minutes per session, with conditions for when the amount of minutes for a particular session may vary, provided that the total amount of time to be provided for that related service over a specific period of time is documented. We defer to TEA to interpret its own guidance consistent with this letter, and to determine whether the proposed IEP meets TEA's guidance.

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.

We hope this information is helpful. If you have further questions please contact Dr. Deborah Morrow at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,

/s/

Alexa Posny
Acting Director
Office of Special Education Programs

cc: Kathy Clayton