

require ESY services in order to receive FAPE access to necessary ESY services.
Changes: None.

Nonacademic Services (§ 300.107)

Comment: One commenter recommended adding more specific language in § 300.107 regarding services and accommodations available for nonacademic activities to ensure that children with disabilities are fully included in nonacademic activities.

Discussion: We agree with the commenter. Section 300.107(a), as proposed, requires public agencies to take steps to provide nonacademic and extracurricular services and activities in a manner necessary to afford children with disabilities an equal opportunity to participate in those services and activities. In addition, § 300.320(a)(4)(ii), consistent with section 614(d)(1)(i)(IV)(bb) of the Act, clarifies that an IEP must include a statement of the special education and related services and supplementary aids and services to be provided to the child to participate in extracurricular and other nonacademic activities. We will add language in § 300.107(a) to clarify that the steps taken by public agencies to provide access to nonacademic and extracurricular services and activities include the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team.

Changes: Additional language has been added in § 300.107(a) to clarify that the steps taken by public agencies to provide access to nonacademic and extracurricular services and activities include the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team.

Comment: One commenter expressed concern about including "nonacademic services" in § 300.107, because it is not in the Act. The commenter stated that services such as athletics, recreational activities and clubs, counseling, transportation and health services should not be included in the regulations because they may be costly and are usually available on a limited basis. One commenter stated that it is confusing to include related services in the examples of nonacademic services and recommended that they be removed.

Discussion: The list of nonacademic and extracurricular services and activities in § 300.107(b) is not exhaustive. The list provides public agencies with examples of services and activities that may afford children with disabilities an equal opportunity for participation in the services offered to

other children of the public agency. We disagree that the list of activities causes confusion with related services, as we think that the public can easily recognize the difference between academic counseling services, for example, that are offered to all children, and the type of counseling services that might be included in a child's IEP as a related service. For these reasons, we believe it is appropriate to maintain the list of nonacademic and extracurricular services and activities in § 300.107, including those services that are also related services in § 300.34.

Changes: None.

Physical Education (§ 300.108)

Comment: A few commenters stated that, in some States, physical education is not required for every nondisabled child every year and this creates situations in which children with disabilities are in segregated physical education classes. The commenters recommended that the regulations clarify the requirements for public agencies to make physical education available to children with disabilities when physical education is not available to children without disabilities.

Discussion: Section 300.108 describes two considerations that a public agency must take into account to meet the physical education requirements in this section. First, physical education must be made available equally to children with disabilities and children without disabilities. If physical education is not available to all children (*i.e.*, children with and without disabilities), the public agency is not required to make physical education available for children with disabilities (*e.g.*, a district may provide physical education to all children through grade 10, but not to any children in their junior and senior years). Second, 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.

This is the Department's longstanding interpretation of the requirements in § 300.108 and is based on legislative history that the intent of Congress was to ensure equal rights for children with disabilities. The regulation as promulgated in 1977 was based on an understanding that physical education was available to all children without disabilities and, therefore, must be made available to all children with disabilities. As stated in H. Rpt. No. 94-332, p. 9, (1975):

Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all non-handicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.

We agree that § 300.108(a) could be interpreted to mean that physical education must be made available to all children with disabilities, regardless of whether physical education is provided to children without disabilities. We will, therefore, revise paragraph (a) to clarify that the public agency has no obligation to provide physical education for children with disabilities if it does not provide physical education to nondisabled children attending their schools.

Changes: Section 300.108(a) has been revised as described in the preceding paragraph.

Full Education Opportunity Goal (FEOG) (§ 300.109)

Comment: One commenter requested that the regulations clarify how a State communicates and monitors the progress of the State's FEOG.

Discussion: We do not believe it is appropriate to regulate how a State communicates and monitors its progress toward the State's FEOG. We believe the State should have the flexibility needed to implement the provisions of this section and the State is in the best position to make this determination.

Changes: None.

Program Options (§ 300.110)

Comment: A few commenters recommended revising § 300.110 to require States to ensure that each public agency have in effect policies, procedures, and programs to provide children with disabilities the variety of educational programs and services available to nondisabled children. The commenters stated that § 300.110 does not provide any guidance to educators. A few commenters stated that "vocational education is an outdated term" and proposed replacing it with "career-technical and adult education" or "career and technical education."

Discussion: We do not believe it is necessary to change § 300.110. Under this provision, States must ensure that public agencies take steps to ensure that children with disabilities have access to the same program options that are available to nondisabled children in the area served by the agency, whatever those options are, and we are not aware of any implementation problems with