

ARKANSAS DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND RELATED SERVICES  
5.00 FREE APPROPRIATE PUBLIC EDUCATION (FAPE)  
July 2008

5.01 PROVISION OF FAPE

- 5.01.1 Subject to 34 CFR 300.101 and this part, the State of Arkansas must ensure that all children with disabilities aged 3 to 21 residing in the State have the right to and availability of FAPE, including children with disabilities who have been suspended or expelled from school. (See §11.00 of these regulations for specific FAPE requirements for children with disabilities who are suspended or expelled from school).
- 5.01.2 Each public agency must implement child find requirements as set out in §3.00 of these regulations (to identify, locate, and evaluate all children with disabilities).
- 5.01.3 The services provided to a child with disabilities under this part must address all of the child's identified special education and related services needs.
- 5.01.4 The services and placement needed by each child with a disability to receive FAPE must be based on the child's unique needs and not on the child's disability.
- 5.01.5 FAPE for children beginning at age 3.
  - 5.01.5.1 Each State must ensure that -
    - A. The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and
    - B. An IEP is in effect for the child by that date, in accordance with 34 CFR 300.323(b).
  - 5.01.5.2 If a child's third birthday occurs during the summer, the child's IEP Team must determine the date when services under the IEP will begin.

5.01.5.3 Limitation. The obligation to make FAPE available to all children with disabilities does not apply with respect to -

- A. Children with disabilities who are eligible under subpart H of the IDEA but who receive early intervention services under Part C of the Act.

5.01.6 Children advancing from grade to grade.

5.01.6.1 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.

5.01.6.2 The determination that a child described in paragraph 5.01.6.1 of this section 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.

## 5.02 FAPE - METHODS AND PAYMENTS

Public agencies in the State of Arkansas may use whatever state, local, federal, and private sources of support are available in the State to meet the requirements of this part. Nothing herein 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. Public agencies 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.

## 5.03 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. (See §18.00 for specific regulations governing residential placements.)

5.04 ROUTINE CHECKING OF HEARING AIDS AND EXTERNAL COMPONENTS OF SURGICALLY IMPLANTED MEDICAL DEVICES

5.04.1 Hearing aids.

Each public agency must ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

5.04.2 External components of surgically implanted medical devices.

5.04.2.1 Subject to paragraph 5.04.2.2 of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

5.04.2.2 For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency 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).

5.05 PROGRAM OPTIONS

Each LEA or other public agency must take steps to ensure that its 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 district or other public agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

5.06 NONACADEMIC SERVICES

5.06.1 Each LEA or other public agency 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 an equal opportunity for participation in those services and activities.

5.06.2 Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district or other public agency, referrals to

agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

## 5.07 PHYSICAL EDUCATION

5.07.1 Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

5.07.1.1 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 -

A. The child is enrolled full time in a separate facility; or

B. The child needs specially designed physical education, as prescribed in the child's IEP.

5.07.1.2 Special Physical Education. If specially designed physical education is prescribed in a child's IEP, the LEA or other public agency 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.

5.07.1.3 Education In Separate Facilities. The LEA or other public agency 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 §§ 5.07.1 and 5.07.3 of this part.

## 5.08 ASSISTIVE TECHNOLOGY

5.08.1 Each LEA and other public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in 34 CFR 300.5 and 300.6, respectively, §§ 2.03 and 2.04 of these regulations, are made

available to a child with a disability if required as part of the child's -

5.08.1.1 Special education under 34 CFR 300.36;

5.08.1.2 Related services under 34 CFR 300.34; or

5.08.1.3 Supplementary aids and services under 34 CFR 300.38 and 300.114(a)(2)(ii).

5.08.2 On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.

5.08.3 Evaluation for Assistive Technology. It is essential that decisions about a child's use of technology be made by a committee of professionals and family members to ensure a broad perspective of knowledge and experience. Committee members might necessarily include any of the following -

5.08.3.1 Child

5.08.3.2 Family members

5.08.3.3 Paraprofessionals/aides

5.08.3.4 Audiologists

5.08.3.5 Classroom teachers

5.08.3.6 Occupational therapists

5.08.3.7 Physical therapists

5.08.3.8 Physicians

5.08.3.9 Qualified examiners

5.08.3.10 Special educators

5.08.3.11 Speech-language pathologists

5.08.4 Assessment of Communication. For children who require assistive technology to communicate, assessment is an ongoing process. Initial assessment can only provide good baseline information and allow the assessment team to make reasonable hypotheses about where and how to begin intervention. The goals of communication assessment are to enable the team to -

- 5.08.4.1 Determine the current and future communication needs of the child and those interacting with him/her;
- 5.08.4.2 Identify the communication capabilities of the child and the child's partners, as well as the characteristics of his/her environments and tasks;
- 5.08.4.3 Reach a consensus on communication goals and prioritize these goals;
- 5.08.4.4 Develop and revise plans that allow these goals to be implemented and that increase the child's involvement in activities and interactions; and
- 5.08.4.5 Monitor the success and/or failure of intervention approaches, including the use of assistive technology.

5.08.5 Assessment Variables. The following variables should be considered when evaluating communication -

- 5.08.5.1 Child -
  - A. Child's needs
  - B. Capabilities and skills of the child
  - C. Personal goals and preferences
- 5.08.5.2 Communication Context/Environment -
  - A. Partners with whom the child will communicate
  - B. Social contexts
  - C. Physical contexts

- 5.08.5.3 Communication Activities -
  - A. Social interaction
  - B. Pragmatic/conversational skills
  - C. Participation in curriculum
  
- 5.08.5.4 Augmentative Communication Aids, Symbols, Techniques and Strategies -
  - A. Gestures
  - B. Vocalizations
  - C. Communication displays (symbols and vocabulary)
  - D. Devices
  - E. Means of accessing equipment
  - F. Communication strategies a child can use to accomplish communications tasks
  
- 5.08.5.5 Assessment Procedures. Assessment of communication abilities, which should take place in more than one environment, should include the following:
  - A. Record general observations
  - B. Complete checklists or other criterion-based instruments
  - C. Interview primary care providers
  - D. Review educational and medical records
  - E. Administer tests

5.09 EXTENDED SCHOOL YEAR SERVICES (ESY)

5.09.1 General.

5.09.1.1 Each LEA and other public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with § 5.09.1.2 of this part.

5.09.1.2 Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with 34 CFR 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

5.09.1.3 In implementing the requirements of this part, the LEA or other public agency may not -

- A. Limit extended school year services to particular categories of disabilities; or
- B. Unilaterally limit the type, amount, or duration of those services.

5.09.2 Definition. As used in these regulations, the term extended school year services means special education and related services that -

5.09.2.1 Are provided to a child with a disability -

- A. Beyond the normal school year of the LEA or other public agency;
- B. In accordance with the child's IEP;
- C. At no cost to the parents of the child; and

5.09.2.2 Meet the standards of the SEA. (See §19.00 of these regulations).

5.10 FAPE REQUIREMENTS FOR STUDENTS WITH DISABILITIES IN ADULT PRISONS

5.10.1 Except as provided in 34 CFR 300.102, the obligation to make FAPE available to all children with disabilities does not apply with respect to students aged 18 to 21 years to the extent that State law does not require that special education and related services under

Part B of IDEA be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility -

5.10.1.1 Were not actually identified as being a child with a disability under 34 CFR 300.8; and

5.10.1.2 Did not have an IEP under Part B of the IDEA.

5.10.2 The exception in paragraph 5.10.1 of this section does not apply to the children with disabilities, aged 18 through 21, who-

5.10.2.1 Had been identified as a child with a disability under 34 CFR 300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

5.10.2.2 Did not have an IEP in their last education setting, but who had actually been identified as a child with a disability under 34 CFR 300.8.

5.10.3 Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under Arkansas state law and are incarcerated in adult prisons.

5.10.3.1 The requirements relating to participation of children with disabilities in general assessments found in § 612(a)(16) of the IDEA and 34 CFR 300.320(a)(6); and

5.10.3.2 The requirements in 34 CFR 300.320(b) relating to transition planning and transition services, with respect to the children whose eligibility under Part B of IDEA will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

5.10.4 Modifications of IEP or placement.

5.10.4.1 Subject to § 5.10.4.2 of this part, the IEP Team of a child with a disability, who is convicted as an adult under Arkansas state law and incarcerated in an adult prison, may modify the child's IEP or placement if the State has demonstrated a bona fide

security or compelling penological interest that cannot otherwise be accommodated.

5.10.4.2 The requirements of 34 CFR 300.320 and 300.112, and §§ 8.02.1 and 8.08.1 of these regulations relating to IEPs, and 34 CFR 300.550(b) and §13.01 of these regulations relating to LRE, do not apply with respect to the modifications described in §5.10.4.1 of this part.

## 5.11 CHILDREN WITH DISABILITIES IN CHARTER SCHOOLS

5.11.1 Children with disabilities who attend public charter schools and their parents retain all rights under these regulations.

5.11.2 If the public charter school is an LEA, consistent with 34 CFR 300.28, that receives funding under 34 CFR 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity. (See §27.00 of these regulations).

5.11.3 Charter schools that are public schools of the LEA.

5.11.3.1 In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must -

A. 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

B. Provide funds under Part B of the Act to those charter schools -

1. 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; and

2. At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.

5.11.4 If the public charter school is a school of an LEA that receives funding under 34 CFR 300.705 and includes other public schools -

5.11.4.1 The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and

5.11.4.2 The LEA must meet the requirements of 34 CFR 300.209 and §27.00 of these regulations.

5.11.5 If the public charter school is not an LEA receiving funding under 34 CFR 300.705, or a school that is part of an LEA receiving funding under 34 CFR 300.705, the SEA is responsible for ensuring that the requirements of this part are met.

5.11.6 Section 5.11.5 of this part does not preclude the ADE from assigning initial responsibility for ensuring the requirements of this part are met to another entity; however, the ADE must maintain the ultimate responsibility for ensuring compliance with this part, consistent with 34 CFR 300.149 and §27.00 of these regulations.

## 5.12 FAPE FOR CHILDREN SUSPENDED OR EXPELLED FROM SCHOOL

5.12.1 A child with a disability who is removed from the child's current placement pursuant to this section must -

5.12.1.1 Continue to receive educational services, as provided in 34 CFR 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

5.12.1.2 Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

5.12.2 The services required by paragraph 5.12.1 of this section may be provided in an interim alternative educational setting.

- 5.12.3 A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.
- 5.12.4 After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under 34 CFR 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in 34 CFR 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
- 5.12.5 If the removal is a change of placement under 34 CFR 300.536, the child's IEP Team determines appropriate services under 5.12.1 of this section.
- 5.13 **STUDENTS WITH DISABILITIES WHO HAVE GRADUATED FROM HIGH SCHOOL WITH A REGULAR HIGH SCHOOL DIPLOMA [See 34 CFR 300.102 (a)(3)(i)]**
  - 5.13.1 The exception in § 5.13 does not apply to children who have graduated from high school but have not been awarded the regular high school diploma.
  - 5.13.2 Graduation from high school with a regular diploma constitutes a change of placement, requiring written prior notice in accordance with 34 CFR 300.503 and § 9.04 of these regulations.
  - 5.13.3 As used in paragraphs 5.13.1 through 5.13.3 of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).
- 5.14 **PROHIBITION ON MANDATORY MEDICATION**
  - 5.14.1 **General.** The SEA must prohibit State and LEA 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 under 34 CFR 300.300 through 300.311, or receiving services under Part B of the IDEA.

- 5.14.2 Rule of construction. Nothing in this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under 34 CFR 300.111 (related to child find).