



**Comments and Regulatory Recommendations
for the
Individuals With Disabilities Education Improvement Act, P.L. 108-446
Submitted by members of the
National Alliance of Pupil Services Organizations (NAPSO)**

The National Alliance of Pupil Services Organizations (NAPSO) is a coalition of national professional organizations whose members provide and support a variety of school-based prevention and intervention services to assist students in becoming effective learners and productive citizens. NAPSO organizations represent over a million members, including school counselors, school nurses, psychologists, school psychologists, social workers and school social workers; occupational therapists, physical therapists, art therapists, dance/movement therapists, and music therapists; speech-language pathologists and audiologists; teachers, students, parents, and administrators. NAPSO promotes interdisciplinary practice and collaboration, and advocates for ensuring access to quality pupil services for all students.

Pupil services include prevention, intervention, transition and follow-up services. Pupil services professionals provide direct services such as education, therapy, counseling, assessment, and diagnosis for all children and youth who are experiencing problems that interfere with learning. They also provide consultation, professional development, parent education, community linkage, and program administration. Additionally, pupil services personnel provide special education and related services that are required by law for students with disabilities.

As you develop the regulations for the newly reauthorized Individuals with Disabilities Education Act (IDEA), NAPSO urges you to support the role of related services personnel in improving academic success and promoting a healthy school climate for students with disabilities. Toward that end, NAPSO offers the following regulatory recommendations for our priority concerns:

I. Personnel Standards

To ensure the most effective use of IDEA funds, all children should receive services from the best-trained and qualified related services personnel.

Recommendation: The regulations should clarify that states are not to create new categories to replace “emergency, temporary or provisional” certification, or waivers for either special education teachers or related services personnel (e.g. ‘conditional’ or ‘interim’ certification, or other similar semantic devices designed to avoid the specific language contained in the statute).

Clearly all special education personnel are to meet the full set of requirements of their profession, as determined by that state, not a watered down set of expectations.

Rationale: Any practice that allows for the invention of new categories of certification that are lower standards than full certification and that are intended to undermine the prohibition against temporary, emergency, provisional or waived certification would be contrary to the law's requirements.

Recommendation: Sec.612(14)(B)(i) and Sec.612(14)(C) Personnel Qualifications
Include regulatory language in the relevant section (Sec. 300.136 Personnel standards, or its successor) that details specifics on state educational agency (SEA) obligations and outlines some specific measurable steps that local education agencies (LEAs) could take to recruit, hire, and retain highly qualified personnel, such as the following:

SEAs shall:

- establish caseload/classroom size standards that take into account total workload activities required and performed by school-based personnel to engage in the broad range of professional activities necessary to meet individual student needs, both to attract and retain qualified personnel and to meet the educational needs of students; loan forgiveness programs; and other programs that may include, but is not limited to:
- funding intensive certification, licensing, or registration programs for personnel who are providing special education or related services to accelerate the preparation of qualified personnel, including distance learning opportunities;

LEAs shall:

- Establish reasonable workload requirements that allow special education teachers and related services providers to engage in the full range of professional roles and responsibilities so that students with disabilities receive the appropriate quality and quantity of services;
- Provide funds to ensure adequate working conditions, including appropriate facilities, necessary educational material, ongoing continuing professional development, and necessary clerical, technological support, and salary supplements for nationally certified personnel;

Rationale: There is concern about the potential changes in qualification standards and hiring practices that may result from changes in IDEA 2004. It is critical that state education agencies (SEAs) establish appropriate qualifications for related service providers, as such a practice is in the best interest of the children in meeting educational goals, especially related to the Adequate Yearly Progress criteria for No Child Left Behind. Ensuring that related service providers have received adequate professional preparation to meet the needs of today's student population will ensure that students with disabilities receive the appropriate quality and quantity of services, which is consistent with the intent of Congress. It is essential that the Department of Education provide clear leadership to direct efforts toward appropriate and effective initiatives for recruitment and retention of qualified personnel, rather than allowing states to take a path that will ultimately create crises and student failure that could have been avoided.

Also, it is important to consider the fiscal and administrative implications of lowered personnel standards. Related services in the schools can be reimbursed by Medicaid only if they are provided by or are under the direction of the fully qualified provider. If states establish lower

standards for personnel in the schools, they risk losing Medicaid eligibility for reimbursement. Currently, many schools are heavily dependent upon Medicaid funds for various related services. If those funds are removed, districts will have to turn to increased funding from state budgets. The extra burden on local and state education agencies could seriously jeopardize special education budgets, programs, and personnel.

II. Early Intervening Services [Sec. 613(f)]

Again, we appreciate the inclusion of behavioral interventions as part of the early intervening services that may be provided to students not yet classified under IDEA. We are also pleased that “other school staff” is included in the professional development section on delivering scientifically based academic and behavioral interventions.

Recommendation: School districts should be aware that they have available a cadre of related services personnel whose specialized training includes developing just such interventions. Specifically, related services personnel are trained to develop behavioral and academic interventions that are directly linked to improved academic achievement.

Rationale: Utilizing current school personnel, particularly those specially trained to recognize students in need of additional services, can also improve collaboration between general and special education staff. This should allow for more efficient use of IDEA dollars and improved coordination and implementation of No Child Left Behind (NCLB) and IDEA programs.

Recommended Regulatory Language:

(a) In implementing early intervening services, a local educational agency may utilize related services personnel to –

- (1) assist in the determination of students who will receive coordinated, early intervening services;
- (2) assist in the design, implementation, and provision of such services; and,
- (3) consult with teachers and other school personnel on the provision of such services in the general education environment.

III. Behavioral Interventions

1. Individualized Education Program [Sec. 614(d)(3)(B)(i)]

The IDEA statute calls for consideration of behavioral needs when designing an IEP, as well as the use of positive behavioral supports, interventions, and services. We would have preferred the stronger language from the Senate bill that would have called for IEP teams to *provide* positive behavioral interventions and supports “in the case of a child whose behavior impedes the child’s learning or that of others.” We are disappointed that, while in the case of reading problems Congress mandates the use of research-based interventions, in the case of behavioral problems, schools must only *consider* using them.

Recommendation: Discussion accompanying the current regulations states “school officials have powerful incentives to implement positive behavioral interventions, strategies and supports whenever behavior interferes with the important teaching and learning activities of school.” (Discussion, 34 C.F.R. Sec. 300.346 (2), March 1999). The regulations should strongly encourage school districts to draw on the extensive body of research on the effectiveness of positive behavioral supports, interventions, and services and the benefits of their use. School districts should be encouraged to provide both individual and systemic research-based interventions, which will address both the individual child’s needs and improve the overall school climate.

We also recommend that the Department promote continued research on effective behavioral assessments and interventions in order to continue the progress of their application.

Rationale: We believe that the Department’s leadership in highlighting the improved academic and behavioral outcomes achieved when these services are implemented effectively will result in an increased use of such interventions.

According to the Caring for Every Child's Mental Health Campaign, part of the federal Center for Mental Health Services of the Substance Abuse and Mental Health Services Administration, children who are victims or witnesses to acts of bullying often suffer from serious emotional problems. Positive behavioral supports and interventions have been proven to assist classrooms or schools with high levels of bullying problems, for example, in making students feel more safe and more satisfied with school life. Without the availability of these supports or interventions, for many students, especially those who are bullying victims, the classroom is no longer a place of learning. When children feel unsafe, they can no longer pay attention to their schoolwork.

Recommended Regulatory Language:

Sec. 300.346(2). Consideration of special factors. The IEP team also shall --

(i). In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior.

(A) Consideration of positive behavioral interventions, strategies, and supports shall include consideration of evidence-based interventions that lead to improved academic outcomes, improved classroom behavior, and a reduction in disciplinary referrals.

(B) In considering evidence-based interventions for an individual child, the IEP team may recommend to the local educational agency the use of such interventions on a school-wide basis to improve the overall school climate.

IV. Related Services

Recommendation: Creative Arts Therapies (Music Therapy, Art Therapy, Dance/Movement Therapy) be

A.) explicitly listed and defined as a related service in the IDEA regulations (Current regulations, 34 C.F.R. §300.24) and

B.) explicitly listed as early intervention providers under Part C (Current regulations, 34 C.F.R. §303.12).

Recommended Regulatory Language:

A. Section 300.24. Related Services.

ADD new subsection (b) and reorder current (b) as (c):

(b) An LEA shall provide other recognized related services, including art therapy, music therapy, and dance/movement therapy, as determined necessary by the IEP team to assist the child to benefit from special education.

B. Section 303.12. Early Intervention Services.

ADD “creative arts therapists” as (e)(13):

(e) *Qualified Personnel.* Early intervention services must be provided by qualified personnel, including—

(13) creative arts therapists

Rationale: While the letter of policy clarification has made some difference in the extent of the provision of creative arts therapies, some school districts continue to maintain that, without explicit mention of such services in the regulations, they are not responsible for providing or paying for this service. Other districts will allow an evaluation for creative arts therapy services only if the parents can document that the child is not making an adequate degree of progress using traditional therapies.

In other instances, there have been increased requests for creative arts therapy services from families of children with whom such therapy has proven quite successful. However, sometimes the school district will not pay for the service, and parents must assume the costs on their own, despite the IEP team’s agreement that the service is necessary.

V. State Eligibility

1. Obligations Related to and Methods of Ensuring Services [Sec. 612(a)(12)]

Recommendation: We strongly encourage the Department to emphasize the importance of developing, implementing, and enforcing state interagency agreements. State Medicaid agencies in particular should maintain a strong role in the reimbursement of eligible services for Medicaid eligible children.

Rationale: Such agreements, when effectively implemented, should improve collaboration across child-serving agencies and reduce disputes of responsibilities.

2. Prohibition on Mandatory Medication [Sec. 612(a)(25)]

Recommendation: With regard to any regulatory language surrounding these provisions, **it is critical that the Department explicitly incorporate the Rule of Construction (B)** contained in the statute --

Nothing in subparagraph (A) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under paragraph (3).

Rationale: We believe that this language is imperative to ensure that the lines of communication between school personnel and parents remain open regarding the needs of the child. It remains our concern that, without this language, such policies would be interpreted as a prohibition on certain discussions between school personnel and parents and would create a chilling effect on the identification of students with mental health and behavioral needs. The data from the Surgeon General's Report on Mental Health (1999), the President's New Freedom Commission on Mental Health, and other sources indicate that the under-identification and misidentification of children and adolescents with mental disorders is already a huge problem.

Thank you for your consideration of these comments concerning implementation of the IDEA. The undersigned organizations welcome the opportunity to work with the Department in developing the regulations for this vital piece of legislation. For further information, please contact Myrna Mandlawitz, with the School Social Work Association at 202-686-1637.

Sincerely,

American Art Therapy Association
American Counseling Association
American Dance Therapy Association
American Music Therapy Association
American Occupational Therapy Association
American Physical Therapy Association
American Psychological Association
American School Counselor Association
American Speech-Language-Hearing Association
National Association of School Nurses
National Association of School Psychologists
National Association of Social Workers
School Social Work Association of America