

Section 3 – Free Appropriate Public Education

Free Appropriate Public Education (FAPE) State Board Rule 160-4-7-.02

All students **with an Individualized Education Plan (IEP)** are entitled to a free appropriate public education (FAPE). This includes children who are eligible for special education from the ages of three (3) through twenty-one (21).

Definition of FAPE

The special education and related services that make up the FAPE are provided to children identified with disabilities who have an IEP at no cost to the parent. Special education and related services, including special education at the preschool, elementary, and secondary levels, are services that are provided so eligible students can make progress toward and/or meet the educational standards of Georgia. All students will be provided an education that includes access to the Georgia curriculum and addresses the unique needs of the individual student and his or her disability.

While the education provided to the student with an IEP must be appropriate and must address what the individual student needs in order to make educational progress, this is neither a guarantee of achievement of each goal on the IEP nor a guarantee of promotion, passing grades, or graduation. Likewise, passing from grade-to-grade or receiving all passing grades does not mean that a student is receiving FAPE. Each student is an individual and his or her appropriate education is determined on a case-by-case basis. In addition, the term “appropriate” is not the same as “best”; “appropriate” is a minimal standard that assures the student has the opportunity to make educational progress.

Students Entitled to FAPE

Students are entitled to FAPE when they are determined eligible for special education and related services. This can be as early as 3 years of age. If a child is receiving services prior to age 3 through the Babies Can't Wait (BCW) program, then both the BCW program and the district have an obligation to work together to transition the child to the public school program by the child's 3rd birthday. Children should have eligibility for special education determined and, if eligible, an IEP developed and in place by age three. Children are entitled to continue to receive special education and related services through their 21st year (or until they turn 22) if they remain eligible for special education, and they have not graduated with a regular high school diploma. Entitlement to FAPE ends upon reaching age 22 or graduating with a regular diploma, whichever comes first. According to Georgia Rules, districts are required to develop a written procedure that identifies a process for completing services when a student reaches the age of 22. The district must state in writing whether services for the student, who is still attending school on his or her 22nd birthday, will cease on the birthday, cease at the end of that semester, or cease at the end of that school year. Students who remain in school after their 22nd birthday are not entitled to FAPE or other IDEA rights for the remainder of their time in school. Although each district can develop its own procedures, those procedures must be in

writing in order to be clear and fair to all students. The ultimate goal is to transition students to the desired activity in collaboration with other agencies or supports so that, by the 22nd birthday, transition has occurred and the student can continue in appropriate adult activities. When a student with an IEP graduates with a regular diploma or ages out of school (i.e., turns 22 years of age), he or she must be provided with a *Summary of Performance (SOP)* of his or her academic and functional needs. The SOP also includes strategies to assist the student in achieving his or her desired postsecondary goals. It is best practice to provide the SOP to ALL students with IEPs who are exiting public school.

Age Exit Procedure for Towns County Schools: All children with disabilities between the ages of 3 through 21 who are residing in Towns County are entitled to a free appropriate public education (FAPE), including children with disabilities who have been suspended or expelled from school. **If a student is receiving special education services upon reaching age 22, Towns County Schools will serve the student until the end of the semester in which the student turns 22.** Towns County Schools will stop providing services on the date of the 22nd birthday or the last school day prior to the birthdate if the birthday falls during the summer, weekend, or school holiday. It is the goal of Towns County Schools to secure the successful transition of students to their desired post-school outcomes and will collaborate to complete that transition by age 22. The adult student and parents will be notified that no individual entitlement to FAPE or other rights under IDEA are afforded the adult student after age 22. FAPE will no longer be provided by Towns County Schools upon a student graduating from school with a general education diploma. This rule will be reviewed at the annual review prior to the student graduating and/or at the **Summary of Performance** meeting. Children with disabilities may be served by the **Babies Can't Wait** program in Towns County as well as other agencies providing services to children from birth to age 3. By age three, a transition meeting is held; and the children are then served under the Individuals with Disabilities Education Act (IDEA) with a Towns County School System IEP. If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin. Towns County Schools works collaboratively with *Babies Can't Wait*, as well as other agencies to ensure that services are provided in Towns County from birth through 21.

Transfer of Rights

At age 18, students become their own educational decision makers, unless a court decides they are not able to make these decisions. On or before the student's 17th birthday, the school is to inform the parents and the student, that at age 18, the student attains the age of majority in Georgia and will become his or her own educational decision maker. This is done during the IEP meeting. The school may also inform parents of other options or where to get more information about guardianships, powers of attorney and any other options. **Beginning at age 18, the school is to send all notices to both the parent and the student, but the student will provide informed written consent for any action requested by the system.** When the student turns 18, he or she becomes the educational decision maker, but the parents retain the rights to all notices of meetings, notices of changes in program or placement, and notices of evaluations while the student is eligible under the IDEA.

Incarcerated Students

Students eligible for special education services who have an IEP and who are in a facility operated by the Department of Juvenile Justice (DJJ) or the Department of Corrections (DOC) must receive their educational programs. Each of these agencies provides the services to students within their facilities in Georgia. Each agency has the responsibility to identify, evaluate, determine eligibility, and provide special education and related services to students. These agencies will contact the most recent public school attended by a student to obtain copies of educational records so that FAPE can be provided. DJJ and DOC are public schools and should be treated as other public schools when providing records in an expeditious manner. Adult students who are between the ages of 18 and 21 who, prior to being in the correctional facility (jail), did not have an IEP the last time they attended school, are the exception.

These students do not have an entitlement to FAPE. A student with a current IEP who is in the community jail, such as those managed by city or county agencies (i.e., the sheriff's office), is also entitled to FAPE. In these circumstances, the district where the student is incarcerated is responsible for providing services. Districts need to work closely with the local jail in order to gain access to the student and to deliver services. The main concern of the local sheriff or other enforcement agency is safety, while the district's obligation is to provide FAPE.

Exception to FAPE

The obligation to make FAPE available to all children with disabilities does not apply to adult students aged 18 through 21, who, in the last educational placement, prior to their incarceration in an adult correctional facility:

- Were not actually identified as being a child with a disability;
- Did not have an IEP in effect; and
- Graduates from high school with a regular high school diploma. (This constitutes a change in placement, requiring written prior notice.) The exception does not apply to adult students with disabilities, aged 18 through 21, who:
 - Had been identified as a child with a disability and had received services in accordance with an IEP but who left school prior to their incarceration in an adult correctional facility or local jail;
 - Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability; or
 - Have graduated from high school but have not been awarded a regular high school diploma.

The term regular high school diploma does not include an alternative degree that is not aligned with the State's academic standards such as a *special education diploma*, *certificate of attendance* or a *general educational development credential (GED)*.

Funding Sources and Insurance

Districts and states may use whatever federal, state, private, or other sources of funds that are available to provide services to students under FAPE. Districts must not delay the delivery of services required by an IEP until the funding source is located or secured. Public or private

insurance may also be used to support the placements if such use is at no cost to the parents and does not decrease the lifetime coverage available. Medicaid is a federal/state insurance program for which students may be eligible. The Medicaid agency encourages districts and states to access the public benefits available through Medicaid when students are eligible.

The IDEA clearly states that districts must notify parents each time they propose to access the student's insurance and must have parental consent before accessing these funds. Districts must inform parents of their right to refuse districts access to the insurance benefits and of the fact that such refusal does not relieve the district of its responsibility to ensure that all required services are provided at no cost to the parents. If a district is going to access benefits, public or private, it should seek written consent from the parent and inform the parent about the amount of benefits it plans to access. This can be done as part of the annual IEP process. The IEP will define the frequency of any service (for example, occupational therapy one time per week for 30 minutes). This can be used to inform the parents and to obtain their agreement. However, if the district exceeds the amount in the IEP or amends the IEP to provide a different level of service, a new consent must be obtained. If placement in a residential facility, either public or private, is necessary for the student to receive FAPE, then the placement is at public expense, usually paid for by the local district. ***Districts should not consider placement in residential facilities unless they have exhausted the nonresidential resources.*** The Georgia Department of Education (GaDOE) has tuition grants to assist local districts if they place a student in a residential facility.

If a district believes a medical evaluation is warranted as part of the determination of eligibility or continuing provision of special education and related services, it must seek parental permission before such evaluation is provided, and the evaluation must be provided at public expense or no cost to the parent. As stated previously, any available insurance may be used to offset the costs of the evaluation. A child should not be denied a medical evaluation if it is needed for educational purposes such as the determination of eligibility for special education or the educational needs of the child.

Delay of Services

Towns County Schools ensures that there will be no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

Medicaid Reimbursement

Towns County Schools files for and receives reimbursement from Medicaid for Medicaid-eligible students receiving Medicaid-billable services performed by school staff. However, the school system does not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE. Furthermore, Towns County Schools does not require the parents to incur any out-of-pocket expenses such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided, but may pay the cost the parents would otherwise be required to pay; and the school system will not use a child's benefits under a public benefits or insurance program if that use would:

- Decrease available lifetime coverage or any other insured benefit;
- Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and are required for the child outside of the time the child is in school;
- Increase premiums or lead to the discontinuation of benefits or insurance; or
- Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenses.

Towns County Schools obtains parental consent prior to accessing a child's or parent's public benefits or insurance for the first time and after providing notification to the child's parents.

The parental consent to access a child's or parent's public benefits or insurance:

- Specifies the personally identifiable information that may be disclosed or information about the services that may be provided to a particular child, the purpose of the disclosure (e.g., billing for services provided under IDEA), and the agency to which the disclosure may be made (e.g. the Georgia Department of Community Health); and
- Specifies that the parent understands and agrees that the school system may access the child's or parent's public benefits or insurance to pay for services provided under IDEA.

Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, the school system provides written notification to the child's parents that includes:

- A statement of parental consent provisions
- A statement of the "no cost" provisions
- A statement that the parents have the right to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of Georgia's public benefits or insurance program at any time; and
- A statement that the withdrawal of consent or refusal to provide consent to disclose personally identifiable information to the agency responsible for the administration of Georgia's public benefits or insurance program does not relieve the school system of its responsibility to ensure that all required services are provided at no cost to the parents.

Accessible Instructional Materials and Assistive Technology

Districts must provide print instructional materials in an accessible format to students who are blind or other print disabled. These materials must be provided in a timely manner, usually about the same time as the traditional materials are received by other students, unless unusual circumstances exist. Accessible formats include braille, audio, or digital text, but do not include the altering of the content. Refer to Georgia Rule 160-4-7-.02 Free Appropriate Public Education for the detailed explanation of children who are blind or otherwise print disabled. Additional information on accessible instructional materials can be found at the Georgia Instructional Materials Center website, <http://gimc.org/>.

Districts must consider each student's need for assistive technology devices and services. Assistive technology is considered by each IEP team in the development, review, and revision of student IEPs. When the IEP team determines that a student requires assistive technology

devices or services, this should be clearly documented in the IEP, and the assistive technology should be provided to the student in a timely manner. The provided assistive technology should be integrated into instructional activities, and data should be collected on the use of the technology. If the IEP team determines that the student requires school purchased assistive technology at home or in other settings to receive FAPE, the assistive technology must be provided to the student at no cost to the parent. The student, staff, and family, if appropriate, should be trained in the use of any assistive technology made available to the student.

Additional information on assistive technology is located on the Georgia Project for Assistive Technology website: <http://www.gpat.org/>. Districts must have in place procedures and practices that ensure the proper functioning of hearing aids. Regular inspection of hearing aids should be documented. This also applies to external components of surgically implanted medical devices such as cochlear implants. However, districts are not responsible for programming such devices or for providing post surgery maintenance.

Towns County Schools provides print instructional materials in specialized, accessible formats (i.e. Braille, audio, digital, large-print, etc.) to children who are blind or other print disabled in a timely manner. The system takes all reasonable steps to ensure that children with print disabilities have access to their accessible format instructional materials at the same time as students without print disabilities. Print instructional materials include textbooks and related core materials that are required by the school system for use by children in the classroom. Specialized formats refer to Braille, audio, or digital text which is exclusively for use by children who are blind or other persons with print disabilities. Large print formats are also included when the materials are distributed exclusively for use by children who are blind or other persons with disabilities. Specialized formats do not include altering the content (e.g. breadth, depth, or complexity) of the print instructional material in the production of accessible instructional materials. Children who are blind or print disabled include:

- Children whose visual acuity, as determined by a competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter of visual field subtends an angular distance no greater than 20 degrees.
- Children whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material.
- Children certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations.
- Children certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.

Assistive Technology

Children with disabilities who require assistive technology in order to receive a free appropriate public education (FAPE) are eligible for assistive technology devices or services, or both, as a part of the child's special education, related services, or supplemental aids and services. Each

IEP Team considers whether or not a child requires assistive technology devices and services in order to receive a free appropriate public education (FAPE). Each IEP written in Towns County indicates the appropriate response in the *Consideration of Special Factors* section of the IEP. Assistive technology can also be addressed when considering other factors such as communication needs and instruction in the use of Braille in the IEP.

An assistive technology evaluation may be required if appropriate assistive technology solutions are not known to the child's IEP Team through the consideration process. This evaluation is conducted by a multidisciplinary team of professionals knowledgeable about assistive technology devices in the technology areas being assessed. The child and family are also included in this evaluation process. The evaluation results in recommendations for assistive technology devices and services, if required. If the child's IEP Team determines that assistive technology devices or services are required for the child to receive a FAPE, a statement to that effect is included in the child's IEP. If assistive technology is required for the child to participate in system-wide or state-wide testing, the need for technology is documented in the appropriate section of the IEP and provided to the child.

If assistive technology devices or services, or both, are required for a child who is blind or other print disabled to access alternative format instructional materials, the assistive technology is documented in the IEP and provided to the child. If the IEP Team determines that the child with a disability requires school-purchased assistive technology at home or in other settings to receive a FAPE, the assistive technology will be provided to the child at no cost to the parent. The need for assistive technology in the non-school settings will also be documented in the child's IEP.

Extended School Year Services

Towns County Schools ensures that *Extended School Year (ESY)* services are available as necessary to provide a FAPE. The term *Extended School Year* services means special education and related services that are provided to a child with a disability beyond the normal school system school year in accordance with the child's IEP at no cost to the parents of the child. These services must meet the standards of the State of Georgia and are provided only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child. In implementing the requirements of this section, Towns County Schools does not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

Extracurricular Activities Accessibility

Towns County Schools takes steps, including the provision of supplementary aids and services that have been determined to be appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities equal opportunity for participation in those services and activities. (Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the Local Education Agency, referrals to agencies that provide assistance to

individuals with disabilities, and employment of students, including both employment by the school system and assistance in making outside employment available.)

Access to Physical Education and Specially Designed Physical Education

Towns County Schools ensures that general physical education services, specially designed if necessary, are made available to every child with a disability receiving FAPE, unless the school system enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades. Each child with a disability is afforded the opportunity to participate in the regular physical education program available to nondisabled children unless the child is enrolled full time in a separate facility – Towns County Schools is responsible for the education of any child with a disability who is enrolled in a separate facility and ensures that the child receives appropriate physical education services or the child needs specially designed physical education, as prescribed in the child's IEP, which is a Related Service: *Adapted PE*. (If specially designed physical education is prescribed in a child's IEP, Towns County Schools provides the services directly or makes arrangements for those services to be provided through other public or private programs.)

PROGRAMMING OPTIONS AND EQUAL ACCESS

Towns County Schools ensures that children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the school system, including art, music, and Career, Technical Education.

ROUTINE CHECKING OF HEARING AIDS/OTHER COMPONENTS

Towns County Schools ensures that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. Towns County Schools is *not* responsible for the post-surgical maintenance, programming or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

PROHIBITION ON MANDATORY MEDICATION

Towns County Schools prohibits personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the *Controlled Substances Act* (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation or receiving services.

Nothing in the paragraph above shall be construed to create a 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 as it relates to child find.