

CHAPTER 2: FREE APPROPRIATE PUBLIC EDUCATION – TABLE OF CONTENTS

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CHAPTER 2: FREE APPROPRIATE PUBLIC EDUCATION

The ~~district (local education agency)~~ LEA is required to ensure that a free appropriate public education (FAPE) is available to residents, homeless individuals and individuals from migrant families ages three (3) ~~to~~ through the age of twenty-one (21) inclusive, until the day prior to the student's twenty-second (22nd) birthday, residing or enrolled in the ~~district~~ LEA and who are eligible for special education. FAPE is individually determined for each student with a disability. FAPE *must* include special education in the least restrictive environment (LRE) and *may* include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms can be found in the ~~g~~Glossary.

Section 1. Definition of a Free Appropriate Public Education (FAPE)

The definition of FAPE under the IDEA means special education and related services that ~~are~~:

1. ~~are~~ FREE: provided at public expense ~~(free)~~;
2. ~~are~~ APPROPRIATE: provided in conformity with an appropriately developed individualized education program, ~~or~~ (IEP) ~~(appropriate)~~;
3. ~~are~~ PUBLIC: provided under public supervision and direction ~~(public)~~; and
4. EDUCATION: include an appropriate preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the ~~State Idaho~~ Department of Education ~~(education)~~.

Section 2. Provision of FAPE

A. ~~District~~ LEA Obligation

The ~~district~~ LEA is required to ensure that FAPE is available to students residing or enrolled in the ~~district~~ LEA who are eligible for special education. This includes students who reside in group, personal care, or foster homes, as well as institutions, if their legal guardian is a resident of Idaho, even though the guardian may reside in another Idaho ~~school district~~ LEA. It also includes students who are migratory or homeless as defined by the McKinney-Vento Homeless Assistance Act (see Glossary). If a student from another state is placed in Idaho by an out-of-state agency, parent, or ~~district~~ LEA, the placing ~~district~~ LEA, parent, or agency is responsible for the educational costs. If a student is placed in an ~~district~~ LEA by an Idaho agency, the student is entitled to FAPE and the responsible agency is determined by Idaho Code regarding the specific situation.

The **district LEA** is obligated to make FAPE available to each eligible student in the **district LEA** as follows:

1. The **district LEA** shall provide FAPE to an individual who is at least three (3) years old and qualifies for special education services unless the parent/adult student has refused special education services. ~~Students aged three (3) to five (5) must have their special education services identified on an IEP since Idaho does not have state-funded preschool programs.~~
2. The **district LEA** shall offer FAPE to parentally-placed ~~private school~~ students in **nonprofit private schools** in accordance ~~to with~~ statutory and regulatory language, ~~which states that parentally placed private school students with disabilities do not have an individual right to some or all of the special education and related services that the student would receive if enrolled in a public school.~~
3. A free appropriate public education shall be 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 and is advancing from grade to grade.
4. ~~Note:~~ Participation in Comprehensive Early Intervening Services neither limits nor creates a right to FAPE.

See Chapters 5, 8, 9, and 10 for more information about the FAPE obligation.

B. Limit to **District LEA** Obligation

The LEA obligation to provide FAPE is limited in the following ways:

1. A student with a disability who has been placed in a **nonprofit** private school or facility by the parent does not have an individual right to receive all or part of the special education and related services that the child would receive if enrolled in a public school. However, the **district LEA** would have Child Find responsibilities. See Chapter 9 for more information.
2. Students who are homeschooled are considered nonpublic **school** students for the purpose of dual enrollment, however a student being homeschooled is not considered a private school student. **Homeschooled students** who are dually enrolled in an **school district's LEA's** general education program may be considered for a Section 504 plan if needed to provide supports and/or accommodations for those general education courses in which they are enrolled. ~~A student who is enrolled in a virtual public school is not considered a homeschooled student for the duration that they attend that virtual public school.~~
 - i. Homeschool students who are dually enrolled are considered to be nonpublic school

students. The ~~district~~ LEA shall allow homeschool 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 Section 504 plan, if needed.
3. Homeschool students may not dually enroll solely for special education and/or related services. The dual enrollment statute does not establish an entitlement to FAPE for a student with a disability. This means that there is no individual right to receive some or all of the special education services that the student would receive if enrolled in public school.

C. When ~~District~~ LEA Obligation to Provide FAPE Ends

The ~~District's~~ LEA's obligation to provide FAPE to a student ends:

1. the day prior to the student's twenty-second (22nd) birthday ~~at the completion of the semester in which the student turns twenty one (21) years old;~~
2. when the student meets the ~~district~~ LEA requirements and the Idaho Content Standards that apply to all students for receipt of a high school diploma; a high school diploma does not include an alternative degree that is not fully aligned with the Idaho Content Standards, such as a general educational development credential (GED);
3. when the student no longer meets the eligibility criteria for special education services, as determined by the team after a reevaluation; or
4. when a parent/adult student has revoked consent for the continued provision of special education services.

D. Temporary Suspension of FAPE

The ~~district~~ LEA is not required to provide FAPE to an eligible student during the suspension of ten (10) cumulative school days or less during a school year (unless the ~~district~~ LEA provides services to students who are not disabled who are also suspended); however, FAPE must be provided following this ten (10) day exception.

Section 3. FAPE Considerations

~~A.~~ Case Law Interpretations of FAPE

The definition of FAPE has been further developed as a result of litigation between parents and districts.

In 1982, the United States Supreme Court in *Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley, et al.* defined FAPE as:

- ~~1. an IEP developed in adequate compliance with the IDEA procedures; and~~
- ~~2. an IEP reasonably calculated to enable the student to receive educational benefit (the Rowley Standard).~~

In March 2017, the Court in *Endrew F. v. Douglas County School District* applies the Rowley Standard, indicating that a school must offer an IEP that is specially designed and reasonably calculated to enable a child to “make progress appropriate in light of the child’s circumstances,” emphasizing the unique needs of the child. The educational program offered “must be appropriately ambitious in light” of [Endrew F’s] unique circumstances just as advancement from grade to grade is appropriately ambitious for most students in a regular classroom. They may differ [comparing Amy Rowley to Endrew F] but every child should have a chance to meet challenging objectives.

The Court expresses its confidence that school authorities will “be able to offer a cogent and responsive explanation for their decision”, demonstrating that the IEP is reasonably calculated to enable the student to make progress in light of the student’s individual circumstances.

~~B.~~A. Applicability to Charter and Alternative Schools

Federal law requires ~~the district to provide that~~ students with disabilities **be provided** educational choices comparable to those choices offered to students without disabilities. These choices include the opportunity to attend a public charter school or alternative public school. Students enrolled in public charter and alternative schools are entitled to FAPE and retain all **of** the rights and protections that are available under the IDEA.

~~C.~~B. Applicability to Detained Youth

Students with disabilities or suspected disabilities who are detained in city or county jails, juvenile detention centers, juvenile correctional facilities, or ~~in~~ Idaho prisons are entitled to FAPE.

1. Services to Youth Detained in City or County Jails

The ~~district~~ LEA in which the facility is located has the responsibility for Child Find and the provision of FAPE to eligible youth.

2. Services to Youth Detained in Juvenile Detention Centers (JDC)

The ~~district~~ LEA in which the facility is located has the responsibility for the provision of FAPE to eligible youth.

Typically, detention in a JDC is short term, and the student most likely returns to his or her home ~~district~~ LEA. ~~While not obligated to do so, if an district LEA has a student who is detained in a JDC not located within the district LEA boundaries,~~ the ~~district~~ home LEA may find it beneficial to coordinate school assignments through the JDC's education staff while the student is in the facility.

3. Services to Youth Placed in the Custody of the Department of Juvenile Corrections (DJC)

When a student is placed in the custody of the Department of Juvenile Corrections, the responsibility for the provision of FAPE resides with the Department of Juvenile Corrections.

4. Services to Youth in the Custody of the Department of Correction (DOC)

When a student is placed in the custody of the Department of Correction, the responsibility for the provision of FAPE resides with the Department of Correction. ~~through an agreement between the SDE and the Department of Correction.~~

~~D.C.~~ Using Public and Private Insurance Funds to Provide FAPE

If a student is covered by a parent's private or public insurance or benefits, the ~~district~~ LEA may access this insurance only if the parent provides informed consent. The consent requirements are different for accessing a parent's private insurance as opposed to public insurance (such as Medicaid).

If an ~~district~~ LEA proposes to access a parent's public insurance to cover any of the costs associated with the provision of special education and/or related services, the ~~district~~ LEA must do the following:

1. Provide written notification regarding ~~the~~ use of public benefits or insurance to the child's parents before accessing the child's or the parent's public benefits or insurance for the first time and prior to obtaining the one-time parental consent and annually thereafter. The written notification must explain all of the protections available to parents to ensure that parents are fully informed of their rights before a public agency can access their or their child's public benefits or insurance to pay for services under the

IDEA. The notice must include a statement that the refusal to provide consent or the withdrawal of consent will not relieve the ~~district's~~ LEA's responsibility to ensure that all the required IEP services are provided at no cost to the parent. The notice must be written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so.

2. Obtain a one-time written consent from the parent after providing the written notification regarding use of public benefits or insurance before accessing the child's or the parent's public benefits or insurance for the first time. This consent must specify (a) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child); (b) the purpose of the disclosure (e.g., billing for services); and (c) the agency to which the disclosure may be made (e.g., Medicaid). The consent also must specify that the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services. Such consent may be withdrawn at any time by the parent.
3. If the child on an IEP moves into a new ~~district~~ LEA, the new ~~district~~ LEA responsible for providing a FAPE must provide the parents with written notification regarding use of public benefits or insurance and must obtain consent before accessing the child's or parent's public insurance.

If an ~~district~~ LEA is proposing to access a parent's private insurance to cover any of the costs associated with the provision of special education and/or related services, the ~~district~~ LEA must ~~get~~ obtain parental consent each time the ~~district~~ LEA proposes to access private insurance and must inform parents that their refusal to permit the LEA to access private insurance does not relieve that LEA of its responsibility to ensure that all required services are provided at no cost to parents.

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