

## Division of Special Education/Early Intervention Services

### **Placement Determination of *Preschool Students with Disabilities, 3 – 5 years old* in the **Least Restrictive Environment (LRE)****

On May 3, 2010 the Office of Management and Budget approved revisions to preschool environment reporting categories for children ages three (3) through five (5), effective for the 2010-11 school year. Because this approval was pending for nearly two years, the window of implementation is quite short for the upcoming State Fiscal Year (SFY) 2011 October Child Count. The Child Count is due October 29, 2010. The revised categories examine the participation of children in a Regular Early Childhood Program for up to 10 hours a week, for 10 or more hours a week, and the location where children receive special education and related services.

While the environment reporting categories have been revised, the data collected is similar to the data collected for prior reporting and little or no additional data collection is required. The revisions only concern children attending a Regular Early Childhood Program. The definitions for all other reporting environments are unchanged.

The revised reporting requirements:

- Eliminate calculation of the percentage of time in a Regular Early Childhood Program; and
- Count children who receive special education and related services in Regular Early Childhood Programs separately from children who receive special education and related services elsewhere.

The following decision rules will determine which category to use when reporting the environment for children with a disability ages three (3) through five (5). Please note that the order of the reporting categories does not reflect a continuum from least to most restrictive:

- Children attending a Regular Early Childhood Program;
- Children attending a Special Education Program; or
- Children receiving services in their Home or Service Provider Location.

Below is a chart adapted from the Office of Special Education Programs (OSEP) Table 3 Child Counts that describes the placements for children, ages three (3) through five (5) years of age.

<b>Children Attending a Regular Early Childhood Program</b>	
Children attending a REGULAR EARLY CHILDHOOD PROGRAM at least 10 hrs per week, ...	...and <b>RECEIVING</b> the majority of hours of <b>SPECIAL EDUCATION</b> and related <b>SERVICES</b> in the <b>REGULAR EARLY CHILDHOOD PROGRAM</b>
	...and <b>RECEIVING</b> the majority of hours of <b>SPECIAL EDUCATION</b> and related <b>SERVICES</b> in some <b>OTHER LOCATION</b>
Children attending a REGULAR EARLY CHILDHOOD PROGRAM less than 10 hrs per week, ...	...and <b>RECEIVING</b> the majority of hours of <b>SPECIAL EDUCATION</b> and related <b>SERVICES</b> in the <b>REGULAR EARLY CHILDHOOD PROGRAM</b>
	...and <b>RECEIVING</b> the majority of hours of <b>SPECIAL EDUCATION</b> and related <b>SERVICES</b> in some <b>OTHER LOCATION</b>
<b>Children Attending a Special Education Program</b>	
Children attending a <b>SPECIAL EDUCATION PROGRAM</b> (NOT in any regular early childhood program),...	...specifically, a <b>SEPARATE SPECIAL EDUCATION CLASS</b>
	...specifically, a <b>SEPARATE SCHOOL</b>
	...specifically, a <b>RESIDENTIAL FACILITY</b>
<b>Children NOT Attending a Regular Early Childhood Program OR Special Education Program</b>	
Children attending <u>NEITHER</u> a REGULAR EARLY CHILDHOOD PROGRAM <u>NOR</u> a SPECIAL EDUCATION PROGRAM	...and <b>RECEIVING</b> the majority of hours of <b>SPECIAL EDUCATION</b> and related <b>SERVICES</b> at <b>HOME</b>
	...and <b>RECEIVING</b> the majority of hours of <b>SPECIAL EDUCATION</b> and related <b>SERVICES</b> at the <b>SERVICE PROVIDER LOCATION</b> or some <b>OTHER LOCATION</b> not in any other category

- The definition for a “**Regular Early Childhood Program**” includes any early childhood program in which *at least 50% or more* of the children are not identified as disabled.
- A “**majority of special education and related services**” is defined as *more than 50%* of the child’s special education and related services delivered in the setting.

## LRE Decision Making Process

### **(1) What is the Least Restrictive Environment (LRE) for preschool students with disabilities, ages three (3) through five (5)?**

An LRE determines the setting where a student with a disability receives special education services, and how much time is spent in those settings. An LRE is not determined by what services the student is to receive. For preschool students, the LRE is an early childhood setting where a student with a disability is able to receive a free appropriate public education (FAPE) designed to meet his or her individual needs while being educated with peers without disabilities to the maximum extent appropriate. Each public agency shall ensure that preschool students with disabilities are educated with nondisabled preschool students. Children with disabilities are to be placed in special classes, separate schooling or otherwise removed from a Regular Early Childhood Program only if the nature or severity of the child's disability is such that participation in a Regular Early Childhood Program, with the use of supplementary aids and services, cannot be satisfactorily achieved.

The determination of whether a placement or setting for a preschool child is the 'least restrictive' is based on several criteria.

- How often a student is provided access to the local school system's early learning curriculum
- How often a student is able to be involved in the local school system's early learning curriculum;
- How often a student is able to have meaningful interaction with his or her nondisabled peers.

The placement where the student receives service(s) must be as close as possible to the student's home. Unless the preschool student's IEP requires a different setting in which special education and related services can be delivered, the student is to be educated in the community setting or the school the student would attend if not disabled. A student with a disability can never be removed from age-appropriate settings solely because of needed modifications to the early learning curriculum or activities.

Local school systems that do not operate a Regular Early Childhood Program for nondisabled students should note that placement in a Regular Early Childhood Program in another school district or in a privately operated program in the local community is a less restrictive placement option than a local school system's separate preschool classroom for students with disabilities.

[20 U.S.C. §1412(a)(5); 34 C.F.R. §§300.115(b); 300.116(e); COMAR 13A.05.01.10A]

### **(2) What does 'placement determination' mean?**

The placement determination identifies the settings where a student's Individualized Education Program (IEP) will be implemented. Federal law requires the following to occur when

determining a student's placement:

- The student's placement decision be made by the student's IEP team;
- The placement must be in the least restrictive environment (LRE) based on and consistent with the student's IEP; and
- The student is to be educated in the early childhood setting the student would attend if not disabled, and as close as possible to his or her home, unless the student's IEP requires some other setting.

[34 C.F.R. §300.116; COMAR 13A.05.01.10C(1)]

**(3) How does the IEP team determine placement in the LRE for a preschool student with a disability?**

The IEP team's determination of a student'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 student's identified instructional needs.

The IEP team must first consider the typical instructional setting that would be provided for a student without a disability. For preschool-age students this may be an early childhood setting designed for students without disabilities. When considering placement of a student with a disability into a Regular Early Childhood Program with nondisabled peers the IEP team must document HOW special education and related services, including supplementary aids, services, supports, accommodations, and modifications will be provided.

If the IEP team determines that the student needs a more restrictive setting for the delivery of services, the IEP team must document WHY the less restrictive setting is inappropriate and describe the extent to which the student WILL NOT participate with nondisabled peers. This includes the participation of preschool students with disabilities with nondisabled peers in age-appropriate early childhood activities, including meals, recess, and other services available to all students in the setting.

[34 C.F.R. §§300.116; 300.327; COMAR 13A.05.01.09A(1)(e)]

**(4) How does parent choice impact the determination of the LRE, particularly for preschool children ages three and four?**

A Regular Early Childhood Program for preschool children who are three and four years of age may include community-based private programs as well as publicly funded options. The IEP team must take into consideration the potential financial impact that could result from identifying a specific setting as the LRE for an individual child. If a child is currently participating in a community-based private preschool program, then the local school system is responsible *only* for the costs associated with delivery of special education and related services within that setting. When the IEP team identifies the LRE as a community-based private preschool, this setting would be discussed consistent with the delivery of FAPE.

**(5) How will a child with disabilities be accommodated in a Regular Early Childhood Program, designed primarily for students without disabilities?**

IDEA requires that a student with a disability be provided with "supplementary aids and services" as needed to enable him or her to succeed in the LRE. These supplementary aids and services can be provided in a Regular Early Childhood Program to enable preschool students with disabilities to be educated with preschool students without disabilities. These aids and services may include, but are not limited to, instructional accommodations, alternatives, modifications, assistance of a consultant teacher with early childhood special education training, computer-assisted devices, additional time for assessment, and/or preferential seating.

[34 C.F.R. §300.324(a); COMAR 13A.05.01.08A and .09A]

**(6) What relevant factors must an IEP team consider in determining a student's placement in the LRE?**

In determining whether a placement is appropriate, the following factors are relevant:

- The educational benefits to a preschool student with a disability in a Regular Early Childhood Program, when supplemented with appropriate aids and services, in comparison to the educational benefits to a preschool student with a disability in an early childhood special education setting; and
- The non-academic benefits to a preschool student with a disability interacting with nondisabled peers and the degree of disruption of the education of other students, resulting in the inability to meet the unique needs of the preschool student with a disability.

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.

**(7) What is the relationship between the IEP and the determination of a preschool student's placement in the LRE? What must be documented?**

A preschool student's IEP forms the basis for the student's placement decision.

Those services and placements that will reasonably promote the student's educational success must be determined and based on the student's unique abilities and needs. The IEP team must explore the full range of supplementary aids, services, and supports needed to facilitate the provision of specialized instruction in a Regular Early Childhood Program **BEFORE** a more restrictive

placement is considered.

At the student's IEP team meeting, the student's ability to participate in general education classes, services, and activities is one of the most important matters to be addressed by the IEP team before the student's IEP is finalized. IDEA requires that each child's IEP contain:

- A statement of the student's present level of academic achievement and functional performance, including how the child's disability affects the child's participation in appropriate activities;
- A statement of the annual measurable goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general curriculum and meet each of the child's other that result from the child's disability;
- A statement of specific special education and related services to be provided to the student and the extent that the child will be able to participate in Regular Early Childhood Program;
- A statement of the supplementary aids, services, supports, and accommodations to be provided for the student or on behalf of the student;
- A statement of the program modifications or supports for early care and education personnel that will be provided for the student;
- An explanation of the extent to which the student **WILL NOT** participate with nondisabled peers in the Regular Early Childhood Program and, if appropriate, nonacademic and extracurricular activities and **WHY NOT**.

The determination of a student's placement in the LRE is based on the student's IEP goals and objectives, and must be made AFTER the goals and objectives on the IEP are developed. Goals and objectives may NEVER be developed to "fit" the placement.

[20 U.S.C. §1412(a)(5); §1414(d)(3); §1414(d)(4)(B); 34 C.F.R. §§300.114 – 300.116; § 300.320; § 300.324; § 300.327; COMAR 13A.05.01.09A and .10C]

### **(8) What constitutes the continuum of alternative placements?**

Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of preschool students with disabilities for special education and related services. The continuum must include instruction in:

- **Regular Early Childhood Program for 10 or more hours per week:**
  - With the majority of special education and related services delivered **within** the Regular Early Childhood Program; or,
  - With the majority of special education and related services delivered **in some other location**.
- **Regular Early Childhood Program for less than 10 hours per week:**
  - With the majority of special education and related services delivered **within** the Regular Early Childhood Program; or,
  - With the majority of special education and related services delivered **in some other location**.

- **Special Education Early Childhood Program;**
- **Home;**
- **Separate schools;**
- **Residential Facilities;** and
- **Service Provider Location.**

The continuum begins with the least restrictive setting, i.e., an instructional setting with nondisabled preschoolers. Placement of a child with a disability in a separate setting, such as those designed for students with disabilities, public or nonpublic day or residential facilities, etc. should only be used when a student'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.05.01.10B]

**(9) How frequently must the placement for a student with a disability be reviewed?**

The placement of each preschool student with a disability is determined at least annually, based on the student's IEP. The preschool student's parents, teacher, or other service provider can initiate a review of the student'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 student'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)]

## **Data Coding and Reporting**

**(10) Is there a relationship between the manner in which a school schedules classes and services and the reporting of LRE data on SSIS?**

No. The LRE for each student with a disability is reported as the setting where the majority of special education and related services are provided. 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 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. For local school systems using the Maryland Online IEP (MOIEP), the database will be revised to automatically calculate the hours of special education and related services. For local school systems using a vendor-based product, revisions to the vendor database must be revised to accurately report the LRE for each preschool child, three through five years of age, not later than July 1, 2011.

**(11) What is the timeline for ensuring the revised LRE category for children receiving special education and related services is accurately reflected on a child's IEP?**

Below is the revised preschool LRE implementation timeline:

- **October 29, 2010** – For federal reporting of child count and SPP/APR the existing preschool LRE codes, MSDE will crosswalk the data to the revised preschool LRE codes.
- **July 1, 2011** – Local school systems and Public Agencies use only revised preschool LRE codes, consistent with federal requirements.
- **October 28, 2011** – For federal reporting of child count and SPP/APR, MSDE will do a partial crosswalk of data to revised preschool LRE codes for IEPs that existed prior to July 1, 2011 and include prior preschool LRE codes. IEPs developed, or revised after July 1, 2011 will have the revised preschool LRE codes.
- **July 1, 2012** – Implementation complete. All existing IEPs have the revised preschool LRE codes.

**(12) How is LRE data reported to the State?**

LRE data are reported for each student with a disability as an alpha code for the setting in which the student is participating, and receiving the majority of special education and related services. For a complete list of the LRE setting codes, please refer to the attached *Decision Tree for Coding Educational Environments – Table 3 – Child Count*.

**(13) How often is LRE data reported to the State?**

Data from local school systems (LSSs) using the Maryland Online IEP (OIEP) 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 submissions, whether nightly or quarterly.

The State child count occurs annually on the last Friday of October. 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]

**(14) How is this information used for local and State data relative to Indicator 6 of the State Performance Plan and Annual Performance Report (APR)?**

The revised OSEP Table 3 data will provide appropriate information for the Part B SPP/APR Indicator 6 measurement. Table 3, A1 plus B1 is used for Indicator 6A. Table 3, C1, C2, and C3 is used for Indicator 6B. For the Federal Fiscal Year (FFY 2009) SPP/APR due February 1, 2011, MSDE is required to establish a new baseline, targets and, as needed, improvement activities for Indicator 6 using the 2009-2010 data.

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## Decision Tree for Coding Educational Environments Table 3 - Child Count

