

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

All students **with** an Individualized Education Program (IEP) are entitled to a free and 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 are services that are provided so that eligible students can make progress toward and/or meet the educational standards of Georgia, including special education at the preschool, elementary and secondary levels. All students will be provided an education that teaches 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 address their unique needs in order to make educational progress, it is neither a guarantee of achievement of each goal on the IEP nor a guarantee of promotion, passing grades or graduation. Likewise, just because a student is passing from grade-to-grade or is receiving all passing grades does not mean that he or she is receiving FAPE. Each student is an individual and the determination of appropriate education is a case-by-case decision. In addition, it should be understood that the term "appropriate" is not the same as "best", but is a minimal standard that assures that the student has the opportunity to make educational progress.

Students entitled to a FAPE

Students are entitled to a FAPE when they are determined eligible for special education and related services. This can be as early as three years of age. If a child is receiving services prior to age three through the Babies Can't Wait (BCW) program, then both the BCW program and the system 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 an IEP developed and in place by age three if they were previously receiving services.

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 with reaching age 22 or graduation with a regular diploma, whichever comes first.

For the first time in Georgia Rules, systems are required to develop a written procedure that identifies a process for completing services when a student reaches the age of 22. The system 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 the 22nd birthday are not entitled to FAPE or other IDEA rights for the remainder of their time in school. Although each system can develop its own procedures, those procedures must be put in writing so as 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 has appropriate adult activities to continue.

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/her academic and functional needs. The SOP also includes strategies to assist the student in achieving his or her desired post-secondary goals. Although not required for students who receive a special education diploma or other exit document, such as a certificate of attendance, best practice would provide the SOP to ALL students with IEPs who are exiting public school. Those students who do not earn a regular diploma or transition to a specific job are those who most likely need all the assistance available to develop successful adult lifestyles and the SOP is a tool that can assist with this. (The actual requirement for SOP can be found in Georgia Rule 160-4-7-.04 Evaluations and Re-evaluations. Georgia has a model SOP that can be found on the GaDOE web page and in the appendix of this document.)

Incarcerated Students

Students eligible for special education services and 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 those 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 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.

The exception may be 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. These students do not have an entitlement to a FAPE.

A student with a current IEP and who is in the community jail, such as those managed by city or county agencies (i.e. the sheriff's office) are also entitled to FAPE. In these circumstances, the system the student attends is responsible for providing services. Systems will 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 system's obligation is to provide a FAPE.

Funding sources and insurance

Systems and States may use whatever federal, State, private or other sources of funds that are available to provide services to students under FAPE. Systems 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 systems and states to access the public benefits available through Medicaid when students are eligible.

The IDEA clearly states that systems must notify parents each time they propose to access the student's insurance and must have parental consent before accessing these funds. Systems must inform parents of their right to refuse systems access to the insurance benefits. If a system is going to access benefits, public or private, they should seek written consent from the parent and inform the parent about the amount of benefits they plan 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 get their agreement. However, if the system 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 a FAPE, then the placement is at public expense, usually paid for by the local system. Systems 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 systems if they place a student in a residential facility.

If a system believes a medical evaluation is warranted as part of the determination of eligibility or continuing provision of special education and related services, they must seek parental permission before such evaluation is provided and it 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.

Accessible Materials and Assistive Technology

Systems 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. Please refer to Georgia Rule 160-4-7-.02 Free and Appropriate Public Education to see the detailed explanation of children who are blind or otherwise print disabled.

Systems 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, they should be clearly documented in the IEP and 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. The student, staff, and family, if appropriate, should be trained in the use of the assistive technology that has been made available to the student.

Systems 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, systems are not responsible for programming such devices or providing post-surgery maintenance.

Extended School Year

Each system must provide extended school year (ESY) services to students who need such services to receive a FAPE. ESY services are those services a student requires beyond the normal school year of the system and are not limited to only the summer months. The IEP makes the determination on whether a student needs ESY and, if so, what services will be provided. This includes determining the details of ESY, such as what services will be provided, when and where the services will take place, the frequency and the duration of the services. Any services provided as ESY must meet the requirements of FAPE. A system must not state that ESY is only for certain groups of students or say it is for all of a certain group. Likewise, they may not limit ESY services to a certain time period or type of activity.

Nonacademic and Extracurricular activities

A FAPE can also include nonacademic and extracurricular services. Systems must consider supplementary aids and services necessary to provide students with disabilities the equal

opportunity for participation in nonacademic and extracurricular activities. This may include, but is not limited to, participation in clubs, referral to agencies that provide services, special interest groups, employment assistance, counseling, health services or athletics.

Charter schools

Children who attend public charter schools and their parents still have all the rights given to them in the public school under the IDEA. There are usually two types of charter schools in the State: a charter that is part of a system or a charter that is a State charter and therefore considered its own system. Charter schools must have available services that are needed to provide education for students with IEPs. The charter that is part of a system has, as part of its resources, the full continuum of services and supports within the system. There may be times when a student's IEP determines that a specific setting is needed and it may not be available at the charter, but in another school within the system. The charter that is part of the system may not, however, decline to serve students with IEPs.

If the charter is a State charter school, it is responsible for finding a way to provide whatever services the IEP Team determines are appropriate for a student with an IEP who chooses to enroll in the charter. Students with IEPs may not be discriminated against and a State charter must accept students who choose to enroll.

Charter schools that are part of the local system must be treated the same as all other individual schools within the system by the central office of the system. This includes flowing funds, State and federal, to the charter at the same time as money is sent to other schools. This also includes providing services or supports that are centrally based in the same manner as they do for other schools. For example, if the central office of the local system funds the Occupational Therapist for any student in any school who needs the service to receive FAPE, then the students in the charter school must also be included. The GaDOE has an extensive web page for charter schools at http://www.gadoe.org/pea_charter.aspx. Included on this site is a document for implementing special education in charter schools. Both parents and educators will find it helpful.

Medication

Systems may not require medication as a condition of attending school, receiving an evaluation or receiving services. Parents make the decisions regarding their children and medication they administer or do not administer. Systems should not make medical decisions by requiring medication. Nothing prohibits a system, however, from sharing classroom observations regarding the academic, behavioral or functional performance of a child with the parents in order to better inform the parents of the student's behavior and

academic performance when taking or not taking medication. If a system believes a student is not receiving medication that is essential for their health or education, they may refer the family to the Department of Family and Children's Services for assistance.

Frequently Asked Questions

How do special education funds flow to the charter school?

The State of Georgia allocates state and federal special education funds to the authorizing system which has the responsibility for dispersing either the funds or equivalent services or a combination of funds and services to the charter school based upon each system's policies. The disbursement of special education funds and/or services needs to be considered by the authorizer when developing policies related to charter schools. Charter schools that are a part of the system should receive funds on the same basis as other schools within the system.

If the school does not provide transportation to students in its charter school, must they provide it for students in special education who attend charter schools?

If the school provides transportation to and from school or financial support (e.g. tokens) for non-disabled students for that kind of transportation, then they need to do the same for students with disabilities. If systems do not provide this support in general, then they typically do not need to provide it to students with disabilities. However, if an IEP Team identifies transportation as a related service on a child's IEP, then the system will need to arrange for transportation services or see that the responsible entity does so. As an IEP Team considers a student's need for transportation, it is critical that Team members understand the differences between a student's need for transportation to get to school (common for all students) and a student's need as a result of a disability that results in the need for a related service. If a charter school is responsible to provide this related service, systems may contract for it or pay the family to transport the child to and from school or the location of the special services.

How do students with disabilities who attend charter schools participate in the NCLB accountability system?

NCLB includes students with disabilities and special education programs in State assessment and accountability systems. Students receiving special education services, including those with the most significant disabilities who participate in an alternate assessment system, will "count" in the accountability formulas. Not only do they count,

they make a difference in a school's ability to meet criteria for "adequate yearly progress" and Georgia specific performance measures under the NCLB law. Please see www.doe.k12.ga.us/curriculum/testing.gaa.asp for additional information.

This manual is meant to serve as a practical guide for implementing IDEA and its regulations. It is not intended to state new law or supplant any federal or state laws, regulations, or requirements. Nothing in this manual should be seen as having the force of law. This manual should not be cited as law or as imposing any additional requirements or obligations outside the requirements of existing law. Systems, schools, and parents are not required to adhere to this manual, but only to the requirements of IDEA as codified in 20 U.S.C. § 1400 *et seq.*, its regulations promulgated in 34 C.F.R. Parts 300