



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Mr. Robert Gilmore

MAR 11 1999

MSHA President

and

Ms. Karen L. Grossman

MSHA School Affairs Committee

Massachusetts Speech-Language-

Hearing Association

200 Reservoir Street, Suite 309A

Needham, Massachusetts 02194

Dear Mr. Gilmore and Ms. Grossman:

This letter is in response to your letter to me, dated February 1, 1999, regarding item number 5 of a memorandum from David P. Driscoll, Massachusetts Commissioner of Education, issued November 2, 1998, to superintendents and other interested parties in Massachusetts.

You are specifically concerned because you believe that the Massachusetts Department of Education's (MASSDE) interpretation of the Individuals with Disabilities Education Act (IDEA), as reflected in this memorandum, is that "students cannot receive only speech and language services without other special education needs since they are 'related services.'" You believe that this interpretation does not reflect the policy set out in prior correspondence from this Office that you believe is relevant to this issue, and therefore ask the following question:

Is the November 2, 1998 memo from the Massachusetts Department of Education and their current interpretation correct or in conflict with your office?

This office does not read the November 2, 1998 memorandum, item number 5 on page 3, to be inconsistent with information contained in the two prior letters from this Office enclosed with your correspondence. While the referenced letters explain that it would be unduly restrictive for a State to deny needed services to a child with a speech-language impairment who does not exhibit other problems relative to academic performance, there is nothing in prior OSEP policy that requires a State to

consider a "speech-language" service as "special education" rather than as a "related service."

Section 300.17 of the current regulations implementing Part B of IDEA provides:

... the term 'special education' means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability,' including --

(i) instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings: and

(ii) Instruction in physical education.

34 CFR §300.17(a)(1)(i)-(ii).

The definition of the term "special education" continues to explain that "(the term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, and is considered special education rather than a related service under State standards." 34 CFR §300.17 (a) (2) (emphasis added).

The note following Section 300.17 further explains that:

The definition of special education is a particularly important one under these regulations, since a child does not have a disability under this part unless he or she needs special education. The definition of related services ...also depends on the definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no related services, and the child is not a child with a disability and is therefore not covered under the Act.

Thus, consistent with the above regulation and accompanying note, unless a related service is considered special education rather than a related service under applicable State standards, a child who needs only a related service is not a child with a disability under Part B of IDEA and would therefore be ineligible for services under Part B of IDEA

Page 3 - Mr. Robert Gilmore and Ms. Karen L. Grossman

Part B, however, leaves to States the determination as to whether a particular related service can be considered "special education," rather than a "related service," under applicable State education standards.

I hope you find this explanation helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Hehir".

Thomas Hehir
Director
Office of Special Education
Programs

CC: Ms. Marcia Mittnacht,
Massachusetts Department
of Education