



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

Dated March 11, 2008

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,

/s/

William W. Knudsen
Acting Director

Office of Special Education
Programs

Dated April 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 55300.340-300.350 is essential to fulfilling the requirements concerning FAPE. In particular, 34 CFR 5300.346(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.

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.

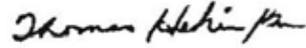
Scenarios Nos. 2 and 4 appear to describe situations where the student cannot receive the services in his or her IEP due to reasons associated with participation in school-sponsored activities or the unavailability of needed personnel. In those instances where a disabled student does not attend school 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.

Page 3 - Ms. Kathy, Balkman,

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,

A handwritten signature in black ink, appearing to read "Thomas Hehir".

Thomas Hehir
Director
Office of Special Education
Programs

Enclosure

cc: Dr. Diane Sydoriak