

Legal Requirements for Making Early Childhood LRE Decisions

Applicable Regulatory Guidance

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§ 300.17 Free appropriate public education

Free appropriate public education or FAPE means special education and related services that

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirement of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education programs (IEP) that meets the requirement of §§ 300.320 through 300.324 (Authority;20 U.S.C 1401(9))

34 CFR § 300.101 (b) FAPE

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

34 CFR §300.114 LRE requirements

Each public agency must ensure that:

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

Supplementary Comments

"The LRE requirements in 300.114 through 300.116 apply to all children with disabilities, including preschool children who are entitled to FAPE. Public agencies that do not operate programs for preschool children without disabilities are not required to initiate those programs solely to satisfy the LRE requirements of the Act. Public agencies that do not have an inclusive public preschool that can provide all the appropriate services and supports must explore alternative methods to ensure that the LRE requirements are met. Examples of such alternative methods might include placement of qualified preschool children with disabilities in a private preschool with children without disabilities in one, but not the only, option available to public agencies to meet the LRE requirements. We believe the regulations should allow public agencies to choose an appropriate option to meeting the LRE requirements. However, if a public agency determines that placement in a private preschool program is

necessary as a means of providing special education and related services to a child with a disability, the program must be at no cost to the parent of the child.”

34 CFR §300.116 Placements

In determining the education placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that-

- (a) The placement decision-
 - (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
 - (2) Is made in conformity with the LRE provisions of this subpart, including §300.114 through 300.118
 - (b) The child placement-
 - (1) is determined at least annually;
 - (2) Is based on the child’s IEP; and
 - (3) Is as close as possible to the child’s home;
 - (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
 - (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
 - (e) A child with a disability is not removed from education in age appropriate regular classrooms solely because of needed modifications to the general education curriculum.
- (Authority: 20 U.S.C. 1412(z)(5))

Supplementary Comments

“Section 300.116 clearly states that the requirements for determining the educational placement of a child with a disability include preschool children with disabilities and that such decisions must be made in conformity with the LRE provisions in §§300.114 through 300.118. This includes ensuring that a continuum of services is available to meet the needs of children with disabilities for special education and related services.”

OSEP Policy Letter - 2006 to Congressman Christopher Smith

Preschool children and the Definition of a Private School

<http://www2.ed.gov/policy/speced/guid/idea/letters/2006-4/smith120106privschools4q2006.pdf>