



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

December 27, 2000

C. Gregory McMurdo
Executive Legal Officer
Oregon Department of Education
Public Service Building
255 Capitol Street, N. E.
Salem, Oregon 97310-0203

Dear Mr. McMurdo:

This letter responds to your letter dated April 25, 2000, to the Office of Special Education and Rehabilitative Services (OSERS) asking for clarification regarding interagency agreements and financial responsibility in the provision of services by public agencies under the Individuals with Disabilities Education Act of 1997 (IDEA) and the Rehabilitation Act of 1973, as amended (Rehabilitation Act). We apologize for the lengthy delay in responding.

In your letter, you expressed the concern that the IDEA and Rehabilitation Act appear to be in conflict with each other regarding which public agency's financial responsibility precedes the other agency's when it comes to transition services for students with disabilities. The sections of the law to which you referred, Sections 612(a)(12)(A) and (B) of IDEA and Sections 101(a)(8)(A)(i) and 101(a)(8)(C)(i) of the Rehabilitation Act, provide that other public agencies or third parties, who have the responsibility to do so, should provide and pay for services before the State Educational Agency (SEA) and the State Vocational Rehabilitation (VR) program, respectively, undertake to do so.

Although these provisions of the IDEA and the Rehabilitation Act may at first seem in conflict, no conflict exists because these provisions are read in concert with each other and with other pertinent provisions of both laws. The SEA is responsible for providing and paying for the services required to be provided to students with disabilities who are eligible for services under the IDEA, and the State Vocational Rehabilitation agency is responsible for providing and paying for the services agreed to in an eligible individual's Individualized Plan for Employment (IPE). (See Section 612(a)(11) of the IDEA and Section 101(a)(9) of the Rehabilitation Act.) When the responsibility of these agencies for serving students with disabilities appears to overlap, the IDEA and the Rehabilitation Act require the SEA and the State Vocational Rehabilitation agency to develop an interagency agreement to determine the financial responsibility of each public agency.

The formal interagency agreement between the SEA and, as appropriate, one or more local educational agencies (LEAs), and the VR program defines the parameters for collaboration in the delivery of transition services. Such agreements permit States to

have greater flexibility so that they may consider their population, resources and the uniqueness of their State. It is within the discretion of each State to determine which LEAs should be parties to agreements with the VR program. Should the State of Oregon choose a method of collaborative arrangements and interagency agreements at the LEA level, we strongly urge that such arrangements and agreements be developed based on the provisions of the State-level agreement.

The statutory provisions governing this agreement are found in Sections 612(a)(11) and 612(a)(12) of the IDEA and Sections 101(a)(8)(B) and 101(a)(11)(D) of the Rehabilitation Act. The implementing regulations for both the IDEA and the Rehabilitation Act require formalization of interagency agreements with respect to transition services for students with disabilities who have an Individualized Education Program (IEP). (See 34 CFR Sections 300.142(a) - (d), 300.348, and 361.22.)

Following is some guidance that may be useful in your efforts to finalize an interagency agreement with the Oregon Department of Human Services, Vocational Rehabilitation Division. To satisfy the minimum requirements for interagency agreements in accordance with Section 612(a)(12) of the IDEA and Section 101(a)(8)(B) of the Rehabilitation Act, the interagency agreements must include provisions that address:

- (1) the identification of, or method for defining, the financial responsibility of each agency;
- (2) conditions, terms and procedures of reimbursement;
- (3) procedures for resolving interagency disputes; and
- (4) procedures for coordination and timely delivery of services.

A State may meet the interagency service coordination requirement in the IDEA and the Rehabilitation Act by providing evidence of: (1) the existence of a State statute or regulation with respect to interagency responsibilities; (2) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or (3) other appropriate written methods as determined by the Chief Executive Officer of the State [Governor] or designee of that officer. (See Section 612(a)(12)(C) of IDEA and 34 CFR Section 300.142(c) as well as Section 101(a)(8)(D) of the Rehabilitation Act.)

In addition to the terms for interagency agreements set forth above, the Rehabilitation Act at Section 101(a)(11)(D) requires State Vocational Rehabilitation agencies to coordinate with education officials and to enter into a formal interagency agreement with the State education agency with regard to transition planning and services. (See Section 101(a)(11)(D) of the Rehabilitation Act.) The primary purpose of the interagency agreement is to ensure that students with disabilities who are eligible for VR services do not experience an interruption in services after they leave secondary school settings. The formal interagency agreement must, at a minimum, provide for:

- Consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;
- Transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and completion of their IEPs under Section 614(d)(1)(A)(vii) of IDEA;
- The roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and
- Procedures for outreach to and identification of students with disabilities who need the transition services.

While these requirements are the minimum that must be included in an interagency agreement between the VR program and the SEA, the specific procedures and funding mechanisms used to implement these requirements have been left to the discretion of individual States. Some States have included other elements such as the number of persons to be served, the time allocated by VR staff to work with LEAs, and the delineation of specific technical assistance to be provided by the VR program. Financial responsibilities not only vary from state to state, but also may be agency-specific or situation-specific within a State.

Transition services for students with disabilities is the primary focus of the interagency agreement between the SEA, LEA and Vocational Rehabilitation agency because the IEP for each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team), must include a statement of the transition service needs of the student that focuses on the student's courses of study (i.e., college preparatory courses, or participation in a vocational education program). For each student beginning at age 16 (or younger, if determined appropriate by the IEP team), the IEP must include a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages. (See 34 CFR §§ 300.29 and 300.347.)

The financial responsibility for transition services described in an IEP is dictated by the State's interagency agreements and is reflected in a statement of the responsibilities and linkages of the school district and other participating agencies in the IEP. While nothing in the IDEA or its regulations requires the use of an SEA's or an LEA's funds or IDEA Part B funds to pay for *all* the costs of special education and related services, the ultimate responsibility to provide a free appropriate public education to students with disabilities lies with the SEA. To meet that burden, a State may assign funding responsibility, by statute or through interagency agreements, to any appropriate State agency or to any combination of State agencies, consistent with applicable program requirements. Nothing in IDEA limits the responsibility of agencies, other than educational agencies (e.g., State Medicaid agencies and other public insurers of children with disabilities), for

providing or paying some or all of the costs of FAPE to students with disabilities in the State. (See Section 612(a)(11) & (12) of the IDEA) In fact, the IDEA regulations specifically address the payment for transition services in 34 CFR Section 300.348, which provides:

Nothing in this part relieves any participating agency, including a State VR agency, of the responsibility to provide or pay for any transition services that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

Under the Rehabilitation Act and the implementing regulation (34 CFR Section 361.22), the State is responsible for facilitating the transition of students who are receiving special education and related services under the responsibility of an educational agency to the provision of VR services under the responsibility of the State VR agency. While State Vocational Rehabilitation agencies can carry out transition planning for students with disabilities in the student's IEP under Sections 101(a)(11)(D)(i) and 103(b)(6) of the Rehabilitation Act, the regulations require that, for each student determined to be eligible for VR services or, if the designated State Vocational Rehabilitation agency is operating under an order of selection, for each eligible student able to be served under the order, an Individualized Plan for Employment (IPE) is to be developed and approved before the student leaves the secondary school setting. (See 34 CFR section 361.22(a)(1).) We would expect, however, that a determination of the student's eligibility for VR services and the development of an IPE occur as early as possible during the transition planning process. The IPE is the written agreement that directs the provision of services for the eligible individual to achieve an employment outcome. (See 34 CFR Section 361.45.) The State VR agency is responsible for providing and paying for the services agreed upon in the IPE for the period that the individual is participating in the VR program as reflected in the individual's IPE.

Although the State VR agency is ultimately responsible for providing and paying for the services agreed upon in the IPE, Congress did not intend for the State VR agency to carry the financial burden alone when serving students with disabilities who are eligible for VR services. Based on the legislative history for both the 1992 and 1998 Amendments to the Rehabilitation Act, the VR program's role is "primarily one of planning for the student's years after leaving school." The intention of the Congress was that the transition service provisions are not to "shift the responsibility of service delivery from education to rehabilitation during the transition years." The Conference report encourages State VR agencies to assist schools in identifying transition services in the development of the IEP, and to participate in the cost of transition services for any student with a disability determined eligible to receive VR services. While the interagency agreement provisions are not to be interpreted as shifting any obligation to pay for specific transition services provided to a student through an IPE, from the State VR agency to the local school districts, "the nature of these services and the roles and responsibilities of each party are to be determined at the State or local level." (See S. Rep. No. 357, 102d Cong., 2d. Sess. 33 (1992); H. Rep. No. 659, 105th Congress, 2d. Sess. 354 (1998).)

Coordination between the appropriate State agencies through interagency agreements is essential in order to improve coordination and collaboration between the schools and the VR program, and to ensure the smooth transition from school to post-school activities, including employment, of students with disabilities eligible for VR services. Congress clearly intended the SEA, the State VR agency, and other appropriate public entities to coordinate efforts to address financial responsibility for services in order to ensure the timely provision of those services to eligible individuals with disabilities.

We hope that this information is helpful. If you need further assistance from the Rehabilitation Services Administration, please contact:

Mr. Gilbert "Doc" Williams, Regional Commissioner,
U.S. Department of Education/OSERS
915 Second Avenue, Room 2848
Seattle, Washington 98174-1099
Telephone: (206) 220-7840

For further information regarding the intent and interpretation of IDEA, you may contact OSEP at the following:

Dr. JoLeta Reynolds or Troy Justesen
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330 C Street, S.W.
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Sincerely,



per
Judith E. Heumann
Assistant Secretary
Office of Special Education and
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cc: Doc Williams, RSA Region X
Samara A. Goodman