



COLORADO DEPARTMENT OF EDUCATION

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Guidance Memorandum

Date April 1, 2009

To: Superintendents
Special Education Directors
BOCES Executive Directors
Charter School Administrators

From: Ed Steinberg, Assistant Commissioner, Student Support Services

Re: Speech Language Pathology Services, Occupational Therapy Services and
Physical Therapy Services under the Rules for the Administration of the
Exceptional Children's Educational Act

Purpose

The purpose of this guidance memorandum is to provide clarification regarding: (1) the classification, under the Rules for the Administration of Colorado's Exceptional Children's Educational Act (ECEA Rules),¹ of speech language pathology (SLP) services as *special education*,² and occupational therapy (OT)³ and physical therapy (PT)⁴ as *related services*; and (2) related implementation issues regarding SLP, OT and PT services.

Background

Under the ECEA Rules and the regulations implementing Part B of the federal Individuals with Disabilities Education Improvement Act of 2004 (IDEA),⁵ if a child's multidisciplinary team determines that the child has one of the disabilities specified by law⁶ but needs a related service only -- and not special education -- then the child is ineligible for special education.⁷ The States have long had the authority to designate a service, otherwise defined under the IDEA as a related service, as being special education.⁸

It has been Colorado's long-standing policy that SLP services are special education instructional services and not a related service. Given the critical linkage between

¹ 1 CCR 301-8

² ECEA Rule 2.43(1)(b)(i) – under the definition of the term “special education”

³ ECEA Rule 2.37 (1) and (3)(f) – under the definition of the term “related services”

⁴ ECEA Rule 2.37(1) and (3)(i) – under the definition of the term “related services”

⁵ 34 CFR Part 300. Hereafter, the IDEA regulations will be referred to by section number only (e.g., IDEA §300.26, IDEA §300.101, etc.)

⁶ See, ECEA Rule 2.08 for the disabilities specified by Colorado law.

⁷ IDEA §300.8(a)(2) and ECEA Rule 2.08

⁸ See, IDEA 1997 Regulation § 300.26(a)(2) and IDEA 2004 Regulation § 300.39(a)(2).

speech-language skills and literacy, the underlying purpose of that policy has been to ensure that children who met the criteria for a speech or language impairment⁹ or preschooler with a disability¹⁰ and who needed SLP services only would be eligible for special education.

Prior to December 2007, this policy was not codified anywhere in Colorado law. In December 2007, this policy was codified at ECEA Rule 2.43(1)(b)(i) as a part of major amendments to the ECEA Rules (effective December 30, 2007). The amended ECEA Rules were approved following a lengthy process, including the collection of broad stakeholder input, public participation under the IDEA and rule-making under Colorado's statutory rule-making requirements. During that rule-making process, the Department received one (1) comment regarding the relevant proposed rules defining SLP services as special education rather than a related service. The Department responded to that comment in the side-by-side that was published as a part of the rule-making process -- to the effect that SLP services have long been considered special education instruction in Colorado, and not a related service.

Under the amended ECEA Rules, OT and PT are related services, not special education services.

SLP Services

Like any other eligible special education student, children with a speech or language impairment are entitled to a free appropriate public education (FAPE) in the least restrictive environment (LRE). The term "FAPE" means special education and related services that: (1) are provided at public expense; (2) meet the standards of the SEA; (3) include an appropriate preschool, elementary school, or secondary school education, and (4) are provided in conformity with an individualized education program (IEP).¹¹

The term "LRE" means that "[to] the maximum extent appropriate, children with disabilities...are educated with children who are nondisabled; ...and [special] classes, separate schooling, or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."¹²

Once a child is determined to be eligible for special education, the child's IEP Team determines the child's special education and related services. Special education services, including SLP services, must be "specially designed" to meet the unique needs of the child – that is:

...
[Adapting], as appropriate, to the needs of the eligible child...the content, methodology or delivery of instruction (1) to address the unique needs of the child that result from the child's disability...and *to ensure access of the child to the general curriculum*, so that the child can meet the educational standards...that apply to all children.¹³

[Emphasis Added]. Any child identified as having a disability (i.e., physical disability, vision disability, hearing disability, significant limited intellectual capacity, significant identifiable emotional disability, specific learning disability, speech or language

⁹ See, Colo. Rev. Stat. §22-20-103(5) and ECEA Rule 2.08(7)

¹⁰ ECEA Rule 2.08(9)

¹¹ IDEA §300.17 and ECEA Rule 2.19

¹² IDEA §300.114(a)(2); Colo. Rev. Stat. § 22-20-103(18); and ECEA Rule 2.28

¹³ IDEA §300.39(3) and ECEA Rule 2.43(2)(c)

impairment, multiple disabilities, or a preschool child with a disability) is entitled to receive SLP services if the child's IEP Team determines that the child needs SLP services in order to receive a FAPE.¹⁴ SLP services must be provided by either a CDE-licensed speech language pathologist or by other qualified providers in consultation with or under the supervision of a CDE-licensed speech language pathologist.

OT and PT Services

OT and PT services are related services under the IDEA and the ECEA Rules.¹⁵ Related services are "[Services] that are required to assist a child with a disability *to benefit from special education...*"¹⁶ [Emphasis added]. As indicated, above, if a child is identified as having a disability but needs only a related service, the child is ineligible for special education services under Part B of the IDEA.

Although a school district or a BOCES may decide to provide SLP, OT or PT services to nondisabled education students (e.g., Section 504 students), such services may not be paid for using IDEA or ECEA funds unless the benefit to nondisabled students is merely incidental to the provision of SLP/OT/PT services to special education students. Where the provision of such services to nondisabled students is not incidental, the administrative unit or state operated program must ensure that the provider's time, based on contemporaneously documented time and effort records, is accurately allocated between special education and nondisabled students and is appropriately reported on the December count.

If you have any questions regarding this guidance memorandum, please contact:

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¹⁴ ECEA Rule 2.43(1)(b)(i)(F)

¹⁵ ECEA Rule 2.37(1) and IDEA § 300.34(a)

¹⁶ ECEA Rule 2.37(1) and IDEA § 300.34(a)