IDEA Provisions Supporting Preschool Inclusion

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The following lists, verbatim, the provisions from the regulations governing Part B of the Individuals with Disabilities Education Act (IDEA) (CFR Part 300) regarding least restrictive environment (LRE) placements. Additionally, following the provisions of IDEA, this fact sheet includes the most recent policy letter from the US Department of Education's Office of Special Education Programs (OSEP) clarifying that the IDEA LRE provisions apply to preschool children with disabilities.

§ 300.114 LRE requirements.

(a) *General.* (1) Except as provided in § 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§ 300.115 through 300.120.
(2) 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.

§ 300.42 Supplementary aids and services.

Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§ 300.114 through 300.116.

§ 300.115 Continuum of alternative placements.

(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
(b) The continuum required in paragraph (a) of this section must—
(1) Include the alternative placements listed in the definition of special education under § 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

§ 300.116 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—
(a) The placement decision—

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;
(b) The child's placement—
(1) Is determined at least annually;
(2) Is based on the child's IEP; and
(3) Is as close as possible to the child's home;
(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
(e) A child with a disability is not removed from education in age appropriate regular classrooms solely because of needed modifications in the general education curriculum.

§ 300.119 Technical assistance and training activities.

Each SEA must carry out activities to ensure that teachers and administrators in all public agencies—
(a) Are fully informed about their responsibilities for implementing § 300.114; and
(b) Are provided with technical assistance and training necessary to assist them in this effort.

§ 300.208 Permissive use of funds.

(a) *Uses.* Notwithstanding §§ 300.202, 300.203(a), and 300.162(b), funds provided to an LEA under Part B of the Act may be used for the following activities:
(1) *Services and aids that also benefit nondisabled children.* For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.

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Dear Colleague:

The purpose of this letter is to reiterate that the least restrictive environment (LRE) requirements in section 612(a)(5) of the Individuals with Disabilities Education Act (IDEA) apply to the placement of preschool children with disabilities.[1] The LRE requirements have existed since passage of the Education for all Handicapped Children Act (EHA) in 1975 and are a fundamental element of our nation's policy for educating students with disabilities (the EHA was renamed the IDEA in 1990). These requirements state the IDEA's strong preference for educating students with disabilities in regular classes with appropriate aids and supports. Under section 612(a)(5) of the IDEA, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, must be educated with children who are not disabled. Further, special classes, separate schooling, or other removal of children with disabilities from the regular educational environment may occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The LRE requirements in section 612(a)(5) of the IDEA apply to all children with disabilities who are served under Part B of the IDEA, including preschool children with disabilities aged three through five, and at a State's discretion, two-year old children who will turn three during the school year.[2] The statutory provision on LRE does not distinguish between school-aged and

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[1] Although not discussed here, other Federal laws apply to preschool-aged children with disabilities as well. These laws include section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA). The Department's Office for Civil Rights (OCR) enforces Section 504 and pursuant to a delegation by the Attorney General of the United States, OCR shares (with the U.S. Department of Justice) in the enforcement of Title II of the ADA. Section 504 is designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the Department. 29 U.S.C. § 794, 34 CFR §104.4(a). Section 34 CFR 104.38 of the Section 504 regulations specify that recipients of Federal financial assistance from the Department who provide preschool education may not on the basis of disability exclude qualified persons with disabilities, and must take into account the needs of these persons in determining the aid, benefits, or services to be provided. Title II prohibits discrimination on the basis of disability by public entities, including public schools regardless of whether they receive Federal financial assistance. 42 U.S.C. §§ 12131-12134, 28 CFR Part 35 (Title II). Additionally, as applicable, entities providing preschool education must comply with the nondiscrimination requirements set forth in Title III of the ADA that prohibit discrimination on the basis of disability in places of public accommodation, including businesses and nonprofit agencies that serve the public. The U. S. Department of Justice enforces Title III of the ADA. 42 U.S.C. §§ 12181-12189, 28 CFR Part 36 (Title III).

[2] Under section 612(a)(1) of the IDEA, a State must make a free appropriate public education (FAPE) available to all children with disabilities residing in the State within the State's mandated age range. If a State's mandated age range includes children with disabilities aged three through five and two-year-old children who will turn three during the school year, all requirements in Part B of the IDEA, including the LRE requirements in section 612(a)(5), apply to those children.

preschool-aged children and therefore, applies equally to all preschool children with disabilities. Despite this long-standing LRE requirement and prior policy guidance [3], the U.S. Department of Education (Department) continues to receive inquiries regarding the applicability of the LRE requirements under Part B of the IDEA to preschool children with disabilities.

Statutory and Regulatory Requirements

A preschool child with a disability who is eligible to receive special education and related services is entitled to all the rights and protections guaranteed under Part B of the IDEA and its implementing regulations in 34 CFR Part 300. One of these guaranteed rights is the right to be educated in the LRE in accordance with section 612(a)(5) of the IDEA and 34 CFR §§300.114 through 300.118. The LRE requirements under Part B of the IDEA state a strong preference for educating children with disabilities in regular classes alongside their peers without disabilities. The term "regular class" includes a preschool setting with typically developing peers.[4] In determining the educational placement of a child with a disability, including a preschool child with a disability, the public agency[5] must ensure that each child's placement decision is made in conformity with the LRE provisions in 34 CFR §§300.114 through 300.118. 34 CFR §300.116(a)(2). The child's placement must be based on the child's individualized education program (IEP). 34 CFR §300.116(b)(2). In addition, the IEP must include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class. 34 CFR §300.320(a)(5).

Before a child with a disability can be placed outside the regular educational environment, the group of persons making the placement decision must consider whether supplementary aids and services could be provided that would enable the education of the child, including a preschool child with a disability, in the regular educational setting to be achieved satisfactorily. 34 CFR §300.114(a)(2). If a determination is made that a particular child with a disability cannot be educated satisfactorily in the regular educational environment, even with the provision of appropriate supplementary aids and services, that child then could be placed in a setting other

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[3] See OSEP Memorandum 87-17, OSEP – Division of Assistance to States Policy Regarding Educating Preschool Aged Children with Handicaps in the Least Restrictive Environment (June 2, 1987); Letter to Neveldine, 16 LRP 842 (March 23, 1990); Letter to Wessels, 19 LRP 2074 (November 27, 1992); Letter to Neveldine, 20 LRP 2355 (May 28, 1993); Letter to Neveldine, 22 LRP 3101 (January 25, 1995); Letter to Neveldine, 24 LRP 3821 (April 17, 1996); Letter to Hirsh, 105 LRP 57671 (August 9, 2005); Letter to Anonymous, 108 LRP 33626 (March 17, 2008).

[4] See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46666 (August 14, 2006).

[5] The term "public agency" includes the State educational agency, local educational agencies (LEAs), educational service agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. See 34 CFR §300.33.

than the regular educational setting. The public agency responsible for providing a free appropriate public education (FAPE) to a preschool child with a disability must make available the full continuum of alternative placements, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, to meet the needs of all preschool children with disabilities for special education and related services. 34 CFR §300.115.

Preschool Placement Options

The public agency responsible for providing FAPE to a preschool child with a disability must ensure that FAPE is provided in the LRE where the child's unique needs (as described in the child's IEP) can be met, regardless of whether the local educational agency (LEA) operates public preschool programs for children without disabilities. An LEA may provide special education and related services to a preschool child with a disability in a variety of settings, including a regular kindergarten class, public or private preschool program, community-based child care facility, or in the child's home.

For data collection purposes, the Department defines a Regular Early Childhood Program as a program that includes a majority (at least 50 percent) of nondisabled children (i.e., children who do not have IEPs) and that may include, but is not limited to:

- Head Start;
- Kindergartens;
- Preschool classes offered to an eligible pre-kindergarten population by the public school system;
- Private kindergartens or preschools; and
- Group child development centers or child care. [6]

If there is a public preschool program available, the LEA may choose to make FAPE available to a preschool child with a disability in the public preschool program. However, many LEAs do not offer, or offer only a limited range of, public preschool programs, particularly for three- and four-year-olds. LEAs that do not have a public preschool program that can provide all the appropriate services and supports for a particular child with a disability must explore alternative methods to ensure that the LRE requirements are met for that child. These methods may include: (1) providing opportunities for the participation of preschool children with disabilities in preschool programs operated by public agencies other than LEAs (such as Head Start or

[6] This is the definition that the Department uses in its annual data collection under section 618 of the IDEA on the number of children with disabilities aged three through five served under the IDEA Part B program according to their educational environments.

community based child care); (2) enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children; (3) locating classes for preschool children with disabilities in regular elementary schools; or (4) providing home-based services. If a public agency determines that placement in a private preschool program is necessary for a child to receive FAPE, the public agency must make that program available at no cost to the parent.[7]

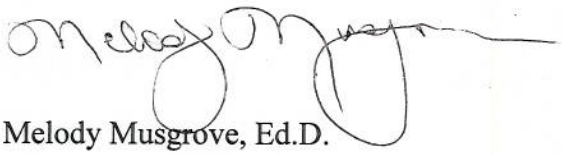
Conclusion

Placement decisions regarding a preschool child with a disability who is served under Part B of the IDEA must be individually determined based on the child's abilities and needs as described in the child's IEP. 34 CFR §300.116(b)(2). State educational agencies and LEAs should engage in ongoing short- and long-term planning to ensure that a full continuum of placements is available for preschool children with disabilities. To achieve this goal, a variety of strategies, including staffing configurations, community collaboration models, and professional development activities that promote expanded preschool options are available. See

http://www.nectac.org/ for further information regarding the IDEA and services for preschool children with disabilities.

We hope this information is helpful in clarifying the applicability of LRE requirements to preschool children with disabilities who receive special education and related services under Part B of the IDEA. Thank you for your continued interest in improving results for children with disabilities.

Sincerely,



Melody Musgrove, Ed.D.
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[7] See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46589 (August 14, 2006); and Letter to Anonymous, 108 LRP 33626 (March 17, 2008).