3301-51-09 Delivery of services.

(A) Least restrictive environment (LRE)

Each school district shall ensure that to the maximum extent appropriate, children with disabilities, including children in public or nonpublic institutions or other care facilities, are educated with children who are nondisabled.

(B) LRE requirements

General

(1) Except as provided in rule 3301-51-07 of the Administrative Code regarding children with disabilities in adult prisons, each school district shall adopt and implement written policies and procedures approved by the Ohio department of education, office for exceptional children, to ensure that the school district meets the LRE requirements of this rule.

(2) Each school district must ensure that:

(a) To the maximum extent appropriate, children with disabilities, including children in public or nonpublic institutions or other care facilities, are educated with children who are nondisabled; and

(b) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(C) Continuum of alternative placements

(1) Each school district must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(2) The continuum required in paragraph (C)(1) of this rule must:

(a) Include the alternative placements listed in the definition of special education under rule 3301-51-01 of the Administrative Code (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(b) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(D) Placements

In determining the educational placement of a child with a disability, including a preschool child with a disability, each school district must ensure that:

(1) The placement decision:

(a) Is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(b) Is made in conformity with the LRE provisions in paragraphs (B) to (E) of this rule.

(2) The child's placement:

(a) Is determined at least annually;

(b) Is based on the child's individualized education program (IEP); and

(c) Is as close as possible to the child's home;

(3) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that the child would attend if nondisabled;

(4) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that the child needs; and

(5) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(E) Nonacademic settings

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in rule 3301-51-02 of the Administrative Code, each school district must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The school district must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

(F) Length of school day and school year

Each child with a disability shall be ensured:

(1) A school day consistent with rule 3301-35-06 of the Administrative Code and consistent in length to that provided nondisabled children, with special education and related services being provided during the regular school day unless otherwise indicated on the IEP; and

(2) A school year consistent with rule 3301-35-06 of the Administrative Code and consistent in length to that provided to nondisabled children with special education and related services being implemented at the beginning of each school year.

(G) Role of preschool and school-age service providers

(1) The school district shall ensure that preschool and school-age service providers for children with disabilities participate in the district's strategic planning process as described in paragraph (A)(9) of rule 3301-35-03 of the Administrative Code.

(2) The school district shall assign early childhood, and school-age intervention specialists, or related service specialists to meet the unique educational needs of each child with a disability. The school-age service provider may provide indirect or direct services in one or any combination of instructional groupings, including large group, small group, individual instruction, or parent and teacher training and consultation.

(3) The school district shall ensure early childhood and school-age intervention specialists, or related service specialists:

(a) Serve children with disabilities to assure a free appropriate public education (FAPE) and may serve children who are not disabled where needs for these services are identified;

(b) Support regular education teachers in serving and/or consulting about children with and without disabilities so that the regular education personnel, in partnership with the special education service providers, can implement the child's IEP in the least restrictive environment;

(c) Assist in organizing and facilitating supplemental supports provided within the regular classroom;

(d) Design parent involvement activities; and

(e) Implement educational interventions and specially designed instruction which means adapting, as appropriate, to the needs of the eligible child, the content, methodology, or delivery of instruction:

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access to the general curriculum so that the child can meet the educational standards adopted by the state board of education that apply to all children.

(4) The school district shall ensure services of paraprofessionals and related service assistants are supervised in accordance with Ohio law.

(H) Personnel qualifications and personnel development

(1) General

The school district must ensure that all personnel necessary to carry out the purposes of Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA) shall be employed and shall be appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. Personnel shall have appropriate certification or licensure as defined by Chapter 3301-24 of the Administrative Code.

(2) Related services personnel and paraprofessionals

The qualifications under paragraph (H)(1) of this rule must include qualifications for related services personnel and paraprofessionals that:

(a) Are consistent with state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(b) Ensure that related services personnel who deliver services in their discipline or profession:

(i) Meet the requirements of paragraph (H)(2)(a) of this rule; and

(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, in meeting the requirements of this rule, to be used to assist in the provision of special education and related services under this rule to children with disabilities.

(a) Paraprofessionals providing services to children with disabilities shall hold an educational aide permit or associate license and meets requirements under paragraph (L) of rule 3301-24-05 of the Administrative Code. Any school district that employs a paraprofessional shall have written policies and procedures outlining:

(i) Criteria for staff selection;

(ii) A planned sequence of continuing education;

(iii) The process for direct continuing supervision and evaluation of the services of such personnel; and

(iv) A job description of the role and function of a paraprofessional.

(b) Personnel serving as school psychology interns shall hold a temporary pupil service license as required by paragraph (A)(5) of rule 3301-23-44 of the Administrative Code and shall be enrolled in school psychologist preparation programs while completing the program internship.

(c) Require that personnel serving as physical therapists are licensed pursuant to Chapter 4755. of the Revised Code to practice physical therapy; physical therapist assistants are licensed pursuant to Chapter 4755. of the Revised Code to assist in the provision of physical therapy services under the supervision of a licensed physical therapist; and physical therapists and physical therapist assistants practice in accordance with sections 4755.40 to 4755.56 of the Revised Code and Chapters 4755-21 to 4755-29 of the Administrative Code.

(d) Require that personnel serving as occupational therapists are licensed pursuant to Chapter 4755. of the Revised Code to practice occupational therapy; occupational therapy assistants are licensed pursuant to Chapter 4755. of the Revised Code to assist in the provision of occupational therapy services under the supervision of a licensed occupational therapist; and occupational therapists and occupational therapy assistants practice in accordance with sections 4755.04 to 4755.13 of the Revised Code and Chapters 4755-1 to 4755-9 of the Administrative code.

(3) Qualifications for special education teachers

The qualifications described in paragraph (H)(1) of this rule must ensure that each person employed as a public school special education teacher in the state who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in Section 1119(a)(2) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA).

(4) Qualifications for supervisory personnel

Personnel with supervisory responsibilities for the delivery of special education services shall be appropriately licensed.

(5) Policy

(a) School districts in the state shall take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this rule to children with disabilities.

(b) Personnel shall be provided professional development that aligns with school district goals and objectives and meets the changing needs of children as required by paragraph (A)(8) of rule 3301-35-05 of the Administrative Code.

(6) Rule of construction

Notwithstanding any other individual right of action that a parent or child may maintain under this rule, nothing in this rule shall be construed to create a right of action on behalf of an individual child or a class of children for the failure of a particular Ohio department of education or school district employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the Ohio department of education as provided for under this rule.

(I) Service provider ratios for delivery of services

(1) The school district, county board of developmental disabilities (county board of developmental disabilities), and other educational agencies shall determine ratios for an individual service provider by considering scheduling and time demands of preschool or school-age service providers, including but not limited to the following:

(a) All areas of service provided to children with and without disabilities, including screening, assessment, consultation, counseling, training, and related duties in the school setting, intervention design, and educational interventions.

(b) The severity of each eligible child's need, and the level and frequency of services necessary for children to attain IEP goals and objectives.

(c) Time needed for planning in accordance with paragraph (A)(9) of rule 3301-35-05 of the Administrative Code.

(d) Additional time for diagnostic testing and classroom observation; coordination of the program; parent, staff and agency conferences concerning individual children; staff development activities; and follow-up; and the demands of an itinerant schedule, including the number of buildings, the distance between the buildings, and travel.

(2) School-age service providers will provide direct services in accordance with the following ratios:

(a) An intervention specialist shall serve no more than sixteen children at the elementary, middle, or junior high school levels, or no more than twenty-four children at the high school level with cognitive disabilities.

(i) No more than twelve children at the elementary, middle, or junior high school levels, or no more than sixteen children at the senior high school level shall be served during any one instruction period.

(ii) The age range shall not exceed sixty months within any one instructional period.

(b) An intervention specialist shall serve no more than sixteen children at the elementary, middle, or junior high school levels, or no more than twenty-four children at the high school level with specific learning disabilities.

(i) No more than twelve children shall be served during any one instructional period.

(ii) The age range shall not exceed sixty months within any one instructional period.

(c) An intervention specialist shall serve no more than ten children with hearing impairments, visual impairments, orthopedic impairments, and/or other health impairments.

(i) No more than eight children shall be served during any one instructional period.

(ii) The age range shall not exceed forty-eight months within any one instructional period.

(d) An intervention specialist shall serve no more than twelve children with emotional disturbances.

(i) No more than ten children shall be served during any one instructional period.

(ii) The age range shall not exceed forty-eight months within any one instructional period.

(iii) There should be a plan on file and in operation in the school district to provide appropriate classroom management and crisis intervention support.

(iv) In the absence of a plan, the school district shall employ at least one full-time paraprofessional in each special class for these children.

(e) An intervention specialist shall serve no more than eight children with multiple disabilities.

(i) No more than eight children shall be served during any one instructional period.

(ii) The age range shall not exceed sixty months within any one instructional period.

(iii) There shall be at least one full-time paraprofessional in each special class for children with multiple disabilities.

(f) An intervention specialist shall serve no more than six children with autism, deaf-blindness and/or traumatic brain injury.

(i) The age range shall not exceed sixty months within any one instructional period; and

(ii) There shall be at least one full-time paraprofessional in each special class for these children.

(g) An intervention specialist may serve multiple categories of children with disabilities. The ratio for this service shall be determined in accordance with paragraph (I)(l) of this rule and shall not exceed sixteen children at the elementary, middle, or junior high school levels, or no more than twenty-four at the high school level.

(i) No more than sixteen children at the elementary, middle, or junior high school levels, or no more than twenty four children at the high school level shall be served during any one instructional period.

(ii) The age range shall not exceed sixty months within any one instructional period.

(iii) Indirect and direct services shall be provided in accordance with each child's IEP.

(3) Related service providers for preschool and school-age children with disabilities shall provide direct services in accordance with the following ratios. Additionally, consideration shall be given to paragraph (I)(l) of this rule. Indirect and direct services shall be provided in accordance with each child's IEP.

(a) An adapted physical education specialist shall provide services to no more than one hundred children with disabilities.

(b) An audiologist shall provide services to no more than one hundred school-age children with disabilities or no more than seventy-five preschool children with disabilities.

(c) An occupational therapist shall provide services to no more than fifty school-age children with disabilities or no more than forty preschool children with disabilities. An occupational therapy assistant who provides occupational therapy techniques must do so under the general supervision of an occupational therapist as required by rules 4755-7-01 and 4755-7-03 of the Administrative Code.

(d) An orientation and mobility instructor shall provide services to no more than fifty school-age children with disabilities or no more than forty preschool children with disabilities.

(e) A physical therapist shall provide services to no more than fifty school-age children with disabilities or no more than forty preschool children with disabilities. A physical therapist assistant who assists in the provision of physical therapy services must do so under the supervision of a physical therapist as required by Chapter 4755-27 of the Administrative Code.

(f) A speech and language pathologist shall provide services to no more than eighty school-age children with disabilities; or no more than fifty school-age children with multiple disabilities, hearing impairments, or orthopedic/other health impairments; or no more than fifty preschool children with disabilities. Each school district shall provide services at a ratio of one speech and language pathologist per two thousand children as required by division (F) of section 3317.15 of the Revised Code.

(g) A school psychologist shall provide services to no more than one hundred twenty-five school-age children with disabilities and no more than seventy-five preschool children with disabilities. Psychological services are defined in paragraph (B)(52)(b)(xiii) of rule 3301-51-01 of the Administrative Code. Each school district shall provide services at a ratio of one school psychologist per two thousand five hundred children as required by division (F) of section 3317.15 of the Revised Code.

(4) Transition services

(a) A work-study coordinator shall provide services to seventy-five children with disabilities.

(b) A vocational special education coordinator shall provide services to fifty children with disabilities.

(5) Supervisory services

(a) A supervisor shall provide services to twenty intervention specialists who are providing services to children with disabilities; or

(b) A supervisor shall provide services to twenty speech and language pathologists; or

(c) A supervisor shall provide services to twenty school psychologists.

(d) An occupational therapy assistant must be supervised as required by rule 4755-7-01 of the Administrative Code.

(e) A physical therapist assistant must be supervised as required by Chapter 4755-27 of the Administrative Code.

(6) Alternative plans

(a) The Ohio department of education, office for exceptional children, is authorized to select a number of school districts, county boards of developmental disabilities, or community schools to implement alternative plans for the calculation of the service provider ratios set forth in paragraph (I)(2) and/or (I)(3) of this rule, for the purpose of participating in an evaluation of the ratios. The purpose for selecting districts to participate in an evaluation is to allow for the development and study of methods of calculating service provider ratios for intervention specialists and related services providers that reflect the fact that children with disabilities may be served in a manner other than through placement in a separate classroom. Accordingly, there is a need to develop fair and appropriate methods of calculating service provider ratios that recognize that students with disabilities may be served in many different ways.

(b) The office for exceptional children shall select districts, boards, or schools from those who complete an application within timelines set by the office for exceptional children. The application must contain the following:

(i) A description of current service provider ratio problems, if any, and how the alternative plan will address those problems;

(ii) A detailed description of the proposed alternative approach to calculating ratios and how it will be implemented, including the formula, if any, that the district, board, or school intends to use, and the identification of the staff to be involved in the alternative plan;

(iii) A statement regarding how the alternative plan integrates the factors set forth in paragraph (I)(1) of this rule;

(iv) Assurances that the service provider ratios set forth in paragraphs (I)(2) and (I)(3) of this rule will not be exceeded;

(v) Assurances that the alternative plan will be implemented in such a manner that it does not interfere with the right of all students with disabilities to receive a free and appropriate public education in the least restrictive environment and that every child will receive the services set forth in the child’s IEP;

(vi) A proposal regarding a system for monitoring and evaluating the alternative plan;

(vii) A statement regarding the method that will be used to inform all parents of students with disabilities who receive services from a provider who will be participating in an alternative plan and a plan for addressing the concerns, if any, of those parents; and

(viii) The proposed timeline to be covered by the alternative plan, which shall be at least one academic year and no more than three academic years.

(c) Districts selected to participate in the evaluation of alternative plans be required to submit periodic reports to the office for exceptional children in a format to be determined by the office for exceptional children. The office for exceptional children may require any district, board, or school to cease implementation of its alternative plan.

(J) Housing, facilities, materials, and equipment and supplies for preschool and school-age programs

(1) Children and service providers must have a service area that will accommodate the special needs of the children in attendance and shall be large enough to accommodate the use and storage of special equipment and teaching materials. Service areas used for special education classrooms must be equivalent to those used for general education classrooms.

(2) Each service provider must have access to an office or room space suitable for private consultation or intervention; access to a telephone in an area where scheduling, parent contacts, and confidential conversations regarding children can be completed; and adequate office equipment including a locking file cabinet with a key and supplies.

(3) Service areas must be equipped with the appropriate materials, equipment, and facilities necessary to identify children with disabilities and to implement the child's IEP and meet the educational, physical, developmental, and learning needs of children within the area.

(4) The service areas for intervention specialists shall be located in the section of the building that houses regular education children of comparable age.

(5) The service areas must provide a work environment that supports service providers and is conducive to children's learning consistent with rule 3301-35-05 of the Administrative Code. Instructional materials, equipment, and technology shall be provided to support each child's progress toward meeting educational objectives as required in paragraph (I)(1) of rule 3301-35-06 of the Administrative Code.

(6) Evaluation and instructional materials and equipment shall be provided to enable the child with a disability to progress in the general curriculum or in the case of preschool, developmentally appropriate activities, and meet both IEP and performance objectives.

(7) Children with disabilities shall have the same access to textbooks, educational materials, and computer technology that is provided to regular education children.

(8) Additional materials and/or technology must be provided to allow children with disabilities access to the materials used in the general curriculum.

(9) Equipment that is utilized for children with disabilities shall be adequately maintained and promptly repaired.

(K) Waiver

(1) If a school district, county board of developmental disabilities or other educational agency exceeds the ratio requirements in paragraph (I) of this rule a waiver request must be filed with the Ohio department of education, office for exceptional children. A school district, county board of developmental disabilities or other educational agency may be granted a waiver for individual service provider ratios or for age-range per instructional period as required by this rule.

(2) Requests must be submitted in writing to the Ohio department of education, office for exceptional children or office of early learning and school readiness. The written request shall include, but not be limited to, the following:

(a) Identification of the specific rule for which a waiver is being requested;

(b) Specific period of time for which the waiver is requested; and

(c) Rationale for the request.

(3) Each school district, county board of developmental disabilities or other educational agency shall annually review the reason for its request as it plans for the delivery of services through the strategic planning process as required by paragraph (A)(9) of rule 3301-35-03 of the Administrative Code.

(L) Prohibition on mandatory medication

(1) General

School district personnel are prohibited from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in 3301-51-09 14 Section 202(c) of the Controlled Substances Act as amended and specified in the Anabolic Steroids Control Act of 1990, November 1990, 21 U.S.C. 812(c) for a child as a condition of attending school, receiving an evaluation under rule 3301-51-06 of the Administrative Code, or receiving services under this rule.

(2) Rule of construction

Nothing in paragraph (L)(1) of this rule shall be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a child’s academic and functional performance, or behavior

in the classroom or school, or regarding the need for evaluation for special education or related services under rules 3301-51-03 and 3301-51-06 of the Administrative Code.

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