



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

October 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/memosdcltrs/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

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 Tymeson 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,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is fluid and cursive, with a large loop at the end.

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