

81 IDELR 287

122 LRP 39264

**Memorandum to State Directors of
Special Education
Office of Special Education Programs**

OSEP 22-01

October 4, 2022

Related Index Numbers

355.065 Special Education Teachers/Instructors

355.010 Aides/Paraprofessionals

355.025 In General

Judge / Administrative Officer

Valerie C. Williams, Director

Ruling

OSEP reiterated the IDEA's requirements for teacher qualifications, as well as qualifications for related services providers and paraprofessionals. Regardless of personnel shortages, OSEP stated, an SEA may not waive those requirements on an emergency, temporary, or provisional basis.

Meaning

Districts facing personnel shortages may be tempted to hire individuals who do not meet IDEA personnel qualification requirements. But there is no exception to the IDEA's qualification rules. Districts must ensure that their hiring personnel fully understand how special education teachers and other personnel qualify under the IDEA. This includes understanding how a teacher may qualify through an alternate route to certification, and the importance of following up to ensure a teacher utilizing an alternate route progresses toward full certification and receives sustained professional development.

Case Summary

While acknowledging that districts are facing severe personnel shortages, OSEP reminded SEAs that they may not waive IDEA personnel qualification requirements on an emergency, temporary, or provisional basis. OSEP stated that it is critical that SEAs understand how personnel qualify to provide

special education and related services, as well as the resources available to help SEAs meet those requirements. OSEP pointed out that FAPE under the IDEA includes the provision of special education and related services by teachers, related services providers, and paraprofessionals who are appropriately and adequately prepared and trained. Accordingly, an SEA may not waive qualification requirements simply because districts face severe personnel shortages, OSEP stated. OSEP explained that, to meet IDEA requirements, a special education teacher must have either: 1) obtained full state certification as a special education teacher; or 2) passed the state special education teacher licensing examination and hold a license to teach in the state as a special education teacher. A public charter school teacher, OSEP stated, may qualify by meeting the certification or licensing requirements, if any, set forth in the state's public charter school law. OSEP noted that a teacher may also pursue an alternate route to certification but it pointed out that the IDEA contains strict requirements governing such routes. For example, the teacher must receive high-quality professional development that is sustained, intensive, and classroom-focused; may teach for no more than three years; and must demonstrate satisfactory progress toward full certification. As to related services personnel and paraprofessionals, OSEP stated that they must have qualifications that are consistent with any state-approved or state-recognized certification. The agency also noted that districts may use appropriately trained paraprofessionals to assist in the provision of special education and related services. Finally, OSEP listed several resources SEAs may utilize to address personnel shortages.

Full Text

Memorandum

TO:State Directors of Special
EducationFROM:Valerie C. Williams Office of
Special Education Programs
(OSEP)SUBJECT:Personnel Qualifications under
Part B of the Individuals with Disabilities Education

Act (IDEA)

The U.S. Department of Education's (Department) Office of Special Education Programs (OSEP) is committed to supporting States in the provision of a free appropriate public education (FAPE) to all children with disabilities. FAPE includes the provision of special education and related services that meet the requirements of IDEA Part B, which includes ensuring that special education teachers and related services providers are appropriately and adequately prepared and trained. This memo is intended to clarify States' obligations regarding the IDEA Part B requirements related to personnel qualifications and alternate certifications. Based on media reports and discussions with States and advocates, OSEP is aware that some States currently have policies and procedures in place that may not be consistent with IDEA requirements. OSEP also recognizes that States are facing many challenges caused by the COVID-19 pandemic, including the impact it has had on exacerbating the shortage of special education teachers and related services providers across the country. Thus, OSEP believes it is critical to ensure that State educational agencies (SEAs) fully understand the IDEA requirements related to personnel qualifications and alternate certifications and are aware of available resources to support their efforts to meet them.

Personnel Qualifications

Under Section 612(a)(14) of IDEA and 34 C.F.R. § 300.156, the SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of IDEA Part B are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. Those qualifications must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school: (1) has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as

a special educator, if such alternate route meets minimum requirements described in 34 C.F.R. § 200.56(a)(2)(ii) as such section was in effect on November 28, 2008), or (2) passed the State special education teacher licensing examination and holds a license to teach in the State as a special education teacher, except in the case of a teacher teaching in a public charter school. A teacher teaching in a public charter school must meet the certification or licensing requirements, if any, set forth in the State's public charter school law. In addition, public school special education teachers may not have special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and must hold at least a bachelor's degree.

Personnel who have not obtained full State certification as a special education teacher may obtain certification through an alternate route. Specifically, under 34 C.F.R. § 300.156(c)(2), personnel who are participating in a program that provides an alternate route to special education teacher certification must:

- (1) receive high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
- (2) participate in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
- (3) assume the functions as a teacher only for a specified period of time not to exceed three years; and
- (4) demonstrate satisfactory progress toward full certification as prescribed by the State.

(Emphases omitted.)

With respect to related services personnel and paraprofessionals, under 34 C.F.R. § 300.156(b), qualifications must be 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. In addition, related services personnel who deliver services in their discipline or profession may not have certification or licensure requirements waived on an emergency, temporary, or provisional basis. Paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, may be used to assist in the provision of special education and related services to children with disabilities.

As noted above, the SEA may not waive the special education or related services personnel certification or licensure requirements on an emergency, temporary, or provisional basis.

Having outlined the requirements under IDEA Part B, this memo also highlights information and resources that may help States meet the requirements.

The Department's and OSEP's support for teacher initiatives

The Department, including OSEP, has long been committed to providing support and encouraging evidence-based and innovative and promising approaches to meeting the need for well-qualified special education teachers. Under the leadership of President Biden and Secretary Cardona, this commitment has increased.

On March 28, 2022, Secretary Cardona issued a call to action for States, school districts, and institutions of higher education (IHEs) to address teacher shortages. The Secretary has encouraged the use of funds under the American Rescue Plan Act of 2021 (ARP) and other federal COVID-19 relief funds to scale up educator preparation programs (EPPs) at IHEs, to work in partnership to address the short- and long-term challenges contributing to the teacher shortage across the country. Additionally, on June 9, 2022, the Secretary released a fact sheet on the Department's efforts to support the teacher development pipeline to recruit, prepare, and retain teachers. The Department also released a fact sheet on Federal programs that may be used to sustain ARP investments in key strategies that attract, prepare,

support, and retain a diverse teacher workforce and address teacher shortages over the long term. The U.S. Departments of Education and Department of Labor also issued a Joint Dear Colleague Letter on August 31, 2022, that focuses on the use of Registered Apprenticeship programs for teaching, and ensuring that teachers are paid a livable and competitive wage. On September 27, 2022, the Department announced 22 new grants totaling more than \$60 million under the Supporting Effective Educator Development program, which will strengthen the teacher pipeline and improve teacher professional development.

Higher Education Emergency Relief Fund (HEERF) under ARP

HEERF grant funds can be used to provide stipends, scholarships, and other financial aid to educators-in-training to help underwrite the cost of preparation. For example, HEERF funds can be used to provide teaching residents with stipends to support living expenses, such as housing, or to cover the cost of travel between campus and the school in which they are completing their clinical experience. These funds can also be used to cover the cost of additional courses or pay test fees to earn first or additional teaching licenses or certification. IHEs can discharge institutional student loans, debt, or unpaid balances to their IHEs with their own funds.

OSEP continues to support States in addressing personnel shortages, through OSEP-funded national technical assistance (TA) centers.¹ A number of these centers provide specific TA to support States' efforts to attract, prepare and retain a quality educator workforce. OSEP, through our TA centers, also works closely with relevant stakeholders to synthesize and share innovative solutions that are making a difference in assisting States in their efforts to build and sustain a strong, effective, and diverse educator workforce with the knowledge and skills needed to provide the quality education each child and family deserves.

Additional resources include:

Attract, Prepare, Retain: Effective Personnel For All | OSEP Ideas That Work

Information and resources for stakeholders to explore potential strategies and innovative approaches to address the teacher shortage.

FACT SHEET: The U.S. Department of Education - Secretary Cardona's Call to Action to Address the Teacher Shortage

Fact sheet that addresses the teacher shortage and provides examples of States currently leading this work.

Whole Child Policy Toolkit | Learning Policy Institute

Toolkit that provides information about teacher shortages, school safety, and additional resources to strengthen the profession.

Collaboration for Effective Educator Development, Accountability, and Reform Center (CEEDAR Center) The Educator Shortages in Special Education Toolkit is organized around the guiding principle that short-term strategies to meet immediate demand must be intentionally paired with long-term, systemic strategies to attract, prepare, and retain effective special education teachers to create comprehensive shortage solutions.

Homepage | Apprenticeship.gov

Website that can be used to locate apprenticeships across the country to connect career seekers, employers, and educators.

OSEP-Funded TA Centers²

- The CEEDAR Center supports students with disabilities in achieving college- and career-ready standards by building the capacity of State personnel preparation systems to prepare teachers and leaders to implement evidence-based practices within multi-tiered systems of support.

- The Early Childhood Technical Assistance Center supports State Part C and Part B Section 619 programs in developing high-quality early intervention and preschool special education service systems.

- The Early Childhood Personnel Center assists States to build Comprehensive Systems of Personnel Development (CSPD) to improve outcomes for infants and young children with disabilities and their families.

- The IRIS Center offers a wide variety of resources and services to suit a diverse set of instructional needs and circumstances.

- The National Center for Systemic Improvement (NCSI) provides differentiated support through universal, targeted, and intensive technical assistance to support SEAs to best use their general supervision and professional development systems.

Finally, OSEP wants to thank all States and entities for the efforts they are making to serve children with disabilities and their families during these difficult times. We hope the information provided in this memo is useful in these ongoing efforts.

cc:Parent Training and Information Centers
OSEP-Funded Technical Assistance Centers

¹See the TA Centers listed below.

²The views expressed in the following websites and resources do not necessarily represent the positions or policies of the U.S. Department of Education. No official endorsement by the U.S. Department of Education of any product, commodity, service, or enterprise mentioned in this website is intended or should be inferred.

Statutes Cited

20 USC 1412(a)(14)