



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

JUN - 9 2000

Ms. Andrea H. Farbman
Executive Director
American Music Therapy Association
8455 Colesville Road, Suite 1000
Silver Spring, Maryland 20910

Dear Ms. Farbman:

Your letter to Assistant Secretary Judith Heumann dated April 5, 2000, written on behalf of the American Music Therapy Association, regarding the provision of music therapy as a related service for students with disabilities has been referred to the Office of Special Education Programs (OSEP) for response.

Specifically, in your letter, you describe the many difficulties parents, advocates, and providers have experienced in securing music therapy services for students with disabilities as a related service under the Individuals with Disabilities Education Act (IDEA). Therefore, you seek a letter of policy clarification from OSEP regarding the requirements of Part B of IDEA (Part B) that would be applicable to (1) music therapy as a related service under Part B and (2) the standards for appropriate personnel to provide music therapy as a related service. The following is an explanation of the requirements of Part B that are relevant to these inquiries.

As to your first inquiry, under Part B, each State and its local school districts must ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing in the State in mandatory age ranges. FAPE includes, among other elements, special education and related services provided at no cost to parents in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR §§300.340-300.350. 34 CFR §300.13. The term "related services" is defined as:

...[t]ransportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes

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school health services, social work services in schools, and parent counseling and training.

34 CFR §300.24(a); see also 20 U.S.C. §1401(22). (Individual terms used in this definition are defined in paragraph (b) of 34 CFR §300.24 of the Part B regulations.)

The IDEA Amendments of 1997 make the focus of each disabled child's IEP the child's appropriate involvement in the general curriculum, that is, the same curriculum as for nondisabled students. 34 CFR §300.347(a)(1)-(2). Each child's IEP must contain, among other components,

[a] statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child--(i) to advance appropriately toward attaining the annual goals; (ii) to be involved and progress in the general curriculum...and to participate in extracurricular and other nonacademic activities....
34 CFR §300.347(a)(3).

As a general matter, each child's IEP team, which includes the child's parents along with school officials, makes the determination as to the instruction and services that are appropriate for an individual child to enable that child to receive FAPE. 34 CFR §§300.343-300.347. As is true regarding consideration of any related service for a disabled child under Part B, individual determinations must be made in light of each child's unique abilities and educational needs, and any instruction or services determined by the IEP team to be necessary for the child to receive FAPE must be provided at public expense and at no cost to the parents.

In the past, much confusion has arisen when a request is made for a child to receive a related service not specifically identified in the statutory list of examples of related services. It has been the Department's longstanding interpretation that "...[a]s under prior law, the list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education in order for the child to receive FAPE." Analysis of Comments and Changes, published as Attachment 1 to the final Part B regulations, 64 Fed. Reg. at 12548 (Mar. 12, 1999); incorporating the substance of the former Note 1 to 34 CFR §300.16; see also Notice of Interpretation, published as Appendix A to 34 CFR Part 300, question 34, 64 Fed. Reg. at 12479..

We recognize that music therapy may be appropriate and useful for some children with disabilities. This also is true with regard to the therapeutic services specified in the statutory and regulatory list of examples of related services. According to your inquiry, however, removal of note 1 to the prior regulations defining the term "related service" formerly at 34 CFR §300.16 is being interpreted by some school officials as relieving them of their responsibility to provide music therapy as a related service under any circumstances.

This misinterpretation is unfortunate. As noted in the preamble to the final Part B regulations published on March 12, 1999, "[a]ll notes in the NPRM related to the sections or subparts covered in these final regulations . . . [were] removed. . . . The substance of any note considered to provide clarifying information or useful guidance has been incorporated into the discussion of the applicable comments in the "Analysis of Comments and Changes" (see Attachment 1 to these final regulations). All other notes have been deleted." We continue to support our prior position that for some children, art, music, or dance therapy is to be identified in their IEPs as a related service if the IEP team, which includes the child's parents, determines that the particular therapy would be necessary for the child to benefit from special education and to receive FAPE.

If the IEP team determines that music therapy is an appropriate related service for a child, the team's determination must be reflected in the child's IEP, and the service must be provided at public expense and at no cost to the parents. However, let me emphasize that there is nothing in this clarification or in any statements in the discussion of comments and changes to the final regulations or in notes previously included in these regulations that would require that every disabled child receive music therapy as a related service regardless of the IEP team's determination as to whether the service is appropriate for the individual disabled child.

The second part of your inquiry raises several issues regarding the standards for, and type of, personnel who are qualified to provide music therapy as a related service. State and local educational agencies must ensure that students with disabilities receive appropriate instruction or services as reflected in their IEPs. 34 CFR §300.600. This means that any instruction or service for a child with a disability under Part B must be provided by personnel who meet appropriate State standards for qualified personnel, as that term is defined at 34 CFR §300.23 of the Part B regulations.

Music therapy and general music education are distinct disciplines and professions. School music educators therefore may not have the appropriate training to provide music therapy for a child with a disability. Part B requires States to have policies and procedures relating to the establishment and maintenance of standards for ensuring that personnel necessary to carry out the purposes of Part B are appropriately and adequately prepared and trained, and that the standards are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements that

apply to the profession or discipline in which a person is providing special education or related services. 34 CFR §300.136(b)(1)(i)-(ii). You indicated that there is a national credential for music therapists, based on a standard established by your organization, the American Music Therapy Association (AMTA). If the State has education certification or licensure standards that are not relevant or appropriately applicable to the qualifications of music therapists, it may wish to adopt an appropriate standard for providers of music therapy services. While States are not precluded from adopting an appropriate training credential for providers of music therapy services, such as that developed by your organization, the Part B regulations clarify that “[n]othing in [Part B] requires a State to establish a specified training standard (e.g., a masters degree) for personnel who provide special education and related services under Part B of the Act.” 34 CFR §300.136(b)(3).

We hope that you find this explanation helpful. If we can be of further assistance, please contact Dr. JoLeta Reynolds at (202) 205-5507.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth R. Warlick".

Kenneth R. Warlick
Director
Office of Special Education Programs