



QUESTIONS AND ANSWERS ON INDIVIDUALIZED EDUCATION PROGRAMS (IEPs), EVALUATIONS, AND REEVALUATIONS

REVISED JUNE 2010

Regulations for Part B of the *Individuals with Disabilities Education Act (IDEA)* were published in the *Federal Register* on August 14, 2006, and became effective on Oct. 13, 2006. In addition, supplemental Part B regulations were published on Dec. 1, 2008, and became effective on Dec. 31, 2008. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise, or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide States, State educational agencies (SEAs), local educational agencies (LEAs), parents, and other stakeholders with information regarding the *IDEA* requirements relating to individualized education programs (IEPs), evaluations, and reevaluations. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. This Q&A document supersedes the Department's guidance, entitled: Questions and Answers on Individualized Education Programs (IEPs), Evaluations and Reevaluations, January, 2007.

The revised Part B regulations include significant changes related to:

- (1) IEPs for children with disabilities who transfer from one public agency to another within the same school year;
- (2) allowing IEP Team participants to be excused from attending IEP Team meetings;
- (3) specifying when other agency representatives that are responsible for providing or paying for transition services must be invited to IEP Team meetings;
- (4) parental consent for initial evaluations and reevaluations for determining eligibility for Part B services; and

- (5) timelines for conducting the initial evaluation for determining whether the child qualifies as a child with a disability under Part B of the *IDEA* and what the educational needs of the child are.

Generally, the questions and corresponding answers presented in this Q&A document required interpretation of the *IDEA* and its implementing regulations; the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As in this document are not intended to be a replacement for careful study of the *IDEA* and its implementing regulations. The *IDEA*, its implementing regulations, and other important documents related to the *IDEA* and the regulations are found at <http://IDEA.ed.gov/explore/view/p/%2Croot%2Cregs%2C>.

If you are interested in commenting on this guidance, please e-mail your comments to OSERSguidancecomments@ed.gov and include IEPs, Evaluations and Reevaluations in the subject of your e-mail, or write to us at the following address:

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E. RELATED SERVICES

Authority: The requirements for related services are found in 34 CFR §300.34.

Question E-1: Can artistic and cultural services, such as music therapy, be considered related services under the *IDEA*? If so, are there qualifications in the *IDEA* for personnel to provide such services as related services?

Answer: Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. Related services can include artistic and cultural services that are therapeutic in nature, regardless of whether the *IDEA* or the Part B regulations identify the particular therapeutic service as a related service. The Department's long-standing interpretation is that the list of related services in the *IDEA* and the Part B regulations is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education in order for the child to receive FAPE. As is true regarding consideration of any related service for a child with a disability under Part B of the *IDEA*, the members of the child's IEP Team (which include the parents, school officials, and whenever appropriate, the child with a disability) must make individual determinations in light of each child's unique abilities and needs about whether an artistic or cultural service such as music therapy is required to assist the child to benefit from special education.

If a child's IEP Team determines that an artistic or cultural service such as music therapy is an appropriate related service for the child with a disability, that related service must be included in the child's IEP under the statement of special education, related services, and supplementary aids and services to be provided to the child or on behalf of the child. 34 CFR §300.320(a)(4). These services are to enable the child to advance appropriately toward attaining the annual goals, to be involved and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with and without disabilities in those activities. 34 CFR §300.320(a)(4)(i)-(iii). If the child's IEP specifies that an artistic or cultural service such as music therapy is a related service for the

child, that related service must be provided at public expense and at no cost to the parents. 34 CFR §§300.101 and 300.17.

Regarding the question about personnel qualifications for providers when an artistic or cultural service such as music therapy is considered a related service, Part B of *IDEA* does not prescribe particular qualifications or credentials for personnel providing special education and related services. Under 34 CFR §300.156(a), each SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of Part B of the *IDEA* are appropriately and adequately prepared and trained. This responsibility includes ensuring that the qualifications for related services personnel and paraprofessionals are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services. 34 CFR §300.156(b)(1). In addition, the SEA must ensure that related services personnel who deliver services in their discipline or profession meet applicable State qualification standards and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis. 34 CFR §300.156(b)(2)(ii). Therefore, if a child's IEP includes an artistic or cultural service such as music therapy as a related service, the SEA would be responsible for ensuring that the child received that service from appropriately and adequately trained personnel, consistent with 34 CFR §300.156(b).

Question E-2: Is a public agency responsible for paying for mental health services if the IEP Team determines that a child with a disability requires these services to receive FAPE and includes these services in the child's IEP?

Answer: The IEP Team for each child with a disability is responsible for identifying the related services that the child needs in order to benefit from special education and receive FAPE. These services must be included in the child's IEP in the statement of special education, related services, and supplementary aids and services, to be provided to, or on behalf of, the child to enable the child to: advance appropriately toward attaining the annual goals, be involved and make progress in the general education curriculum, participate in extracurricular and other nonacademic activities, and be educated and participate with other children with and without disabilities in those activities. 34 CFR §300.320(a)(4)(i)-(iii). Mental

health services provided as a related service must be provided at no cost to the parents. 34 CFR §§300.101 and 300.17.

An IEP Team may consider whether mental health services are provided as counseling services (34 CFR §300.34(c)(2)) or social work services in schools (34 CFR §300.34(c)(14)). Under 34 CFR §300.34(c)(2), counseling services are defined as including services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. Under 34 CFR §300.34(c)(14)(ii), social work services in schools includes group or individual counseling for the child and family. However, under 34 CFR §300.34(c)(5), the public agency would not be responsible for paying for mental health services that constitute medical treatment for a child by a licensed physician except to the extent that the services are for diagnostic and evaluation purposes only.