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Robert Powell, JD
CSHA Legislative Counsel
rpowell@csha.org

Public School FREQUENCY & DURATION; MAKE-UP SESSIONS; USE OF SUBSTITUTES

CSHA continues to receive questions as to “make-up” IEP services, especially with the traditional IEP description of 20 minutes of speech therapy twice a week. Additionally, many schools do provide a back-up speech-language pathologists and may be utilizing short-term subs for special education services, including special education.

CSHA advises IEP services to be conditioned on the school calendar or other flexibility in the frequency of services. Otherwise state compliance, if involved, will require IEP services to be made up by the affected school district. Situations have been reported where the SLP has been out due to illness and upon return, has in addition to an already excessive caseload, been required to make-up all ST sessions.

Contract provisions should spell out working hours for teachers and specialists. Some schools have contract provisions (i.e., extra pay or stipends) for additional workload provisions. If a SLP caseload is such that it prevents implementing assigned IEP services, the state has an interest in assuring appropriate implementation of IEP services and the CDE Special Ed Division complaint/compliance office might become involved. For instance, a SLP after exhausting all reasonable discussions, may as a last resort consider filing a workload grievance (*i.e., violation of contract provisions and being forced to violate federal/state laws*).

Use of short-term substitutes may or may not be desired by the local school SLPs. While appropriate special ed services may be implemented by a sub acting as an instructional aide, “speech aides” are required by state law to be “directly supervised” and such services noted in the IEP. Thus a short-term substitute would have to be placed under the supervision of a SLP to carry out or make-up IEP speech therapy sessions.

Relevant laws and policies:

IEP Frequency & Duration Discussions from federal OSEP (2002)

The IEP [32 Code of Federal Regulations/CFR 300.347 & clarified in Appendix C] must include the anticipated frequency, location and duration. IDEA does not explicitly require a IEP to specify the actual time, in terms of hours and minutes. The Dept. Of Education has stated that the amount of services must be clearly stated in a manner appropriate to the type of services provided and sufficiently clear to all persons involved in developing and implementing the IEP (*“precise daily allotments are preferred and the use of a range of times would not be sufficient. In situations where the child’s disability and unique educational needs cannot be reflected through a daily allocation, public agencies should determine weekly allocations for the amount of services.”*). If the IEP team decides that an extended school year, or day, is in order such contingencies must be specified in the IEP.

A school district generally is responsible for making alternative arrangements to provide the services set out in the student’s IEP when other school-related activities make either the student or the services provider unavailable during the time when the service is

regularly scheduled. However, it is not obligated to do so when the student is unavailable for other reasons, as during absences from school.

CA CDE Title 5 Regulation section 3051 Standards for DIS Services:

(2) “ ... shall include frequency and duration of services.”

(3) “All entities and individuals providing designated instruction and services shall be qualified.”

Title 5 Section 3051.1 LSH Development & Remediation

An individual holding an appropriate credential with specialization in LSH may provide services which include:

(1) “Referral and assessment ...”

(2) *Specialized instruction and services for individuals with disorders of LSH ...”*

Caseloads of FT LSH specialists ... shall not exceed ... average of 55 ...”. **Services may be provided by an aide working under the direct supervision of a credentialed LSH specialist if specified in the IEP. No more than two aides may be supervised by one LSH specialists. Caseloads may not be increased.** (emphasis added)

CDE SED discussions

The state’s SED Complaint Unit has held a firm line-- and do make findings of non-compliance when complaints are filed that a provider (speech, psych, OT, etc.) missed even one session that wasn't made up. It is suggested that local IEP teams ***put in the IEP that the sessions will be provided according to the school calendar and attach a school calendar to the IEP so parents don't expect services during the summer months, holidays etc.***

Some schools are reported to write IEP for speech therapy as a number of sessions per year or minutes per year as opposed to 20 minutes twice a week?

CA Ed Code section 56061-2

Ed Code 56060 – A noncredentialed person shall not substitute for any special education certificated position.

Ed Code 56061 - A person holding a valid credential authorizing substitute teaching may serve as substitute for the appropriately credentialed special education teacher as follows: a) Except as provided in subdivisions (b) and (c), the employer shall not employ an inappropriately credentialed substitute teacher for a period of more than 20 cumulative school days for each special education teacher absent during each school year. (b) Upon application by the district or COE, the superintendent may approve an extension of 20 school days in addition to those authorized by subdivision (a).

56062 - The employer shall use the following priorities in placing substitute teachers in special education classrooms: a) A substitute teacher with the appropriate special education credential or credentials. b) A substitute teacher with any other special education credential or credentials. c) A substitute teacher with a regular teaching credential.

EC 56363 (a) Designated instruction and services as specified in the individualized education program shall be available when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program. The instruction and services shall be provided by the regular class teacher, the special class teacher, or the resource specialist if the teacher or specialist is competent to provide such instruction and services and if

the provision of such instruction and services by the teacher or specialist is feasible. If not, the appropriate designated instruction and services specialist shall provide the instruction and services. Designated instruction and services shall meet standards adopted by the board.

CA Dept of Ed Special Ed Division web site – Complaints

State has an interest in assuring IEPs and federal/state laws are followed!

SED Quality Assurance Process < www.cde.ca.gov/sp/se/qa >.