THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202
July 13, 2012

Honorable Patty Murray
United States Senate
Washington, DC 20510

Dear Madam Chairman:

Thank you for your letter of May 1, 2012, concerning Braille instruction and recommendations to the U.S. Department of Education (Department) to develop new regulations for the individualized education program (IEP) process for students with blindness or visual impairments. You also requested that the Department provide additional guidance to school districts emphasizing the importance of Braille instruction as a tool for literacy for blind and visually impaired students, the circumstances in which Braille instruction should be provided, and the scope of an evaluation to guide decisions of IEP Teams in this area. Because we believe that the applicable statutory and regulatory provisions are sufficiently clear, the Department does not intend to regulate further in this area at this time. However, the Department agrees that, based on the concerns you have raised, additional guidance would be helpful in strengthening proper implementation of these IDEA requirements at the State and local levels and to highlight best practices.

The Department places a high priority on ensuring that appropriate services are provided to children and youth with disabilities, including those with blindness or visual impairments. Under Part B of the Individuals with Disabilities Education Act (IDEA), each State and its public agencies must ensure that a free appropriate public education (FAPE) is made available to all eligible children with disabilities, including to children who are blind or visually impaired, so that they are prepared for further education, employment, and independent living. The IDEA's IEP process is designed to ensure that an appropriate program is developed to meet the individual needs of a child with a disability, and the statutory provision quoted in your letter is an integral part of the IEP process for blind and visually impaired students. Section 614(d)(3)(B)(iii) of the IDEA requires that, "in the case of a child who is blind or visually impaired, [the IEP Team] provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child." In the 1997 reauthorization of the IDEA, this IEP requirement was added to ensure that blind and visually impaired students are provided the Braille instruction that is necessary for them to receive FAPE. It was retained without change when the IDEA was reauthorized in 2004. The Part B regulation at 34 CFR §300.324(a)(2)(iii) incorporates this statutory provision verbatim. This requirement applies equally to children who need Braille instruction when they enroll in kindergarten, as well as to children who will benefit from Braille instruction because they face the prospect of future vision loss while they are still in school. The evaluation required by the current regulations would inform an IEP Team's decision as to when instruction in Braille or the use of Braille may not be appropriate for a particular child who is blind or visually impaired. Generally, determinations regarding the components of evaluations for particular children are matters within the purview of State and local officials. In determining whether a child who is blind or visually impaired should not receive Braille instruction, consistent with statutory requirements, we believe that a thorough and rigorous evaluation should be

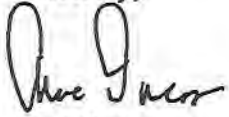
conducted. Therefore, our proposed guidance will clarify the scope of this evaluation and will indicate that it generally should include a data-based learning media assessment, based on a range of learning modalities (auditory, tactile, and visual), and a functional visual assessment.

Consistent with the need to ensure appropriate implementation of this IEP requirement, the Department also provides financial support to help expand the numbers of personnel qualified to provide Braille instruction. To help ensure that children with blindness or visual impairments receive appropriate services, evidence-based interventions, and appropriate materials and media, including Braille and Braille instruction, the Department's Office of Special Education Programs (OSEP) awards competitive grants to support university programs that prepare teachers of students who are blind or visually impaired. OSEP requires these personnel development programs to include curricula and coursework in Braille and Braille instruction. OSEP staff would be happy to meet with you and your staff to share information and resources about our discretionary grant programs that include support for personnel preparation programs, technical assistance, and oversight of services to children with visual impairments and blindness.

The Department previously issued a Notice of Policy Guidance to States and school districts to facilitate their implementation of IEP requirements governing the use of Braille and Braille instruction. See Educating Blind and Visually Impaired Students, 65 Fed. Reg. 36586-36594 (June 8, 2000), (copy enclosed). Building on the principles enumerated in the 2000 guidance and in light of the concerns you have raised, the Department will provide further guidance in the form of a Dear Colleague letter that will emphasize, among other matters, the need for the IEP Team to ensure that Braille instruction is provided without undue delay if the Team determines that a student could benefit from such instruction, regardless of whether the student who is blind and visually impaired is just starting school or experiences the vision loss later on in his or her educational career. This guidance will also clarify that an IEP Team's decision that it is not appropriate for a child to receive instruction in Braille or the use of Braille generally would need to be based on a proper assessment of a student's learning modalities and a functional visual assessment. Also, to ensure that the needs of children with degenerative conditions which lead to low vision or blindness later in their educational experience are addressed, the proposed guidance will identify funding opportunities that are designed to help strengthen the capacity of State and local personnel to meet the educational needs of students who are likely to experience vision loss later in childhood or in early adolescence.

The Department is committed, as you are, to ensuring that all children, including children with blindness and visual impairments, receive effective instruction that will lead to positive educational and career outcomes. Thank you again for your thoughtful letter and for providing recommendations to facilitate appropriate implementation of the IDEA's IEP requirements governing Braille and Braille instruction. We appreciate your ongoing support of children with disabilities.

Sincerely,



Arne Duncan

Enclosure

Federal Register

Thursday,
June 8, 2000

Part IV

Department of Education

Educating Blind and Visually Impaired Students; Policy Guidance; Notice

DEPARTMENT OF EDUCATION

Educating Blind and Visually Impaired Students; Policy Guidance

AGENCY: Office of Special Education and Rehabilitative Services, U.S. Department of Education.

ACTION: Notice of policy guidance.

SUMMARY: The Department issues this Notice of Policy Guidance (notice) to address the requirements of Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Act Amendments of 1997, as they apply to the education of blind and visually impaired students. This notice updates OSEP memorandum 96–4, Policy Guidance on Educating Blind and Visually Impaired Students dated November 3, 1995, to reflect new and revised statutory provisions added by the IDEA Amendments of 1997 and conforming regulatory changes to implement those requirements. The Department issued guidance for the education of students who are deaf in the form of a Notice of Policy Guidance published in the Federal Register on October 30, 1992 (57 FR 49274). That policy guidance also is being updated for consistency with the IDEA Amendments of 1997.

This notice provides important background information to educators in meeting their obligations to ensure that blind and visually impaired students receive appropriate educational services in the least restrictive environment appropriate to their unique needs. A description of procedural safeguards also is included to ensure that parents are knowledgeable about their rights, including their right to participate in decisions regarding the provision of services to their children.

FOR FURTHER INFORMATION CONTACT: Rhonda Weiss or JoLeta Reynolds, U.S. Department of Education, Office of Special Education Programs, Mary E. Switzer Building, Room 3086, 330 C Street, SW, Washington, D.C. 20202. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD), may call (202) 205–5465.

Individuals with disabilities may obtain this document in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center, telephone (202) 205–8113.

SUPPLEMENTARY INFORMATION: To respond to concerns that services for some blind and visually impaired students were not appropriate to address their unique educational and learning needs, particularly their needs for instruction in reading, writing, and composition, as well as orientation and mobility and other self-help skills, policy guidance on educating blind and visually impaired students was issued as OSEP memorandum 96–4 (November 3, 1995). This policy guidance provided some background information on these students and their unique needs, and applicable requirements of Part B of the Individuals with Disabilities Education Act (Part B) were explained.[1]

In the reauthorization of the IDEA Amendments of 1997, Public Law 105–17, Congress clarified public agencies' responsibilities in educating blind and visually impaired students in two important respects. Specifically, the reauthorized statute provides that Individualized Education Program (IEP) teams are required to make provision for instruction in Braille and the use of Braille for blind and visually impaired students, unless, based on relevant evaluations, the IEP team determines that instruction in Braille or the use of Braille is not appropriate.

Also, reflecting an awareness that a blind or visually impaired individual's ability to move around independently is closely linked to the individual's self esteem, an amendment to the statutory definition of "related services" adds "orientation and mobility services" to the list of examples of supportive services specifically identified in the statute.

The IDEA Amendments of 1997 contain other new requirements applicable to all children with disabilities, particularly in areas relating to requirements for evaluations and reevaluations, focusing IEPs on a student's meaningful involvement and progress in the general curriculum, and strengthening procedural safeguards and opportunities for parent participation in important educational decisions. Even with these significant statutory changes, the core concepts that were applicable prior to the enactment of the IDEA Amendments of 1997 continue to apply.

Background

The population of children who receive services under Part B because of blindness or visual impairment is extremely diverse. These children display a wide range of vision difficulties and varying adaptations to vision loss. With regard to degree of vision, the student population includes persons who are totally blind or persons with minimal light perception, as well as persons with varying degrees of low vision. For some individuals, blindness or visual impairment is their only disability, while for others, blindness or vision impairment is one of several identified disabilities that will affect, to varying degrees, learning and social integration. For example, some children who are blind or visually impaired also have hearing, orthopedic, emotional, or cognitive disabilities.

In addition, persons with similar degrees of vision loss may function very differently. A significant visual deficit that could pose formidable obstacles for some children may pose far less formidable obstacles for others. This is because adaptations to vision loss are shaped by individual factors, such as availability and type of family support and degree of intellectual, emotional, physical, and motor functioning. Therefore, in addition to the nature and extent of vision loss, a variety of factors needs to be considered in designing an appropriate educational program for a blind or visually impaired child, and these factors could change over time.

The challenge for educators of blind and visually impaired children, including those with other disabilities, is how to teach skills that sighted children typically acquire through vision. Blind and visually impaired students have used a variety of methods to learn to read, write, and acquire other skills, both academic and nonacademic. For example, for reading purposes, some students use Braille exclusively; others use large print or regular print with or without low vision aids. Still others use a combination of methods, including Braille, large print, low vision aids and devices with computer-generated speech, while others have sufficient functional vision to use regular print, although with difficulty.

In order to receive an appropriate education under Part B, it is generally understood that students who are blind or visually impaired must be provided appropriate instruction in a variety of subjects, including language arts, composition, and science and mathematics. However, in order to be educated in these subject areas effectively, blind and visually impaired children must be taught the necessary skills to enable them to learn to read and to use other appropriate technology to obtain access to information. It also is very important for blind and visually impaired children, including those with other disabilities, who need orientation and mobility services, to receive appropriate instruction in orientation and mobility as early as possible. Providing these children with needed orientation and mobility services at the appropriate time increases the likelihood that they can participate meaningfully in a variety of aspects of their schooling, including academic,

nonacademic, and extracurricular activities. Once these individuals are no longer in school, their use of acquired orientation and mobility skills should greatly enhance their ability to move around independently in a variety of educational, employment, and community settings. These skills also should enhance the ability of blind and visually impaired students to obtain employment, retain their jobs, and participate more fully in family and community life.

This policy guidance contains an explanation of the provisions of Part B of IDEA as amended by the IDEA Amendments of 1997 and Department regulations that address public agencies' obligations in educating blind and visually impaired students. Statements that utilize the word "should" constitute guidance and do not mean "must," and are not intended to impose any new requirements that go beyond the requirements of the applicable statutory and regulatory provisions explained below.

Application of the Free Appropriate Public Education Requirements of Part B to Blind and Visually Impaired Students

A. In General

Under Part B, each State and its public agencies must ensure that a free appropriate public education (FAPE) is made available to all children with specified disabilities residing in the State in mandatory age ranges, and that the rights and protections of Part B are afforded to those children and their parents. FAPE includes, among other elements, special education and related services that are provided at no cost to parents, under public supervision and direction, that meet State education standards and Part B requirements, that include an appropriate preschool, elementary, or secondary school education in the State involved, and that are provided in conformity with an individualized education program (IEP) that meets Part B requirements.[2]

Consistent with this obligation to ensure FAPE, the Part B regulations also provide that the services and placement provided to a child with a disability under Part B must be based on all of the child's identified special education and related services needs, and not on the child's disability.[3] This includes meeting the child's needs that result from identified disabilities other than blindness or visual impairment.

B. Evaluation Requirements

Before the initial provision of special education and related services to a child with a disability under Part B, a full and individual initial evaluation must be conducted in accordance with 34 CFR §§ 300.532 and 300.533.[4] The IDEA Amendments of 1997 require that a variety of assessment tools and strategies must be used in the evaluation process to gather relevant functional and developmental information about the child. This includes information provided by the parents, to assist in determining (1) whether the child is a child with a disability, and (2) the content of the child's IEP, including the extent to which the child can be involved and progress in the general curriculum, and for a child of preschool age, to participate in appropriate activities.[5] Through the evaluation process, determinations also can be made about the range of accommodations and modifications necessary for a blind or visually impaired child to be involved and progress in the general curriculum, the same curriculum as for nondisabled children.

An evaluation under Part B must assess the child in all areas related to the suspected disability, including, if appropriate, "health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities."[6] In addition, the evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.[7] Any standardized tests that are utilized for those assessments must be conducted by trained and knowledgeable personnel.[8]

An assessment of a child's vision status generally would include the nature and extent of the child's visual impairment and its effect, for example, on the child's ability to learn to read, write, do mathematical calculations, and use computers and other assistive technology, as well as the child's ability to be involved in and progress in the general curriculum. For children with low vision, this type of assessment also generally should include an evaluation of the child's ability to utilize low vision aids, as well as a learning media assessment and a functional vision assessment. For children who are blind and for children who have low vision, consistent with the new statutory requirement regarding Braille instruction, the assessment of vision status generally would be closely linked to the assessment of the child's present and future reading and writing skills, needs, and appropriate reading and writing media. This information would be used by the IEP team in determining whether it would be inappropriate to provide a blind or visually impaired child with instruction in Braille or the use of Braille.[9]

As required for children with other disabilities, appropriate assessments of blind and visually impaired children, including those with other disabilities, also must address each child's ability to be involved and progress in the general curriculum, the same curriculum as for nondisabled children. This information could be obtained, for example, from an assessment of academic performance that would focus on the child's ability to learn to read, including reading comprehension, and to learn composition, science and mathematics, and computing.

As part of the evaluation process, it is especially important to address a blind or visually impaired child's ability to be involved and progress in the general curriculum, the same curriculum as for nondisabled children, particularly in situations where the child has other disabilities. This is because of the relationship of the evaluation to the child's IEP, which focuses specifically on participation in the general curriculum offered to nondisabled students, including the need for any supplementary aids and services, other accommodations, modifications, or devices to facilitate the blind or visually impaired child's involvement in the general curriculum. This information is needed regardless of whether a child will be educated in a regular classroom or in a separate classroom or school.[10] The evaluation also should identify any necessary program modifications or supports for school personnel needed for a child or on behalf of a child to ensure that the child's unique needs arising from blindness or visual impairment or other identified disabilities are appropriately addressed in the IEP.

Because of the importance for some blind and visually impaired students of acquiring the skills necessary to access information, additional assessments may be necessary to determine whether a child should receive specific instruction in listening skills. Possible assessments for this purpose could include assessments of hearing, general intelligence, or communicative status. A child's need for orientation and mobility services and the appropriate method or methods for acquiring the requisite skills also should be assessed, and this generally would be accomplished through an assessment of motor abilities, as well as vision and communicative status, which should be conducted as early as possible. This is

especially important because parents and organizations representing the interests of blind and visually impaired individuals have reported that, in some instances, these students are not receiving appropriate orientation and mobility services and that appropriate evaluations of their needs for these services are not being conducted. In all instances, the results of all assessments administered to the child, including those administered to determine the child's needs resulting from one or more disabilities other than blindness or visual impairment, must be considered as the child's IEP is developed.[11]

C. IEP Development and Content Requirements

The IDEA Amendments of 1997 make a number of significant changes to the Act's IEP requirements, which are applicable to all disabled students, including blind and visually impaired students.[12] Under Part B, an IEP developed in accordance with 34 CFR §§ 300.341-300.350 is the essence of each child's entitlement to a FAPE. The IDEA Amendments of 1997 clarify that each child's IEP must (1) relate the child's education to the child's involvement and progress in the general curriculum, the same curriculum as for nondisabled children, and (2) address unique needs arising out of the child's disability or disabilities. The IDEA Amendments of 1997 also require that IEPs for disabled children, including blind and visually impaired children, contain a statement of measurable annual goals, including benchmarks or short-term objectives.[13] The annual goals must be related to (1) meeting the child's needs that result from the disability, or disabilities, to enable the child to be involved in and progress in the general curriculum, and (2) meeting each of the child's other educational needs that result from the child's disability, or disabilities.

With regard to these criteria for developing annual goals, IEP teams for blind and visually impaired children must ensure that those children can appropriately access the general curriculum offered to nondisabled children, and that unique needs relating to the child's blindness or visual impairment or other identified disabilities are addressed.[14] Therefore, if IEP teams identify educational needs of individual children arising from their blindness or visual impairment or other disability, that the general curriculum does not sufficiently address, those specific needs must be addressed.[15] For example, if a particular student has little or no skill in Braille reading and writing, the IEP team may conclude that more frequent and intensive instruction in Braille likely would be necessary before the student could be fully involved and make meaningful progress in the general curriculum offered to nondisabled children. In addition, once the child's initial need for Braille instruction has been met, the IEP team should periodically make a determination of the child's ability to be involved and progress in the general curriculum, and the extent to which continued intensive Braille instruction and other accommodations would be needed.

The IDEA Amendments of 1997 include specific requirements regarding including children with disabilities in general State and district-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary.[16] For example, each child's IEP must include a statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed for the child to participate in the assessment. Also, if the IEP team determines that a child will not participate in a particular assessment or part of an assessment, the IEP must include a statement of why that assessment is not appropriate for the child, and how the child will be assessed.[17]

Consistent with the emphasis in the IDEA Amendments of 1997 on relating the child's IEP to the child's involvement and progress in the general curriculum, IEP teams must ensure that blind and visually impaired students, including those with other disabilities, receive appropriate instructional accommodations and modifications. Providing appropriate instructional accommodations and modifications will help prepare these students to participate in State or district-wide assessments of student achievement with appropriate accommodations or individual modifications in test administration.

The IDEA Amendments of 1997 also require the development of guidelines for use of alternate assessments, which are used if an IEP team determines that an individual child cannot participate in regular assessments, even with appropriate accommodations or individual modifications in test administration.[18] However, it is expected that if IEP teams properly make individualized determinations about what testing accommodations or individual modifications in test administration are appropriate for a child, it should be necessary to use alternate assessments for a relatively small percentage of children with disabilities. In addition, if the purpose of a test is to measure a student's ability to read, States need to be able to test to determine whether blind or visually impaired students, whose primary reading medium is not standard print, can read, whether by providing them with a Braille or large print version of the test, or through some other means, as appropriate.

Each child's IEP must be developed by an IEP team, that is, a group of individuals that includes:

- The parents of the child;
- At least one regular education teacher of the child if the child is, or may be, participating in the regular education environment;
- At least one special education teacher of the child, or, if appropriate, at least one special education provider of the child;
- A public agency representative who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general curriculum, and about the availability of resources of the public agency;
- An individual who can interpret the instructional implications of evaluation results, who may be another member of the IEP team;
- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and,
- If appropriate, the child.[19]

Public agencies must ensure that students are invited to attend IEP meetings if the participation of the student would be appropriate.

For IEP meetings involving transition services, there are additional requirements. The Part B regulations provide that the public agency must invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of either the student's transition services needs, the statement of needed transition services for the student, or both. In these situations, if the student does not attend the meeting, the public agency must ensure that the student's preferences and interests are considered. If another agency would likely be responsible for providing or paying for needed transition services, the public agency must ensure that a representative of that agency is invited to the meeting.[20] The public agency responsible for the student's education generally must initiate and conduct meetings for the purpose of developing, reviewing, and, if necessary, revising the IEP, or the individualized family

service plan (IFSP), of a child with a disability. The public agency must ensure that the child's IEP team (1) reviews the child's IEP periodically, but not less than annually, to determine whether the child's annual goals are being achieved, and (2) revises the IEP as appropriate.[21]

An IFSP, the written plan for providing early intervention services under Part C of IDEA to an infant or toddler with disabilities and his or her family, may serve as the IEP for a child with a disability aged 3 through 5 (or at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year). For this to occur, the IFSP must contain the material described in section 636 of the Act, and must be developed in accordance with §§ 300.341–300.346 and §§ 300.349–300.350. In addition, using the IFSP to serve as the IEP must be consistent with State policy and agreed to by the agency and the child's parents.[22] If an IFSP is to be used, the public agency must provide the child's parents a detailed explanation of the differences between an IFSP and an IEP and must obtain written, informed parental consent to use an IFSP.[23]

D. Special Factors in IEP Development

In developing IEPs, the IDEA Amendments of 1997 require IEP teams to consider a range of special factors. The following two factors are particularly relevant for blind and visually impaired students.

1. Instruction in Braille and the Use of Braille

One of the most serious concerns voiced by parents of blind or visually impaired children and their advocates, as well as by adults who are blind or visually impaired, is that the number of students receiving instruction in Braille has decreased significantly over the past several decades. As a result, these individuals believe that Braille instruction is not being provided to some students for whom it may be appropriate. Braille has been a very effective reading and writing medium for many blind and visually impaired persons, and knowledge of Braille provides numerous tangible and intangible benefits, including increased likelihood of obtaining productive employment and heightened self-esteem.

The IDEA Amendments of 1997, therefore, include a specific provision with regard to instruction in Braille and the use of Braille and state:

The IEP team must—* * * (iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;[24]

This statutory provision requires IEP teams to make provision for instruction in Braille or the use of Braille, unless it is determined, after appropriate evaluations of the child's reading and writing needs, that this instruction is not appropriate for a particular child. Decisions about instruction in Braille and the use of Braille must be made on a case-by-case basis, consistent with the individual needs of a particular child. In developing IEPs for children with low vision, even for those with a high degree of functional vision, IEP teams also must consider evaluations of the child's need for instruction in Braille and the use of Braille, and must make provision for such instruction unless it is determined, after appropriate evaluation, to be inappropriate for the child. Factors such as shortages of trained personnel to provide Braille instruction, the availability of alternative reading media, such as large print, recorded materials, or computers with speech output, or the amount of time needed to provide a child with sufficient and regular instruction to attain proficiency in Braille or the use of Braille, may not be used to deny Braille instruction to a child for whom that instruction has not been determined individually to be inappropriate. Once the IEP team includes instruction in Braille in the IEP, this instruction, as is true for other aspects of the child's IEP, must be implemented as soon as possible following the child's IEP meeting.[25]

For a child to become proficient in Braille, systematic and regular instruction from knowledgeable and appropriately trained personnel is essential. For blind and visually impaired children, including those with other disabilities, IEP teams must ensure that the instructional time allocated for Braille instruction is adequate to provide the level of instruction determined appropriate for the child. IEP teams also must ensure, as discussed more fully below, that appropriate assistive technology is provided to facilitate necessary Braille instruction. Likewise, for children with low vision, instruction in the appropriate utilization of functional vision and in the effective use of low vision aids requires regular and intensive intervention from knowledgeable and appropriately trained personnel.

IEP teams also must consider the method or methods for teaching blind and visually impaired children, including those with other disabilities, how to write and compose. Children whose reading medium is Braille likely will use Braille for these purposes. For composition, however, in addition to writing Braille manually, these children also may benefit from using assistive technology devices, such as a personal computer with speech output or a Braille display. IEP teams must make individualized determinations about the needs of blind and visually impaired children, including those with other disabilities, for instruction in writing and composition, and must include effective methods for teaching writing and composition, including the appropriate use of assistive technology, in the IEPs of these students.

In addition to mastering the skills taught to all children, blind and visually impaired children, including those with other disabilities, must receive instruction in the skills that the IEP team determines are necessary for the child to obtain access to information needed to participate in the general curriculum, as a supplement to instruction in the reading method determined appropriate for the child. The skills that could be taught to access information include use of cassette recordings, including recordings that utilize compressed speech, personal computers with speech output or a Braille display, and optical scanners with speech output. Use of these devices, methods, and services should be considered on an individual basis to supplement Braille instruction for students for whom Braille is the primary reading medium, or to supplement print or large print for children using print as their primary reading medium. While instruction in the skills necessary to access information is extremely important, local educational agencies also are required by Part B and Section 504 to provide instructional materials in the format determined appropriate for the child by the IEP team to enable the child to participate in the public agency's program.[26]

In addition, for most students who are blind or visually impaired, including those with other disabilities, the development of skills related to future employment, vocational training, or postsecondary education, such as the use of reader services, would be appropriate. For example, reader

services have proven to be vital for the workplace success of many adults who are blind or visually impaired. As appropriate, IEP teams should consider making reader services available, as well as providing instruction in the skills necessary to the effective use of those services. In considering whether reader services or other services related to the workplace success of these students would be appropriate, IEP teams should consider whether those services would be necessary to supplement the techniques that the student already may be receiving to access information, or necessary for the student's successful transition from school to post-school activities.

2. Assistive Technology

The IDEA Amendments of 1997 continue to recognize the importance of assistive technology in the education of children with disabilities, and specify assistive technology as one of the special factors that IEP teams must consider in IEP development.[27] Issues related to accessing information frequently arise in the education of blind and visually impaired students, as well as those with other disabilities. Therefore, it is especially important that IEP teams for blind and visually impaired students give appropriate consideration to these students' needs for assistive technology and the full range of assistive technology devices and services that are available for them, and this consideration needs to occur as early as possible. As is true for students with other disabilities, a blind or visually impaired student's ability to become proficient in the use of appropriate assistive technology could have a positive effect on the development of the student's overall self-confidence and self-esteem. Students taught the skills necessary to address their disability-specific needs are more capable of participating meaningfully in the general curriculum offered to nondisabled students.

The Department's regulations also provide that, on a case-by-case basis, consideration of the use of school-purchased assistive technology devices in a child's home or in other settings may be required. If the child's IEP team determines that the child needs to have access to a school-purchased device at home or in another setting in order to receive FAPE, a statement to this effect must be included in the child's IEP, the child's IEP must be implemented as written, and the device must be provided at no cost to the parents.[28]

In meeting the assistive technology needs of blind and visually impaired students, public agencies may use whatever State, local, Federal, and private sources of support available in the State to finance required services.[29] To obtain information about assistive technology, including information about assistive technology that could be used to assist in the education of blind and visually impaired students, public agencies may wish to consult the Assistive Technology Act of 1998 (Tech Act) project that serves their State.[30] In making assistive technology purchases, public agencies also need to ensure that they comply with applicable requirements of Federal law, including Section 504, Title II of the ADA, and the Tech Act.[31]

E. Orientation and Mobility Services

For some blind and visually impaired children, the inability to move around independently can be a formidable obstacle to participating in school, family, and community life. In some instances, blind and visually impaired individuals have felt discouraged from seeking employment opportunities because of their inability to get to the job or negotiate the work environment once on the job, or because of their fears that this will be the case. Still in other instances, some blind and visually impaired individuals have been denied access to employment opportunities because of employers' misperceptions that the individual will be unable to get around without sighted assistance. Therefore, acquisition of orientation and mobility skills, like the acquisition of other skills such as academic and social skills, is of great importance to the social and economic independence of blind and visually impaired persons.

Orientation and mobility services are generally recognized as encompassing distinctive strategies particular to the educational needs of blind or visually impaired students. The IDEA Amendments of 1997 amended the list of examples of "related services" contained in the statute to include "orientation and mobility services."[32] The term "orientation and mobility services" is defined in the Part B regulations, at 34 CFR § 300.24(b)(6), as follows:

(i) * * * services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching students the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (*e.g.*, using sound at a traffic light to cross the street);

(B) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

The responsible public agency must ensure that orientation and mobility services are provided by trained and knowledgeable personnel who meet appropriate State qualification standards. In some instances, these personnel will need to be qualified to work with blind and visually impaired students who, in addition to their blindness or visual impairments, have other physical, sensory, or emotional disabilities. Because the need for safe movement throughout their school, home, and community environments is of critical importance for blind and visually impaired students, and because inadequate skill in this area could have an adverse impact on the ability of some blind and visually impaired persons to obtain appropriate employment, orientation and mobility services should be considered for each blind and visually impaired child. The extent to which orientation and mobility services are necessary for an individual child and, if so, the amount and duration of those services that are necessary for a child to receive FAPE are decisions for the child's IEP team. If a blind or visually impaired child has other disabilities, such as hearing, motor, or emotional disabilities, the child's unique disability-specific needs arising from those other disabilities also must be considered in designing an appropriate program of orientation and mobility services for the child. Orientation and mobility services should be provided as early as possible in a child's education, and updated or supplemented periodically, as needed. For example, while it may not be appropriate to teach a very young child how to cross a busy street, a very young child still could be taught the skills necessary to move around inside a school building. As students mature, it might be appropriate, depending on individual factors, for the student to be taught how to cross a busy street. Therefore, IEP teams need to be aware of individual factors that would affect the nature and extent to which orientation and mobility services may be needed for a particular student.

For some children with disabilities such as children with significant cognitive disabilities, "travel training

* * * is often an integral part of their special educational program in order for them to receive FAPE and be prepared for post-school activities, including employment and independent living."[33] Providing blind or visually impaired students, particularly those with other disabilities, with travel training also could facilitate their fuller integration into their communities in and outside of school, both during and following their school attendance. Therefore, the definition of "special education" has been amended at 34 CFR § 300.26(a)(2)(ii) to include "travel training," and the pertinent definition reads as follows:

Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (*e.g.*, in school, in the home, at work, and in the community).[34]

Since the importance of travel training has been recognized for children with disabilities, such as children with significant cognitive disabilities, IEP teams for blind and visually impaired students, particularly those with significant cognitive disabilities, may need to consider these students' need for travel training, as appropriate. Travel training is often integral to ensuring that some children with disabilities receive FAPE and are prepared for post-school activities such as employment and independent living. Travel training is important to enable these students to attain systematic orientation to and safe movement within their environment in school, at home, at work and in the community.[35]

F. Additional Factors in IEP Development

The following needs[36] also may need to be considered and appropriately addressed by the child's IEP team to ensure a child's appropriate access to the general curriculum:

- Compensatory skills, such as communication and listening modalities;
- Extended school year services, if determined necessary to provide FAPE to the student;[37]
- Social interaction skills;
- Recreation and leisure skills;
- Career education; and
- For students with low vision, visual efficiency skills.

This list is not intended to be exhaustive. A child's IEP team could determine that it would be appropriate to consider an individual child's need for other skills or services, in addition to those listed above. Therefore, in making decisions about the educational programs for a blind or visually impaired child, as is true for other disabled children, IEP teams must consider the full range of skills and services necessary for the child to receive FAPE, and to be involved and progress in the general curriculum, as appropriate.

Least Restrictive Environment and Provision of Services Requirements

Part B requires States to have policies and procedures for ensuring that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.[38] This requirement is known as the least restrictive environment (LRE) requirement. Consistent with this LRE principle, the IDEA Amendments of 1997 require that each child's IEP contain an explanation of the extent, if any, to which the child will not be educated and participate with nondisabled children in the regular class and in academic, extracurricular and other nonacademic activities.[39] Department regulations also provide that a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum for that child.[40]

Thus, before a disabled child can be removed from the regular classroom, the placement team, which includes the child's parents, must consider whether the child can be educated in less restrictive settings with the use of appropriate supplementary aids and services and make a more restrictive placement only when they conclude that education in the less restrictive setting with appropriate supplementary aids and services cannot be achieved satisfactorily.[41]

Recognizing that the regular classroom may not be the LRE placement for every disabled student, the Part B regulations require public agencies to make available a continuum of alternative placements or a range of placement options, to meet the needs of students with disabilities for special education and related services. The options on this continuum include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. In addition, the continuum must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.[42]

Part B also requires that each child's placement must be based on the child's IEP.[43] That is why placement decisions cannot be made before a student's IEP is developed. Rather, it is the child's IEP that forms the basis for the placement decision. This means, for example, that the 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, the statement of the program modifications or supports for school personnel that will be provided for the child, and the explanation of the extent, if any, to which the child will not participate with nondisabled children in regular classes and other academic, nonacademic and extracurricular activities, form the basis for the placement decision. Under Part B, the IEP team for each child with a disability must make an individualized determination regarding how the child will participate in the general curriculum, including supports needed for the child, and what, if any, educational needs will not be met through involvement in the general curriculum. If, in the evaluation process, full consideration has been given to the range of accommodations and modifications that might be needed for the blind or visually impaired student, including a student who has other disabilities, such as a hearing impairment or an emotional disability, to access the general curriculum offered to nondisabled students, information about those needs should be readily available to the IEP team. After the student's IEP is developed, the placement determination, that is, the determination as to the setting in which services will be provided, must be made on an individual basis, consistent with the student's IEP and the Act's LRE requirements.

The IDEA Amendments of 1997 specify that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.[44] Public agencies and parent training and information centers should take steps to ensure that parents of blind and visually impaired

students are informed about available placement options for their child, including those addressing unique needs arising from a child's blindness or visual impairment and other disabilities, if applicable, and other identified educational needs. This will help to ensure that parents can provide meaningful input to the group making the placement decision.

The overriding rule in placement is that each student's placement must be determined on an individual basis.[45] In addition, as is true for students with other disabilities, the potential harmful effect of the placement on the blind or visually impaired student, or the quality of services he or she needs, must be considered in determining the LRE.[46] As in other situations, placements of blind and visually impaired students, including those with other disabilities, may not be based solely on factors such as category of disability, significance of disability, availability of special education and related services, availability of space, configuration of the service delivery system, or administrative convenience.[47]

In implementing Part B's LRE requirements, in some instances, placement decisions are inappropriately made before IEPs that address a child's unique needs are developed. Individual determinations of appropriate special education and related services, supplementary aids and services, and program modifications and supports for school personnel must be made through the IEP process, which must address the development of skills necessary for a student to cope with the impact of blindness or low vision or other identified disabilities on the student's ability to learn and to be involved and progress in the general curriculum. Since Part B requires that each child's placement must be based on his or her IEP, making placement decisions before a student's IEP is developed is a practice that violates Part B and could result in the denial of FAPE in the LRE.

Still in other instances, some students have been inappropriately placed in the regular classroom although it has been determined that their IEPs cannot be appropriately implemented in the regular classroom even with the necessary and appropriate supplementary aids and services. In these situations, the nature of the student's disability and individual needs could make it appropriate for the student to be placed in a setting outside of the regular classroom in order to ensure that the student's IEP is satisfactorily implemented. By contrast, there are other instances where some blind and visually impaired students have been inappropriately placed in settings other than the regular classroom, even though their IEPs could have been implemented satisfactorily in the regular classroom with the provision of appropriate supplementary aids and services. As is true for all educational decisions under Part B, these concerns about the misapplication of the LRE requirements for blind and visually impaired students underscore the importance of making individual placement determinations based on each student's unique abilities and needs.

In making placement determinations regarding children who are blind or visually impaired, it is essential that groups making decisions regarding the setting in which appropriate services are provided consider the full range of settings that could be appropriate depending on the individual needs of the blind or visually impaired student, including needs that arise from any other identified disabilities that the student may have. The following are some examples:

- A regular classroom with needed support services provided in that classroom by an itinerant teacher or by a special education teacher assigned to that school;
- The regular classroom with services provided outside the classroom by an itinerant teacher or by a special education teacher assigned to that school;
- A self-contained classroom in a regular school that provides services that address needs arising from the student's blindness or visual impairment as well as other identified disabilities, if applicable; and
- A special school with a residential component that provides services that address the full range of the blind or visually impaired student's disability-specific needs, including those arising from other disabilities, if applicable.

Procedural Safeguards

Part B also requires that public agencies afford parents of children with disabilities an array of procedural safeguards. These include giving parents written notice, in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so. This written notice must be given a reasonable time before a public agency proposes or refuses to initiate, or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. Included in this not. :e, among other components, are a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, a description of any options the agency considered and the reasons why those options were rejected, a description of any evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action, and sources for parents to contact, such as parent training and information centers or Protection and Advocacy entities or other advocacy organizations, to gain assistance in understanding the provisions of the Act.[48] The requirement to provide a description of any option considered includes a description of the types of placements that were actually considered for the child, e.g., regular class placement with needed supplementary aids and services, regular classroom with pull-out services, special school, and the reasons why these placement options were rejected. Providing this kind of information to parents will enable them to play a more knowledgeable and informed role in the education of their children.

Informed parental consent must be obtained before conducting an initial evaluation or reevaluation, with certain limited exceptions, and before the initial provision of special education and related services to a child with a disability.[49] Section 300.500(b)(1) of the Part B regulations defines "consent" to mean that the parent has been fully informed of the activity for his or her consent has been sought in his or her native language or other mode of communication.

The IDEA Amendments of 1997 also require public agencies to give parents a copy of a notice of procedural safeguards available to parents under Part B, written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. Such a notice must be provided prior to an initial referral of a child for evaluation, before an IEP meeting, before a reevaluation, and upon receipt of a request for a due process hearing. This notice, among other matters, must inform parents of their right to file a complaint under the State complaint procedures at 34 CFR §§ 300.660–300.662, as well as their right to seek mediation or request a due process hearing.[50] Part B affords parents and public educational agencies the right to initiate an impartial due process hearing on any matter regarding the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.[51]

The IDEA Amendments of 1997 provide that, when a parent requests a due process hearing on matters involving the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, the public agency must inform the parents of the availability of mediation as a means to resolve the dispute. Mediation, at a minimum, must be available whenever an impartial due process hearing is requested. The mediation process must be voluntary on the part of the parties, not be used to deny or delay a parent's right to a due process hearing or any other rights afforded under Part B of the Act, and be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.[52]

Disagreements between parents and public agencies over issues such as the extent that Braille instruction should be included in a child's IEP, or the educational setting in which the child's IEP should be implemented, are examples of some of the matters that can be the subject of mediation or an impartial due process hearing. The use of mediation is strongly encouraged, since its use could eliminate the need to utilize the Act's due process procedures to resolve the dispute. Public agencies need to inform parents of all children with disabilities, including parents of blind and visually impaired students, about their right to initiate a due process hearing if agreement cannot be reached on important educational decisions, as well as their right to file a complaint under the State complaint procedures at 34 CFR §§ 300.660–300.662 of the Part B regulations, including a description of how to file a complaint and the timelines under those procedures.

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Dated: June 5, 2000.

Richard W. Riley,

Secretary of Education.

Appendix

[1] Two other related Federal laws also are applicable to the education of blind and visually impaired students. Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. 794 and Title II of the Americans with Disabilities Act of 1990 (Title II of the ADA), 42 U.S.C. 12131, are civil rights laws that protect persons with disabilities from discrimination on the basis of disability. The Department's Office for Civil Rights (OCR) enforces Section 504, as it applies to recipients of Federal financial assistance from the Department. OCR also enforces Title II of the ADA, as it applies to public entities, regardless of receipt of Federal funds. Under Section 504 and its implementing regulations at 34 CFR Part 104, children with disabilities in public elementary and secondary education programs operated by recipients of Federal financial assistance are entitled to a free appropriate public education in accordance with the Section 504 regulations at 34 CFR 104.33–104.36. With respect to elementary and secondary education programs, OCR generally interprets Title II of the ADA and its prohibition against discrimination on the basis of disability in a manner consistent with Section 504 and its regulations. The IDEA requirements described in this Notice are consistent with recipients' and public entities' obligations to provide FAPE to blind and visually impaired students under Section 504 and Title II of the ADA.

For further information about the requirements of Section 504 and Title II of the ADA, as they apply to the education of blind and visually impaired students, contact the OCR Customer Service Team at the following address and telephone number: OCR Customer Service Team, U.S. Department of Education, 330 C Street, S.W. Room 5212, Washington, D.C. 20202–1100. Telephone: (202) 205–5413; (202) 260–0471 for TTD services, Toll Free: 1–800–421–3481. Fax: (202) 205–9862, E-mail: ocr@ed.gov.

[2] 20 U.S.C. 1412(a)(1) and 34 CFR 300.121; 20 U.S.C. 1401(8) and 34 CFR 300.13.

[3] 34 CFR 300.300(a)(3)(i)–(ii).

[4] 34 CFR 300.531.

[5] 34 CFR 300.532(b).

[6] 34 CFR 300.532(g).

[7] 34 CFR 300.532(h).

[8] 20 U.S.C. 1414(b)(3)(B)(i) and 34 CFR 300.532(c)(1)(ii).

[9] *See* 20 U.S.C. 1414(d)(3)(B)(iii).

[10] 34 CFR 300.532(b)(1)–(2); *see also* Appendix A to 34 CFR Part 300, question 2 (Appendix A), 64 FR at 12472 (Mar. 12, 1999).

[11] The IEP is a written statement for a child with a disability that is developed, reviewed, and revised at a meeting in accordance with the requirements of 34 CFR 300.341–300.350. *See* 34 CFR 300.340(a).

[12] For a fuller explanation of IEP and other requirements of the Individuals with Disabilities Education Act Amendments of 1997, *see* Notice of Interpretation, Appendix A to 34 CFR Part 300, published at 64 FR 12406, 12469 (Mar. 12, 1999).

[13] 34 CFR 300.347(a)(2).

[14] *See* National Agenda for the Education of Children and Youths with Vision Impairments, including Multiple Disabilities, AFB Press (1995).

[15] 34 CFR 300.347(a)(2); Appendix A, question 2, 64 FR at 12472 (Mar. 12, 1999).

[16] 34 CFR 300.138(a).

[17] 34 CFR 300.347(a)(5)(i)–(ii).

[18] 34 CFR 300.138(b); *see also* Attachment 1, 64 FR at 12564 (Mar. 12, 1999).

[19] 34 CFR 300.344(a)(1)–(7).

[20] 34 CFR 300.344(b).

[21] 34 CFR 300.343(c).

[22] 34 CFR 300.343(a) and 300.342(c).

[23] 34 CFR 300.342(c)(2).

[24] 20 U.S.C. 1414(d)(3)(B)(iii) and 34 CFR 300.346(a)(2)(iii).

[25] 34 CFR 300.342(b)(1)(ii).

[26] *See* Analysis of Comments and Changes, published as Attachment 1 to 34 CFR Part 300 (Attachment 1), 64 FR at 12590 (Mar. 12, 1999).

[27] 34 CFR 300.346(a)(2)(v).

[28] 34 CFR 300.308(b); Appendix A, question 36, 64 FR at 12479 (Mar. 12, 1999).

[29] 34 CFR 300.301(a). *See also* 34 CFR 300.244 regarding an LEA's obligations to use up to 5 percent of the amount the agency receives in any fiscal year in combination with other amounts other than education funds to develop and implement a coordinated services system designed to improve results for children and families; OSEP memorandum 00–7 dated January 13, 2000 to State Directors of Special Education, entitled Enhancing Coordinated Services Systems among LEAs and SEAs.

[30] For a complete list, see a project sponsored by the National Institute on Disability and Rehabilitation Research (NIDRR), a component of the Office of Special Education and Rehabilitative Services, at http://www.resna.org/taproject/at/statecontacts.html

[31] *See* the October 9, 1997 "Dear Colleague" letter from the Secretary and the attached technical assistance packet. For guidance on standards that the Department uses for its suppliers, *see* Requirements for Accessible Software Design, 1997, at http://gcs.ed.gov/coninfo/clibrary/software.htm

[32] 20 U.S.C. 1401(22).

[33] *See* Attachment 1, 64 FR at 12549 (Mar. 12, 1999).

[34] 34 CFR 300.26(a)(4).

[35] *See* Attachment 1, 64 FR at 12549 (Mar. 12, 1999).

[36] National Agenda for the Education of Children and Youth with Visual Impairments, including Multiple Disabilities, AFB Press, at p. 14 (1995).

[37] 34 CFR 300.309.

[38] 34 CFR 300.550(b).

[39] 20 U.S.C. 1414(d)(1)(A)(iv) and 34 CFR 300.347(a)(3)–(4); Appendix A, question 1, 64 FR at 12471 (Mar. 12, 1999).

[40] 34 CFR 300.552(e).

[41] 34 CFR 300.550(b); Attachment 1, 64 FR at 12638 (Mar. 12, 1999).

[42] 34 CFR 300.551(b).

[43] 34 CFR 300.552(b)(2). That regulation requires that each child's placement is determined at least annually, is based on his or her IEP, and is in the school or facility as close as possible to the child's home. 34 CFR 300.552(b)(1)–(3). Further, unless a disabled student's IEP requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. 34 CFR 300.552(c).

[44] 20 U.S.C. 1414(f) and 34 CFR 300.501(c) and 300.552(a).

[45] *See* 34 CFR 300.552.

[46] 34 CFR 300.552(d).

[47] Appendix A, question 1, 64 FR 12406 at 12471 (Mar. 12, 1999).

[48] 34 CFR 300.503(a)(1) and (b)(2)–(4), and (7).

[49] 34 CFR 300.505(a)(1).

[50] 34 CFR 300.504.

[51] 34 CFR 300.507(a).

[52] 34 CFR 300.507(a)(2), 300.506(a)(2) and (b).

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