

May 28 2008

Catherine D. Clarke
Director, Education and Regulatory Advocacy
American Speech-Language-Hearing Association
444 North Capitol Street, NW, Suite 715
Washington, DC 20001

Dear Ms. Clarke:

This is in response to your April 23, 2008, letter to me following up on our conversations at the meeting I had with the staff of the American Speech-Language-Hearing Association (ASHA) earlier this year. First, I want to thank you for your hospitality and the opportunity for the discussions we had at that meeting. I was delighted to be able to participate. I would also like to respond to the issues you raise in your letter.

You request clarification on the role of speech-language pathologists (SLPs) in the use of the Response to Intervention (RTI) model that can be a component of an evaluation for children suspected of having a specific learning disability (SLD) under the 2006 final regulations implementing the reauthorized Individuals with Disabilities Education Act (IDEA). Although the Part B regulations, at 34 CFR §300.308(b), identify a speech-language pathologist as one of the individuals qualified to conduct diagnostic examinations of children, you are concerned that SLPs are not consistently included, when appropriate, as members of the RTI team.

The IDEA and the Part B regulations do not address the role of SLPs, or other qualified professionals, in an RTI model. As you know, under 34 CFR §300.307(a)(2), state criteria for determining whether a child has an SLD, as defined in 34 CFR §300.8(c)(10), must permit the use of a process based on the child's response to scientific, research-based intervention. If a local educational agency (LEA) chooses to use an RTI model as one part of the full and individual evaluation required under 34 CFR §§300.304-300.311, the LEA may choose the RTI model it wishes to implement. It would then be the responsibility of the LEA to determine the roles and responsibilities of the various staff members to be involved in that particular model, or which staff members the LEA chooses to involve in its RTI model. The individuals involved in the RTI model could vary for a number of reasons, such as the nature of the child's suspected disability, the expertise of local staff, and other relevant factors. The U.S. Department of Education (Department) does not prescribe the models LEAs must use, or how they will utilize their staff in implementing a selected model. Such determinations are left to state educational agencies (SEAS) and LEAs under the statute and regulations.

You also request clarification on whether children suspected of having communication disabilities other than SLDs should go through the RTI process as part of the identification process to determine eligibility for services. The statute and regulations are silent on this issue. As indicated above, the regulations at 34 CFR §300.307(a)(2) require only that states permit the

use of a process based on a child's response to scientific, research-based intervention as part of the identification of an SLD. The Part B regulations do not address the use of an RTI model for children suspected of having other disabilities. It is up to each state to develop criteria for determining whether a child has a disability, provided those criteria include a variety of assessment tools and strategies and do not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child. 34 CFR §300.304(b)(1)-(2).

As we explained in the Analysis of Comments and Changes accompanying publication of the August 14, 2006, final Part B regulations:

A public agency must use a variety of data gathering tools and strategies even if an RTI process is used. The results of an RTI process may be one component of the information reviewed as part of the evaluation procedures required under §§ 300.304 and 300.305. As required in §300.304(b), consistent with section 614(b)(2) of the Act, an evaluation must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion for determining eligibility for special education and related services. Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children With Disabilities, Final Rule, 71 Fed. Reg. 46540, 46648 (Aug. 14, 2006).

Next, you request guidance on state standards on the use of paraprofessionals and assistants in the provision of speech-language pathology services, because you are concerned that LEAs may be using these individuals improperly in serving children with disabilities. The Office of Special Education and Rehabilitative Services (OSERS) appreciates ASHA's recommendations regarding the use of paraprofessionals and assistants. These recommendations are very detailed and are clearly based on ASHA's collective experience. States could certainly choose to accept these recommendations or similar recommendations. However, OSERS is not in a position to adopt, or require that states adopt, the recommendations.

The Part B regulations at 34 CFR §300.156(b) require that the qualifications established and maintained by states must include qualifications for related services personnel and paraprofessionals that (1) are 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 (2)(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, in meeting the requirements of Part B to be used to assist in the provision of special education and related services under Part B to children with disabilities.

Our position regarding your request that the Department provide guidance on state standards for the use of paraprofessionals remains the same as the position set out in our response to public comments on the June 21, 2005, Notice of Proposed Rulemaking. See 71 FR 46611-46612. The Act and regulations require states to establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of Part B, including speech-language paraprofessionals, are appropriately and adequately prepared and trained. 34 CFR §300.156(a). The use of paraprofessionals and assistants who are appropriately trained and supervised is

governed by state law, regulation, and written policy, giving states the option of determining whether paraprofessionals and assistants can be used to assist in the provision of special education and related services under Part B of the Act, and, if so, to what extent their use would be permissible. States have the flexibility to determine whether to use paraprofessionals and assistants, and, if so, to determine the scope of their responsibilities.

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.

I hope this clarification is helpful to you. I am sorry that we are not in a position to provide the additional guidance you are seeking, but it is important that we continue to allow states the flexibility to utilize staff consistent with Part B and the discretion afforded states in this regard to ensure that children with disabilities receive the services that they need. Please do not hesitate to contact me if you have further questions.

Sincerely,

/s/

Jennifer Sheehy
Director
Office of Policy and Planning