

160-4-7-.02 FREE APPROPRIATE PUBLIC EDUCATION (FAPE).

(1) GENERAL.

(a) A free appropriate public education (FAPE) must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in 160-4-7-.18 Discipline. [34 C.F.R. § 300.101(a); 34 C.F.R. § 300.530(d)]

(b) If a student is receiving services upon reaching age 22, the LEA shall have a written procedure that identifies a process for completing services to which the adult student has been previously entitled. LEAs shall state in writing that the goal is to secure the successful transition of students to their desired post-school outcomes and will collaborate to complete that transition by age 22. If a student is still attending school at age 22, the LEA shall state whether services will cease on the student's 22nd birthday, or will continue until the end of the semester or until the end of the current school year. If an adult student remains after their 22nd birthday, the LEA shall notify the adult student and the parent(s) that although services will continue, no individual entitlement to FAPE or other rights under IDEA are afforded the adult student.

(c) FAPE for children beginning at age 3. Each LEA must ensure that:

1. The obligation to make FAPE available to each eligible child residing in the LEA begins no later than the child's third birthday; and

2. An IEP or an IFSP is in effect for the child by that date. [34 C.F.R. § 300.101(b)(1)(i) – ii]

3. 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. [34 C.F.R. § 300.101(b)(2)]

(d) Children advancing from grade to grade.

1. Each LEA must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade. [34 C.F.R. § 300.101(c)(1)]

2. The determination that a child described above is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations. [34 C.F.R. § 300.101(c)(2)]

(2) LIMITATION - exception to FAPE for certain ages.

(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

1. Adult students aged 18 through 21, who, in the last educational placement, prior to their incarceration in an adult correctional facility:

(i) Were not actually identified as being a child with a disability;

(ii) Did not have an IEP in effect; and [34 C.F.R. § 300.102(a)(2)(i)(A) – (B)]

(iii) Graduates from high school with a regular high school diploma. This constitutes a change in placement, requiring written prior notice. [34 C.F.R. § 300.102(a)(3)(iii)]

2. The exception does not apply to adult students with disabilities, aged 18 through 21, who:

(i) 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;

(ii) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability; or [34 C.F.R. § 300.102(a)(2)(ii)(A) – (B)]

(iii) Have graduated from high school but have not been awarded a regular high school diploma. [34 C.F.R. § 300.102(a)(3)(ii)]

(iv) 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). [34 C.F.R. § 300.102(a)(3)(iv)]

(b) Documents relating to exceptions. The LEA must assure that the information it has provided is current and accurate. [34 C.F.R. § 300.102(b)]

(3) FAPE--METHODS AND PAYMENTS.

(a) Georgia may use whatever State, local, Federal, and private sources of support that are available in the State to meet the requirements of this Rule. For example, if it is necessary to place a child with a disability in a residential facility, Georgia could use joint agreements between the agencies involved for sharing the cost of that placement. [34 C.F.R. § 300.103(a)]

(b) Nothing relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability. [34 C.F.R. § 300.103(b)]

(c) The LEA must ensure that there is 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. [34 C.F.R. § 300.103(c)]

(d) Children with disabilities who are covered by public benefits or insurance.

1. A LEA may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under IDEA, as permitted by the public benefits or insurance [34 C.F.R. § 300.154(d)(1)] except -

(i) With regard to services required to provide FAPE, the LEA may not require the parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE; [34 C.F.R. § 300.154(d)(2)(i)]

(ii) The LEA may 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 [34 C.F.R. § 300.154(d)(2)(ii)]

(iii) The LEA may not use a child's benefits under a public benefits or insurance program if that use would -

(I) Decrease available lifetime coverage or any other insured benefit;

(II) 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;

(III) Increase premiums or lead to the discontinuation of benefits or insurance; or

(IV) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenses; and [34 C.F.R. § 300.154(d)(2)(iii)]

2. The LEA shall obtain 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 consistent with paragraph (3)(d)3. of this rule and 34 C.F.R. § 300.154(d)(2)(v). The parental consent to access a child's or parent's public benefits or insurance shall:

(i) Meet the requirements of 34 C.F.R. § 99.30 and 34 C.F.R. § 300.622 by specifying the personally identifiable information that may be disclosed (e.g., records

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

(ii) Specify that the parent understands and agrees that the LEA may access child's or parent's public benefits or insurance to pay for services provided under IDEA. [34 C.F.R. § 300.154(d)(2)(iv)]

3. Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, the LEA shall provide written notification to the child's parents consistent with 34 C.F.R. § 300.503(c) that includes:

(i) A statement of parental consent provisions in 34 C.F.R. § 300.154(d)(2)(iv)(A)-(B);

(ii) A statement of the "no cost" provisions in 34 C.F.R. § 300.154(d)(2)(i)-(iii);

(iii) A statement that the parents have the right under 34 C.F.R. part 99 and 34 C.F.R. part 300 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

(iv) A statement that the withdrawal of consent or refusal to provide consent under 34 C.F.R. part 99 and 34 C.F.R. part 300 to disclose personally identifiable information to the agency responsible for the administration of Georgia's public benefits or insurance program does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents. [34 C.F.R. § 300.154(d)(2)(v)]

(e) Children with disabilities who are covered by private insurance.

1. With regard to services required to provide FAPE to an eligible child, a LEA may access the parents private insurance proceeds only if the parents provide consent. [34 C.F.R. § 300.154(e)]

2. Each time the LEA proposes to access the parents' private insurance proceeds, the LEA must –

(i) Obtain parental consent; and

(ii) Inform the parents that their refusal to permit the LEA to access their private insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents. [34 C.F.R. § 300.154(e)(2)(i) – (ii)]

(4) RESIDENTIAL PLACEMENT. If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child. [34 C.F.R. § 300.104]

(5) ACCESSIBLE INSTRUCTIONAL MATERIALS.

(a) LEAs will provide 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. LEAs will take 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. [See 34 C.F.R. § 300.172(a); § 300.172(b)(4)]

1. Print instructional materials include textbooks and related core materials that are required by the LEA for use by children in the classroom.

2. 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. [17 U.S.C. § 121(d)(4)]

(i) 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.

3. Children who are blind or print disabled include:

(i) 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.

(ii) Children whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material.

(iii) Children certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations.

(iv) 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. [36 C.F.R. § 701.6(b)(1)]

5. The following groups of individuals are eligible to certify children who are blind or other print disabled for specialized format instructional materials:

(i) In cases of blindness, visual disability, or physical limitations “competent authority” is defined to include doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents).

(ii) In the case of a reading disability from organic dysfunction, competent authority is defined as doctors of medicine who may consult with colleagues in associated disciplines. [36 C.F.R. § 701.6(b)(2)]

(b) In order to insure the timely provision of high quality, accessible instructional materials to children who are blind and other print disabled, the LEA must adopt the National Instructional Materials Accessibility Standard (NIMAS).

1. The NIMAS refers to a standard for source files created by textbook publishers for the purpose of producing accessible instructional materials. NIMAS files are not child ready files and will be used by authorized users and entities to produce accessible materials for children who are blind and visually impaired.

2. Children who are certified as blind or other print disabled are eligible to receive accessible instructional materials produced with NIMAS files.

(c) The LEA may coordinate with the National Instructional Materials Access Center (NIMAC) to facilitate the production and delivery of accessible materials to children who are blind or other print disabled.

1. The NIMAC refers to the central repository which is responsible for processing, storing, and distributing NIMAS files of textbooks and core instructional materials.

2. LEAs must provide written assurances to the GaDOE regarding their intention to coordinate with the NIMAC.

3. LEAs coordinating with the NIMAC will require textbook publishers to deliver the contents of the print instructional materials to the NIMAC in a NIMAS format file on or before delivery of the print instructional materials. The files will be used in the production of accessible instructional materials.

4. LEAs coordinating with the NIMAC may also purchase instructional materials from the textbook publishers that are produced in or may be rendered in a specialized format.

(d) If the LEA chooses not to coordinate with the NIMAC, assurances must be made to the GaDOE that the LEA will provide accessible instructional materials to children who are blind or other print disabled in a timely manner. LEAs will take all reasonable steps to ensure that students with print disabilities have access to their

accessible format instructional materials at the same time as students without print disabilities. [34 C.F.R. § 300.210(b)(2)]

1. LEAs that do not coordinate with the NIMAC will be responsible for purchasing, producing or otherwise providing high-quality, accessible instructional materials in specialized formats in a timely manner for children who are blind or print disabled. LEAs will take all reasonable steps to ensure that students with print disabilities have access to their accessible format instructional materials at the same time as students without print disabilities.

(e) The LEA is also responsible for providing accessible materials to children who require instructional materials in accessible formats, but who do not qualify for the materials under the definition of blind and other print disabled or who need materials that can not be produced from NIMAS. [20 U.S.C. § 1413(a)(6)]

(f) Some children who require accessible instructional materials will need assistive technology to access the materials (e.g. text reader to read digital file, screen magnification program to read digital file).

(6) ASSISTIVE TECHNOLOGY.

(a) 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.

(b) Each IEP Team will consider whether or not a child requires assistive technology devices and services in order to receive a free appropriate public education (FAPE). Minimal compliance will be indicating 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. [34 C.F.R. § 300.324]

(c) 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 shall be conducted by a multidisciplinary team of professionals knowledgeable about assistive technology devices in the technology areas being assessed. The child and family should also be included in this evaluation process. The evaluation should result in recommendations for assistive technology devices and services, if required.

(d) 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 must be included in the child's IEP.

1. If assistive technology is required for the child to participate in districtwide or Statewide testing, the need for technology should be documented in the appropriate section of the IEP and provided to the child.

2. 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 should be documented in the IEP and provided to the child.

(e) 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 must be provided to the child at no cost to the parent. The need for assistive technology in the non-school settings should be documented in the child's IEP. [34 CFR § 300.105]

(7) EXTENDED SCHOOL YEAR SERVICES.

(a) Each LEA must ensure that extended school year services are available as necessary to provide a FAPE. [34 C.F.R. § 300.106(a)(1)]

1. Extended school year services must be 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. [34 C.F.R. § 300.106(a)(2)]

2. In implementing the requirements of this section, the LEA may not -

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services. [34 C.F.R. § 300.106(a)(3)(i) – (ii)]

(b) Definition. As used in this Rule, the term extended school year services means special education and related services that -

1. Are provided to a child with a disability:

(i) Beyond the normal school year of the LEA;

(ii) In accordance with the child's IEP;

(iii) At no cost to the parents of the child; and

(iv) Meet the standards of the State. [34 C.F.R. § 300.106(b)(1) – (2)]

(8) NONACADEMIC SERVICES.

(a) Each LEA must take steps, including the provision of supplementary aids and services determined 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. [34 C.F.R. § 300.107(a)]

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the LEA, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the LEA and assistance in making outside employment available. [34 C.F.R. § 300.107(b)]

(9) PHYSICAL EDUCATION. The LEA must ensure that its public schools comply with the following:

(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the LEA enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades. [34 C.F.R. § 300.108(a)]

(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless -

1. The child is enrolled full time in a separate facility; or
2. The child needs specially designed physical education, as prescribed in the child's IEP. [34 C.F.R. § 300.108(b)]

(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the LEA responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs. [34 C.F.R. § 300.108(c)]

(d) Education in separate facilities. The LEA responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this Rule. [34 C.F.R. § 300.108(d)]

(10) FULL EDUCATIONAL OPPORTUNITY GOAL (FEOG). Each LEA must have in effect policies and procedures to demonstrate that the LEA has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal. [34 C.F.R. § 300.109]

(11) CHARTER SCHOOLS

(a) Children with disabilities who attend public charter schools and their parents retain all rights to a FAPE as described in this Rule. [34 C.F.R. § 300.209(a)]

(b) Charter schools that are public schools of an LEA. Each LEA must ensure that charter schools that are public schools of the LEA must -

1. Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

2. Provide funds to those charter schools at the same time and on the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities. [34 C.F.R. § 300.209(b)]

(c) Public charter schools that are LEAs. If the public charter school is an LEA, that charter school is responsible for ensuring that all of these requirements are met. [34 C.F.R. § 300.209(c)]

(12) PROGRAM OPTIONS. Each LEA shall take steps to ensure 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 LEA, including art, music, and Career, Technical and Agricultural Education. [34 C.F.R. § 300.110]

(13) ROUTINE CHECKING OF HEARING AIDS/OTHER COMPONENTS.

(a) Hearing aids. Each LEA must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. [34 C.F.R. § 300.113(a)]

(b) External components of surgically implanted medical devices. Each LEA must ensure that the external components of surgically implanted medical devices are functioning properly. The LEA 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). [34 C.F.R. § 300.113(b)]

(14) PROHIBITION ON MANDATORY MEDICATION.

(a) Each LEA must prohibit 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

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of attending school, receiving an evaluation or receiving services. [34 C.F.R. § 300.174(a)]

(b) Nothing under paragraph (14)(a) 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. [34 C.F.R. § 300.174(b)]

Authority O.C.G.A. § 20-2-133; 20-2-152; 20-2-240.

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