



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

Dated November 28, 2007

This letter is in response to your September 12, 2007 electronic mail (email) inquiry to the U.S. Department of Education's (Department's) Information Resource Center. Because the question concerns Part B of the Individuals with Disabilities Education Act (Part B), it was forwarded to the Department's Office of Special Education Programs (OSEP) for response.

You ask, "How is the determination made that a child only needs related services and not special education? What are the specific criteria used to make this determination and are these criteria contained in IDEA?"

Part B of IDEA does not contain explicit criteria for determining whether a child needs only a related service, but does include specific procedures for conducting evaluations and making eligibility determinations. The initial evaluation is accomplished through the evaluation procedures in 34 CFR §300.304 and if appropriate, through review of existing evaluation data on the child. The evaluation procedures in 34 CFR §300.304 require the use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining; (i) whether the child is a child with a disability under 34 CFR §300.8; and (ii) the content of the child's individualized education program (IEP), including information related to enabling the child to be involved and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities). 34 CFR §300.304(b)(1). Further, under 34 CFR §300.304(b)(2), no single measure or assessment can be used as the sole criterion for determining whether the child is a child with a disability and for determining an appropriate educational program for the child. Under 34 CFR §300.306(a)(1), upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child determine whether the child is a child with a disability, as defined in 34 CFR §300.8, and the educational needs of the child.

Under 34 CFR §300.306(c)(1)-(2), in interpreting evaluation data for the purpose of determining if a child is a child with a disability under 34 CFR §300.8 and the educational needs of the child, each public agency must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about

the child's physical condition, social or cultural background, and adaptive behavior, and must ensure that information obtained from all such sources is documented and carefully considered. Through appropriate application of these Part B evaluation and eligibility procedures, public agencies should have the information they need to determine whether a child with a particular impairment that is listed in the definition of "child with a disability" in 34 CFR §300.8 needs special education and related services, or needs only a related service. These determinations are unique to the facts and circumstances involving a particular child and must be made on an individual basis.

States may designate speech-language pathology services or any other related service as special education if the service otherwise meets the criteria in the definition of special education and is considered special education rather than a related service under State standards. Under the definition of special education, the service must consist of specially designed instruction, provided at no cost to parents and must include instruction conducted in the classroom, in the home, in hospitals and institutions, or in other settings. 34 CFR §§300.8(a)(2)(ii) and 300.39(a)(1).

Your inquiry next asks, specifically with regard to the definition of "emotional disturbance" in 34 CFR §300.8(c)(4), "What is the definition of 'adversely affects a child's educational performance?' Is this defined in IDEA or are there criteria defined within IDEA for determining this?"

Whether a child's disability "adversely affects a child's educational performance" is considered for all disability categories in 34 CFR §300.8(c), because, to be eligible, a child must qualify as a child with a disability under 34 CFR §300.8 and need special education because of a particular impairment or condition. Although the phrase "adversely affects educational performance" is not specifically defined, the extent of the impact that the child's impairment or condition has on the child's educational performance is a decisive factor in a child's eligibility determination under Part B. We believe that the evaluation and eligibility determination processes described in our response to question 1 above are sufficient for the group of qualified professionals and the parent to ascertain how the child's impairment or disability affects the child's ability to function in an educational setting. A range of factors—both academic and nonacademic—can be considered in making this determination for each individual child. See 34 CFR §300.306(c). Even if a child is advancing from grade to grade or is placed in the regular educational environment for most or all of the school day, the group charged with making the eligibility determination still could determine that the child's impairment or condition adversely affects the child's educational performance because the child could not progress satisfactorily in the absence of specific instructional adaptations or supportive services, including modifications to the general education curriculum. 34 CFR §300.101(c) (regarding requirements for individual eligibility determinations for children advancing from grade to grade).

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.



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We hope this information is helpful. If you have any further questions, please do not hesitate to contact Deborah J. Morrow at 202-245-7456.

Sincerely,

A handwritten signature in cursive script that reads "Patricia J. Guard".

Patricia J. Guard
Acting Director
Office of Special Education Programs

cc: Mr. Tim Harris