



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

September 9, 2019

Jill C. Rowland, Esq.  
Saltz Family Early Intervention Advocacy Center  
Alliance for Children's Rights  
3333 Wilshire Blvd., Ste. 550  
Los Angeles, California 90010

Dear Ms. Rowland:

This letter addresses your organization's electronic correspondence to Ruth Ryder, former acting director of the Office of Special Education Programs (OSEP). In that letter, your former colleague, Lisa Winebarger, asked a series of questions based on the Preschool for All Learners ("PAL") special day program within the Los Angeles Unified School District. We regret the delay in responding.

We note that section 607(d) of the 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.

In your letter, you state that PAL classrooms serve 10 children with a range of disabilities with both moderate and severe levels of need and are staffed with a special education teacher as well as two special education assistants. Specific special education and related services are not listed in the individualized education programs (IEP) for children attending this program as all services are provided in a collaborative setting in the PAL classroom. Based on this information you asked the following questions:

1. Does a local educational agency (LEA) violate the guarantee of [a free appropriate public education] FAPE by categorically barring speech and language therapy services on account of a student's placement in the PAL program, which purportedly provides two hours per week of speech and language services to each PAL classroom?
2. Does an LEA violate the guarantee of FAPE by placing blanket restrictions on available "related services," e.g., physical therapy, occupational therapy, or behavioral interventions, on account of placement in a particular special day program?

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Because these questions are related, we have combined our responses.

Because specific responses to your questions would necessarily require a factual inquiry, OSEP expresses no view as to whether the LEA's program described in your inquiry would violate IDEA. We note though that under IDEA, decisions about each child's educational program and services and the setting in which the child's program and services will be implemented must be made on an individual basis in light of each child's unique needs. In general, a policy that prohibits the provision of specific related services or restricts the amount or type of services that can be provided to a child based solely on the particular setting in which the child is placed, regardless of the child's individual needs, would not be consistent with IDEA. Our explanation of relevant IDEA requirements follows.

Under IDEA, an IEP must include, among other elements, 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 for the child. 20 U.S.C. § 1414(d)(1)(A)(iv)(IV) and 34 C.F.R. § 300.320(a)(4). An appropriate IEP for a preschool aged child with a disability must be designed to enable the child to participate in appropriate activities. See 20 U.S.C. § 1414(d)(1)(A)(i)(I) and 34 C.F.R. § 300.320(a)(1)(ii). The IEP also must include the projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications. 20 U.S.C. § 1414(d)(1)(A)(i)(VII) and 34 C.F.R. § 300.320(a)(7). Consistent with these provisions 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 to parents and IEP Team members. The amount of time to be committed to each of the various services to be provided must be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP. See also [OSEP Letter to Carroll](#) (April 19, 2018) and [OSEP Letter to Matthews](#) (January 7, 2010).

IDEA also includes requirements regarding the educational placement of a child with a disability. Placement decisions must be 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. Each child's placement decision also must be made in conformity with the least restrictive environment provisions, including 34 C.F.R. §§ 300.114 through 300.118. Additionally, a child's placement must be determined at least annually, be based on the child's IEP, and be as close as possible to the child's home. The overriding rule is that placement decisions must be determined on an individual, case-by-case basis, depending on each child's unique needs and circumstances and based on the child's IEP. In all cases, however, placement decisions must not be made solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience. See [Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities](#), Final Rule, Analysis of Comments and Changes, 71 FR 46540, 46588 (Aug. 14, 2006).

Given the information provided above, barring a specific related service from being included in a child's IEP or restricting the provision of a specific related service or services based solely on the child's placement in a particular program – without regard for the child's identified needs for that service – would be inconsistent with the individualized decision-making required in both the IEP and placement processes. By copy of this letter, we are informing Kristin Wright, Director of Special Education at the California Department of Education, of your inquiry and OSEP's response.

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

Sincerely,

/s/

Laurie VanderPloeg  
Director  
Office of Special Education Programs

Cc: Kristen Wright