

Dated June 11, 2002

Ms. Trish Howard
Acting Part C Coordinator
Commission for Children with Special
Health Care Needs (CCSHCN)
982 Eastern Parkway
Louisville, KY. 40217

Dear Ms. Howard:

I am writing concerning the First Steps Review Panel used by the Kentucky Early Intervention Program when an individualized family service plan (IFSP) team recommends early intervention services that exceed one hour per discipline per week. In reviewing the focus group comments submitted to the Office of Special Education Programs (OSEP) by Kentucky, as part of its self-assessment packet, OSEP noted that comments were made by providers regarding the amount of paperwork involved with requesting services "beyond the set guidelines". There were further comments made by providers that the process for requesting a review for services prescribed above the guideline level resulted in a delay in the provision of services for eligible children and families.

In response to OSEP's request for further information regarding the guidelines and the review process, you sent the regulation at 911 KAR 2:130: Kentucky Early Intervention Program Assessment and Service Planning, and Section VI of your Policy and Procedure Manual, both of which describe the process used by the IFSP team to obtain authorization for early intervention services beyond the State's guidelines. Section 2 (10)(g) 2.a. and b. of 911 KAR 2:130 states: "Unless prior authorization is granted, based on individual needs of the child, the frequency and intensity for therapeutic intervention for each child shall not exceed one (1) hour per discipline per week." The regulation and policy describe a process to request prior authorization for exceeding the limits whereby a written request must be sent to the First Steps State office. The State coordinator forwards the request to the State's Best Practice Review Panel, which completes the review process within 10 working days of receiving the request. The decision of the panel may be appealed to the State's First Steps coordinator or directly pursuant to 911 KAR 2:170. The decision of the First Steps coordinator may also be appealed pursuant to 911 KAR 2:170.

A State may establish guidelines to assist teams in developing the IFSP. However, those guidelines may not be implemented in a manner that restricts the authority and responsibility of the IFSP team to make individualized determinations for the child and family and to include in each child's IFSP those services that the team determines are

appropriate to meet the unique needs of the child and family. According to the State regulation, if an IFSP team recommends services that exceed one hour per discipline per week, a request with accompanying documentation must be submitted to the Review Panel. The Panel does not include the parents and other required IFSP meeting participants. If the Panel does not, after its review, approve the additional services requested, there is no further IFSP meeting; the parent's only recourse is to appeal the decision to the First Steps Coordinator or file an appeal with the Cabinet for Health Services. Thus the Review Panel, and not the IFSP team, makes the final determination regarding the frequency of the service, subject only to appeal.

Under Part C of the Individuals with Disabilities Education Act (IDEA), the IFSP team, which includes the parent(s), has the decision-making responsibility to identify early intervention services that meet the unique developmental needs of the child and the needs of the child's family related to enhancing the child's development, based on the results of the evaluation and assessment of the child and the child's family. 34 CFR §303.340. The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and family, including frequency, intensity and method of delivering services, the natural environments in which the early intervention services will be provided, the location of the services, and payment arrangements, if any. 34 CFR §303.344(d)(1). A State can not confer the final determination of the frequency and intensity of the early intervention services needed by a child on a body that does not meet these requirements, nor can it require a parent to initiate an appeal process in order to secure early intervention services determined necessary by the IFSP team.

Kentucky' regulations and procedures concerning the State review panel are on their face inconsistent with the above requirements for developing IFSPs under Part C of IDEA. In its current application, Kentucky assures that its procedures for developing, reviewing and evaluating IFSPs meet the requirements of 34 CFR §§303.340-303.346. Kentucky must revise its regulation and procedures for the State review panel to ensure that its process is consistent with Part C requirements or change its practice and submit an assurance that the revised practice can be implemented under current State regulations. Kentucky must respond within 10 days of the date of this letter. If you have any questions or need assistance, please call the Kentucky Part C State contact, Jill Harris, at (202)-205-9583.

Sincerely,

/s/

Stephanie S. Lee
Director
Office of Special Education Programs