



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

July 31, 2013

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

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.

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". The signature is fluid and cursive, with a long horizontal line extending to the right.

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