



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

January 9, 2017

Dear Colleague:

We are writing to reaffirm the position of the U.S. Department of Education (ED or Department) that all young children with disabilities should have access to inclusive high-quality early childhood programs where they are provided with individualized and appropriate supports to enable them to meet high expectations. Over the last few years, States and communities have made progress in expanding early learning opportunities for young children, with all but four States investing in free public preschool programs.<sup>1</sup> The Federal government, while aligning with the movement of States, has led several efforts to increase access to and the quality of early childhood programs, such as the Preschool Development Grants and expansion of Head Start. States have focused on improving the quality of early learning programs, including the development of early learning program standards and incorporating these into Quality Rating and Improvement Systems (QRIS).<sup>2</sup>

In September 2015, ED and the U.S. Department of Health and Human Services (HHS) issued a [policy statement on promoting inclusion](#) in early childhood programs to set a vision on this issue and provide recommendations to States, local educational agencies (LEAs), schools, and public and private early childhood programs.<sup>3</sup> Despite the expansion of early childhood programs, there has not yet been a proportionate expansion of inclusive early learning opportunities for young children with disabilities. Given this concern and the ED-HHS policy statement on early childhood inclusion, the Office of Special Education Programs (OSEP) is updating the February 29, 2012, Dear Colleague Letter (DCL) to reaffirm our commitment to inclusive preschool education programs for children with disabilities and to reiterate that the least restrictive environment (LRE) requirements in section 612(a)(5) of the Individuals with Disabilities

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<sup>1</sup> Walter N. Ridley Lecture: Pre-Kindergarten Access and Quality are Essential for Children's Growth and Development (November 2, 2016), available at: <http://www.ed.gov/news/speeches/walter-n-ridley-lecture-pre-kindergarten-access-and-quality-are-essential-childrens-growth-and-development>. For more detailed but less recent information on State investments in public preschool see: Barnett, W.S., Friedman-Krauss, A., Gomez, R.E., Squires, J.H., Clarke Brown, K., Weisenfeld, G.G., & Horowitz, M. (2016). *The state of preschool 2015: State preschool yearbook*. New Brunswick, NJ: National Institute for Early Education Research.

<sup>2</sup> QRIS statewide systems are implemented in over half of the States and others are developing such systems. ED and the of Department of Health and Human Services have supported States in further developing such systems under Race to the Top-Early Learning Challenge and the Child Care Development Fund. For more information see: <https://qrisguide.acf.hhs.gov/index.cfm?do=qrisabout>.

<sup>3</sup> See U.S. Departments of Education and Health and Human Services Policy Letter on the Inclusion of Children with Disabilities in Early Childhood Programs (September 14, 2015), available at: <http://www2.ed.gov/policy/speced/guid/earlylearning/joint-statement-full-text.pdf>.

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Education Act (IDEA or Act) are fully applicable to the placement of preschool children with disabilities.<sup>4</sup> This DCL supersedes the 2012 OSEP DCL and includes additional information on the reporting of educational environments data for preschool children with disabilities and the use of IDEA Part B funds to provide special education and related services to preschool children with disabilities.

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 Education of the Handicapped Act was renamed the IDEA in 1990). These requirements reflect 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 occurs 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, to two-year-old children who will turn three during the school year.<sup>5</sup> IDEA’s LRE provision does not distinguish between school-aged and

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<sup>4</sup> 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, as amended (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 and HHS) in the enforcement of Title II of the ADA in the education context. HHS has Title II jurisdiction over public preschools. 35 CFR §35.190(b)(3). Section 504 prohibits discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the Department. 29 U.S.C. § 794, 34 CFR §104.4(a). Section 104.38 of the Department’s Section 504 regulations specify that recipients of Federal financial assistance from the Department that 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. 34 CFR §104.38. 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).

<sup>5</sup> 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. All States make FAPE available beginning on a child’s third birthday. All requirements in Part B of the IDEA, including the LRE requirements in section 612(a)(5), apply to children with disabilities aged three through five and two-year-old

preschool-aged children and, therefore, applies equally to all preschool children with disabilities. Despite this long-standing LRE requirement and prior policy guidance,<sup>6</sup> ED continues to receive inquiries asking whether IDEA’s LRE requirements apply to preschool children with disabilities.

### **Key Statutory and Regulatory Requirements**

A preschool child with a disability who is eligible to receive special education and related services and his or her parents are 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.<sup>7</sup> Under 34 CFR §300.116(a), in determining the educational placement of a child with a disability, including a preschool child with a disability, the public agency<sup>8</sup> must ensure that each child’s placement decision 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 is made in conformity with the LRE provisions in 34 CFR §§300.114 through 300.118. The child’s placement must be based on the child’s individualized education program (IEP) and determined at least annually. 34 CFR §300.116(b)(1) and (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 the education of a particular child with a

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children who will turn three during the school year, if they are included in the State’s mandated age range. See also 20 U.S.C. 1413(a)(1) (applying these LRE requirements to LEAs).

<sup>6</sup> 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 Nevelndine, 16 LRP 842 (March 23, 1990); Letter to Wessels, 19 LRP 2074 (November 27, 1992); Letter to Nevelndine, 20 LRP 2355 (May 28, 1993); Letter to Nevelndine, 22 LRP 3101 (January 25, 1995); Letter to Nevelndine, 24 LRP 3821 (April 17, 1996); Letter to Hirsh, 105 LRP 57671 (August 9, 2005); Letter to Anonymous, 108 LRP 33626 (March 17, 2008).

<sup>7</sup> 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).

<sup>8</sup> The term “public agency” includes the State educational agency, 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.

disability cannot be achieved 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 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. In selecting the LRE, consideration also must be given to any potential harmful effect on the child or on the quality of services that the child needs. 34 CFR §300.116(d).

### **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 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.

If there is an LEA public preschool program available, the LEA may choose to make FAPE available to a preschool child with a disability in the LEA's public preschool program. While the number of public pre-kindergarten programs has increased, many LEAs do not offer, or offer only a limited range of, public preschool programs, particularly for three-year-olds. In these situations, the LEA must explore alternative methods to ensure that the LRE requirements are met for each preschool child with a disability. 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 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 public 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.<sup>9</sup>

Additionally, preschool children with disabilities are often identified as children with disabilities while participating in regular public preschool programs, such as Head Start or a regular public

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<sup>9</sup> 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 OESP Letter to Anonymous (March 17, 2008), available at <http://www2.ed.gov/policy/speced/guid/idea/letters/2008-1/redacted031708privschool1q2008.doc>.

pre-kindergarten program. The following requirements apply when determining placement options for a child with a disability who already participates in a regular public preschool program, including a community-based regular public preschool program operated by a public agency other than the LEA. Under 34 CFR §300.116(c), unless the child’s IEP requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. In addition, under 34 CFR §300.116(d), the placement team, which includes the child’s parent and may include the child’s current teacher, must consider any potential harmful effect on the child and on the quality of services that he or she needs before removing the child from the current regular public preschool setting to another more restrictive setting. Consistent with these requirements, IDEA presumes that the first placement option considered for a preschool child with a disability is the regular public preschool program the child would attend if the child did not have a disability. Therefore, in determining the placement for a child with a disability who already participates in a regular public preschool program, the placement team must consider whether the LEA, in collaboration with the regular public preschool program, can ensure that the child receives all of the special education and related services and supplementary aids and services included in the child’s IEP in order to meet the needs of the particular child with a disability.

### **Reporting Educational Environments Data for Preschool Children with Disabilities**

In accordance with the data collection requirements in section 618(a) of the Act, the Department requires States to report on educational environments for preschool children with disabilities. This data collection requires States to report on the number of preschool children with disabilities who attend a Regular Early Childhood Program and whether they receive the majority of hours of special education and related services in the Regular Early Childhood Program or another location.<sup>10</sup> 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

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<sup>10</sup> For additional information on the data collection requirements under section 618 of the Act, see the Child Count and Educational Environment information available at: <http://www2.ed.gov/programs/osepidea/618-data/collection-documentation/index.html>

- Group child development centers or child care.<sup>11</sup>

We have received questions regarding whether more informal settings, such as weekly school-based or neighborhood playgroups, or home settings may be considered a Regular Early Childhood Program. For the purpose of the Department’s annual data collection under section 618 of the Act, we do not consider these informal settings as Regular Early Childhood Programs because they are generally not required to comply with a State’s early learning programs standards or curricula.

As noted above, States are required to report whether children attending a Regular Early Childhood Program receive the majority of hours of special education and related services in the Regular Early Childhood Program or in some other location.<sup>12</sup> It has come to our attention that additional clarification is needed regarding when special education and related services can be considered as being received in the Regular Early Childhood Program. Specifically, stakeholders have asked whether “in the Regular Early Childhood Program” means a child must receive the majority of special education and related services in the child’s classroom, or whether some other location within the building would also be considered “in the Regular Early Childhood Program.” Special education and related services delivered in the child’s classroom in the course of daily activities and routines in which all children in the classroom participate (e.g., “circle time”, “learning centers”), would be considered as being received in the Regular Early Childhood Program. However, services delivered in other locations that remove the child from the opportunity to interact with nondisabled children would not be considered as being received in the Regular Early Childhood Program. These include, but are not limited to, services delivered in a 1:1 therapeutic setting, or in a small group comprised solely of children with disabilities in another location within the building where the regular early childhood program is located.

To further address these questions, the reporting instructions in the *EDFacts* C089 file specifications for IDEA Section 618 Part B Child Count and Educational Environment will be updated for School Year 2017-2018. The updated file specifications will address informal settings as a Regular Early Childhood Program and will clarify when special education and related services are considered as being provided in the Regular Early Childhood Program.

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<sup>11</sup> 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.

<sup>12</sup> See the Child Count and Educational Environment information available at: <http://www2.ed.gov/programs/osepidea/618-data/collection-documentation/index.html>

### **Use of IDEA Part B Funds for Preschool Children with Disabilities**

We have received questions regarding the use of IDEA Part B (section 611 and section 619) funds to provide special education and related services to preschool children with disabilities. LEAs must ensure that Part B funds are used in conformity with IDEA Part B requirements, including the requirements in 34 CFR §300.202. In general, LEAs must use IDEA Part B section 619 funds, and as applicable IDEA Part B section 611 funds, only to pay the excess costs of providing special education and related services to children with disabilities ages three through five and, at a State’s discretion, to two-year-old children with disabilities who will reach age three during the school year, such as costs for special education teachers and administrators; related services providers; materials and supplies for use with preschool children with disabilities; professional development for special education personnel; professional development for general education teachers who teach preschool children with disabilities; and specialized equipment or devices to assist preschool children with disabilities.<sup>13</sup> 34 CFR §§300.202 and 300.800.

Because the availability of regular public preschool programs varies across States, we understand that the use of State and local funds will also differ across States and LEAs. Consequently, how States and LEAs use IDEA Part B funds to provide special education and related services to preschool children with disabilities also will differ based on the specific circumstances in each State and LEA. For example, if an LEA provides universal preschool to all children ages three, four, and five, using State and local funds, the LEA must use IDEA Part B funds only to pay the excess costs of providing special education and related services to children with disabilities in those preschool programs.

The excess cost requirement, however, does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages three, four, or five if no local or State funds are available for nondisabled children of these ages. For example, if an LEA offers no regular public preschool programs for children without disabilities, and a preschool child with a disability is already participating in a private preschool program that is being paid for by the child’s parents, the child’s placement team may determine that, based on the child’s IEP and the LRE provisions, placement in a private preschool program is necessary for the child to receive FAPE in the LRE. In such situations, the LEA responsible for providing FAPE to the child must pay for all of the costs associated with the provision of special education and related services in the LRE, as stated in the child’s IEP. See 34 CFR §§300.145 through 300.147. Specifically, if the placement team determines, based on the child’s IEP, that placement in an inclusive private preschool program is necessary to provide FAPE to a

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<sup>13</sup> See OSEP Letter to Couillard (March 7, 2013) available at: <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/12-011637r-wi-couillard-rti3-8-13.doc>

child who needs interaction with nondisabled peers, the LEA is responsible for making available an appropriate program in the LRE and ensuring that tuition costs associated with that placement for the period of time necessary to implement the IEP are at no cost to the parents.<sup>14</sup>

### **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. For additional information regarding the IDEA and services for preschool children with disabilities, see the Early Childhood Technical Assistance Center at <http://ectacenter.org/> and the Department’s Early Learning Inclusion webpage at:

<http://www2.ed.gov/about/inits/ed/earlylearning/inclusion/index.html>.

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 the importance of providing inclusive early learning opportunities for young children with disabilities.

Sincerely,

/s/

Ruth E. Ryder

Acting Director

Office of Special Education Programs

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<sup>14</sup> See OSEP Letter to Neveldine, 22 IDELR 630 (January 25, 1995). We also note that there may be circumstances where a placement team determines that a specific service needed by a child could be provided in a variety of settings and would not require interaction with nondisabled peers, assuming all other Part B requirements, including the LRE requirements, are met. In those instances where the placement team has determined that provision of that service is all that is required to provide FAPE to the child, the public agency is only responsible for providing the required service and that service could be provided in a variety of settings.