



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

MAY 30 1980

Mr. Stan Dublinske, Director
School Services Program
American Speech-Language
& Hearing Association
10801 Rockville Pike
Rockville, Maryland 20852

Dear Mr. Dublinske:

Recently, you requested a policy interpretation of the term "adversely affects educational performance" as it relates to speech impaired children. You indicated that the American Speech-Language-Hearing Association (ASHA) has received reports that some State and local educational agencies are requiring educational assessments of all speech impaired children as part of the evaluation process in order to determine their eligibility for special education and related services.

The broad issue raised in your inquiry is whether the definition of "speech impaired" in the regulations implementing the Education of the Handicapped Act, Part B (as amended by P.L. 94-142) is interpreted to mean that children with communicative disorders who have no other handicapping condition are ineligible for services as "handicapped children" unless educational assessments indicate concomitant problems in academic achievement. An interpretation is needed because "educational performance" is not specifically defined in the Part B regulations. However, the standard for determining whether a child fits into any of the categories of handicaps listed in the Act and regulations is that the impairment "adversely affects a child's educational performance." Under Section 602(1) of the Act, a child with one of the listed impairments must need special education to be a "handicapped child". For children who need a "related service" but no other special education services, the Part B regulations in section 121a.14(a)(2) allow a State to consider that service as "special education", bringing those children within the scope of the Act.

I agree that an interpretation which denies needed services to speech impaired children who have no problem in academic performance is unreasonably restrictive in effect and inconsistent with the intent of the Act and regulations.

There is strong support in the Act and regulations for a broad construction of the term "educational performance". By its terms, the Act affords some services (and encourages States to provide more) to infants and preschoolers with the kinds of handicapping conditions listed in the statute. "Speech impaired" is one of those categories of handicapping conditions. Obviously, assessments of academic performance (through standardized achievement tests in subject matter areas) would be inappropriate or inconclusive if administered to many such children. The meaning of "educational performance" cannot be limited to showing of discrepancies in age/grade performance in academic subject-matter areas.

The extent of a child's mastery of the basic skill of effective oral communication is clearly includable within the standard of "educational performance" set by the regulations. Therefore, a speech/language impairment necessarily adversely affects educational performance when the communication disorder is judged sufficiently severe to require the provision of speech pathology services to the child.

The process for determining a child's disabilities and need for educational services is described in Sections 121a.530-533 of the Part B regulations. These evaluation and placement procedures contemplate that the diagnosis and appraisal of communicative disorders as handicapping conditions would be the responsibility of a qualified speech-language pathologist. (see, also, the definition of "speech pathology" in Section 121a.13(b)(12)).

Section 121a.432 sets minimum requirements for the evaluation procedures that public educational agencies administer.

Section 121a.532(f) indicates the possible range of areas for assessment (i.e., health, vision, hearing, social-emotional status, general intelligence, academic performance, communicative status, and motor abilities). However, the "comment" following this section states:

Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate decision.

The "multisource" requirement of Section 121a.533(a)(1) makes public agencies responsible for using information from a variety of sources in interpreting evaluation data and making placement decisions. Listed sources include: "...aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior". Following this section is a "comment" which clarifies the multisource requirement in relation to speech-language children:

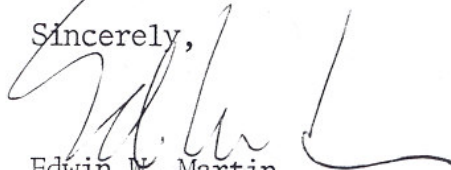
Paragraph (a)(1) includes a list of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance...For example, while all the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other handicapped children, such as a child who has a severe articulation disorder as his primary handicap. For such a child, the speech-language pathologist, in complying with the multi-source requirement, might use (1) a standardized test of articulation and (2) observation of the child's articulation in conversational speech. (Emphasis added.)

Any public agency requirements which impose procedures more extensive or stringent than those in the Federal regulations must be scrutinized in light of these clarifying comments. It is clear that, in establishing the existence of a speech/language impairment that is "handicapping" in Part B terms, a professional judgement is required. The basis for that judgment is the child's performance on formal and/or informal measures of linguistic competence and performance, rather than heavy reliance on the results of academic achievement testing. The impact of the child's communicative status on academic performance is not deemed the sole or even the primary determinant of the child's need for special educational services. It is the communicative status - and professional judgments made in regard to assessments of communicative abilities - which has overriding significance.

In the event that the speech-language pathologist establishes through appropriate appraisal procedures the existence of a speech/language impairment, the determination of the child's status as a "handicapped child" cannot be conditioned on a requirement that there must be a concurrent deficiency in academic performance.

It was not the intent of the Act to reduce services to handicapped children. The practice which you have brought to our attention could have that kind of negative effect. I appreciate your inquiry on behalf of children with speech/language impairment and trust that this response has made clear the Office's position on this issue.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Edwin W. Martin', with a long horizontal flourish extending to the right.

Edwin W. Martin
Acting Assistant Secretary
for Special Education & Rehabilitative Services

cc: Garry McDaniels
Jack Jones
Tom Irvin
Bill Tyrrell
Jerry Vlasak