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Part II

Department of Education

34 CFR Parts 300 and 301

**Assistance to States for the Education of
Children With Disabilities and Preschool
Grants for Children With Disabilities;
Final Rule**

DEPARTMENT OF EDUCATION

34 CFR Parts 300 and 301

RIN 1820-AB57

Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations governing the Assistance to States for Education of Children with Disabilities Program and the Preschool Grants for Children with Disabilities Program. These regulations are needed to implement changes made to the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (Act or IDEA).

DATES: These regulations take effect on October 13, 2006.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: These regulations implement changes in the regulations governing the Assistance to States for Education of Children with Disabilities Program and the Preschool Grants for Children with Disabilities Program necessitated by the reauthorization of the IDEA. With the issuance of these final regulations, part 301 has been removed and the regulations implementing the Preschool Grants for Children with Disabilities Program are included under subpart H of these final regulations.

On June 21, 2005, the Secretary published a notice of proposed rulemaking in the *Federal Register* (70 FR 35782) (NPRM) to amend the regulations governing the Assistance to States for Education of Children with Disabilities Program, the Preschool Grants for Children with Disabilities Program, and Service Obligations under

Special Education Personnel Development to Improve Services and Results for Children with Disabilities. In the preamble to the NPRM, the Secretary discussed, on pages 35783 through 35819, the changes proposed to the regulations for these programs; specifically, the amendments to 34 CFR part 300, the removal of 34 CFR part 301 and relocation of those provisions to subpart H of 34 CFR part 300, and the amendments to 34 CFR part 304.

Final regulations for 34 CFR Part 304—Special Education-Personnel Development to Improve Services and Results for Children with Disabilities were published in the *Federal Register* (71 FR 32396) on June 5, 2006, and became effective July 5, 2006.

Major Changes in the Regulations

The following is a summary of the major substantive changes in these final regulations from the regulations proposed in the NPRM (the rationale for each of these changes is discussed in the *Analysis of Comments and Changes* section of this preamble):

Subpart A—General

Definitions

- The definition of *child with a disability* in § 300.8 has been revised as follows:

(1) Section 300.8(b) (Children aged three through nine experiencing developmental delays) has been changed to clarify that the use of the term “developmental delay” is subject to the conditions described in § 300.111(b).

(2) The definition of *other health impairment* in § 300.8(c)(9)(i) has been changed to add “Tourette Syndrome” to the list of chronic or acute health problems.

- The definition of *excess costs* in § 300.16 has been revised to clarify that the computation of excess costs may not include capital outlay and debt service. In addition, a new “Appendix A to Part 300—Excess Cost Calculation” has been added to provide a description (and an example) of how to calculate excess costs under the Act and these regulations.

- The definition of *highly qualified special education teacher* in § 300.18 has been revised, as follows:

(1) Section 300.18(b), regarding requirements for highly qualified special education teachers in general, has been modified to clarify that, when used with respect to any special education teacher teaching in a charter school, *highly qualified* means that the teacher meets the certification or licensing requirements, if any, set forth in the State’s public charter school law.

(2) A new § 300.18(e), regarding separate “high objective uniform State standards of evaluation” (HOUSSE), has been added to provide that a State may develop a separate HOUSSE for special education teachers, provided that any adaptations of the State’s HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers. This provision also clarifies that a State may develop a separate HOUSSE for special education teachers, which may include single HOUSSE evaluations that cover multiple subjects.

(3) Section 300.18(g) (proposed § 300.18(f) (“Applicability of definition to ESEA requirements; and clarification of new special education teacher”)) has been revised as follows: (1) The heading has been revised, and (2) the language changed to clarify when a special education teacher is considered “new” for some purposes.

(4) Section 300.18(h) (proposed § 300.18(g)) has been modified to clarify that the highly qualified special education teacher requirements also do not apply to private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under § 300.138.

- The definition of *Indian and Indian tribe* in § 300.21 has been changed to clarify that nothing in the definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian tribe that is not listed in the *Federal Register* list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

- The definition of *parent* in § 300.30 has been revised to substitute “biological” for “natural” each time it appears in the definition, and to add language clarifying that to be considered a parent under this definition a “guardian” must be a person generally authorized to act as the child’s parent, or authorized to make educational decisions for the child.

- The definition of *related services* in § 300.34 has been revised as follows:

(1) Section 300.34(a) (General) has been modified to (A) add the statutory term “early identification and assessment of disabilities in children,” which was inadvertently omitted from the NPRM, (B) combine “school health services” and “school nurse services,” and (C) remove the clause relating to a free appropriate public education under

require ESY services in order to receive FAPE access to necessary ESY services.

Changes: None.

Nonacademic Services (§ 300.107)

Comment: One commenter recommended adding more specific language in § 300.107 regarding services and accommodations available for nonacademic activities to ensure that children with disabilities are fully included in nonacademic activities.

Discussion: We agree with the commenter. Section 300.107(a), as proposed, requires public agencies to take steps to provide nonacademic and extracurricular services and activities in a manner necessary to afford children with disabilities an equal opportunity to participate in those services and activities. In addition, § 300.320(a)(4)(ii), consistent with section 614(d)(1)(i)(IV)(bb) of the Act, clarifies that an IEP must include a statement of the special education and related services and supplementary aids and services to be provided to the child to participate in extracurricular and other nonacademic activities. We will add language in § 300.107(a) to clarify that the steps taken by public agencies to provide access to nonacademic and extracurricular services and activities include the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team.

Changes: Additional language has been added in § 300.107(a) to clarify that the steps taken by public agencies to provide access to nonacademic and extracurricular services and activities include the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team.

Comment: One commenter expressed concern about including "nonacademic services" in § 300.107, because it is not in the Act. The commenter stated that services such as athletics, recreational activities and clubs, counseling, transportation and health services should not be included in the regulations because they may be costly and are usually available on a limited basis. One commenter stated that it is confusing to include related services in the examples of nonacademic services and recommended that they be removed.

Discussion: The list of nonacademic and extracurricular services and activities in § 300.107(b) is not exhaustive. The list provides public agencies with examples of services and activities that may afford children with disabilities an equal opportunity for participation in the services offered to

other children of the public agency. We disagree that the list of activities causes confusion with related services, as we think that the public can easily recognize the difference between academic counseling services, for example, that are offered to all children, and the type of counseling services that might be included in a child's IEP as a related service. For these reasons, we believe it is appropriate to maintain the list of nonacademic and extracurricular services and activities in § 300.107, including those services that are also related services in § 300.34.

Changes: None.

Physical Education (§ 300.108)

Comment: A few commenters stated that, in some States, physical education is not required for every nondisabled child every year and this creates situations in which children with disabilities are in segregated physical education classes. The commenters recommended that the regulations clarify the requirements for public agencies to make physical education available to children with disabilities when physical education is not available to children without disabilities.

Discussion: Section 300.108 describes two considerations that a public agency must take into account to meet the physical education requirements in this section. First, physical education must be made available equally to children with disabilities and children without disabilities. If physical education is not available to all children (*i.e.*, children with and without disabilities), the public agency is not required to make physical education available for children with disabilities (*e.g.*, a district may provide physical education to all children through grade 10, but not to any children in their junior and senior years). Second, 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.

This is the Department's longstanding interpretation of the requirements in § 300.108 and is based on legislative history that the intent of Congress was to ensure equal rights for children with disabilities. The regulation as promulgated in 1977 was based on an understanding that physical education was available to all children without disabilities and, therefore, must be made available to all children with disabilities. As stated in H. Rpt. No. 94-332, p. 9, (1975):

Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all non-handicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.

We agree that § 300.108(a) could be interpreted to mean that physical education must be made available to all children with disabilities, regardless of whether physical education is provided to children without disabilities. We will, therefore, revise paragraph (a) to clarify that the public agency has no obligation to provide physical education for children with disabilities if it does not provide physical education to nondisabled children attending their schools.

Changes: Section 300.108(a) has been revised as described in the preceding paragraph.

Full Education Opportunity Goal (FEOG) (§ 300.109)

Comment: One commenter requested that the regulations clarify how a State communicates and monitors the progress of the State's FEOG.

Discussion: We do not believe it is appropriate to regulate how a State communicates and monitors its progress toward the State's FEOG. We believe the State should have the flexibility needed to implement the provisions of this section and the State is in the best position to make this determination.

Changes: None.

Program Options (§ 300.110)

Comment: A few commenters recommended revising § 300.110 to require States to ensure that each public agency have in effect policies, procedures, and programs to provide children with disabilities the variety of educational programs and services available to nondisabled children. The commenters stated that § 300.110 does not provide any guidance to educators. A few commenters stated that "vocational education is an outdated term" and proposed replacing it with "career-technical and adult education" or "career and technical education."

Discussion: We do not believe it is necessary to change § 300.110. Under this provision, States must ensure that public agencies take steps to ensure that children with disabilities have access to the same program options that are available to nondisabled children in the area served by the agency, whatever those options are, and we are not aware of any implementation problems with

Children with Disabilities Enrolled in Private Schools by Their Parents; State Plan for High Cost Fund; Free and Low-Cost Legal Services; and Confidentiality Pledge Prior to the Commencement of Mediation.

Annual reporting and recordkeeping burden for this collection of information is estimated to approximately 6 hours for 79,194 respondents (LEAs and State agencies). The total annual reporting and recordkeeping burden for information collection 1820-0600 for all States and LEAs is 472,651 hours.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with this order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM published in the **Federal Register** on June 21, 2005, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects

34 CFR Part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 301

Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Infants and children, Reporting and recordkeeping requirements.

Dated: July 31, 2006.

Margaret Spellings,
Secretary of Education.

For the reasons discussed in this preamble, and under the authority of 20 U.S.C. 1221(e)(3) and 1406, the Secretary amends title 34 of the Code of Federal Regulations as follows:

■ 1. Part 300 is revised to read as follows:

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

Subpart A—General

Purposes and Applicability

Sec.

300.1 Purposes.

300.2 Applicability of this part to State and local agencies.

Definitions Used in This Part

300.4 Act.

300.5 Assistive technology device.

300.6 Assistive technology service.

300.7 Charter school.

300.8 Child with a disability.

300.9 Consent.

300.10 Core academic subjects.

300.11 Day; business day; school day.

300.12 Educational service agency.

300.13 Elementary school.

300.14 Equipment.

300.15 Evaluation.

300.16 Excess costs.

300.17 Free appropriate public education.

300.18 Highly qualified special education teachers.

300.19 Homeless children.

300.20 Include.

300.21 Indian and Indian tribe.

300.22 Individualized education program.

300.23 Individualized education program team.

300.24 Individualized family service plan.

300.25 Infant or toddler with a disability.

300.26 Institution of higher education.

300.27 Limited English proficient.

300.28 Local educational agency.

300.29 Native language.

300.30 Parent.

300.31 Parent training and information center.

300.32 Personally identifiable.

300.33 Public agency.

300.34 Related services.

300.35 Scientifically based research.

300.36 Secondary school.

300.37 Services plan.

300.38 Secretary.

300.39 Special education.

300.40 State.

300.41 State educational agency.

300.42 Supplementary aids and services.

300.43 Transition services.

300.44 Universal design.

300.45 Ward of the State.

Subpart B—State Eligibility

General

300.100 Eligibility for assistance.

FAPE Requirements

300.101 Free appropriate public education (FAPE).

300.102 Limitation—exception to FAPE for certain ages.

Other FAPE Requirements

300.103 FAPE—methods and payments.

300.104 Residential placement.

300.105 Assistive technology.

300.106 Extended school year services.

300.107 Nonacademic services.

300.108 Physical education.

300.109 Full educational opportunity goal (FEOG).

300.110 Program options.

300.111 Child find.

300.112 Individualized education programs (IEP).

300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.

Least Restrictive Environment (LRE)

300.114 LRE requirements.

300.115 Continuum of alternative placements.

300.116 Placements.

300.117 Nonacademic settings.

300.118 Children in public or private institutions.

300.119 Technical assistance and training activities.

300.120 Monitoring activities.

Additional Eligibility Requirements

300.121 Procedural safeguards.

300.122 Evaluation.

300.123 Confidentiality of personally identifiable information.

300.124 Transition of children from the Part C program to preschool programs.

300.125–300.128 [Reserved]

Children in Private Schools

300.129 State responsibility regarding children in private schools.

Children With Disabilities Enrolled by Their Parents in Private Schools

300.130 Definition of parentally-placed private school children with disabilities.

300.131 Child find for parentally-placed private school children with disabilities.

(7) *Orientation and mobility services*—

(i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching children the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(8)(i) *Parent counseling and training* means assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(9) *Physical therapy* means services provided by a qualified physical therapist.

(10) *Psychological services* includes—

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(11) *Recreation* includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(12) *Rehabilitation counseling services* means services provided by

qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.*

(13) *School health services and school nurse services* means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(14) *Social work services in schools* includes—

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(15) *Speech-language pathology services* includes—

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(16) *Transportation* includes—

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(26))

§ 300.35 Scientifically based research.

Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.

(Authority: 20 U.S.C. 1411(e)(2)(C)(xi))

§ 300.36 Secondary school.

Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(Authority: 20 U.S.C. 1401(27))

§ 300.37 Services plan.

Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with § 300.132, and is developed and implemented in accordance with §§ 300.137 through 300.139.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.38 Secretary.

Secretary means the Secretary of Education.

(Authority: 20 U.S.C. 1401(28))

§ 300.39 Special education.

(a) *General.* (1) *Special education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) *Instruction in physical education.*

(2) *Special education* includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—

(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

(ii) Travel training; and

(iii) Vocational education.

(b) *Individual special education terms defined.* The terms in this definition are defined as follows:

(1) *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) *Physical education* means—

- (i) The development of—
 - (A) Physical and motor fitness;
 - (B) Fundamental motor skills and patterns; and
 - (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
- (ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) *Specially designed instruction* means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) *Travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) *Vocational education* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(29))

§ 300.40 State.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(Authority: 20 U.S.C. 1401(31))

§ 300.41 State educational agency.

State educational agency or *SEA* means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(Authority: 20 U.S.C. 1401(32))

§ 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.

(Authority: 20 U.S.C. 1401(33))

§ 300.43 Transition services.

(a) *Transition services* means a coordinated set of activities for a child with a disability that—

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—

- (i) Instruction;
- (ii) Related services;
- (iii) Community experiences;
- (iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) *Transition services* for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

(Authority: 20 U.S.C. 1401(34))

§ 300.44 Universal design.

Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

(Authority: 20 U.S.C. 1401(35))

§ 300.45 Ward of the State.

(a) *General.* Subject to paragraph (b) of this section, *ward of the State* means a child who, as determined by the State where the child resides, is—

- (1) A foster child;
- (2) A ward of the State; or
- (3) In the custody of a public child welfare agency.

(b) *Exception.* Ward of the State does not include a foster child who has a foster parent who meets the definition of a *parent* in § 300.30.

(Authority: 20 U.S.C. 1401(36))

Subpart B—State Eligibility

General

§ 300.100 Eligibility for assistance.

A State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in §§ 300.101 through 300.176.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a))

FAPE Requirements

§ 300.101 Free appropriate public education (FAPE).

(a) *General.* A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d).

(b) *FAPE for children beginning at age 3.* (1) Each State must ensure that—

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with § 300.323(b).

(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

(c) *Children advancing from grade to grade.* (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(1)(A))

§ 300.102 Limitation—exception to FAPE for certain ages.

(a) *General.* The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

§ 300.108 Physical education.

The State must ensure that public agencies in the State comply with the following:

(a) *General. 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.

(b) *Regular physical education.* Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) *Special physical education.* If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) *Education in separate facilities.* 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 in compliance with this section.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(5)(A))

§ 300.109 Full educational opportunity goal (FEOG).

The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(2))

§ 300.110 Program options.

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))

§ 300.111 Child find.

(a) *General.* (1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) *Use of term developmental delay.* The following provisions apply with respect to implementing the child find requirements of this section:

(1) A State that adopts a definition of *developmental delay* under § 300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).

(2) A State may not require an LEA to adopt and use the term *developmental delay* for any children within its jurisdiction.

(3) If an LEA uses the term *developmental delay* for children described in § 300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.

(4) If a State does not adopt the term *developmental delay*, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.

(c) *Other children in child find.* Child find also must include—

(1) Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

(d) *Construction.* Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in § 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1401(3)); 1412(a)(3))

§ 300.112 Individualized education programs (IEP).

The State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§ 300.320 through 300.324, except as provided in § 300.300(b)(3)(ii).

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(4))

§ 300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.

(a) *Hearing aids.* Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(b) *External components of surgically implanted medical devices.* (1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

(2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1401(1), 1401(26)(B))

Least Restrictive Environment (LRE)**§ 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

(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.

(2)(i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility—

(A) Were not actually identified as being a child with a disability under § 300.8; and

(B) Did not have an IEP under Part B of the Act.

(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who—

(A) Had been identified as a child with a disability under § 300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under § 300.8.

(3)(i) Children with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.

(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with § 300.503.

(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, the term *regular high school diploma* does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).

(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) *Documents relating to exceptions.* The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by § 300.700 (for purposes of making grants to States under this part), is current and accurate.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(1)(B)–(C))

Other FAPE Requirements

§ 300.103 FAPE—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(c) Consistent with § 300.323(c), the State must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1401(8), 1412(a)(1)).

§ 300.104 Residential placement

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(10)(B))

§ 300.105 Assistive technology.

(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§ 300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's—

(1) Special education under § 300.36;

(2) Related services under § 300.34; or

(3) Supplementary aids and services under §§ 300.38 and 300.114(a)(2)(ii).

(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(B)(i))

§ 300.106 Extended school year services.

(a) *General.* (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§ 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not—

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

(b) *Definition.* As used in this section, the term extended school year services means special education and related services that—

(1) Are provided to a child with a disability—

(i) Beyond the normal school year of the public agency;

(ii) In accordance with the child's IEP; and

(iii) At no cost to the parents of the child; and

(2) Meet the standards of the SEA.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(1))

§ 300.107 Nonacademic services.

The State must ensure the following:

(a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(1))



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

FEB 12 2010

James Irby, Esq.
The Law Firm of James Irby, P.C.
120 East Tennessee Street
Florence, Alabama 35630

Dear Mr. Irby:

This letter is in response to your September 17, 2009 letter to Patricia Guard, former Acting Director of the Office of Special Education Programs. You requested guidance regarding the requirements of under Part B of the Individuals with Disabilities Education Act (IDEA) as they relate to additional reading instruction provided in lieu of mandatory physical education.

Specifically, you ask whether an Individualized Education Program (IEP) team for a student with a disability may agree to provide additional reading instruction in place of, and during, otherwise scheduled mandatory physical education instruction. You enclosed a November 16, 2004 memorandum from the State of Alabama Department of Education addressing sufficient instruction time for struggling readers that references the requirement for "30 minutes daily of physical education established in accordance with the *Code of Alabama (1975)*, 16-4-1." We interpret the State requirement as applying to students with and without disabilities and your question to be whether the IDEA provides the IEP Team with authority to waive this State requirement for students with disabilities who require additional reading instruction.

In general, it would be inappropriate for the IEP Team to deny children with disabilities the opportunity to participate in State mandated physical education instruction for the sole purpose of providing them with additional reading instruction. The IEP Team should consider additional strategies and scheduling, such as an extended school day or extended school year, if the child requires such instruction in order to receive a free appropriate public education.

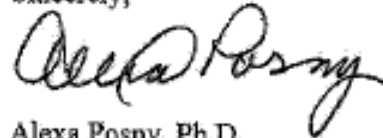
Consistent with 34 CFR §300.320(a), each child's IEP Team determines the special education and related services, and supplementary aides, services, and other supports that are needed to meet each child's unique needs in order for the child to: (1) advance appropriately toward attaining the annual goals; (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. Because physical education instruction is a requirement for all students, the IEP Team must determine the child's needs in order to meet this requirement. We note that the definition of special education, at 34 CFR §300.39, includes instruction in physical education. Therefore, for some students with disabilities instruction in physical education may be a part of the special education services prescribed in IEP. Students with disabilities who can participate in the

regular physical education with or without supplementary aides, services and other supports must be provided an equal opportunity to meet this State requirement.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have questions, please do not hesitate to contact Laura Duos at 202-245-6474 or by email at Laura.Duos@ed.gov, or Deborah Morrow at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Posny". The signature is fluid and cursive, with the first name "Alexa" written in a larger, more prominent script than the last name "Posny".

Alexa Posny, Ph.D.
Acting Director
Office of Special Education Programs



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

Garth Tymeson, Ph.D.
Center on Disability Health and
Adapted Physical Activity
College of Science and Health
University of Wisconsin, La Crosse
131 Mitchell Hall
La Crosse, Wisconsin 54601

JUL 31 2013

Dear Dr. Tymeson:

This is in response to your March 1, 2013 letter to Michael K. Yudin, Acting Assistant Secretary, Special Education and Rehabilitative Services, U.S. Department of Education, and follow-up phone conversation with Jennifer Wolfsheimer, Education Program Specialist, on March 25, 2013. In your letter, you ask whether it is consistent with Part B of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations for a school district to deny the provision of physical education services as part of a preschool-aged child's individualized education program (IEP), when physical education is not available to all children in preschool. As an example, you state that a local school district refused to provide a preschool-aged child with a disability physical education as part of the child's IEP because children without disabilities in preschool in the school district are not offered physical education.

The Part B regulations, at 34 CFR §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 CFR §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.

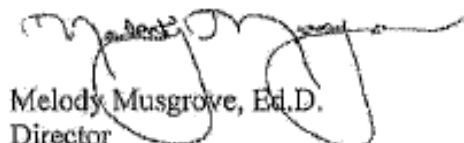
Under 34 CFR §300.108(c), "[i]f specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs." Thus, 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). Furthermore, the requirements of Part B of the IDEA regarding IEPs for children with disabilities apply to preschool-aged children.

Page 2 – Mr. Garth Tymeson

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have questions, please do not hesitate to contact Jennifer Wolfsheimer at 202-245-6090 or by email at Jennifer.Wolfsheimer@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove", written over a horizontal line.

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs



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

OCT 23 2013

Luke E. Kelly, Ph.D., CAPE
Director of Adapted Physical Education
Curry School of Education, University of Virginia
202 Emmet Street South
P.O. Box 400407
Charlottesville, VA 22904-4407

Dear Dr. Kelly:

This is in response to your May 5, 2013 letter to Michael K. Yudin, Acting Assistant Secretary, Special Education and Rehabilitative Services, United States Department of Education, requesting clarification of provisions of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations at 34 CFR Part 300. We understand your letter to be asking whether physical education is required for high school students with disabilities ages 16-21, if it is in their individualized education programs (IEPs), even though physical education is not provided to their non-disabled peers in those grades. Your letter also notes that the IEPs for some of these students with disabilities, particularly those ages 18-21, are implemented in community-based transition programs.

Your fundamental question (*i.e.*, whether a student with disability, for whom physical education is included on his or her IEP, is entitled to physical education even if physical education is not available to his or her same-age typically developing peers) was recently addressed in the Office of Special Education Programs' (OSEP) response to Garth Tymeson dated July 31, 2013 (*Letter to Tymeson*) located at <http://www2.ed.gov/policy/speced/guid/idea/memosdelttrs/index.html>. *Letter to Tymeson* states –

The Part B regulations, at 34 CFR §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 CFR §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 CFR §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 child must provide the services directly or make arrangements for those services

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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).

Letter to Tyneson specifically addresses pre-school aged children with disabilities. However, we believe that the same analysis applies to students with disabilities ages 16-21.

Your letter states that the placement for some students with IEPs ages 18-21 is a community-based transition program. The Department’s longstanding position is that placement refers to the provision of special education and related services rather than a specific place, such as a specific classroom or specific school. 71 Fed. Reg. 46540, 46687 (August 14, 2006). Neither the statute nor 34 CFR §300.108 distinguish between the potential locations, *i.e.*, a high school setting or a community-based transition program, where a student with physical education on his or her IEP should receive it. We believe that the placement decision is best left to the team that determines the educational placement, under 34 CFR §300.327, of the student with a disability.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have questions, please do not hesitate to contact Rebecca Walawender at 202-245-7399 or by email at Rebecca.Walawender@ed.gov.

Sincerely,



Melody Musgrove, Ed.D.
Director
Office of Special Education Programs



pennsylvania
DEPARTMENT OF EDUCATION

*Bureau of Special Education
Pennsylvania Training and Technical Assistance Network*

Adapted Physical Education

Frequently Asked Questions

November 2013

What does federal law say about physical education for students with disabilities?

In Section 300.108, The Individuals with Disabilities Education Act (IDEA 2004) states the following: 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.

Is the LEA responsible to provide physical education for students with disabilities?

Each child with a disability must be afforded the opportunity to participate in the general physical education program available unless the child is enrolled full time in a separate facility. If the IEP team has determined that the student is in need of adapted physical education, the LEA must provide the specially designed physical education instruction.

Is adapted physical education a direct service?

Yes, according to IDEA Adapted Physical Education is a direct service. It is up to each LEA to ensure that it is reflected appropriately in each student's IEP.

Is there a requirement to determine an IEP goal related to adapted physical education?

Yes, just like any other direct service, the IEP team must consider the areas of need for each student and determine appropriate IEP goal(s) goals based on assessment.

Is there a requirement that a certified adapted physical educator (CAPE) deliver adapted physical education?

No, in Pennsylvania there is no requirement for any specialized certification related to adapted physical education. Certified physical education teachers can provide Adapted Physical Education to students with disabilities.

Must adapted physical education always be provided in a self-contained, pull-out class?

Although adapted physical education could be provide in a self-contained, pull out class, the IEP team should begin with less restrictive options. The IEP team should begin with the general physical education classroom and consider what supplementary aids and services could be provided, before recommending placement in a more restrictive setting.

If a student receives self-contained adapted physical education, does the student have to go to general physical education also?

This is an IEP team decision. A student could receive adapted physical education and participate in general physical education. It would be similar to a student receiving specialized reading instruction and still participate in the general education reading class.

How is it determined that a student needs adapted physical education?

This determination should be made using assessments aligned to the PA Academic Standards for Health, Safety and Physical Education. The assessment should be completed by a physical education teacher with input from other team members.

Is there an adapted health curriculum for students with disabilities?

All students, including students with disabilities, are instructed according to the PA Academic Standards for Health, Safety, and Physical Education. It is up to each LEA to determine the appropriate curriculum; the IEP team determines any appropriate adaptations and/or modifications.

Can adapted physical education services be given during the general physical education class?

The IEP team determines how and where services are delivered. A continuum of services should be considered to meet the needs of the student. This continuum could include the general physical education class with or without supports, consultation within the general physical education classroom, co-teaching, etc.

Physical Education for Students with Disabilities

IDEA 2004 requires that students with disabilities receive physical education services, specially designed if necessary. If your child has a disability and an IEP, the school must provide physical education as part of your child's special education program.

Many students with disabilities can safely and successfully participate in general physical education, with or without accommodations and supports. However, some children benefit from specially designed or adapted physical education. Content in adapted physical education should mirror the general physical education curriculum to the greatest extent possible.

Because physical education is a required component of special education, your child's general and/or adapted physical education teacher should be included as a member of the IEP team if the student is receiving specially designed physical education.

At a minimum, if your child is receiving specially designed or adapted physical education, the IEP should include a summary of present level of performance in physical education content, the frequency and duration (minutes and days per week or stipulated time period) of physical education services, measurable goals and objectives about content, and the placement where these services are provided. Like all other special education and related services, physical education instruction should be detailed in the IEP.

Note: *These required physical education services are different and separate from related services such as physical and occupational therapy.* Best practice is a “motor team” approach or service delivery model where adapted and general physical education teachers and related service personnel work collaboratively to meet the unique needs of students with disabilities.

Physical Education Content and Requirements in IDEA

34 C.F.R.300.39(b)(2) IDEA defines "physical education" as the development of:

- Physical and motor skills
- Fundamental motor skills and patterns
- Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports)
- Includes special physical education, adapted physical education, movement education, and motor development

20 U.S.C. 1401(29) Special Education. The term 'special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including -

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) **instruction in physical education.**

34 CFR 300.108 Physical Education. The State must ensure that public agencies in the State comply with the following:

(a) General. **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. [See [Commentary to IDEA](#) below for more information on this often confused "grade level" misconception.]

(b) **Regular physical education.** Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless -

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) **Special physical education.** If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) **Education in separate facilities.** 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 in compliance with this section.

[Wrightslaw: Special Education Law](#), 2d Edition, p. 55, p. 202, and p. 206.

Interpretation of the PE Requirement by the U.S. Department of Education

[Commentary to IDEA](#) (page 46583) discusses when PE is required for students with disabilities beyond the grade level requirement of nondisabled peers.

Note: This is a very important clarification that is often not known or understood by school district personnel since it appears in the discussion section of the IDEA regulations in the Federal Register. You should bring this clarification to the attention of school officials if PE is being characterized as a grade level requirement based on what nondisabled peers receive.

1. Physical education **must be made available equally** to children with disabilities and children without disabilities.

2. 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**.

From H. Rpt. No. 94-332, p. 9, (1975):

Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all non-handicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.

US Department of Education - Office of Special Education Programs: Policy Letters, Guidance, and Clarification

The following letters from the US Department of Education clarify some common misconceptions about PE services for students with disabilities.

The two letters below cover the age range of required PE services for students with disabilities (3-21 years). The preschool and high school transition ages are often overlooked. These periods are important times for motor development, health-related fitness, sport skills, aquatics, community-based physical activity, and many other content areas common in general and adapted physical education programs.

[Applicability of Physical Education for Children \(Age 18-21\) with Disabilities in Transition Program](#), OSEP Policy Letter to Luke Kelly, October 23, 2013

[Applicability of Physical Education for Preschool Children with Disabilities](#), OSEP Policy Letter to Garth Tymeson, July 31, 2013

The next letter clarifies that other subjects or services cannot be substituted for or replace required PE.

[Denying Mandatory Physical Education Instruction for Children with Disabilities](#), OSEP Policy Letter to James Irby, February 12, 2010

The following Guidance Document provides information about extracurricular athletics or sports for students with disabilities. Section 300.107 of IDEA includes information on Nonacademic Services, including extracurricular athletics or sports. These services are a required part of special education.

*The state must ensure the following: (a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the same manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities, (b) Nonacademic and extracurricular services and activities may include counseling services, **athletics**, transportation, health services, ...*

[Schools' Obligation to Provide Equal Opportunity to Students with Disabilities to Participate in Extracurricular Athletics](#), OCR Guidance Document, January 25, 2013.

Adapted Physical Education

Adapted or specially designed physical education (APE) is about meeting the unique needs of individual students with disabilities. In APE, the instructor provides planning and assessment, consultation for general physical education teachers, specially designed instruction, and adapts or modifies the curriculum, task, equipment, and/or environment so a child can participate in all aspects of physical education.

APE and general physical education teachers work together to design meaningful and beneficial instruction for all students.

APE Certification for Teachers

It is common for teachers to specialize or have advanced preparation in adapted physical education. National and state level adapted physical education teacher certifications or licenses exist.

[Adapted Physical Education National Standards \(APENS\)](#). The mission of APENS is to promote the 15 Adapted Physical Education Standards and national certification exam. The goal of APENS is to ensure that all students who qualify for specially designed physical education services receive them from a "qualified" teacher. Teachers who pass the APENS exam receive CAPE recognition (Certified Adapted Physical Educator).

Some individual states also have add-on teaching licenses or certifications in adapted physical education. The following states have separate teaching licenses in adapted physical education: CA, LA, ME, MI, MN, NE, OH, OR, RI, SD, WI, and WY.

Talk with your school district. Ask about teacher qualifications. Encourage your district to hire staff who are qualified to teach adapted or specially designed PE.

See the directory below for samples of many adapted physical education teacher preparation programs.

[NCPEID National Directory of APE Teacher Preparation Programs](#)

[Preparing Qualified and Effective Adapted Physical Educators to Improve Outcomes for Students with Disabilities](#). Personnel development in adapted physical education can lead to meaningful student success and positive education outcomes. This Webinar from the National Center to Improve Recruitment and Retention of Qualified Personnel for Children with Disabilities highlights the roles & responsibilities and preparation of adapted physical education (APE) teachers.

Eligibility Criteria for Adapted Physical Education Services

A few states like MN and LA have developed state-approved adapted physical education eligibility criteria.

[Minnesota APE Eligibility Criteria](#)

[Louisiana APE Eligibility Criteria](#)

[California APE Eligibility Criteria](#)

In most states, each school district has its own criteria for adapted or specially designed physical education eligibility.

Articles

[Physical Education and IEP Development.](#) All of the IEP requirements make the physical educator more accountable for including students with disabilities in regular physical education whenever it is appropriate.

[Why You Need to Ask "Dumb" Questions.](#) I was so "dumb" that when my daughter was in first grade, her father or I went to school every day she was scheduled for physical education so we could remove her from activities that were contraindicated for her physical condition. I was so "dumb" I didn't know there was such a thing as adapted physical education...

[Feeling Guilty About Asking For Special Ed Services? Remember the Domino Effect.](#) A second issue in our hearing was whether my child required Adapted Physical Education (APE). At the time of our hearing in 1987, APE was not provided to any child in the entire county. The hearing officer ruled that my child did require adapted physical education. Since 1988, APE has been provided to hundreds of children in our county.

[Court of Appeals for the Ninth Circuit Upholds Jury Award of One Million to Fired Special Ed Teacher](#) by Peter Wright, Esq. & Pamela Wright, MA, MSW. Soon after she began work as an adaptive PE teacher, Dr. Settlegoode. was struck by inequities in access and services. Her students were not allowed to participate in activities that were freely available to non-disabled students. Many of these denials of access were in clear violation of law.

[U.S. Department of Education Clarifies Schools' Obligation to Provide Equal Opportunity to Students with Disabilities to Participate in Extracurricular Athletics.](#)

[Schools Could Use Guidance on Physical Education for Disabled Kids](#) by Christina Samuels. Students with disabilities get about the same time in physical education as their counterparts in general education, but teachers could benefit from sharing resources on how to keep kids with emotional or physical disabilities active, according to the 2010 [GAO Report on Physical Education for Students with Disabilities.](#)

[Does an IEP make a child ineligible for sports?](#) I was told that my child cannot participate in sports at school because he has an IEP. Isn't this discrimination?

[PE Central](#) hosts a section on Frequently Asked Questions. Use the dropdown box and search function to find answers on any PE topic.

At [Adapted PE FAQs](#), you can ask their Adapted PE Expert a question or scroll the previously answered questions on topics including:

- Adaptations for Physical Activities
- Adapted Aquatics Programming
- Adapted Physical Education Programming
- ADD/ADHD
- Assessment
- Autism
- Behavior/Emotional Disturbance
- Cerebral Palsy
- Down Syndrome
- Hearing Impairment
- IEP Information
- more...

[Physical Education for Children with Disabilities](#). Minnesota PACER Parent Training and Information Sheet.

[Physical Education Classes can be Adapted for Children with Disabilities](#) by Beth Casper in the Early Childhood Connection Newsletter, Winter 2004, p.6.

["How to do it" Articles](#). A collection of practical articles that can be used by adapted and general physical education teachers, coaches, parents, and related service personnel from the Journal of Physical Education, Recreation, and Dance and other professional sources.

Resources

State Departments of Education - Adapted Physical Education Information for Parents and School Staff

Alabama - [Adapted Physical Education and 504 Process State Guidelines](#)

California - [Adapted Physical Education Guidelines](#)

Colorado - [Adapted Physical Education](#)

Connecticut - [Guidelines for Adapted Physical Education](#)

Maryland - [Adapted Physical Education: A Guide for Serving Students with Disabilities](#)

Minnesota - [Administrative Rules – Adapted Physical Education](#)

North Carolina – [Adapted PE Frequently Asked Questions](#)

Pennsylvania – [Adapted Physical Education FAQ](#)

Vermont – [APE Frequently Asked Questions](#)

Wisconsin – [Physical Education for Children with Disabilities](#)

Other Resources

[Adapted Physical Education from PE Central](#). A premier website for health and physical education.

[National Consortium on Physical Education for Individuals with Disabilities \(NCPEID\) National Directory of APE Teacher Preparation Programs](#)

[Center on Disability Health and Adapted Physical Activity \(University of Wisconsin-La Crosse\)](#)

[Undergraduate Program in Adapted Physical Education Teaching](#). Wisconsin is one of 14 states that has a separate add-on teaching license/certification in adapted physical education. The [UW-La Crosse program](#) prepares highly qualified and effective adapted physical education teachers to implement IDEA required physical education services to eligible students with disabilities.

[Adapted Physical Education - Parent Links](#) from PE Central. Physical activity participation is hard for individuals with disabilities. Parents can make a difference in the physical activity behaviors of their child and in turn impact on their own fitness levels.

[Adapted Physical Education Instructional Videos](#).

[SHAPE America – Society of Health and Physical Educators](#). Professional organization of those involved in physical education, leisure, fitness, dance, health promotion, and education and all specialties related to achieving a healthy lifestyle. SHAPE provides members with an array of resources, support, and programs to help practitioners improve their skills.

[SHAPE America – Adapted Physical Education](#) Resources.

[National Center on Physical Activity and Disability \(NCPAD\)](#)

[NCPAD Directory of Programs](#) for people with disabilities and health conditions, including camps, therapeutic recreation, and adapted PE programs. Browse the programs by name, state or country, or you can search by a specific zip code and list only the programs closest to you.

[President's Council on Fitness, Sports and Nutrition \(PCFSN\) - I Can Do It, You Can Do It](#). Physical Activity Mentoring Program for Persons with Disabilities.

Free Publications Related to Physical Education

[Students with Disabilities: More Information and Guidance Could Improve Opportunities in Physical Education and Athletics](#). Report (June 2010) from the U.S. Government Accountability Office, a congressional watchdog agency, says "a notable challenge to serving students with disabilities in general PE classes is the lack of sufficient training or experience among PE or classroom teachers, according to our interviews and other research."

[National Association for Sport and Physical Education. *The 2012 Shape of the Nation Report: Status of Physical Education in the USA*](#) provides a current picture of physical education (PE) in the American education system.

[State Standards for Physical Education](#). In response to the need for high-quality physical education and sport programs, many states have adopted physical education standards that closely align with SHAPE America voluntary National Standards. SHAPE America is providing the link to all of the states and Washington, D.C. Compare your state's standards to SHAPE America's National Physical Education Standards.
