



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

November 12, 2014

Ms. Tracy Blodgett
1764 Bromley Drive
Woodbury, Minnesota 55125

Dear Ms. Blodgett:

This is in response to your letter to Ruth Ryder, Deputy Director, Office of Special Education Programs, dated December 3, 2013. Your letter stated that Minnesota requires a student to demonstrate an audiological documentation of hearing loss, among other factors, to be eligible for special education services as a deaf or hearing impaired student. You noted that some students “meet the initial eligibility criteria for special education services in the area of deaf or hard of hearing due to a conductive hearing loss” and that “[c]onductive hearing loss can often be corrected medically or surgically” so that the student no longer meets the criteria for deaf or hard of hearing. You asked whether a student whose conductive hearing loss has been medically or surgically corrected to the point that the student’s hearing thresholds are within normal limits can continue to receive special education and related services if a reevaluation shows that the student continues to demonstrate significant discrepancies in reading, written language, general knowledge, and social skills.

The regulations under Part B of the Individuals with Disabilities Education Act (IDEA) define a child with a disability as a child evaluated in accordance with 34 CFR §§300.304 through 300.311 as having one or more of a number of impairments, including a hearing impairment (which includes deafness), and who, by reason thereof, needs special education and related services. 34 CFR §300.8(a)(1). Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child’s educational performance. [34 CFR §300.8\(c\)\(3\)](#).

Under 34 CFR §300.8, a child must meet two prongs to be considered a child with a disability eligible for special education and related services under IDEA Part B: 1) the child has one or more of the impairments specified in 34 CFR §300.8; and 2) because of one or more of the impairments, the child needs special education and related services. If a child does not meet both prongs, whether determined during an initial evaluation or a reevaluation, then the child is not eligible for special education and related services under IDEA Part B.

However, it is important to note that 34 CFR §300.305(e) requires the public agency to evaluate a child with a disability in accordance with 34 CFR §§300.304 through 300.311 before determining that the child is no longer a child with a disability. Therefore, before exiting a child from special education based on a determination that the child no longer meets the criteria for “child with a disability,” the child must be assessed in all areas related to the suspected disability, and the evaluation must be sufficiently comprehensive to identify the child’s potential need for special education and related services, whether or not commonly linked to the disability category in which the child was previously identified, consistent with 34 CFR §300.304(c)(4) and (6).

That is, even though a child may no longer meet the criteria for “child with a disability” under the “hearing impairment” category based on medically or surgically corrected hearing that is now in the normal range, the child may still meet the criteria for “child with a disability” under one of the other disability categories specified in 34 CFR §300.8. In OSEP’s view, the child’s language needs and whether he or she qualifies under the “speech or language impairment” category would be important considerations when evaluating that child’s continued eligibility for services, because hearing loss during the crucial early years can have a long-term impact on a child’s speech and language acquisition and development.¹ Therefore, a group of qualified professionals and the child’s parent, which may be the child’s individualized education program team, could determine that the child continues to be eligible for special education and related services even if the child’s hearing loss is resolved. 34 CFR §300.306(a). This could occur if the group determines that, after following the appropriate evaluation procedures, the child continues to be a child with a disability under one of the other disability categories (such as speech or language impairment) and, because of the disability, requires special education and related services.² 34 CFR §300.305(a).

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 Department of the IDEA in the context of the specific facts presented.

If you have any further questions, please do not hesitate to contact Dr. Ken Kienas, of my staff, at 202-245-7621 or by email at Ken.Kienas@ed.gov.

Sincerely,

/s/ Melody Musgrove

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

cc: State Director of Special Education

¹ For example, see: Ingvalson, E.M., Young, N. M. & Wong, P. C. M. (2014). Auditory–cognitive training improves language performance in prelingually deafened cochlear implant recipients, *International Journal of Pediatric Otorhinolaryngology*, 78, 1624-31; Kronenberger, W. G., Bethany G. Colson, Shirley C. Henning, and David B. Pisoni. (2014). Executive functioning and speech-language skills following long-term use of cochlear implants. *Journal of Deaf Studies and Deaf Education*, 19, 456-470.

² In addition, even if a child is found ineligible for services under IDEA Part B, the child may be eligible for services under Section 504 of the Rehabilitation Act of 1973 (Section 504) and/or Title II of the Americans with Disabilities Act of 1990 (ADA). The Office for Civil Rights (OCR) in the U.S. Department of Education enforces Section 504 in public schools and, along with the U.S. Department of Justice, enforces Title II of the ADA in public schools. Information about OCR enforcement is available on OCR’s website at www.ed.gov/ocr.