Technical Assistance Bulletin

Division of Early Intervention and Special Education Services | Bulletin # 17-03

☐ Birth – Age 4	☐ Birth – K	☒ Age 3 – K	☐ Birth – 21	☐ Age 3 – 21

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Inclusive Early Childhood Services
In the Least Restrictive Environment (LRE)

On January 9, 2017, the U.S. Department of Education (Department) issued a Dear Colleague Letter (DCL) reaffirming the position of the Department that "all young children with disabilities should have access to inclusive high-quality early childhood programs where they are provided with individualized and appropriate supports to enable them to meet high expectations" https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/preschool-lre-dcl-1-10-17.pdf.

This DCL supersedes the 2012 Office of Special Education Programs (OSEP) DCL and further restates key statutory and regulatory requirements pertaining to placement options for preschool children with disabilities, the reporting of educational environments data, and the use of IDEA Part B Funds to support participation in inclusive early childhood programs. Additionally, the DCL emphasizes that inclusive learning opportunities are about more than a particular physical location. Inclusive high-quality early childhood programs place an emphasis on access to the general early childhood curriculum, equity in learning through the provision of specialized and differentiated instruction, and opportunities for interaction and participation with same-age peers without disabilities, including in non-academic as well as academic settings.

This Technical Assistance Bulletin (TAB) addresses the Dear Colleague letter and its implications for local school systems' implementation of a continuum of early childhood settings that ensure access to and meaningful participation in inclusive high-quality programs, to the fullest extent appropriate for each child. More specifically, the guidance contained in this TAB applies to preschool children with disabilities, age 3 through 5, served through an Individualized Education Program (IEP), and does not apply to children parentally placed in a private school and receiving services through a service plan. For more information about parentally placed private school students and service plans refer to this MSDE presentation at marylandpublicschools.org.

http://marylandpublicschools.org/programs/Documents/Special-Ed/ParentallyPlacedPrivateSchoolsMSDE082011.pdf

or

http://archives.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/33890/8211MSDEParentallyPlacedPrivateSchools.pdf

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Inclusive High-Quality Early Childhood Programs

A central focus of preschool special education and related services is to narrow the gap in development that exists between preschoolers with disabilities and their same age peers without disabilities. Research on the efficacy of providing special education and related services in inclusive high-quality early childhood programs has reported improved outcomes and progress towards mastery of age-appropriate skills, knowledge and behaviors for preschool children with disabilities (*Fact Sheet of Research on Preschool Inclusion; Barton, E.E., & Smith, B.J.(2014); Denver, CO: The Colorado Center for Social Emotional Competence and Inclusion*). In Maryland, inclusive education for young children of all ability levels supports each child's participation in the continuum of early childhood settings – community-based and school based – with appropriate modifications and accommodations that support school readiness and positive outcomes.

To measure the effectiveness of early intervention and preschool special education services in narrowing the performance gap with same-age peers, the Office of Special Education Programs (OSEP) requires that all states report annually on three early childhood outcomes:

- children have positive social-emotional skills and relationships;
- children acquire and use knowledge and skills to successfully participate in daily activities; and
- children use appropriate behaviors to meet their needs, leading to increased independence.

We know that if children make developmental progress across these three child outcomes, they will enter school better prepared to engage with and make progress in the regular early childhood curriculum. The three broad outcomes are comprehensive, functional, and look at development as an integrated process. The ultimate goal for all children is to be full and active participants in their homes, schools, and communities.

Key Statutory and Regulatory Requirements

While the actual terminology of "inclusion" does not appear anywhere in the IDEA, it can serve as a guiding principle when determining the location, or least restrictive environment (LRE), in which an individual child's special education and related services will be delivered. The requirements of the LRE provision in IDEA [34 C.F.R. §300.114 through 300.120] are that, to the maximum extent possible, children with disabilities are educated alongside their peers without disabilities in regular early childhood settings. The child's placement decision is made by a team of persons, including parents and other persons knowledgeable about the child, in conformity with the LRE provisions and based on the child's IEP [34 C.F.R. § 300.116(a) &(b)].

An IEP team may not place a child with a disability outside of the regular early childhood setting unless it has first considered whether the child could remain inside that setting with supplementary aids and services. [34 C.F.R. § 300.114(a)(2)] If, even with supplementary aids and services, the answer is "no", then the child can be placed in a setting other than the regular early childhood setting, but the IEP team must: a) document WHY that setting is not appropriate for the delivery of IEP services; and, b) describe the extent to which the child WILL NOT participate with nondisabled peers. Additionally, the team must consider any potential harmful effects on the child and on the quality of services if removed from a regular early childhood setting [34 C.F.R. § 300.116(d)].

Preschool Placement Options

A preschool child's IEP forms the basis for the placement decision. Each public agency must ensure that a full continuum of alternative placements, "including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions" is available. The public agency must also ensure that a free appropriate public education (FAPE) is provided in the LRE where the child's unique needs can be met, regardless of whether it operates public preschool programs for children of the same age without disabilities [34 C.F.R. § 300.115].

The continuum begins with regular early childhood settings in which children of the same chronological age without disabilities typically participate. Placement of a child with a disability in a separate setting, such as those designed specifically for students with disabilities, public or nonpublic day or residential facilities, etc., should only be used when a child's IEP cannot be implemented in a less restrictive setting [20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.116; COMAR 13A.05.01.10A].

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If there is a public preschool program available, the local school system (LSS) may choose to make FAPE available in that program. In the situation where an LSS does not offer a public preschool program, or offers only a limited range of programs, particularly for three-year-olds, the LSS must meet LRE requirements through alternative methods, which may include:

- Preschool programs operated by public agencies other than the LSS (e.g., Head Start or community-based child care);
- Private preschool programs for nondisabled preschool children;
- Classes for preschool children with disabilities in regular public elementary schools; or
- Home-based services.

The determination of a child's placement in the LRE is based on the child's IEP goals and objectives, and must be made **AFTER** the goals and objectives on the IEP are developed. Goals and objectives, as well as the types or amounts of services hours to be provided, may NEVER be developed to "fit" the placement.

LRE Decision-Making Process

The IEP team's determination of a child's placement in the LRE is a description of WHERE and HOW special education and related services can be delivered with nondisabled peers through the use of supplementary aids, services, supports, accommodations, and modifications to appropriately meet the preschool child's identified instructional needs. The determination of whether a placement or setting for a preschool child is the 'least restrictive' is based on the following criteria:

- How often a child is provided access to an early learning curriculum;
- How often a child is able to be involved in the early learning curriculum; and
- How often a child is able to have meaningful interaction with his or her nondisabled peers.[1]

However, local school systems **MAY NOT** make placements based solely on factors such as the following:

- Category of disability;
- Significance of the disability;
- Configuration of delivery system;
- Availability of educational or related services;
- Availability of space; or
- Administrative convenience.

The placement of each preschool child with a disability is determined at least annually, based on the child's IEP. The preschool child's parents, teacher, or other service provider can initiate a review of the child's IEP at any time. If the IEP is revised as a result of an IEP review meeting, the IEP team must review the preschool child's placement to determine if a change in placement is needed to reflect the revised IEP [20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.116; COMAR 13A.05.01.08B(3) and .10C(1)].

Reporting Educational Environments Data for Preschool Children with Disabilities

The Department requires States to report on educational environments for preschool children with disabilities (section 618(a) of IDEA), including the number of preschool children with disabilities who attend a *Regular Early Childhood Program*, defined as a program that includes a majority of nondisabled children, and whether they receive a majority of their special education and related service hours in the *Regular Early Childhood Program* or another location. Regular Early Childhood Programs include Head Start, public school system kindergarten classes, preschool classes offered to an eligible pre-kindergarten population by the public school system, private kindergartens or preschools, and group child development centers or child care.

The LRE for each student with a disability is reported as the setting where the majority of special education and related services are provided. There is no relationship between the manner in which a school schedules classes and

[1] Consideration of a child's medical status on the basis of health and safety concerns may impact the extent to which an individual child is able to engage with their nondisabled peers. However, all programs and settings should plan for and provide opportunities for each child to meaningfully interact with typical peers to the fullest extent possible.

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services and the reporting of LRE data on the Special Services Information System (SSIS). For children participating in a Regular Early Childhood Program, the hours per week in the setting, and whether the majority of special education and related services are delivered in that setting or some other location determine the education and related services are delivered in that setting or some other location determine the LRE. School systems may not "average," "adjust," "alter" or otherwise modify the reporting of the LRE data for students. The goal is to **INCREASE** the participation of students with disabilities and the amount of IEP services delivered in a Regular Early Childhood Program with nondisabled peers throughout a school year. Data may not be manipulated in any way that would obscure what actually occurs within community early childhood settings or early childhood settings within public schools.

The January 2017 Dear Colleague Letter (DCL) clarified that informal settings, for the purpose of the Department's annual data collection under section 618 of IDEA, are not considered a *Regular Early Childhood Program* because they are "not generally required to comply with a State's early learning programs standards or curricula." Examples of informal settings in the DCL include weekly school-based or neighborhood playgroups and home settings. The Department also provided additional clarification around when special education and related services can be considered as being received in the *Regular Early Childhood Program*. Services delivered in locations other than the *Regular Early Childhood Program* classroom that remove the child from the opportunity to interact with nondisabled children are not considered as being received in the *Regular Early Childhood Program*. This includes services delivered in a one-on- one therapeutic setting or in a small group comprised solely of children with disabilities in another location within the building. Per the DCL, the reporting instructions in the ED*Facts* C089 file specifications for IDEA Section 618 Part B Child Count and Educational Environment will be updated for School Year 2017-2018 in order to address these issues. [Ryder, R. (2017, January 9). Dear Colleague Letter. Washington, DC: U.S. Department of Education, Office of Special Education and Rehabilitative Services]

LRE data are reported for each child with a disability as an alpha code for the setting in which the child is participating, and receiving the majority of special education and related services. For a complete list of the LRE setting codes, please see below, *Decision Tree for Reporting Education Environments for Children Ages 3 – 5 with IEPs.*

Decision Tree for Reporting Education Environments for Children Ages 3–5 with IEPs			
	EdFacts – OSEP Categories and Codes	**MD Code**	**Maryland Categories and Codes**
A1	Attending a regular early childhood program 10 hours or more and receiving the majority of special education and related service in the program	W	W = Attending a Regular Early Childhood Program for at Least 10 Hours Per Week and Receiving the Majority of Special Education and Related Services in that setting. (EC>10)
A2	Attending a regular early childhood program 10 hours or more and receiving the majority of special education and related service in another location	X	X = Attending a Regular Early Childhood Program for at Least 10 Hours Per Week and Receiving the Majority of Special Education and Related Services in Some Other Location. (EC>10 Other Location)
B1	Attending a regular early childhood program less than 10 hours and receiving the majority of special education and related services in the program	Y	Y = Attending a Regular Early Childhood Program Less Than 10 Hours Per Week and Receiving the Majority of Special Education and Related Services in That Setting. (EC <10)
B2	Attending a regular early childhood program less than 10 hours and receiving the majority of special education and related service in another location	Z	Z = Attending a Regular Early Childhood Program Less Than 10 Hours Per Week and Receiving the Majority of Special Education and Related Services in Some Other Location. (EC <10 Other Location)

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Decision Tree for Reporting Education Environments for Children Ages 3–5 with IEPs			
	EdFacts – OSEP Categories and Codes	**MD Code**	**Maryland Categories and Codes**
C1	Children attending a special education program (NOT in any regular early childhood program)	S	S = Separate Class; special education program with less than 50% nondisabled children
C2	Children attending a separate special education school (NOT in any regular early childhood program)	F or G	F = Public Separate Day School – 3-5 year-old who receives ALL of their special education and related services in educational programs in public day schools specifically for children with disabilities. G = Private Separate Day School – 3-5 year- old who receives ALL of their special education and related services in educational programs in private day schools specifically for children with disabilities.
C3	Children attending a residential facility (NOT in any regular early childhood program)	H or I	H = Public Residential Facility – 3-5 year-old who receives ALL of their special education and related services in a publicly operated residential facility or residential medical facility on an inpatient basis. I = Private Residential Facility - 3-5 year-old who receives ALL of their special education and related services in a privately operated residential facility or residential medical facility on an inpatient basis
D1	Home - Children attending neither a regular early childhood program nor a special education program (Not included in rows above) And receiving the majority of hours of special education and related services at home	E or J	J = Home - 3 to 5 year-old who receives ALL of their special education and related services in the principal residence of the child's family or caregivers. E = Hospital Placement – 3-5 year-old who receives special education in a medical treatment facility on an in-patient basis.
D2	Service Provider Location - Children attending neither a regular early childhood program nor a special education program (Not included in rows above) And receiving the majority of hours of special education and related services at the service provider's location or some other location not in any other category	T	T = Service Provider Location. 3-5 year-old who receives all of their special education and related services from a service provider, and who does not attend an early childhood program or a special education program provided in a separate class, separate school, or residential facility. For example, speech instruction provided in: private clinicians' offices, clinicians' offices located in school buildings, hospital facilities on an outpatient basis, and libraries and other public locations. Do not include children who also receive special education at home. Children who receive special

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Decision Tree for Reporting Education Environments for Children Ages 3–5 with IEPs			
	EdFacts – OSEP Categories and Codes	**MD Code**	**Maryland Categories and Codes**
			education both in a service provider location and at home should be reported in the home category.

Data from local school systems using the Maryland Online IEP (MOIEP) are submitted nightly to SSIS. Local school systems using vendor systems submit data to SSIS at least quarterly, or more frequently if desired. LRE data are included in all data submission, whether nightly or quarterly.
The State child count occurs annually on October 1st. It is a collection of information that represents single point in time data for all students with disabilities that receive special education and related services at the time of the data collection. The data collected are neither cumulative nor longitudinal. The second data submission, Exit Data, is reported annually on June 30. The Exit Data report is a collection of data on all students who exit special education services from July 1 of the previous year to June 30 of the current year. These data are reported to the federal Office of Special Education Programs (OSEP) annually. [34 C.F.R. §§ 300.640 – 300.646]

Use of IDEA Part B Funds for Preschool Children with Disabilities
As discussed on pages 7-8 of the DCL, because the availability of regular public preschool programs varies widely across States, how local school systems use Part B IDEA funds to provide special education and related services will differ based on the specific circumstances of each LSS. If a LSS provides public preschool programs, then Part B IDEA funds must only be used to pay the excess costs of providing special education and related services in those programs. Excess costs include:

- Costs for special education teachers and administrators
- Related services providers
- Materials and supplies for use with preschool children with disabilities
- Professional development for special education personnel
- Professional development for general education teachers who teach preschool children with disabilities
- Specialized equipment or devices to assist preschool children with disabilities

[34 CFR §§ 300.202 and 300.800]

If a LSS does not provide public preschool programs (or slots are limited by income eligibility and thus unavailable), then Part B IDEA funds may be used "to pay for all of the costs directly attributable to the education of a child with a disability."

Inclusion for Preschool Children with Disabilities
Inclusion has been identified as an evidence-based practice, providing measurable benefits to children with disabilities as well as their nondisabled same-age peers. When used as a guiding principle for decision-making by the IEP team, inclusion provides a focus on ensuring access to and meaningful participation in typical community and school-based programs. Through the implementation of inclusive practices along the full continuum of LRE settings, children with disabilities receive specialized instruction that addresses their unique learning needs within the context of standards and expectations established for all children. Incorporating inclusive principles into the IEP team decision-making process enables the determination of the immediate setting in which services are to be delivered, while maintaining a longer term perspective on the child and family's participation in the broader community beyond school.

Additional Online Resources

- IDEA Data Center 3-5 decision tree, scenarios, and reporting app used for IDEA 618 and SPP/APR Indicator B6 reporting, https://b6tools.ideadata.org/MD/
- Early Childhood Technical Assistance Center http://ectacenter.org/
- U.S. Department of Education Early Learning Inclusion webpage https://www2.ed.gov/about/inits/ed/earlylearning/inclusion/index.html

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