



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

April 19, 2018

Brian Carroll, Esq.  
2447 Pacific Coast Highway  
Second Floor  
Hermosa Beach, California 90254

Dear Mr. Carroll:

This letter responds to your correspondence to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP). In that letter, you asked “whether and/or how a school [could] unilaterally schedule five days[’] worth of individualized education program (IEP) instruction and services for a preschool student when the school knows from the outset that a particular preschool student will not regularly attend school five days a week.” We regret the delay in responding.

We note that section 607(d) of Individuals with Disabilities Education Act (IDEA) prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented, and does not establish a policy or rule that would apply in all circumstances.

Under 20 U.S.C. 1412(a)(1)(A) and (B), a State must make a free appropriate public education (FAPE) available to all eligible children with disabilities residing in the State within the State’s mandated age range. In accordance with 34 CFR §300.101(b), a public agency must make FAPE available to a preschool child with a disability beginning at the child’s third birthday. The State must ensure that each eligible child with a disability ages three through five has an IEP that is developed, reviewed, and revised in accordance with 20 U.S.C. 1414(d). An individualized family service plan that contains the content in 20 U.S.C. 1436(d) and is developed in accordance with 20 U.S.C. 1414(d) may serve as the IEP for a preschool child with a disability if using that plan as the IEP is consistent with the State policy, and is agreed to by the agency and the child’s parent in accordance with 20 U.S.C. 1414(d)(2)(B) and 34 CFR §300.323(b).

You provide an example in your letter in which a preschool child’s IEP specifies that the child will be provided with 1,500 minutes of specially designed instruction per week, divided equally between the special education class and the general education class in a public preschool program. You indicate that “no schedule was agreed upon when everyone signed the IEP,” however, the parents informed the public agency during the IEP meeting that the child would attend the public preschool program only three days per week so that the child could participate in activities and services outside of the public school setting. You ask whether “further

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agreement should be obtained” to determine the amount of specially designed instruction that will be provided if it is unlikely that the public agency can provide the full 1,500 minutes in three days or whether the public agency “can unilaterally implement a schedule after the IEP meeting” that provides for less than the 1,500 minutes.

As is true for all children with disabilities, the public agency cannot unilaterally change the amount of services included in a preschool child’s IEP. In accordance with 20 U.S.C. 1414(d)(1)(A)(i)(IV), the IEP must include a “statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided...” The IEP must also include the anticipated frequency, location, and duration of the services and modifications, described in 34 CFR §300.320(a)(4). 34 CFR §300.320(a)(7).

Consistent with 20 U.S.C. 1414(d)(1)(A)(i)(IV) and 34 CFR §300.320(a)(7), the child’s IEP must include the specific amount of special education and related services, and supplementary aids and services, that the public agency will provide to the child so the level of the agency’s commitment of resources is clear. Therefore, if the public agency wants to revise the child’s IEP, including the amount of services in the child’s IEP, after the IEP Team meeting, it must engage the parent in further discussion, which may, but need not necessarily occur through an IEP Team meeting. Under 20 U.S.C 1414(d)(3)(D), a parent and a public agency may agree not to convene an IEP Team meeting to make changes to the IEP after the annual IEP Team meeting for a school year, and instead to develop a written document to amend or modify the child’s current IEP. If changes are made to the child’s IEP in accordance with 20 U.S.C 1414(d)(3)(D), the public agency must ensure that the child’s IEP Team is informed of those changes. 34 CFR §300.324(a)(4)(ii).

If you have any further questions, please do not hesitate to contact Lisa Pagano of my staff at 202-245-7413 or by email at [Lisa.Pagano@ed.gov](mailto:Lisa.Pagano@ed.gov).

Sincerely,

/s/

Ruth E. Ryder  
Acting Director  
Office of Special Education Programs