



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

JAN 27 2010

Sue A. Goldman
School Affairs Chair
New Jersey Speech-Language-Hearing Association
390 Amwell Road, Suite 402
Hillsborough, NJ 08844 USA

Dear Ms. Goldman:

This is in response to your electronic mail (e-mail) communication to Dr. Deborah Morrow, dated October 28, 2009, in which you express concern regarding the interpretation and implementation of the provisions in 34 CFR §300.156(b)(2)(ii) and section 612(a)(14)(B)(ii) of the Individuals with Disabilities Education Act (IDEA). Your October 28 e-mail notes that New Jersey's regulation regarding emergency certification, at N.J.A.C. 6A:9-6.3, states that:

[a] district board of education may apply to the county superintendent for an emergency certificate for a candidate in authorized educational services areas if it can demonstrate its inability to locate a suitable certified candidate due to unforeseen shortages or other extenuating circumstances. The county superintendent may approve the application if he/she determines that there are no suitable certified candidates to fill the position.

You question whether this provision is consistent with the requirement that a State have procedures that ensure that related service providers, including speech language pathologists, have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

The Part B regulations, at 34 CFR §300.156(b) state that:

qualifications for related services personnel and paraprofessionals [must be] consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and ... related services personnel who deliver services in their discipline or profession... [must not] have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and [must] allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

See also, 20 U.S.C. 1412(a)(14)(B).

Because the referenced New Jersey regulation permits school districts to employ related services personnel with emergency certification, the provision appears to permit the waiver of State-approved or State-recognized certification requirements on an emergency basis. This does not appear to be consistent with the 2004 amendments to Part B of the IDEA and its implementing regulations as cited above.

We have been in contact with the State and are working with them to explore other options that the State could use in lieu of an emergency waiver of State-approved or State-recognized certification requirements, to contend with possible shortages of related services personnel. One option is to provide for alternate routes to certification. In the comments and responses accompanying publication of the August 14, 2006 final Part B regulations, the Department explained that:

[w]hile the Act does not address alternative routes to certification programs for related services personnel or other non-teaching personnel, there is nothing in the Act or the regulations that would preclude a State from providing for alternate routes for certification for related services personnel or other non-teaching personnel. It is, however, up to a State to determine whether related services or non-teaching personnel participating in alternative routes to certification programs meet personnel requirements established by the State, consistent with the requirements in §300.156 and section 612(a)(14) of the Act.

71 Fed. Reg. 46612.

We also note the following language from the House Conference Report:

Conferees intend for State educational agencies to establish rigorous qualifications for related services providers to ensure that students with disabilities receive the appropriate quality and quantity of care. State educational agencies are encouraged to consult with local educational agencies, other State agencies, the disability community, and professional organizations to determine the appropriate qualifications for related service providers, including the use of consultative, supervisory, and collaborative models to ensure that students with disabilities receive the services described in their individual IEPs.

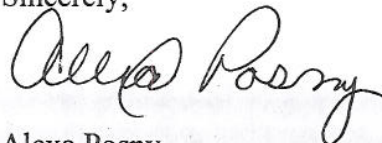
H. Rept. No. 108-779, at 192 (2003).

Additionally, sample strategies to recruit and retain qualified related services personnel may include: adjusted workloads; improving working conditions; incentive programs; salary supplements; loan forgiveness; tuition assistance; signing bonuses; streamlined application processes; State and national advertising venues; school and university partnerships; release time for professional development; certification reciprocity between States; and funding of LEA recruitment and retention programs. The Department believes that States and LEAs are in the best position to determine the most effective recruitment and retention strategies for their location. See 71 Fed. Reg. 46612 (August 14, 2006).

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 further questions, please do not hesitate to contact Ms. Susan Falkenhan, the New Jersey State Contact in OSEP, at 202-245-7242, or by e-mail at Susan.Falkenhan@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Posny". The signature is written in a cursive style with a large initial "A".

Alexa Posny
Acting Director
Office of Special Education Programs

cc: Roberta Wohle