



AMERICAN  
SPEECH-LANGUAGE-  
HEARING  
ASSOCIATION

November 2, 2006

Ms. Alexa Posny  
Director, Office of Special Education Programs  
U.S. Department of Education  
Office of Office of Special Education and Rehabilitative Services  
400 Maryland Avenue, S.W.  
Washington, DC 20202

Dear Director Posny:

It was a pleasure to meet with you last month and begin our conversations regarding IDEA 2004 and speech-language services in the schools. As we indicated at the meeting, we would like to request clarification on three issues.

First, we are requesting a letter clarifying that, under the 2006 IDEA Part B final regulations, the Department of Education (ED) stands by the policy described in the attached Department of Health, Education, and Welfare's May 30, 1980, letter discussing when speech impairment "adversely affects educational performance." Among other things, the 1980 letter clarifies that "a speech/language impairment necessarily adversely effects educational performance when the communication disorder is judged sufficiently severe to require the provision of speech pathology services to the child....The extent of a child's mastery of the basic skill of effective oral communication is clearly includable within the standard of "educational performance" set by the regulations." This has been very helpful for us in light of calls from ASHA members who are reporting that some state and local education agencies continue to require educational assessments of all children with speech-language disorders in order to determine eligibility for special education and related services, and that children are being denied services because their disability is not reflected in failing courses or being retained in a grade.

It is our interpretation of the 2006 IDEA Part B final regulations that the current statute and regulations are consistent with the earlier guidance in 1980. In fact, while the 1999 regulations state that the IEP for each child with a disability must include a statement of the child's present level of educational performance, the 2006 regulations strengthen the broadness of this by stating that this IEP must include a statement of *academic achievement and functional performance*. Although "functional performance" is not defined, the discussion section states that the term is generally understood to refer to skills or activities that are not considered academic or related to a child's academic achievement and is often used in the context of routine activities of everyday living. The regulations are also clear that each state must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade. Finally, the regulations state that the evaluation must include functional, developmental, and academic information about the child, implying that eligibility is based on other factors in addition to academic performance.

444 NORTH CAPITOL STREET, N.W.  
SUITE 715  
WASHINGTON, DC 20001  
FAX 202-624-5955

[www.asha.org](http://www.asha.org)

10801 ROCKVILLE PIKE  
ROCKVILLE, MD 20852-3279  
301-897-5700 VOICE or TTY  
FAX 301-897-7356

Next, we would like some written guidance on the need to use substitutes and to schedule make-up sessions when speech-language pathology (SLP) sessions are missed. Some state and local education agencies are requiring the use of substitutes during the absence of speech-language pathologists, while others require the SLP to schedule a make-up session when a session is missed. Clarification is needed requiring sessions missed due to the child's absence from school, cancellation for a class or school activity such as a field trip or an assembly, or absence of the SLP due to illness or family emergencies.

Last, we are requesting clarification regarding the continuum of service delivery options to be considered for a student. ASHA members have reported that some local education agencies limit speech-language services to small-group pull-out intervention only, or allow only direct services. This prevents the IEP Team from developing an education plan that meets the individual needs of the child, as services must meet a predetermined format rather than reflect the needs of the child. We are concerned that this practice violates one of the fundamental premises of the statute. Furthermore, caseloads become inflated with children making limited or no progress due to inappropriate delivery of services.

The regulations address this issue within the context of the continuum of alternative placements. For example, the Discussion/Comments Section states that "placement decisions must be based on the individual needs of each child with a disability. Public agencies, therefore, must not make placement decisions based on a public agency's needs or available resources, including budgetary considerations and the ability of the public agency to hire and recruit qualified staff" (*Federal Register*, p. 46587); "placement decisions for all children with disabilities must be made on an individual basis" (*Federal Register*, p. 46587); "This requirement for the continuum [of alternative placements] reinforces the importance of the individualized inquiry, not a "one size fits all" approach" (*Federal Register*, p. 46587); "placement decisions must be determined on an individual case-by-case basis depending on each child's unique educational needs and circumstances and based on the child's IEP" (*Federal Register*, p. 46587); and "in all cases, placement decisions must be individually determined on the basis of each child's abilities and needs and each child's IEP, and not solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience" (*Federal Register*, p. 46588). These statements reflect our concerns regarding service delivery options. Therefore, we are requesting clarification on whether these statements on the continuum of alternative placements can be considered to include the continuum of service delivery options. If not, can ED issue guidance on the continuum of service delivery options similar to the statements relative to the continuum of alternative placements?

Clarification from the Department of Education on these issues would assist ASHA in providing accurate information to our members who provide services in school settings. We look forward to your response to our inquiries. If you have any questions, please contact me, Catherine Clarke, ASHA's Director of Education and Regulatory Advocacy, by phone at 301-897-0159 or by e-mail at [cclarke@asha.org](mailto:cclarke@asha.org).

Sincerely,



Catherine D. Clarke  
Director, Education & Regulatory Advocacy