

## **FREE APPROPRIATE PUBLIC EDUCATION (FAPE) ([34 C.F.R. §§ 300.101-300.113](#); [GEORGIA RULE 160-4-7-.02](#))**

### ***Definition of FAPE***

All children **with an Individualized Education Program (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). The special education and related services that make up a FAPE are provided to children identified with disabilities and who have an IEP, and the services are provided 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 children can make progress toward and/or meet the Georgia Standards of Excellence (GSE). All eligible children will be provided an education that includes access to the Georgia curriculum and addresses the unique needs of the individual child and his or her disability.

While the education provided to the child with an IEP must be appropriate and must address what the individual child 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 child is receiving FAPE. Each child 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 standard that assures the child has the opportunity to make educational progress. In the recent U.S. Supreme Court case, it was determined that “a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” and the local educational agency (LEA)<sup>1</sup> should be able to provide “a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of [the child’s] circumstances.” See [Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. \\_\\_\\_\\_\\_, 137 S. Ct. 988 \(2017\)](#).

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<sup>1</sup> Local educational agencies include public boards of education or other public authorities legally constituted within Georgia for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of the State, including state charter schools and Georgia Department of Juvenile Justice (DJJ).

## Special Education Rules Implementation Manual

### *Children Entitled to a FAPE*

Children 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 traditional LEA have an obligation to work together to transition the child to the public school program by the child's third birthday. Children who have previously received services through BCW must be determined eligible for special education services and have an IEP in place by age three. This means that the IEP Team meeting must be held by the third birthday and services should be implemented within a reasonable time period. Services are not required to begin when school is not normally in session.

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 a FAPE ends upon reaching age 22 or graduating with a regular high school diploma, whichever comes first.

According to Georgia Rules, LEAs are required to develop a written procedure that identifies a process for completing services when a student reaches the age of 22. See Georgia Rule [160-4-7-.02\(1\)\(b\)](#). The LEA 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 a FAPE or other IDEA rights for the remainder of their time in school. Although each LEA 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 high school diploma or ages out of school (i.e., turns 22 years of age), he or she must be provided with a summary of his or her academic and functional needs. The Summary of Performance (SOP) also includes strategies to assist the student in achieving his or her desired postsecondary goals. Although not required for students who receive a special education diploma or other exit document, such as a high school certificate of attendance, best practice is to provide the SOP to ALL students with IEPs who are exiting public school. Those students who do not earn a regular high school diploma or transition to a specific job are those who will most likely need all the assistance available to develop positive postschool outcomes. The SOP is a tool that can assist with this.

## Special Education Rules Implementation Manual

### *Incarcerated Students*

Students eligible for special education services who have an IEP and who are in a facility operated by the Georgia Department of Juvenile Justice (DJJ) or the Georgia Department of Corrections (GDC) 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 LEA attended by a student to obtain copies of educational records so that a FAPE can be provided. DJJ and GDC are LEAs and should be treated as other LEAs 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, were not identified as a student with a disability, did not have an IEP in effect, and graduated from high school with a regular high school diploma, are the exception. These students do not have an entitlement to a FAPE.

A student with a current IEP who is in the local jail, such as those managed by city or county agencies (i.e., the sheriff's office), is also entitled to a FAPE. In these circumstances, the LEA where the jail is located is responsible for providing services to students in that jail. LEAs 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 LEA's obligation is to provide FAPE. LEAs should work with local jails to establish a procedure in advance in order to be prepared to serve an incarcerated student when necessary. The U.S. Department of Education, Office of Special Education Programs (OSEP) makes it clear that "[r]egardless of the structure in a State, the State as the IDEA, Part B grantee, has ultimate responsibility for ensuring FAPE is made available to all eligible students with disabilities residing in State and local juvenile and adult correctional facilities." [Dear Colleague Letter on the IDEA for Students with Disabilities in Correctional Facilities, U.S. Dep't of Educ., Office of Special Education Programs \(OSEP\), December 5, 2015.](#)

### *FAPE - Methods and Payments*

LEAs and states may use whatever federal, state, private, or other sources of funds that are available to provide a FAPE to eligible children. If private or public insurance will be used, this requires parental consent. LEAs must not delay the delivery of services required by an IEP until the funding source is located or secured. Public insurance such as Medicaid or private insurance may also be used to support the services if such use is at no cost to the parents and does not decrease the lifetime coverage available, nor result in an increase in premiums.

## Special Education Rules Implementation Manual

If the LEA wants to access private insurance benefits for which the child is eligible, the LEA must obtain consent from the parent the first time they plan to access, inform parents of their right to refuse the LEA's access to the insurance benefits, and inform parents that such refusal does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.

If placement in a residential facility, either public or private, is necessary for the child to receive a FAPE, then the placement is at public expense and paid for by the LEA.

### ***Accessible Instructional Materials and Assistive Technology***

LEAs must provide instructional materials in an accessible format to children who are blind or other print disabled in a timely manner as part of the provision of a FAPE. Accessible formats include braille, audio, digital text, or large print, but do not include the altering or modifying of the content. Additional information on the provision of a FAPE for children who are blind or print disabled can be located in Georgia Rule [160-4-7-.02](#). Information on accessible instructional materials can be found at the [Georgia Instructional Materials Center](#) website.

LEAs must also consider each child's need for assistive technology devices and services in the development, review, and revision of the child's IEPs. This includes the purchase of technology and training for staff, the parent and child. Additional information on assistive technology is located on the [Georgia Project for Assistive Technology](#) website.

### ***Routine Checking of Hearing Aids/Other Components***

LEAs must have procedures and practices in place that ensure the proper functioning of hearing aids for children with hearing impairments, including deafness. Regular inspection of hearing aids should be documented. This also applies to external components of surgically implanted medical devices such as cochlear implants. However, LEAs are not responsible for programming such devices or for providing post-surgery maintenance.

### ***Extended School Year***

Each LEA must provide extended school year (ESY) services to children who need such services to receive FAPE. ESY services are those services a child requires beyond the normal school year of the LEA, are not limited to only the summer months or other breaks and are provided at no cost to the parent. The IEP Team makes the determination regarding whether a child 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, and the selected goals. Any services provided as ESY must meet the requirements of FAPE. A LEA must not state that ESY is only for certain groups of students.

## Special Education Rules Implementation Manual

### *Nonacademic and Extracurricular Activities*

FAPE also includes nonacademic and extracurricular services. LEAs must consider supplementary aids and services determined appropriate and necessary by the child's IEP Team to provide children with disabilities the equal opportunity to participate 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. An IEP may define the supports or services a child needs to participate in desired nonacademic and extracurricular activities but does not change the nonacademic and extracurricular eligibility requirements.

### *Charter Schools*

Children who attend public charter schools and their parents retain all the rights given to them under the IDEA, including FAPE. In general, two types of charter schools are present in the state: (1) locally approved charter schools that operate according to the terms of a charter or contract that has been approved by a local board of education; and (2) LEA charter schools that operate according to the terms of a charter or contract that has been approved by the State Charter Schools Commission. The ultimate responsibility to provide FAPE to children attending locally approved charter schools resides with the LEA that approved the charter or contract. For LEA charter schools, they are their own LEA and each individual LEA charter school has the responsibility to provide FAPE to children attending the LEA charter school.

### *Medication*

LEAs may not require medication as a condition of attending school, receiving an evaluation, or receiving services. Parents make the decisions regarding their children and any medication they administer or do not administer. LEAs should not make medical recommendations or decisions involving medication. Nothing prohibits a LEA 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 their child's behavior and academic performance. If a LEA believes a child is not receiving medication that is essential for his or her health or education, it may refer the family to the [Georgia Division of Family and Children Services](#) for assistance.

### *Frequently Asked Questions*

#### **1. Are Charter schools and Virtual schools required to provide a FAPE?**

Children who attend public charter schools, and public virtual schools and their parents retain all the rights given to them under the IDEA, including FAPE. For more information, see [Office of Special Education Programs \(OSEP\) Dear Colleague Letter Regarding Children with Disabilities Attending Public Virtual Schools](#), [Office of Civil Rights \(OCR\) Dear Colleague Letter](#)

## Special Education Rules Implementation Manual

[on Charter Schools](#), and [Office of Special Education and Rehabilitative Services \(OSERS\) Frequently Asked Questions about Rights of Students with Disabilities in Public Charter Schools under the IDEA](#).

### 2. What are related services?

Related services are those services that are required to assist a child with a disability in benefiting from special education. The IEP Team determines the related services needed for each individual child. Related services may include transportation, speech-language pathology, audiology, interpreting, psychological services, physical and occupational therapy, recreation, counseling, rehabilitation counseling, orientation and mobility services, medical services (diagnostic or evaluation services only), school health services, school nursing services, school social work, and parent counseling and training. Related services do not include optimization, maintenance, or replacement of surgically implanted devices, including cochlear implants.

### 3. Are LEAs required to provide occupational therapy or physical therapy as a provision of FAPE?

IDEA requires that a child be provided with special education and related services and the IEP serves as the framework. School-based occupational therapy (OT) and physical therapy (PT) are related services as defined under [34 C.F.R. § 300.34](#) of the IDEA and are provided to children who meet criteria for special education services under Georgia Rule [160-4-7-.05](#). As a related service, OT and PT assist the child in achieving the IEP goals and objectives.

### 4. Who is responsible for providing a FAPE to eligible students in an adult correctional facility?

If it is a Georgia Department of Corrections (GDC) facility, then the GDC must provide IEP services.

### 5. Who is responsible for providing a FAPE to eligible students in a local jail?

The LEA where the local jail is located is responsible for the provision of a FAPE. LEAs should develop procedures to ensure two-way communication and collaboration is established with their local jail so that the LEA will be notified when a student with a disability is incarcerated in the local jail.

### 6. How does adjudication change the rules in terms of responsibility?

Once the student has been adjudicated and **moved** to a GDC or DJJ facility, GDC or DJJ will assume responsibility for the implementation of IEP services.

## Special Education Rules Implementation Manual

### **7. How can a LEA ensure FAPE if a student is in a local jail or Sherriff's Detention Center, and the center will not allow the LEA to provide services?**

A student with a current IEP who is in the local jail, such as those managed by city or county agencies (i.e., the sheriff's office), are also entitled to a FAPE. In these circumstances, the LEA where the jail is located is responsible for providing educational services. The LEA will need to work closely with the local jail in order to gain access to the student and to deliver services. The LEA should document all correspondence with the local jail, especially if the local jail will not permit the LEA to provide a FAPE to the child with a disability.