



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

June 14, 2007

This letter is in response to your January 18, 2007 electronic mail (email) inquiry to Ms. Elizabeth Newton, in the Office of Special Education Programs (OSEP). In your email, you asked whether the personnel qualifications outlined in 34 CFR §300.156 also apply to staff hired by the local educational agency (LEA) to provide compensatory special education and related services. You additionally requested clarification as to whether requirements for instructional materials apply to these compensatory services.

Under Part B of the Individuals with Disabilities Education Act (IDEA), each State and its public agencies must ensure that a free appropriate public education (FAPE) is made available to all children with disabilities in mandatory age ranges. FAPE includes, among other matters, the provision of special education and related services that meet State education standards and Part B requirements. Under 34 CFR §300.156(a), qualifications established and maintained by a State educational agency (SEA) must ensure that special education teachers and related service providers be appropriately and adequately prepared and trained. Paraprofessionals must be appropriately trained and supervised, in accordance with State law, regulation, or written policy. 34 CFR §300.156(c) requires that the qualifications described in 34 CFR §300.156(a) ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the Elementary and Secondary Education Act (ESEA). The timely access to appropriate and accessible instructional materials described at 34 CFR §300.172 is an inherent component of a public agency's obligation under the Act to ensure that FAPE is available for children with disabilities.


Under Part B regulations, no distinction is made between the personnel qualifications for special education and related services provided pursuant to a child's individualized education program (IEP) as part of the regular school program and those provided pursuant to an IEP as compensatory services. Personnel providing compensatory services should meet the same requirements that apply to personnel providing the same types of services as a part of a regular school program. There is similarly no distinction between instructional materials provided as part of special education and related services under the IEP as part of the regular school program and those provided pursuant to an IEP as compensatory services.

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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.

I hope this information is responsive to your questions. If you have further questions, please feel free to write to Ms. Newton again, or she can be reached at (202) 245-7587.

Sincerely,

 for

Alexa Posny, Ph.D.

Director

Office of Special Education Programs

cc: Ms. Roberta Wohle