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Special Education

Technical Assistance Advisory SPED 2012-1: Certain IEP Services Not Provided by the Department in DYS Institutional Settings

To: Administrators of Special Education and Other Interested Parties

From: Marcia Mittnacht, State Director of Special Education

Date: October 06, 2011

The Department of Elementary and Secondary Education (the Department) through the Special Education in Institutional Settings (SEIS) program is responsible for providing special education services to eligible students in institutional settings operated by or under contract with the Department of Youth Services (DYS), as well as other state agency institutional settings. The Department's SEIS program is responsible for providing such services according to the students' IEPs, subject to resource availability. *See 603 CMR 28.06(9).*

When a student enters a DYS residential setting¹, DYS and SEIS determine if a DYS student has been identified as special education eligible. For eligible students, SEIS staff review the student's IEP and begin IEP services as soon as possible. Some IEP services are not currently provided by the SEIS program. These services are referred to in this and related documents as Non-SEIS Services ("NSS"). NSS may be any type of service that the SEIS program is currently unable to provide based upon its resources and the type or amount of services available.

If IEP services are identified as NSS, SEIS notifies the district in writing. The district has the opportunity to identify service providers to deliver the NSS services required by the IEP in the DYS residential setting, or to discuss other options with the parent. To support the district in providing this service, SEIS assists in coordinating with DYS to provide the service to the student with the least disruption in regular DYS programming. For a district service provider, DYS requires the appropriate background checks and compliance with the DYS Visitor Policy.

Counseling² is an NSS

One typical service found on student IEPs is counseling. DYS residential settings offer ongoing clinical services to all resident students³. DYS clinical services, however, are part of regular DYS programming and are not provided or bound by a student's IEP. The Department offers the following suggestions to districts when counseling services are identified on a student's IEP.

Recommended District Practice

Districts that receive NSS letters regarding counseling are encouraged to discuss with the parent/guardian the existence of DYS' clinical services and to have the parent consider if the IEP counseling services might be duplicative or unnecessary in the DYS residential setting given the comprehensive nature of DYS clinical services. In that event, the district and the parent may agree to suspend the IEP counseling services during the period of time that the student is in the DYS residential setting.

If the district and the parent agree to suspend the IEP counseling services while the student is in the DYS residential setting, an amendment⁴ to the IEP should be signed reflecting that IEP counseling services will be suspended while the student is in the DYS residential setting.

The IEP amendment or written notice in reference to the amendment will note that:

- a. the student is receiving clinical services from DYS while in a DYS residential setting;
- b. the parent understands that DYS clinical services are **not** special education services;
- c. the parent understands that the DYS clinical program is not bound by decisions of the district, or the IEP team, or by the IEP.

Any agreement that changes the IEP service delivery during the period of time the student is in the DYS residential setting should be reflected through a notice and consent in the student record or through an amendment to the IEP. If, however, the school district arranges services to be provided in the DYS residential setting, consistent with the IEP, no additional documentation is required.

As ever, I appreciate the cooperation of districts with SEIS as we serve students in DYS residential settings.

Attachment:

Massachusetts Department Of Youth Services Clinical Services Overview

¹ Refer to the Department of Youth Services Public Information Packet on the DYS web site for information regarding DYS programs. [Public Information Packet 2013](#)

² This discussion of counseling services should be read to also apply to other clinical or therapeutic services that may be included on a student's IEP.

³ See the attached description of DYS services.

⁴ IEP Form A1 & A2

Last Updated: October 06, 2011