

Special Education FAPE and One-to-One Support Obligations for Students with Disabilities

34 CFR §300.101 34 CFR §104.33

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PURPOSE

This BEC clarifies that the Local Educational Agency (LEA) is ultimately responsible for the provision of special education and related services for every student with a disability under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973. It describes the responsibilities of the LEA to provide special education and related services including one-to-one support for students with disabilities.

When the Individualized Education Program (IEP) team or Section 504/Chapter 15 team determines that a student with a disability requires one-to-one support for all or part of the school day, the LEA retains the obligation to provide services to students with disabilities. The source for providing or paying for the one-to-one support to a student with a disability, including the availability of medical assistance funded resources, cannot delay the receipt of the one-to-one services.

TYPES OF ONE-TO-ONE SUPPORT

The term one-to-one support means the individualized adult support provided in order to address the behavioral and care needs of a student with a disability, over and above the individualized educational support that the student would normally receive from the teaching staff, including paraprofessionals.

In 22 PA Code §§ 14.105(a) and 711.5(d), the state special education regulations, an instructional paraprofessional is defined as a school employee who works under the direction of a certificated staff member to support and assist in providing instructional programs and services to children with disabilities or eligible young children.

The support and assistance provided by a paraprofessional may include one-on-one or group review of material taught by certificated staff, classroom management, and implementation of positive behavior support plans. Services may be provided in a special education class, regular education class, or other instructional setting as provided in the student's IEP.

In addition to definition of instructional paraprofessional, §§14.105(a) and 711.5(d) also define a personal care assistant (PCA) as an individual who provides one-to-one support and assistance to a student, including support and assistance in the use of medical equipment, for example; augmentative communication devices; activities of daily living; and monitoring health and behavior. A PCA is also an employee of the school entity and may provide support to more than one student but not at the same time.

Therapeutic Staff Support (TSS) services are one-to-one support services that are authorized and funded through the Office of Medical Assistance Programs (OMAP). On January 11, 1994, OMAP issued the bulletin entitled, Outpatient Psychiatric Services for Children Under 21 Years of Age. In this bulletin, TSS services are defined as including one-on-one interventions to a child or adolescent at home, school, daycare, other community-based program, or community setting when the behavior without this intervention would require a more restrictive treatment or educational setting.

TSS services may include crisis intervention techniques, immediate behavioral reinforcements, emotional support, time-structuring activities, time out strategies, passive restraints when necessary, and additional psychosocial rehabilitative activities. Persons providing TSS are not employees of the school entity and have the specific tasks as prescribed in the treatment plan. Regardless of the availability of medical assistance funded resources, such as TSS services, implementation of the student's IEP may not be delayed and the student must receive the one-to-one support services described in the student's IEP (34 CFR §300.323(c)).

FAPE

Every student with a disability who is determined to be eligible under IDEA or qualified under Section 504 of the Rehabilitation Act is entitled to Free Appropriate Public Education (FAPE). Section 504 requires LEAs to provide FAPE to all qualified students with disabilities within their jurisdictions, regardless of the nature or severity of those disabilities (34 CFR §104.33).

A LEA can satisfy the Section 504 FAPE requirement by implementing an appropriate service agreement (22 PA Code §15.7). IDEA defines FAPE as special education and related services provided at public expense, under public supervision and direction, without charge and in conformity with an IEP even if those children are advancing from grade to grade (34 CFR §300.101).

GUIDELINES FOR ONE-TO-ONE SUPPORT AS PART OF FAPE

Whenever an IEP team or Section 504 team determines that a student with a disability requires one-to-one support services for all or part of the school day, the LEA is responsible for the provision of this service without delay, even if that means using LEA resources (including additional staff) to provide one-to-one support services. The IEP team is required to consider supplemental aids and services and program modifications for all students with disabilities.

A key question for the IEP or Section 504 team to consider is whether the student with a disability requires one-to-one support to make meaningful progress toward annual goals in the IEP in the least restrictive environment (LRE). This determination must be made even if the student currently receives one-to-one services from another agency or individual.

In determining whether a student needs one-to-one support, the team should consider the following factors:

- Reports from the student's parents, teachers and other persons with information relevant to the student's academic, social, emotional, and/or behavioral needs;
- The student's past history in making meaningful progress in his or her educational program – including the student's progress toward annual goals – without one-to-one support;
- The student's history of a referral, need for, or receipt of community-based or school-based mental health services;
- The student's record of attendance, any disciplinary offenses, including offenses resulting in manifestation determinations or multiple short-term suspensions, functional behavioral assessments, positive behavior support plans and any other evaluations available to the team, including evaluations from a student's community- or school-based mental health provider; and
- The student's behaviors that resulted in exclusion from the classroom.

If the IEP or 504 team has deemed one-to-one support necessary for FAPE in the LRE, the IEP or Section 504 team must include the need for the one-to-one service in the student's IEP or 504 Service Agreement even if the student currently receives one-to-one support from another agency or individual. When one-to-one supports are necessary, then the IEP

or Section 504 Service Agreement must include the type of support (paraprofessional, PCA), frequency, and duration of one-to-one supports in the IEP or Service Agreement.

The one-to-one support services must be written, clearly defined in writing, and identify who is responsible and the procedures in place to ensure there will be no delay or gaps in the provision of one-to-one supports. A delay or gap in one-to-one service will prevent access to school and/or school transportation and constitute a denial of FAPE. Consistent with 34 CFR §300.323, the LEA must ensure that there is no delay in implementing a student's IEP, which includes any case in which the payment source for providing or paying for special education and related services to the student is being determined (34 CFR §300.103).

The LEA may meet its obligation to provide one-to-one support using services funded by medical assistance, such as TSS services, to the extent that the student qualifies for such services under the medical assistance system. However, eligibility for one-to-one support through medical assistance and reliance on use of medical assistance cannot be a precursor or condition to the provision of one-to-one support services. Nor may the LEA require a parent to utilize or obtain medical assistance or other insurance or suggest that the parent must appeal any medical assistance denial of services as a condition to obtain one-to-one support.

In summary, an LEA is the agency primarily and ultimately responsible for meeting the needs of students with disabilities. As such, the responsible LEA must ensure that all necessary services and supports required by an IEP or Service Agreement are provided in a timely manner. An LEA cannot rely on the provision of a TSS service by the medical assistance system to meet its obligation of FAPE. Moreover, it is never appropriate to deny a student access to curriculum, school, school-sponsored activities, or transportation because of the unavailability of staff or funds to provide one-to-one services.

REFERENCES:

State Board of Education Regulations

22 PA Code §14.105 22 PA Code §14.131 22 PA Code §14.133 22 PA Code §15.7 22 PA Code §711.5

Federal Regulations

34 CFR §§ 300.101 – 300.104 34 CFR §§ 300.114 – 300.120 34 CFR §§ 300.320 – 300.324 34 CFR §104.33

Other

Office of Medical Assistance Program (OMAP) Bulletin, 01-94-01

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