



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

September 6, 2012

Arthur Ackerhalt, Esq.
Goldstein, Ackerhalt & Pletcher, LLP
70 Niagara Street, Suite 200
Buffalo, NY 14202

Dear Mr. Ackerhalt:

This is in response to your March 19, 2012 letter to Alexa Posny, former Assistant Secretary, Office of Special Education and Rehabilitative Services, U.S. Department of Education, which was forwarded to me for response. In your letter, you ask whether it is consistent with Part B of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations for a school district to adopt a policy precluding related services for all students with disabilities from commencing at the start of the school year. As an example, you ask if it would be proper for a school district to adopt a policy that, instead of beginning in the first week of school, related services for all students with disabilities will begin during the third week of school.

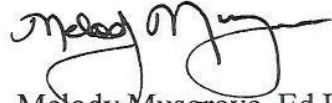
The regulations implementing IDEA in 34 CFR §300.323(a) require that each public agency have an individualized education program (IEP) in effect at the beginning of each school year for each child with a disability within its jurisdiction. An IEP is defined in 34 CFR §300.320 as a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 34 CFR §§300.320 through 300.324. A public agency must ensure that the IEP is developed by an IEP Team that includes the required participants in 34 CFR §300.321 and is based on the individual needs of the child.

Under 34 CFR §300.320(a)(4) and (7), an IEP must include, among other things, a statement of the special education and related services to be provided to the child and the projected date for the beginning of the services, including the anticipated frequency, location, and duration of those services. The IEP team, which includes the parent and school officials, determines the projected date for the beginning of a related service based on the individual needs of the child. On a case-by-case basis, the IEP Team may determine that the individual needs of the child require that the start date of a related service should occur the first week of school or after the beginning of the school year. Therefore, a policy that mandates that related services for all children with disabilities will begin at a specific time after the beginning of the school year (e.g., the third week of the school year) would not be consistent with the IDEA and its implementing regulations at 34 CFR §§300.320-300.324.

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.

If you have any further questions, please do not hesitate to contact Frank Miller, of my staff, at 202-245-7065 or by email at Frank.E.Miller@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is stylized with a large, looped "M" and a long horizontal stroke extending to the right.

Melody Musgrove, Ed.D.

Director
Office of Special Education Programs

cc: State Director of Special Education