



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

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Bradley Hutton, M.P.H., Director
Bureau of Early Intervention
Part C Coordinator
State of New York Department of Health
Corning Tower
The Governor Nelson A. Rockefeller Empire State Plaza
Albany, New York 12237

Dear Mr. Hutton:

This is in response to the November 4, 2008 letter from the New York Department of Health (NYDOH) to the Office of Special Education Programs (OSEP), which also referenced NYDOH's April 21, 2005 letter to OSEP. These two letters ("correspondence") requested clarification as to whether New York's respite service policy in 10 NYCRR 69-4.18 is consistent with the early intervention service (EIS) requirements of Part C of the Individuals with Disabilities Education Act (IDEA) and OSEP's *Letter to Steele* dated March 13, 2003. We apologize for the delay in our response.

Specifically, the correspondence from NYDOH questions whether it is consistent with Part C of the IDEA for New York's policy to permit, but not limit, identifying respite services when needed "to enable the parent(s) to participate or receive other early intervention services in order to meet the outcomes on a child's [individualized family service plan] IFSP" as was set forth in OSEP's *Letter to Steele*. We are clarifying that the provision of respite services under Part C is not limited solely to circumstances when it is needed to enable a parent to receive other EIS on the IFSP, and further conclude that New York's respite policy is consistent with Part C, based on our specific analysis of New York's policy and the representations in your correspondence.

Our reference in *Letter to Steele* that respite "may be necessary for some families to participate in appropriate early intervention activities" was cited as one example to differentiate respite from being "child-care or "baby-sitting" assistance in ordinary circumstances." As noted in that letter and in our regulations in 34 CFR §303.343, the participants in the IFSP meeting (including the child's parents) are responsible for identifying those Part C services that meet the unique developmental needs of each eligible child and the child's family related to enhancing their child's development. Under IDEA section 636(a)(1) and (2), the identification of EIS on a child's IFSP is based on an assessment of the child's needs and "a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler."

The criteria identified in NYDOH's policy in 10 NYCRR 69-4.18(b) are consistent with the Part C requirement that respite not serve as routine child-care, but that its provision is limited to when

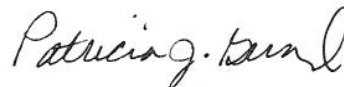
respite may enhance, in child- and family-specific circumstances, the capacity of the family to meet the developmental needs of their infant or toddler with a disability. Specifically, NYDOH's policy requires the IFSP team to consider a constellation of factors, including the: "(1) severity of child's disability and needs; (2) potential risk of out-of-home placement for the child if respite services are not provided; (3) lack of access to informal support systems (e.g. extended family, supportive friends, community supports, etc.); (4) lack of access to other sources of respite...; (5) presence of factors known to increase family stress (e.g., family size, presence of another child or family member with a disability, etc.); and (6) the perceived and expressed level of need for respite services by parent." NYDOH also clarified that "the perceived need for respite services by the parents, in the absence of any other factors, is not a sufficient indicator of the need for respite." This is consistent with Part C requirements that make clear that the determination of Part C services on the IFSP must be made by the IFSP team, which includes the child's parent(s), but that such determination is not based solely on parent request.

NYDOH's November 18, 2008 and April 21, 2005 correspondence confirms that its policy is "to ensure the need for respite is individually assessed, is based on a constellation of factors, which includes the severity of a child's disability, and can be used for temporary relief of care-giving responsibilities. While this can include respite services to assist the parent(s) in participating in activities associated with the child's IFSP, this [specific factor] is not a requirement for respite services." Further, NYDOH's policy in 10 NYCRR 69-4.18(b) requires that "[t]he provision of respite services for an eligible child and family shall be determined in the context of IFSP development, based on the individual needs of the child and family, and with consideration given to ... [the list of factors]." NYDOH's policy requires consideration of a variety of factors that highlight specific circumstances when respite may be needed to enhance the family's capacity to meet the child's developmental needs and, further, that the determination of whether respite is identified on the child's IFSP is made on an individualized basis and is made by the eligible child's IFSP team. For these reasons, we conclude that NYDOH's policy is consistent with Part C requirements.

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 inquiry presented.

We hope this information is helpful to you. If you have further questions, please do not hesitate to contact Hillary Tabor at 202-245-7813 or at Hillary.Tabor@ed.gov.

Sincerely,



Patricia J. Guard
Acting Director,
Office of Special Education
Programs