



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

August 21, 2009

Carol Ann Heath, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services
Maryland State Department of Education
200 West Baltimore Street
Baltimore, MD 21201

Dear Dr. Heath:

This is in response to your letter of April 27, 2009 to William Knudsen, former Acting Director of the Office of Special Education Programs (OSEP). Your letter requests clarification of 34 CFR §300.320(b)(1), which states that individualized education programs (IEPs) must include "[appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills." Specifically, your letter asks that OSEP "waive

- the requirement for a measurable postsecondary goal in employment for students with disabilities that have severe medical conditions and developmental needs; and that this population of students not be included in the total number of students, age 16 and over, that is used for reporting data for State Performance Plan Indicator 13."

The regulatory citation quoted in your letter is based on section 614(d)(1)(A)(i)(VII1)(aa) of the Individuals with Disabilities Education Act (IDEA), which states that the IEP, "beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter[,]... [include I appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills." As the Department stated in the Analysis of Comments and Changes to the regulations governing Part B of IDEA, "the only area in which postsecondary goals are not required in the IEP [in effect when the child turns 16] is in the area of independent living skills." 71 Fed. Reg. 46540, 46668 (Aug. 14, 2006).

While including employment goals in the IEPs of some students with severe medical conditions and developmental needs may be upsetting to their parents, the IDEA does not provide an exception for this requirement based on the nature of the child's disability; and OSEP does not have the authority to waive this statutory requirement. Therefore, the determination of what postsecondary goals to include on a child's IEP must be individualized and may not be based on whether the child has a severe medical condition and developmental needs.

The purpose of this requirement is to ensure that the IEP Team considers and develops appropriate postsecondary goals, in a timely manner, in each of these essential areas for every

child with a disability, and updates them annually to ensure that the goals reflect the child's present needs, strengths, preferences, and interests.

The Department developed Indicator 13 to meet the requirements of section 616(a)(3)(B) of IDEA, which states that the Secretary

shall monitor the States, and shall require each State to monitor the local educational agencies located in the State..., using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas: ...(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and *a system of transition services* (emphasis added) as defined in sections 602(34) and 637(a)(9) of this title.

In order to ensure that States' data adequately measure performance of a State's system of transition services and align with the statutory requirements related to transition services, Indicator 13 captures the required data on all children covered by section 614(d)(1)(A)(i)(VIII)(aa) of the IDEA.

Based on section 607(e) of 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 IDEA in the context of the specific facts presented.

Should you have additional questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,

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

Patricia J. Guard
Acting Directors
Office of Special Education Programs