



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

August 15, 2007

Ms. Carlette Morris
Walker Gamble Elementary School
PO Box 7
New Zion, South Carolina 29111

Dear Ms. Morris:

You submitted the following question to the Office of Special Education Programs (OSEP): Under the Individuals with Disabilities Education Act (IDEA), does Medicaid have to be discontinued if there is no progress and can it be discontinued because of this? By way of this letter, we are responding to your question.

Under IDEA, 34 CFR §300.154(a), the Chief Executive Officer of a State or designee of that officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency [that would include Medicaid agencies] and the State educational agency, in order to ensure that all services that are needed to ensure a free appropriate public education (FAPE) are provided. Under 34 CFR §300.154(b), if any public agency, other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy to provide or pay for any services that are also considered special education or related services that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement. A noneducational public agency may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context. If the public agency other than an educational agency fails to provide or pay for the special education and related services for which they are obligated to pay, the local educational agency (LEA) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services, and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism.

Under 34 CFR §§300.320-300.323, the child's individualized education program (IEP) Team, including the child's parent, is responsible for determining what special education and related services a child needs. If the child fails to make progress under the IEP, it should be reviewed and the reasons for the lack of progress be identified. The IEP, if necessary, should be revised to assist the child in achieving his/her annual goals, and the services needed to achieve those goals are included on the IEP, including both special education and related services.

If the State and/or the LEA has an agreement with the Medicaid agency to reimburse Medicaid-covered services that are included in a Medicaid-eligible child's IEP and the IEP Team determines those services are necessary, then Medicaid is obligated to reimburse the LEA for those services, subject to the terms of the interagency agreement (or other mechanism that is in place). We cannot, however, address whether 'lack of progress' would be a basis to discontinue Medicaid reimbursement for services to a specific child, as that is a matter that would be controlled by the State's Medicaid program and/or the terms of the interagency agreement or other mechanism concerning Medicaid reimbursement for services provided pursuant to an IEP.

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.

We hope this provides the information you need. If you have questions about this issue, please do not hesitate to contact Mary Williams in the Office of Policy and Planning at (202) 245-7586.

Sincerely,

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

Patty Guard
Acting Director
Special Education Programs