



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

THE ASSISTANT SECRETARY

AUG 24 2007

Pat Kelly
Disability Rights Advocate
131 W. Wilson Street
Madison, Wisconsin 53703

Dear Ms. Kelly:

Thank you for your letter dated July 9, 2007, in which you request clarification from the Office of Special Education Programs (OSEP) regarding the requirement in Part B of the Individuals with Disabilities Education Act (Part B) and the final Part B regulations for including a description of benchmarks or short-term objectives in the individualized education programs (IEPs) of students with disabilities who take alternate assessments aligned to alternate achievement standards. Your letter questions the policy of the Madison Metropolitan School District requiring that the IEPs of students with disabilities who take alternate assessments aligned to alternate achievement standards include benchmarks or short-term objectives "only during the years that other students are required to take State or district-wide assessments." Your letter further expresses your understanding that the Wisconsin Department of Public Instruction supports this interpretation. As explained below, we believe that the policy adopted by the State and school district in this regard is consistent with Part B.

The Individuals with Disabilities Education Act (IDEA) and the final Part B regulations require that each child's IEP include a statement of measurable annual goals, including academic and functional goals. 34 CFR §300.320(a)(2)(i). In addition, the final Part B regulation at 34 CFR §300.320(a)(2)(ii), consistent with section 614(d)(1)(A)(i)(I)(cc) of the IDEA, requires an IEP to include a description of benchmarks or short-term objectives only for children with disabilities who take alternate assessments aligned to alternate achievement standards. The requirement that IEPs of all children with disabilities include benchmarks or short-term objectives was removed in the 2004 reauthorization of the IDEA.

Following the 2004 reauthorization of the IDEA and publication of the Notice of Proposed Rulemaking (NPRM) implementing those statutory changes in the Federal Register at 70 Fed. Reg. 35782 (Jun. 21, 2005), the Department received a number of public comments opposing the removal of benchmarks and short-term objectives as required components of the IEP. In the Analysis of Comments and Changes accompanying publication of the final Part B regulations in the Federal Register, the Department declined commenters' requests to reinstate this provision and explained as follows:

Benchmarks and short-term objectives were specifically removed from section 614(d)(1)(A)(i)(II) of the Act. However, because benchmarks and

short-term objectives were originally intended to assist parents in monitoring their child's progress toward meeting the child's annual goals, we believe a State could, if it chose to do so, determine the extent to which short-term objectives and benchmarks would be used. However, consistent with §300.199(a)(2) and sections 608(a)(2) and 614(d)(1)(A)(ii)(I) of the Act, a State that chooses to require benchmarks or short-term objectives in IEPs in that State would have to identify in writing to the LEAs located in the State and to the Secretary that such rule, regulation, or policy is a State-imposed requirement, which is not required by Part B of the Act or the Federal regulations. Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540, 46663 (Aug. 14, 2006) (to be codified at 34 C.F.R. Pt. 300).

Although the final Part B regulation requires that IEPs must include a description of benchmarks or short-term objectives only in the IEPs of students with disabilities who take alternate assessments aligned to alternate achievement standards, the regulation does not specify what years the IEPs of students who take alternate assessments aligned to alternate achievement standards must include a description of benchmarks or short-term objectives. OSEP believes, at a minimum, Part B requires States and public agencies to require a description of benchmarks or short-term objectives in the IEPs of students with disabilities who take alternate assessments aligned to alternate achievement standards during the years that the students take an alternate assessment. However, we find nothing in Part B that would prohibit a State from requiring its public agencies to include a description of benchmarks or short-term objectives in the IEPs of students with disabilities who take alternate assessments aligned to alternate achievement standards during years when the students do not take those assessments—that is—at the point that the IEP Team identifies a student as needing an alternate assessment, even though the student will not take an alternate assessment during that year, and during years beyond the time that the student is required to take an alternate assessment.

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 information addresses your concern. If you have further questions, please do not hesitate to contact Mary Williams in the Office of Policy and Planning at 202-245-7586.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs