

Do Related Services Ever End?

Evaluating, Programming and Dismissal from Related Services

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What is a related service? 37 Code of Federal Regulations § 300.34

- *Related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

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What is a related service?

Texas Education Agency

"Related services are a support to the commitment that all students with disabilities have available to them a free appropriate public education with special education services designed to meet their specific needs. Some students may need related services to meet their individually designed special education goals." - Texas Education Agency

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What is a related service?

Texas Education Agency

Related Services can include, but are not limited to:

- Physical therapy
- Occupational therapy
- Transportation
- Counseling services
- Parent training/In Home Training
- Orientation and mobility services
- School Health Services (including assistance with health-related needs during the school day, e.g., catheterization)

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What is a related service?

Texas Education Agency

Related Services can include, but are not limited to:

- Audiology services
- Medical services (only to diagnose or evaluate a student's disability)
- Social work services in school
- Speech-language therapy (In Texas, speech-language therapy is considered an instructional service. So, it can be a stand-alone service as well as a supportive service)
- Psychological services
- Recreation
- Rehabilitation counseling services
- Interpreting services

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The screenshot shows a document from the Texas Education Agency (TEA) titled "Related Services for Students with Disabilities – Questions & Answers". The document contains several questions and answers regarding the delivery of related services. The questions include: "How are related services delivered?", "What are direct services?", "What are indirect services?", "May a student currently being served under the IDEA who only requires related services remain under the special education umbrella?", and "Can students being served under Section 504 receive related services and support?". The answers provide detailed information about the requirements for service delivery, including the role of school districts, the types of direct and indirect services, and the criteria for students to remain under the special education umbrella or receive services under Section 504.

Related Services for Students with Disabilities

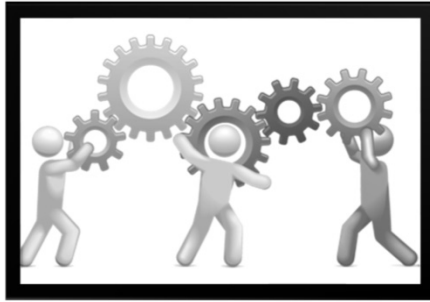
Questions and Answers

TEA
(revised Feb. 2023)

<https://tea.texas.gov/sites/default/files/related-services-for-students-with-disabilities-q%26a.pdf>

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Determining Related Services



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Special Education: Role of the IEP Process in Determining Related Services

- A student's IEP must contain a description of the student's special education and related services and supplementary aids and services. 34 CFR 300.320(a)(4)
- The IDEA requires that an IEP include a statement of the special education and related services "based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child (34 CFR 300.320(a)(4):
 - To advance appropriately toward attaining the annual goals;
 - To be involved in and make progress in general education curriculum in accordance with 34 CFR 300.320(a)(1), and to participate in extracurricular and other nonacademic activities; and
 - To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section."

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Special Education: Role of the IEP Process in Determining Related Services

- The special education and related services and supplementary aids and services must be based on “peer-reviewed research.”
- Peer-reviewed research is “research that is reviewed by qualified and independent reviewers to ensure the quality of the information meets the standards of the field before the research is published.” 71 Fed. Reg. 46,664(2006).
- Each student’s need for related services, like his need for special education, must be determined on an individual basis as part of the IEP process and must be based on an assessment of the student’s individual needs.
- While the parent’s role is an essential component of the IEP process, parents do not have veto power of any of the IEP’s components, including related services.
- An IEP is not defective merely because it fails to include special education and related services requested by the parents if those services are not necessary for the child to receive FAPE.
- The IDEA does not expressly require that related service providers be members of the child’s IEP team. Still, the IEP team may include “other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.”

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Special Education: Role of the IEP Process in Determining Related Services

- An IEP must include a statement of the anticipatory frequency, location, and duration of related services that will be provided to the child. 34 CFR 300.320(a)(7).
- The IEP must clearly specify the nature and type of services that the district intends to provide.
- The IEP team must determine, on a case-by-case basis, and the IEP must describe, a projected date when the student’s services will start. The IEP team may determine that the individual needs of the child require that the start date of a related service should occur the first week of school or on another appropriate day. 34 CFR 300.320(a)(7).
- The IEP should consider the student’s needs for modified or alternative instructional materials when deciding the student’s supplementary aids and services.
- Interscholastic sports and other extracurricular activities:
 - Participation in an interscholastic sport or other extracurricular activity may be included in an IEP if the IEP team determines that it is a necessary component of FAPE and includes participation as a specific related services in the student’s IEP. *Letter to Anonymous*, 17 IDELR 180(OSEP 1990).

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Special Education & Related Services

- A student who needs only related services and not special education is not eligible under the IDEA as a child with a disability. 34 CFR 300.8(a)(2)(i).
- If the related service is considered special education rather than a related service under state standards, the child would be determined to be a child with a disability.
- Just as eligibility for special education turns on the needs identified in a student's evaluation, so too does the student's eligibility for related services. Each student's need for one or more related services, like his need for special education, is determined on an individual basis as part of the IEP process. 34 CFR 300.320(a).

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Section 504 & Related Services

- Unlike the IDEA, Section 504's statute and regulations don't provide specific examples of related services.
- Section 504 related aids and services are part of an appropriate education, and a district must provide those services to the extent that they enable the school district to meet the individual educational needs of the eligible students with disabilities as adequately as it meets the needs of nondisabled students. 34 CFR 104.33(b)(1).
- The 504 team determines if related aids and services are necessary through the evaluation process. 34 CFR 104.35.
- A student may receive related services under Section 504 even if he does not need special education under the IDEA. 34 CFR 104.33.

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Key Case Law



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Irving Indep. Sch. Dist. v. Tatro,
468 U.S. 883, 104 S. Ct. 3371, 82 L.
Ed. 2d 664 (1984)



Under IDEA,
how can a
*Related
Service* be
determined?

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Irving ISD v. Tatro

The Tatro Test

- U.S. Supreme Court established a three-prong test for determining whether a particular service is a related service that should be provided under the IDEA:
- Known as the *Tatro* Test:
 1. the student must have a disability that requires special education under the IDEA
 2. the service must be necessary for the student to benefit from special education;
 3. the service must be able to be performed by a non-physician.

Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 104 S. Ct. 3371, 82 L. Ed. 2d 664 (1984)

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Irving ISD v. Tatro

Facts of the Case

- Action brought to require the school to provide Amber Tatro, an eight-year-old girl born with spina bifida, with clean intermittent catheterization (CIC) so she could attend special education classes.
- She suffers from orthopedic and speech impairments and a neurogenic bladder, which prevents her from emptying her bladder voluntarily.
- Consequently, she must be catheterized every three to four hours to avoid injury to her kidneys.
- CIC is a procedure involving the insertion of a catheter into the urethra to drain the bladder, which could be performed within minutes by a layperson person with less than an hour's training.
- Amber's parents, babysitter, and teenage brother are all qualified to administer CIC and Amber soon will be able to perform this procedure herself.
- Irving ISD agreed to provide Amber special education services, who was 3 ½ years old at the time.
- An IEP was developed.
- However, the program made no provision for school personnel to administer CIC.
- Administrative remedies were unsuccessful in securing for Amber CIC services during the school hours.
- The parents brought legal action.

Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 104 S. Ct. 3371, 82 L. Ed. 2d 664 (1984)

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Irving ISD v. Tatro

Ruling

- On remand, DC entered an injunction requiring the school district to provide the service and awarded attorney fees.
- Court of Appeals Affirmed. Certiorari was granted.
- The Supreme Court held:
 - 1. provision of clean intermittent catheterization was a "related service" under the Education of the Handicapped Act and not a "medical service," (as 'services provided by a licensed physician') and
 - 2. because relief was available under Education of the Handicapped Act, relief, including attorney fees, could not be awarded under the Rehabilitation Act.
- The Court held:
 - CIC services qualify as a "supportive service ... required to assist a handicapped child to benefit from special education," within the meaning of the Act.
 - With CIC services available during the school day, respondents' child cannot attend school and thereby "benefit from special education."
 - Such services are no less related to the effort to educate than are services that enable a child to reach, enter, or exit a school.

Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 104 S. Ct. 3371, 82 L. Ed. 2d 664 (1984)

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Student BNF Harmony Public Schools

TEA DOCKET NO. 090-SE-0121 - January 2022

In developing a student's IEP, the ARD Committee must consider whether the student needs AT devices and services. 34 C.F.R. § 300.324(a)(2)(v). Student exhibited an identified deficit in communication and the District repeatedly indicated Student required AT to address Student's communication deficits. By specifically identifying AT in Student's IEP, the District clearly recognized AT was necessary as special education, a related service or a supplemental aid or service Student needed in order to access and make progress in the general curriculum. 34 C.F.R. § 300.105(a). However, the District took **no systematic approach** for assessing and identifying the appropriate AT for addressing Student's identified needs. Instead, the District changed communication devices in and out and never stayed with a single device long enough to determine its effectiveness. The District should have more thoroughly evaluated Student's AT needs and trained Student on the use of Student's AT. 34 C.F.R. § 300.6(a), (e). The District attempts to blame Student's Parents for the changes back and forth with assistive technology. **However, the District, not the parent, is obligated for the provision of a FAPE.** 34 C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001.

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Student bnf Lamar Consolidated

DOCKET NO. 249-SE-0821

January 2022

- Child find case involving a student who did not qualify for services.
- Related services was one of the issues.
- Teacher input and solid evaluation data crucial to support district's case.

Alvin, 503 F.3d 378. In this case, evidence clearly demonstrated that the student was able to do well and succeed in the classroom, and no need for specialized instruction was established.

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Student bnf Harmony Public Schools

DOCKET NO. 257-SE-0821- January 2022

- Outside provider came to school to provide counseling services to the student.
- Hearing Officer considered that to possibly be notice to the District for both child find and the possible need for the related service of counseling
- District prevailed because parent never provided consent to evaluate.

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Student bnf MCKinney ISD

DOCKET NO. 192-SE-0220 - July 2020

The District has provided speech therapy as a related service to Student at every annual ARD Committee meeting since 2015. Additionally, the ARD Committee considered Student's outside OT evaluation and recommended OT as a related service to support Student in Language Arts and Behavior. The record also reflects that direct psychological services were proposed by the District to assist Student in progressing on Student's IEP goals. Petitioner therefore did not met Petitioner's burden on this claim.

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RELATED SERVICES HOT TOPICS

- **Counseling**
 - When a student sees a private counselor?
 - When a student is unresponsive to counseling or declines?
- **Transportation**
 - During a DAEP placement?
 - Parent declines?
- **Nursing Services/Medical Services**
 - When a parent won't provide consent to talk to medical doctor
- **Occupational Therapy for Sensory Issues**

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Practice Tips for Dismissing Services

- Student success may show that related service isn't needed... but look at more than grades.
- Have good data
- Consider what evaluations may be needed
- Teacher Input is always vital

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In re: Student with a Disability
Idaho State Educational Agency
March 16, 2015



Can the district use
their discretion to
choose alternative
methodology for
providing
the *Related
Service*
educational
benefit ?

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In re: Student with a Disability
Idaho State Educational Agency (H-15-01-30)

March 16, 2015

- The IEP discontinued a speech-impaired student's one-to-one aide based on her progress and to increase the student's independence, contrary to the parent's concerns that an aide was necessary to facilitate communication between school staff and home.
- The IEP showed there were multiple methods to use besides an aide, such as a weekly tracking sheet proposed by the parents.
- The parents would like a weekly tracking sheet – showing on the last school day of the week how the child has done, concerns, and a list of what she can do to improve her work and improve her grades for her classes.
- The issue:
 - Has the student been denied FAPE by the district's failure to provide a one-on-one aide?

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In re: Student with a Disability
Idaho State Educational Agency (H-15-01-30)

March 16, 2015

Tatro Test:

1. the student must have a disability that requires special education under the IDEA
2. the service must be necessary for the student to benefit from special education
3. the service must be able to be performed by a non-physician.

Application:

- First and third prongs not contested.
- Issue: Whether the student needed a one-to-one aide to benefit from special education?
 - Parents suggested a weekly tracking sheet could be used as alternative methodology for communication with staff and the home.
 - The proposed resolution demonstrated that a one-to-one aide was not necessary in the parents' eyes, and the aide's role could "be fulfilled through other methods."
 - Districts generally have the discretion to determine the methodology to be used for providing a meaningful educational benefits to the student.
 - It is not a denial of FAPE if the district chooses methods different than those proposed by the parents.
 - After removing the aide, the student's grades improved and she passed from grade to grade.
 - Parents failed to satisfy the second prong, so IHO concluded the district did not deny FAPE by removing the one-to-one aide from the student's IEP.

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In re: Student with a Disability
Idaho State Educational Agency

March 16, 2015

Ruling:

➤ An independent hearing officer concluded that an Idaho district did not deny a student with a speech-language impairment FAPE by removing the services of a one-to-one aide from her IEP.

Translation/Meaning:

- A district must include a particular service as a related service in an IEP only where that service is necessary for the student to benefit from special education.
- In addition, a district has discretion for determining the methodology to be used for providing that educational benefit.

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Board of Education of the City School
District of the City of White Plains
v.
New York State Educational Agency

99-31
July 29, 1999

Can participation
in athletics be a
Related Service
under IDEA?



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Board of Education of the City School District of the City of White Plains
v.
New York State Educational Agency

- Female student with ADD and depression, 16-year-old, was entitled to participate in the district's interscholastic athletics program, even though her parents had unilaterally enrolled her in a private school.
- The district had classified the student as OHI, based on ADD and depression.
- The review officer heard testimony from a psychiatrist, the mother, the student, concerning the importance of participating on the sports teams and its beneficial effect on her self-esteem and academic progress.
- The review officer instructed that future IEPs should consider whether there was, in fact, any nexus between her participation in sports and her educational performance.
- The board appealed the hearing officer's decision.
- Petitioner argues that the student does not meet the eligibility requirements set forth in the Regulations of the Commissioner of Education, and that the Commissioner of Education has hold that this athletic eligibility regulations apply with equal force and effect to children with disabilities.
- Nevertheless, such rules may be waived for a student with a disability whose IEP indicates that participation in interscholastic athletics is essential to the student's educational program. (*Dennin ex rel Dennin v. Connecticut Interscholastic Athletic Conference, Inc.*, 913 F. Supp. 663 [D. Conn., 1996] appeal dismissed as moot, 94 F. 3d 96 [2d Cir., 1996]; cf. *Beatty by Beatty v. Pennsylvania Interscholastic Athletic Association*, 24 IDELR 1146, [U.S. D.C. W.D. Pa., 1996]).

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Board of Education of the City School District of the City of White Plains
v.
New York State Educational Agency

- The relevant question in this situation: Whether the student's IEP specifically provides that the child should participate in petitioner's interscholastic athletic program in order to benefit from her instructional program, or should her IEP have so provided?
- The hearing officer found that the girl's IEP should have provided that she participate on petitioner's teams, if otherwise qualified to do so.
- The hearing officer determined that the student's participation on sports was a related service that was necessary for her social and emotional development.
- The hearing officer found that state athletic eligibility rules were superseded by the 1997 Amendments to the IDEA, which included "recreation" and "therapeutic recreation" within the definition of related services.

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But see...

Inga J. Dixon and David G. Dixon on
behalf of Ryan Dixon
v.
Hamilton City Schools and Ohio High
School Athletic Association

U.S. District Court, Southern District of Ohio
C-1-99-827
November 4, 1999

Can participation
in athletics be a
Related Service
under IDEA?



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Inga J. Dixon and David G. Dixon on behalf of Ryan Dixon v. Hamilton City Schools and Ohio High School Athletic Association

- Ryan Dixon, 18-year-old senior, suffers from ADHD, bipolar disorder, and ODD. Under IDEA, Ryan has a disability under OHI and ED.
- Ohio High School Athletic Association (OHSAA) is a voluntary, non-profit organization whose primary objective is to administrate and regulate interscholastic junior and high school athletics.
- Hamilton City School District is a member of the OHSAA.
- Although Ryan suffers from psychological and behavioral disorders, he excels in athletics, particularly football. Playing football serves as a motivator for Ryan to concentrate on his studies.
- Under the heading "Services," his IEP states:
 - For all Goals & Objectives . . . Ryan will be able to participate in extracurricular activities and sporting events to increase academic progress as this is Ryan's motivator. As per guidelines set up by Ohio High School Athletic Association and Hamilton City Schools, Ryan must be able to participate as Regular Education student and follow all team rules & regulations as determined by the coaches. Ryan must successfully make the team through the regular student process.

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Inga J. Dixon and David G. Dixon on behalf of Ryan Dixon
v.
Hamilton City Schools and Ohio High School Athletic Association

- Ryan's parents brought suit in District Court seeking to compel a district and high school athletic association to allow the student to participate in interscholastic athletics.
- The parents claimed that the athletic association's by-law, which limited a high-school student's interscholastic athletic eligibility to eight semesters, violated the IDEA, Section 504, and the ADA.
- A District Court denied the parents' request for an injunction that would compel the district to allow their 18-year-old son, with ADHD, bi-polar disorder and oppositional defiant disorder, to participate in interscholastic athletics, on the ground that participation in athletics was not necessary to provide FAPE.
- The court concluded that participation in athletics was not a mandatory element of the student's IEP and neither was it a related service under the IDEA.
- The central issue was whether FAPE could be provided without athletics.
- While participation in athletics had an important effect on the student's educational and behavioral progress, other elements of his IEP, such as tutoring, auditory instruction, testing accommodations and daily planners, were also important.
- Moreover, the student showed progress in some semesters when he did not participate in athletics.

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Inga J. Dixon and David G. Dixon on behalf of Ryan Dixon
v.
Hamilton City Schools and Ohio High School Athletic Association

- As the U.S. Supreme Court has stated:
 - "The definition of related services . . . broadly encompasses those supportive services that may be required to assist a child with a disability to benefit from special education . . . and enable a disabled child to remain in school during the day [to] provide the student with the meaningful access to education that Congress envisioned." *Cedar Rapids Comm, Sch. Dist. v. Garret F.*, 119 S.Ct. 992, 997 (1999).
 - The related services in the statutes are the type that make it possible for a disabled child to attend school and benefit from public education.
 - For instance:
 - a hearing-impaired child would derive no benefit from public education without the services of a sign language interpreter.
 - In the *Cedar Rapids* case, the plaintiff required an attendant to monitor his ventilator and take care of other physical needs in order to be able to attend school. Thus, the school district was required to provide the plaintiff with an attendant as a "related service."
 - Here, although participation in interscholastic sports may be a motivational tool and has spill-over educational benefits, no one has suggested that interscholastic sports is necessary to enable a student to remain in school during the day.

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Thank you!



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