



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION PROGRAMS

DIRECTOR

April 30, 2025

Honorable Debbie Critchfield
Superintendent of Public Instruction
Idaho Department of Education
650 West State Street
Boise, Idaho 83702

Dear Superintendent Critchfield:

The U.S. Department of Education (the Department), Office of Special Education Programs (OSEP), received an inquiry from a parent of a child with a disability who is dually enrolled in an Idaho public charter school and traditional public school. The parent asked whether the Idaho State Department of Education's (ISDE) policy implementing Idaho's dual enrollment law¹ is consistent with the free appropriate public education (FAPE) requirements under the Individuals with Disabilities Education Act (IDEA).² Based on our review of relevant State and Federal special education requirements, OSEP has determined, as explained below, that the ISDE dual enrollment policy is inconsistent with IDEA. Specifically, ISDE's policy on dual enrollment expressly limits the provision FAPE under IDEA to only the public school of primary enrollment, and a child with a disability is not eligible for FAPE in the secondary public school of enrollment.

Idaho's Charter School Law, Dual Enrollment Law, and ISDE's Policy

OSEP reviewed the following requirements in Idaho's Education Code (Idaho Code):

Idaho Code section 33-5203(6)(a) states: "Each authorized public charter school is hereby designated as a local education agency (LEA) as such term is defined in 34 C.F.R. § 300.28,³ unless the charter holder and authorizer agree that:

- (i) Public charter schools authorized by the board of trustees of a school district may be included in that district's LEA; or
- (ii) Entities with multiple charters may operate as a single LEA."

¹ OSEP has previously used "dual enrollment" to mean simultaneous enrollment in secondary and postsecondary educational programs. See e.g. <https://sites.ed.gov/idea/files/increasing-postsecondary-opportunities-and-success-09-17-2019.pdf>. However, for the purposes of this letter, the State's use of the term "dual enrollment" appears to be broader, as it is based on a student's enrollment in two or more educational programs or settings, including but not limited to enrollment in a public school and a public charter school; enrollment in a public school and a postsecondary institution; or enrollment in a traditional public school and an alternative public school. See e.g. Idaho Code section 33-203. For the purposes of this letter, the term "dual enrollment" is referring to a student's enrollment in two or more elementary or secondary programs or settings, but not enrollment in a postsecondary institution.

² See Idaho Department of Education, Special Education Manual, Aug. 21, 2024 <https://www.sde.idaho.gov/sped/files/shared/Idaho-Special-Education-Manual-2024.pdf>; and Idaho State Department of Education, Dual Enrollment Q&A, Updated Sep. 1, 2022 <https://www.sde.idaho.gov/sped/sped-manual/files/chapters/shared/Dual-Enrollment-Q&A.pdf>.

³ Idaho Code cites to IDEA's definition of an LEA.

Idaho Code section 33-5206(1) states, “Public charter schools shall comply with the federal individuals with disabilities education act.”⁴

Idaho Code section 33-5207(3) states, “Special education. For each student enrolled in the public charter school who is entitled to special education services, the public charter school shall receive the state and federal funds from the exceptional child education program for that student that would have been apportioned to the school district in which the public charter school is located.”⁵

Idaho Code 33-203 establishes the right of a parent or guardian of a child of school age who is enrolled in a nonpublic school or a public charter school to enroll the child in any public school, including another public charter school for dual enrollment purposes. The law further establishes that the dually enrolled student’s primary education provider shall be the provider in which the student is registered for the majority of coursework.⁶ Additionally, Idaho Code 33-203 requires the board of trustees of the school district or the board of directors of the public charter school to adopt procedures governing dual enrollment pursuant to Idaho Code 33-203. OSEP notes that Idaho Code section 33-203 which authorizes dual enrollment, has no reference to exceptional children, special education, or the IDEA.⁷

The ISDE Special Education Manual (Idaho Manual),⁸ establishes the policy and procedures for implementing IDEA and the Idaho Code relating to children with disabilities. For children with disabilities who are dually enrolled in a public charter school and a traditional public school. Chapter 8, Section 3 of the Idaho Manual states:

“[P]arents of public charter school students shall be allowed to enroll the student in a public school for dual enrollment purposes. Special education services (specially designed instruction and services calculated to meet the unique needs of a student with a disability) shall be the obligation of the public charter school. The district shall allow public charter school students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and
2. receive accommodations in the general education courses for which they are enrolled on a 504 plan, if needed.

⁵ See Idaho Code 33-5207(3): <https://legislature.idaho.gov/statutesrules/idstat/title33/t33ch52/sect33-5207/>

⁶ See Idaho Code 33-203: <https://legislature.idaho.gov/statutesrules/idstat/title33/t33ch2/sect33-203/>

⁷ Idaho Code 33-203 requires the board of trustees of the school district or the board of directors of the public charter school to adopt procedures governing dual enrollment pursuant to Idaho 33-203. The Idaho Special Education Manual, developed by ISDE and offered to local education agencies for adoption, establishes the policy implementing Idaho 33-203 for children with disabilities.

⁸ As stated in the Idaho Manual: “The policies and procedures contained in this Idaho Special Education Manual have been developed by the State Department of Education (SDE) and offered to local education agencies (LEA) for adoption. This Manual has been approved by the State Board of Education, meets the IDEA eligibility requirement of 20 U.S.C. Section 1412, and is consistent with state and federal laws, rules, regulations, and legal requirements. In the case of any conflict between Idaho Administrative Code (IDAPA) and the Individuals with Disabilities Education Act (IDEA), the IDEA shall supersede the IDAPA, and IDAPA shall supersede this Manual.”

Public charter school students may not dually enroll solely for special education. The Board of Directors/Trustees of the public charter school and the traditional school district shall adopt procedures governing dual enrollment.

For detailed requirements and responsibilities governing dual enrollment of charter school students, see Section 33-203, Idaho Code.”

The Idaho State Department of Education Dual Enrollment Q&A (Dual Enrollment Q&A), updated on September 1, 2022, provides further information regarding the implementation of the State’s dual enrollment policy and procedures under Idaho Code 33-203 and the ISDE Special Education Manual, specifically related to the addressing the needs of children with disabilities who are participating in the dual enrollment program. The Dual Enrollment Q&A states:

“Question 12: If a student is enrolled in a traditional school district and the parent wishes to enroll the student at a charter school for part of the school day, which school becomes the primary school for enrollment purposes under the dual enrollment provisions?

Answer: Idaho charter schools are under no legal obligation to accept students attending traditional school districts. However, if a charter school accepts a traditional school district student, the charter school becomes the primary school for enrollment purposes under the dual enrollment provisions. As such, the charter school becomes responsible for the provision of a Free Appropriate Public Education (FAPE) if the student has an existing IEP [individualized education program] or is determined to be in need of special education and related services. The traditional school district is obligated to determine whether the student qualifies to receive accommodations for a 504 plan in the general education courses for which the student has enrolled, which is discussed in the next question.

Question 13: May a public charter school student with a disability dually enroll in a traditional school district and receive special education services through an IEP?

Answer: No. The Idaho Special Education Manual, Chapter 8, Section 4, specifically provides that “[s]pecial education services (specially designed instruction and services calculated to meet the unique needs of a student with a disability) shall be the obligation of the public charter school. The district shall allow public charter school students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to: (1) Enroll in general education courses under the same criteria and conditions as students without disabilities; and (2) Receive accommodations in the general education courses for which they are enrolled on a 504 plan, if needed. Public charter school students may not dually enroll solely for special education.”

Question 14: May a public charter school student with a disability dually enroll in another public charter school and receive special education services through an IEP?

Answer: No. Idaho Code 33-203 specifically provides that the dually enrolled student's primary public charter school education provider is the school where the student is registered for the majority of the coursework. The primary education provider is responsible for providing special education services through an IEP. The charter school where the student is dually enrolled but does not provide the majority of the coursework may not discriminate and is required to: (1) enroll the student in general education courses under the same criteria and conditions as students without disabilities; and (2) provide accommodations in the general education courses for which the student is enrolled through a 504 plan, if needed."

Applicable IDEA Part B Requirements

In determining whether Idaho's policy for children with disabilities who are dually enrolled is consistent with IDEA, OSEP reviewed the following requirements:

Under IDEA section 612(a)(1)(A), a State must have policies and procedures in effect to ensure that a free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school. Under 34 C.F.R. § 300.17, FAPE is defined as, special education and related services that (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the SEA, including the requirements of Part B; (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. §§ 300.320 through 300.324.

Under IDEA section 608(a), each State that receives funds under IDEA shall ensure that any State rules, regulations, and policies relating to IDEA conform to the purposes of IDEA. Under 34 C.F.R. § 300.2(b)(1), IDEA Part B requirements apply to public agencies within the State, including political subdivisions of the State that are involved in the education of children with disabilities, including: the State educational agency (SEA), local educational agencies (LEAs), education service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or an ESA, and other State agencies and schools.

Under 34 C.F.R. § 300.2(b)(2), for public agencies within the State, the provisions of IDEA Part B are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under IDEA Part B.

OSEP’s Analysis and Conclusions

Based on OSEP’s review of Idaho’s policies on dual enrollment of children with disabilities, and review of IDEA, OSEP has concluded that State’s policies contained in the Idaho Manual and Dual Enrollment Q&A, are inconsistent with IDEA and need to be revised.

The Dual Enrollment Q&A limits the provision FAPE, as explained above, under IDEA for a child with a disability who is dually enrolled to only the school of their primary enrollment. Specifically, the child with a disability is denied FAPE in the secondary school of enrollment as Idaho policy only allows an IDEA-eligible child with a disability to receive accommodations under a 504 plan, and prohibits the child from receiving special education and related services within the secondary school of enrollment.⁹ IDEA Part B requirements apply to public charter schools and traditional LEAs in Idaho, see 34 C.F.R. § 300.2(b). ISDE’s implementation of its dual enrollment policy is inconsistent with 34 C.F.R. § 300.2(b) because it does not require IDEA Part B requirements to be implemented in all public agencies for all eligible children with disabilities.

Idaho’s Manual and Dual Enrollment Q&A uses a standard under Section 504 which according to the Section 504 regulations, requires the “provision of regular or special education and related aids and services designed to meet the student’s individual educational needs as adequately as the needs of nondisabled students are met.” See 34 C.F.R. § 104.33(b)(1)(i). This is a substantively different standard than for children who are eligible under IDEA. In *Andrew F. v. Douglas County School District Re-1* (580 U.S. 386), the U.S. Supreme Court clarified that for all children with disabilities with an IEP, a school must offer an IEP that is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”¹⁰

Consistent with 34 C.F.R. § 300.320, IEPs must be tailored to each IDEA-eligible child with a disability. If any eligible child’s IEP Team determines that the child needs any aspect of their IEP implemented in both their primary and secondary enrollment settings, or provisions of the IEP that are only applicable in a child’s secondary dual enrollment setting, those services must be provided in accordance with the IEP Team’s determination.

Required Next Steps

Within 90 days of the date of this letter, the State must submit to OSEP:

1. Notifications to all public agencies, LEAs, charter schools, parent advocacy groups, the State advisory panel, and other interested parties advising them of the State’s plan to revise the Idaho Manual, Dual Enrollment Q&A, and any other relevant documents related to dual enrollment of children with disabilities.¹¹ This notification must also inform all parties that FAPE must be made available to all IDEA-eligible children in public agencies within the State, consistent with 34 C.F.R. § 300.2(b).

⁹ Idaho State Department of Education, Dual Enrollment Q&A, Questions 12 through 13. Updated September 1, 2022
<https://www.sde.idaho.gov/sped/sped-manual/files/chapters/shared/Dual-Enrollment-Q&A.pdf>

¹⁰ See Questions and Answers (Q&A) on U. S. Supreme Court Case Decision *Andrew F. v. Douglas County School District Re-1*,
<https://sites.ed.gov/idea/questions-and-answers-qa-on-u-s-supreme-court-case-decision-andrew-f-v-douglas-county-school-district-re-1/>

¹¹ Changes to policies or procedures must meet the public participation requirements in 34 C.F.R. § 300.165.

2. Notifications to all public agencies, LEAs, charter schools, and parents of eligible children with disabilities participating in the State’s dual enrollment program informing them of the requirement to identify whether any child with a disability has been denied appropriate services under IDEA, and whether compensatory services are appropriate.¹²

As soon as possible, but no later than one year from the date of this letter, the State must submit to OSEP:

1. The State’s revised Idaho Manual, Dual Enrollment Q&A, and any other relevant documents related to dual enrollment of children with disabilities that clarify that an IDEA-eligible child participating in the State’s dual enrollment program is entitled to all the rights afforded under IDEA, including the provision of FAPE and implementation of an IEP in either dual enrollment setting, as determined appropriate by the IEP Team, consistent with 34 C.F.R. §§ 300.2(b), 300.116(a)(1), and 300.320.¹³
2. A summary of the reviews undertaken by LEAs of children with disabilities who currently participate in the State’s dual enrollment program. The review must summarize information about the number of children with disabilities who had been denied appropriate services under IDEA, and the extent to which compensatory services were provided.
3. A copy of a notification to all public agencies, LEAs, charter schools, parent advocacy groups, the State advisory panel, and other interested parties advising them of the revisions the State made to its Idaho Manual, Dual Enrollment Q&A, and any other relevant documents. This notification must also require public agencies and LEAs to revise their relevant policies and practices to ensure dually enrolled students may access their IEP services in whichever dual enrollment setting based on their individual needs and stated within their IEP.
4. The State’s plan for ensuring LEA compliance with 612(a)(1) of the IDEA and IDEA’s implementing regulations including 34 C.F.R. §§ 300.2(b), 300.116(a)(1), and 300.320, including how the State will monitor LEA implementation of Idaho’s revised policy and procedures related to dual enrollment of children with disabilities.

¹² As explained in OSERS’ Return to School Roadmap, under IDEA, courts have recognized compensatory services as an equitable remedy to prospectively address the past failure or inability of the LEA to provide appropriate services, including those that were identified on the child’s IEP. That is, courts have ordered such services to address the child’s needs after a failure or inability to provide FAPE over a given period of time. Likewise, the State complaint procedures provide for compensatory services as an available remedy when the SEA has found a failure or inability to provide appropriate services under IDEA in order to address the needs of the child. 34 C.F.R. § 300.151(b)(1). See OSERS’ [Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the Individuals with Disabilities Education Act \(PDF\)](#)

¹³ Changes to policies or procedures must meet the public participation requirements in 34 C.F.R. § 300.165.

We appreciate your prompt attention to this important matter. If you have questions regarding the above or would like to request technical assistance, please contact your State Lead, Jarmaquetia Wrighten, at jarmaquetia.wrighten@ed.gov or 202-245-6413.

Sincerely,



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cc: Chynna Hirasaki
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Malia Hollowell
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