

STATE BOARD OF EDUCATION
STATE DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION SERVICES
ADMINISTRATIVE CODE

CHAPTER 290-8-9
SPECIAL EDUCATION SERVICES

290-8-9-.05 Individualized Education Program (IEP).

Public agencies must develop and implement procedures to ensure that all eligible children have an appropriate IEP based on the child's unique needs and not on the child's disability. This includes children placed in or referred to a private school or facility by the public agency.

(1) Free Appropriate Public Education (FAPE).

(a) 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.

(b) Each public agency 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.

(c) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's public agency for making eligibility determinations.

(2) Effective Dates for IEPs.

(a) For children transitioning from Early Intervention to preschool, an IEP must be developed and implemented no later than the child's third birthday. If the child's third birthday occurs during the summer months, the IEP Team will determine when special education services will begin (i.e., during the summer or the first day of school). Justification must be provided when an IEP is not implemented on the child's third birthday.

(b) For all other children, public agencies must have an IEP in effect for each child with a disability within its jurisdiction at the beginning of each school year. A meeting to develop an IEP must be conducted within 30 calendar days of the initial determination that the child

needs special education and related services. The IEP must be in effect before special education and related services are provided to a child and must be implemented as soon as possible following the IEP meeting, unless the meeting occurred during the summer or a vacation period, or where there are circumstances that require a short delay (e.g., working out transportation arrangements or finding a qualified provider). There can be no delay in implementing a child's IEP while determining the payment source for providing or paying for special education and related services.

(c) Special education programs must be in operation for at least the length of the regular school term and school day unless the IEP Team specifies a different length of time based on the individual needs of the child.

(3) IEP Team Membership. The public agency must ensure that the IEP Team for each child with a disability includes the following:

(a) The parents of the child with a disability.

(b) Not less than one regular education teacher of the child if the child is, or may be, participating in the regular education environment. The regular education teacher must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of appropriate positive behavioral interventions and supports and other strategies for the child and the determination of supplementary aids and services, program modifications, and supports for school personnel.

(c) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child.

(d) A representative of the public agency who:

1. Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities,
2. Is knowledgeable about the general education curriculum,
3. Is knowledgeable about the availability of resources of the public agency. The public agency may designate an LEA member of the IEP Team to also serve as the public agency representative, if the criteria for serving as a public agency representative are met, and

4. Has the authority to commit agency resources and be able to ensure that IEP services will be provided.

(e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in sections (b) through (d) above.

(f) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of the knowledge or special expertise of any individual is made by the party who invites the individual to be a member of the IEP Team.

(g) Whenever appropriate, the child with a disability.

(h) Secondary Transition Services Participants. In addition to the participants specified in (a) through (f) above, if a purpose of the meeting is the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals, the public agency must invite the child and, with the consent of the parents or a child who has reached the age of majority, a representative of any other agency that is likely to be responsible for providing or paying for transition services. If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.

(i) Early Intervention Representatives. In the case of a child who was previously served under Part C/Early Intervention (EI), an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the EI service coordinator or other representatives of the EI system to assist with the smooth transition of services.

(4) **IEP Team Attendance.**

(a) A member of the IEP Team, as listed in (3)(b) through (e) above, is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(b) A member of the IEP Team, as listed in (3)(b) through (e) above, may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the

curriculum or related services, if the parent, in writing, and the public agency consent to the excusal; and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to obtaining consent from the parent for the excusal of the required IEP Team member.

(5) **Parental Involvement in IEP Development.**

(a) Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including the provision of a written notification of the IEP meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place.

(b) The notice specified in (a) above must indicate the purpose, date, time, location of the meeting, and who will be in attendance. In addition, the notice must inform the parents that they have the right to bring other individuals who have knowledge or special expertise about the child and that they have the right to request that a Part C service coordinator or other representatives of the Part C/Early Intervention system be invited to attend the initial IEP Team meeting for a child previously served under Part C of the IDEA. For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice must indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child. In cases where transition is addressed, the notice must also indicate that the public agency will invite the student; and identify any other agency that will be invited to send a representative, but only if consent to invite other agencies is obtained from the parent and/or student (if the rights have transferred).

(c) When conducting IEP Team meetings, the parents of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of reasonable efforts (at least two attempts) to arrange a mutually agreed on time and place such as detailed records of telephone calls made or attempted and the results of those calls, copies of

correspondence sent to parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) Public agencies must take whatever action is necessary to ensure that the parent understands the proceedings at the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) The public agency must give the parent a copy of their child's IEP at no cost.

(6) **IEP Content.** The IEP Team is responsible for reviewing all available assessment data and developing an IEP. In developing each child's IEP, the IEP Team must consider the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; the academic, developmental, and functional needs of the child; and, as appropriate, the results of any general State or district wide assessments. The IEP Team does not have to repeat information in a component of the IEP that is already included in another component. All IEPs must address or include, at a minimum, the following content:

(a) A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or for preschool children as appropriate, how the disability affects the child's participation in appropriate activities.

(b) A statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the child's disability. For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks is also required.

(c) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the

child to advance appropriately toward attaining the annual goal(s); to be involved and make progress in the general education curriculum; to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children in those activities described herein.

(d) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in (c) above.

(e) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments and, if the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or district wide assessment of student achievement, a statement of why the child cannot participate in the regular assessment and that the alternate assessment selected is appropriate for the child.

(f) The projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications.

(g) A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

(h) Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter, appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and the transition services (including courses of study) needed to assist the child in reaching those goals.

(i) In the case of a child whose behavior impedes the child's learning or that of others, positive behavioral interventions and supports, and other strategies to address that behavior should be developed and implemented.

(j) In the case of a child with limited English proficiency, consideration of the language needs of the child as those needs relate to the child's IEP.

(k) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

(l) Consideration of the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consideration of the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and the full range of needs, including opportunities for direct instruction in the child's language and communication mode.

(m) Consideration of whether the child needs assistive technology devices and services.

(n) Beginning not later than one year before the child reaches the age of majority (age 19), the IEP must include a statement that the child has been informed of his or her rights under the IDEA, if any, that will transfer to him or her on reaching the age of majority. However, the public agency must continue to provide notice to the parents any time notice is required.

(o) Academic goals must be written to general education content standards; or Alabama Extended Standards for students with significant cognitive disabilities who are being assessed with the Alabama Alternate Assessment; or Developmental Standards for preschool children with disabilities. Transition goals must be written to Alabama's Transition Standards.

(7) **Accessibility of the Child's IEP.** Each public agency must ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for implementing the IEP. In addition, each teacher and provider must be informed of his or her specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with his or her IEP. When

revisions are made to the IEP, the persons responsible for IEP implementation must be informed of the changes.

(8) **IEP Accountability**. Public agencies providing special education services to a child with a disability must provide the services in accordance with the IEP. However, the agency, teacher, or other persons who are responsible for implementing the IEP are not held accountable if a child with a disability does not achieve the growth projected in the annual goal(s), as long as good faith efforts are made to assist the child toward achieving those goal(s).

(9) **Extended School Year Services (ESY)**. The length of a program for a child with a disability may not be limited to the regular school term/year if an interruption in educational services is likely to deny a child FAPE. One criteria that may be considered by the child's IEP Team is if significant regression, caused by an interruption in educational services, renders it unlikely that the child will regain critical skills even after an appropriate recoupment period.

(a) Each public agency must ensure that extended school year services are available as necessary to provide FAPE.

(b) 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.

(c) A public agency may not limit extended school year services to particular categories of disability; or unilaterally limit the type, amount, or duration of those services. ESY means special education and related services that are provided to a child with a disability beyond the normal school year of the public agency, in accordance with the child's IEP, at no cost to the parents of the child; and meet the standards of the SEA.

(10) **IEPs for Transfer Students**.

(a) In State Transfers. In the case of a child with a disability who transfers within the same school year, who enrolls in a new school, and who had an IEP that was in effect in Alabama, the new public agency, in consultation with the parents, must provide FAPE to a child, including services comparable to those described in the child's previously held IEP, until such time as the new public agency adopts the previously held IEP or develops, adopts, and implements a new IEP.

(b) Out of State Transfers. In the case of a child with a disability who transfers within the same school year, who enrolls in a new school, and who had an IEP that was in

effect in a previous public agency in another state, the new public agency, in consultation with the parents, must provide the child with FAPE, including services comparable to those described in the previously held IEP, until such time as the new public agency conducts a new evaluation (if determined to be necessary by the new public agency) and determines eligibility. If an evaluation is determined to be necessary by the IEP Team, that evaluation will be considered to be an initial evaluation. If the parents refuse consent for the initial evaluation, the public agency may, but is not required to initiate mediation and/or a due process hearing to override the parents' refusal.

(c) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, and the previous public agency in which the child was enrolled must take reasonable steps to promptly respond to such request from the new public agency.

(11) **IEP Review and Revision.** Each public agency must ensure that the IEP Team:

1. Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

2. Revises the IEP, as appropriate, to address:

- (i) Any lack of expected progress toward the annual goals, and in the general education curriculum, if appropriate;

- (ii) The results of any reevaluation conducted;

- (iii) Information about the child provided to, or by, the parents;

- (iv) The child's anticipated needs; or

- (v) Other matters.

3. If the parents or the child's teacher has reason to suspect that the IEP needs revision, an IEP meeting may be requested at anytime. The education agency must conduct the IEP meeting within 30 calendar days upon the receipt of the request.

4. Consideration of special factors. In conducting a review of the child's IEP, the IEP Team must consider the special factors described under IEP Content.

5. Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must participate in the review and revision of the IEP of the child.

6. In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or by amending the IEP rather than by redrafting the entire IEP. If changes are made to the child's IEP without a meeting of the IEP Team, the public agency must obtain a parent's written agreement to such changes and must ensure that the child's IEP Team is informed of those changes. The parent shall be provided with a revised copy of the IEP with the amendments incorporated.

(12) **Agency Responsibilities for Transition.**

(a) If a participating agency, other than the public agency, fails to provide agreed upon transition services contained in the IEP of a child with a disability, the public agency must, as soon as possible, reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP. The public agency's responsibility ends upon the child's receipt of an Alabama High School Diploma or by the child exceeding the age of eligibility for FAPE.

(b) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

(13) **Exceptions to IEP Requirements for Individuals with Disabilities in Adult Prisons.**

(a) The following IEP requirements do not apply to the IEPs of individuals with disabilities in adult prisons:

1. Participation in state or district wide assessments.

2. Transition, if the incarcerated individual's eligibility for services will end, because of their age, prior to their release from prison based on consideration of their sentence and eligibility for early release.

(b) The IEP Team of a child with a disability who is convicted as an adult under 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.

(c) Individuals aged 18 to 21 are not entitled to special education and related services if, in their last educational placement prior to incarceration in an adult correctional facility they were not identified as having a disability and did not have an IEP under Part B of the IDEA. This does not apply to individuals aged 18 to 21 who had been identified as a student with a disability and had received services in accordance with an IEP, but who left school prior to their incarceration; or did not have an IEP in their last educational setting, but who had been identified as a student with a disability in accordance with these rules.

(14) Children with Disabilities who are Covered by Public Benefits or Insurance.

(a) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under these rules, as permitted under the public benefits or insurance program. With regard to services required to provide FAPE to an eligible child, the public agency:

1. May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE;
2. May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided, but may pay the cost that the parents otherwise would be required to pay;
3. May not use a child's benefits under a public 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 that 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 expenditures;

4. Must obtain one time written parental consent, after notifying parents of their rights and protection consistent with these rules and notified annually thereafter. and

5. Inform parents that their refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(b) Children with disabilities who are covered by private insurance. With regard to services required to provide FAPE to an eligible child under these rules, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with these rules. Parents must be notified annually of their protections and these rules.

(c) Use of Part B funds. If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under these rules, to ensure FAPE, the public agency may use its Part B funds to pay for the service. To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

(d) Proceeds from public benefits or insurance or private insurance. Proceeds from public or private insurance will not be treated as program income for purposes of the IDEA and 34 CFR 80.25. If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under these rules, those funds will not be

considered "State or local" funds for purposes of the maintenance of effort provisions under the IDEA.

(e) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

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