



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION PROGRAMS

DIRECTOR

OSEP Policy Letter 22-03

April 7, 2022

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La Crosse, Wisconsin 54601

Dear Dr. Tymeson:

This letter responds to your September 2, 2021, correspondence addressed to Dr. David Cantrell, then Acting Director of the Office of Special Education Programs (OSEP), U.S. Department of Education (Department). We regret the delay in responding. In that letter, you asked that OSEP clarify requirements related to the provision of physical education, including adapted physical education and the least restrictive environment, to children with disabilities under the Individuals with Disabilities Education Act (IDEA). Specifically, you asked that OSEP provide guidance in the form of a “Policy Letter of Clarification” regarding the following:

1. Is it inconsistent with IDEA to offer specially designed instruction to children with disabilities in content areas such as adapted aquatics or biking skills if the same curriculum content is not offered to children without disabilities at the same grade level?
2. Do all students – children with disabilities and children without disabilities – need to receive the same educational content or should instructional content for a child with a disability be based on what has been agreed to in the child’s individualized education program (IEP)?
3. Does the continuum of educational placements required in 34 C.F.R. § 300.115 extend to required content, such as specially designed instruction in physical education? Does all physical education instruction for children with disabilities need to take place in the general education setting with their nondisabled peers?
4. Can a local educational agency or an IEP Team, against a parent’s wishes, remove specially designed physical education services from a child’s IEP because a school does

not have a comparable program or content for children without disabilities at the same grade level?

5. Would the removal of a child with a disability from an adapted physical education instructional setting be considered a change of placement, and therefore require that an IEP Team meeting be convened?¹

We note that section 607(d) of the IDEA prohibits the Secretary of the Department from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. It represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented and does not establish a policy or rule that would apply in all circumstances. Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

The crux of your questions has previously been addressed with you and other constituents in prior correspondence, as identified below.

Please see our [informal guidance](#) provided to you on July 31, 2013, in which we state:

The Part B regulations, at 34 C.F.R. § 300.108, address the requirements of school districts to provide physical education services to students with disabilities. Section 300.108(a) requires schools to provide physical education to all children receiving a free appropriate public education unless the school does not provide physical education to children without disabilities in the same grades. That exception, however, only relieves schools of the 34 C.F.R. § 300.108(a) requirement to provide general physical education to all students with disabilities regardless of the unique needs of any given student and regardless of any student's IEP. Section 300.108(a) does not relieve schools of the duty to provide physical education to those students who have unique needs requiring physical education and have IEPs setting out physical education as part of that student's special education and related services.

Under 34 C.F.R. § 300.108(c), "[i]f specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that

¹ Your letter references an example where the school district decided to discontinue adapted aquatics and biking instruction and suggested the child with a disability would no longer participate in a small group, adapted physical education class of 7-10 students and instead, receive instruction in a general education class of possibly 40 students to achieve the district's full inclusion goal.

child must provide the services directly or make arrangements for those services to be provided through other public or private programs.” Thus, under Part B, “if physical education is specially designed to meet the unique needs of a child with a disability and is set out in that child’s IEP, those services must be provided whether or not they are provided to other children in the agency.” *Analysis of Comments and Changes* of the final Part B regulations, 71 Fed. Reg. 46540, 46583 (August 14, 2006).

Under IDEA, each eligible child with a disability is entitled to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet the child’s unique needs and that prepare the child for further education, employment, and independent living. 20 U.S.C. § 1400(d)(1)(A). The primary vehicle for providing FAPE under IDEA is through an appropriately developed IEP, which must include, among other things, a statement of the special education and related services, and supplementary aids, services, and other supports that are needed to meet each child’s unique needs in order for the child to: (1) advance appropriately towards attaining the annual goals; (2) be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and (3) be educated and participate in such activities with other children with disabilities and nondisabled children. 34 C.F.R. §§ 300.17, 300.320. The Department’s IDEA web site, which brings together IDEA information and resources from the Department and our grantees, provides additional specific information related to your inquiry. Please see the information contained in the topic areas under “[Free Appropriate Public Education](#)” and “[Individualized Education Program](#)” for information already disseminated by OSEP that will further address your question.

IDEA requires that each child with a disability participates with nondisabled children in these programs and activities to the maximum extent appropriate to the needs of that child. Under 34 C.F.R. § 300.117, the public agency must ensure that each child with a disability has the supplementary aids and services determined by the child’s IEP Team to be appropriate and necessary for the child to participate in nonacademic settings. As noted above, physical education services, specially designed, if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless the child is enrolled full time in a separate facility; or the child needs specially designed physical education, as prescribed in the child’s IEP. 34 C.F.R. § 300.108(b). Furthermore, the public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services. 34 C.F.R. § 300.108(d). Each public agency must take steps to provide nonacademic and extracurricular services and activities, including athletics, in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. 34 C.F.R. § 300.107. See [OSEP Report on Creating Equal Opportunities for Children and Youth with Disabilities to Participate in Physical Education and Extracurricular Athletics \(August 2011\)](#).

Please see our [informal guidance](#) provided to you on May 12, 2021, in which we state:

Generally, OSEP does not opine on whether the scenarios set forth in policy inquiries constitute a change in a child's educational placement. Determinations about whether a revision to a child's program results in a change in placement are made based on the facts and circumstances of the specific child, examining a number of factors. To help guide that decision-making process, OSEP set out several factors to consider in its Letter to Fisher, 21 IDELR 992 (July 6, 1994):

In determining whether a "change in educational placement" has occurred, the public agency responsible for educating the child must determine whether the proposed change would substantially or materially alter the child's educational program. In making such a determination, the effect of the change in location on the following factors must be examined: whether the educational program set out in the child's IEP has been revised; whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement option is the same option on the continuum of alternative placements.

Both 20 U.S.C. § 1412(5)(A) and 34 C.F.R. § 300.114 describe IDEA's requirements for ensuring children with disabilities are educated in their least restrictive environment. Specifically, 34 C.F.R. §300.114(a)(2) states that:

Each public agency must ensure that—

- (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
- (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

We thank you for your continued commitment to ensuring children with disabilities have access to appropriate instruction to meet their unique physical education needs and trust that the information in this letter is responsive to your inquiry. If you have further questions, please contact Lisa Pagano at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Valerie C. Williams