

# U.S. Department of Education

## Policy Letters:

### *Advocating for Students with Disabilities in P.E.*

Omar Sanchez (PhD Student), The Ohio State University

Ally Keene (PhD Student), Old Dominion University

Mackenzie Pigg (PhD Student), Virginia University

Dr. Deborah Shapiro, Georgia State University

Dr. Suzanna Dillon, Texas Women University



**2023 OSEP LEADERSHIP AND PROJECT DIRECTORS' CONFERENCE**





# 2023 OSEP Leadership and Project Directors' Conference



## *DISCLAIMER:*

*The contents of this presentation were developed by the presenters for the 2023 OSEP Conference. However, these contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.*

*(Authority: 20 U.S.C. 1221e-3 and 3474)*

# Collaborative Product of the Multi-Institution Mentorship Consortium (MAMC)

- Funded by the Office of Special Education Programs (OSEP), U.S. Department of Education (ED)
- Preparation of leadership personnel in the field of Adapted Physical Activity to serve as higher education faculty.
  - Train pre-service physical education teachers and related service professionals to appropriately educate youth with disabilities.



# Introduction and Purpose

In this presentation, we will:

- Review key terms and federal laws that impact physical education service delivery
- Highlight relevant guidance documents from national organizations that support physical education and sport for students with disabilities
- Discuss commonly reported situations related to physical education along with resources for stakeholders



# Topics of Discussion



DEAR COLLEAGUE LETTER



GAO REPORT



CASE STUDY



# The Purpose of OSEP's Policy Letters: Dear Colleague Letters

- Clarify and provide guidance on how OSEP and the ED Office of Civil Rights (OCR) interpret federal regulations including IDEA, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (ADA)
- Are responses to inquiries from stakeholders regarding how the laws or policies apply to their specific situation
  - Stakeholders are given the option of having the policy guidance formalized as a letter (e.g., *Letter to Kelly*).



# OSEP's Dear Colleague Letters Relevant to Physical Education

- Letter to Tymeson (2021)
- Letter to Irby (2010)
- Letters to Tymeson (2013) and Kelly (2013)
- Dear Colleague Letter Regarding Extracurricular Athletics (2013)



# Letter to Tymeson (2021)

- Inquiry related to concerns about the increased frequency with which IEP teams were replacing physical education with related services.<sup>3</sup>
- OSPE Response:
  - IEP team may decide that the child needs specially designed instruction for physical education (i.e., APE services) when they cannot fully access the GPE program.<sup>3</sup>
  - Specially designed instruction in physical education (i.e., APE service) is considered a special education service, *not* a related service, and must be available to children with disabilities receiving a FAPE.<sup>1,3</sup>





# Letter to Tymeson (2021) Cont.

- OSEP further clarified:
  - Students with disabilities must be provided with the opportunity to participate in the physical education programming available to peers without a disability; and have that physical education instruction specially designed, if necessary.<sup>3</sup>
  - LEAs must comply with IDEA's requirements for related service personnel and teachers, as well as state policies and procedures, regarding personnel qualifications when assigning the personnel to deliver specially designed physical education instruction/APE services.<sup>2</sup>



# Letters to Tymeson (2013) and Kelly (2013)

## Tymeson (2013)

- Inquiry related to LEA's refusal to provide P.E. services to a child with a disability because they did not offer the service to students without disabilities in preschool, although it was indicated on the child's IEP.<sup>4</sup>

## Kelly (2013)

- Inquiry related to physical education services for high school students with disabilities aged 16-21 years, including students aged 18 to 21 years whose transition plans are implemented in community-based transition programs.<sup>5</sup>

- Both sought clarification on whether physical education is required for students with APE services in their IEPs within these respective age groups, even when GPE is not provided to their respective peers without disabilities.<sup>6</sup>



# Letters to Tymeson (2013) and Kelly (2013) Cont.

OSEP's Response clarified:

- As a part of FAPE, physical education must be made available equally to children with disabilities and children without disabilities, and if specially designed instruction (i.e., APE) is set out in that child's IEP to meet individual needs, those services must be provided.<sup>4,5</sup>
- OSEP also reaffirmed that the requirements of Part B of the IDEA for children with disabilities applies to both preschool-aged children and transition-aged high school students.<sup>4,5</sup>



# Letter to Irby (2010)

- Inquiry concerned the removal from physical education for instruction in other subject areas.<sup>7</sup>

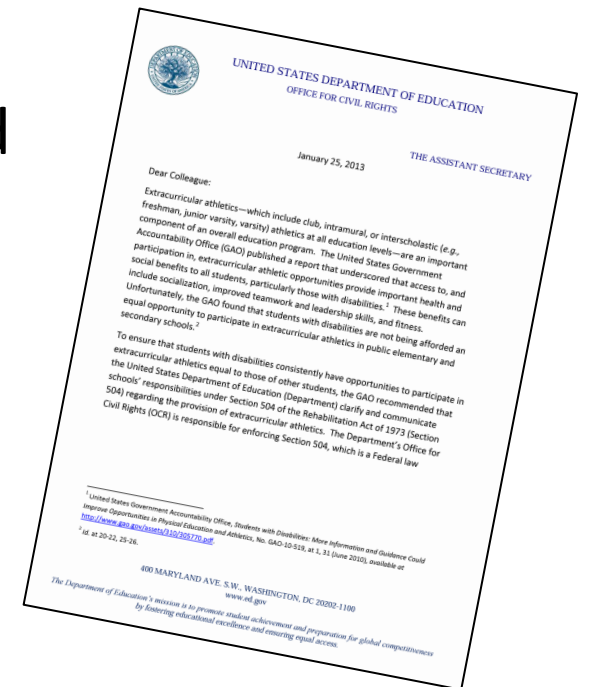
## OSEP Response:

- IEP team is responsible for ensuring students access to a well-rounded program of instruction, inclusive of physical education.<sup>8</sup>
- IEP teams may decide a student needs more time to reach desired goals in reading, this time however cannot be taken from other *required* subject areas<sup>7</sup>, including physical education.<sup>9</sup>



# Dear Colleague Letter Regarding Extracurricular Athletics (2013)

- U.S. Senate HELP Committee requested the Government Accountability Office (GAO) investigate:
  - The status of extracurricular athletic opportunities and physical education for students with disabilities, and
  - The ED's role in removing barriers for schools.
- *GAO report* published in 2012
- Response published in 2013 by ED's OCR titled the *Dear Colleague Letter Regarding Extracurricular Athletics*
  - Clarified existing legal requirements and expectations for schools on the mandates of IDEA and Section 504



# Dear Colleague Letter Regarding Extracurricular Athletics (2013) Cont.

- Students with disabilities entitled to equal educational opportunities to benefit from participation in official school sponsored and funded extracurricular sports
- School districts must:
  - Determine if reasonable accommodations to policies and practices are needed
  - Provide aids and services to ensure equal opportunity to participate to maximum extent appropriate without fundamentally altering the program
  - Consider creation of interscholastic opportunities
- Policy letter outlines examples (e.g., accommodations for students with visual impairments) with recommendations included in IEPs and 504 accommodation plans



# Case Study Discussion

In December, Mr. Ruiz, an itinerant APE teacher, received notification of an annual IEP meeting for Jayden, a 9<sup>th</sup> grader with dyscalculia and spinal bifida who uses a wheelchair for mobility. Mr. Ruiz consulted the family for information on sports or activities they do at home and found tennis to be an important leisure activity for the family. In the development of the IEP, Mr. Ruiz prepares to advocate for Jayden's participation on the high school tennis team in the spring as well as Jayden's plan for continued enrollment in physical education in 10<sup>th</sup> grade (beyond the one physical education credit required for graduation)...



# Reference List

1. Bittner, M., Silliman-French, L., Lieberman, L. J., & Lytle, R. (2020). 12 myths and facts about physical education for students with disabilities. *JOPERD: The Journal of Physical Education, Recreation & Dance*, 91(1), 24–32.
2. Individuals with Disabilities Education Act ([IDEA], 2004). <https://sites.ed.gov/idea/>
3. OSEP (2021). *Letter to Tymeson*. <https://sites.ed.gov/idea/idea-files/policy-letter-may-12-2021-to-tymeson/>
4. OSEP (2013), *Letter to Tymeson*. <https://sites.ed.gov/idea/idea-files/policy-letter-april-7-2022-to-tymeson/>
5. OSEP (2013). *Letter to Kelly*. <https://sites.ed.gov/idea/idea-files/policy-letter-september-3-2013-to-w-kelly-dude/>
6. Keene, M.A., Sanchez, O., Pigg, M., Shapiro, D., & Dillon, S. (in review). Understanding and applying federal education laws to advocate for physical education for students with disabilities. *Submitted to Journal of Physical Education, Recreation, and Dance*.
7. *Every student Succeeds Act of 2015*. Public Law 113-95. Sec. 8002
8. OSEP (2010). *Letter to Irby*. <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2010-1/irby021210iep1q2010.pdf>
9. SHAPE America (2016). *Getting started with ESSA: A guide for health and physical educators*. <https://www.shapeamerica.org/uploads/pdfs/2018/advocacy/Getting-Started-with-ESSA-eguide.pdf>





# Resource Spotlight

- Individuals with Disabilities Education Act (IDEA) website
  - Brings together IDEA information and resources from the Department and its grantees.
  - <https://sites.ed.gov/idea/>
- IDEAS That Work
  - For information from research to practice initiatives funded by OSEP that address the provisions of IDEA and ESSA. This website includes resources, links, and other important information relevant to OSEP's research to practice efforts.
  - <https://osepideasthatwork.org/>





# 2023 OSEP Leadership and Project Directors' Conference



## *DISCLAIMER:*

*The contents of this presentation were developed by the presenters for the 2023 OSEP Conference. However, these contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.*

*(Authority: 20 U.S.C. 1221e-3 and 3474)*

# Thank you for your time!

Questions are welcomed...



**2023 OSEP LEADERSHIP AND PROJECT DIRECTORS' CONFERENCE**

