

3301-51-02 Free appropriate public education

- (A) Each school district shall adopt and implement written policies and procedures, approved by the Ohio department of education, office for exceptional children, ensuring that a free appropriate public education (FAPE) is made available to all children with disabilities between the ages of three and twenty-one, inclusive, including children with disabilities who have been suspended or expelled from school, for whom the school district is the child's school district of residence, as defined in paragraph (B)(56) of rule 3301-51-01 of the Administrative Code and as provided by rule 3301-51-01 of the Administrative Code.
- (B) FAPE
- (1) General
- Each school district shall make FAPE available to all children between the ages of three and twenty-one, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in rule 3301-51-05 of the Administrative Code, for whom the school district is the child's school district of residence.
- (2) FAPE for children beginning at age three
- Each school district must ensure that:
- (a) The obligation to make FAPE available to each eligible child for whom the school district is the child's school district of residence begins no later than the child's third birthday; and
- (b) An individualized education program (IEP) is in effect for the child by that date, in accordance with rule 3301-51-07 of the Administrative Code.
- (c) If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin.
- (3) Children advancing from grade to grade
- (a) Each school district of residence 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.
- (b) The determination that a child described in paragraph (B)(1) of this rule is eligible under this chapter of the Administrative Code, must be made on an individual basis by the group responsible within the child's school district of residence for making eligibility determinations.
- (C) Limitation: exception to FAPE for certain ages

The obligation of the school district of residence to make FAPE available to all children with disabilities does not apply with respect to the following:

- (1) Children with disabilities who have graduated from high school with a regular high school diploma;
 - (2) The exception in paragraph (C)(1) of this rule does not apply to children who have graduated from high school but have not been awarded a regular high school diploma;
 - (3) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with rule 3301-51-05 of the Administrative Code;
 - (4) As used in paragraphs (C)(1) to (C)(3) of this rule, the term regular high school diploma does not include an alternative degree that is not fully aligned with Ohio's academic content standards, such as a certificate or a general educational development credential; and
 - (5) Children with disabilities who are eligible under Subpart H of Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA), but who receive early intervention services under Part C of the IDEA.
- (D) FAPE: methods and payments
- (1) Each school district of residence shall use whatever state, local, federal, and private sources of support are available in the school district to meet the requirements of Part B of the IDEA. For example, if it is necessary to place a child with a disability in a residential facility, a school district of residence could use joint agreements between the agencies involved for sharing the cost of that placement.
 - (2) Nothing in this rule 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.
 - (3) Consistent with rule 3301-51-07 of the Administrative Code, each school district 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.
- (E) Residential placement
- If placement by the school district of residence 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.
- (F) Assistive technology
- (1) Each school district must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in rule

3301-51-01 of the Administrative Code, are made available to a child with a disability if required as a part of the child's:

- (a) Special education under rule 3301-51-01 of the Administrative Code;
 - (b) Related services under rule 3301-51-01 of the Administrative Code; or
 - (c) Supplementary aids and services under rule 3301-51-09 of the Administrative Code.
- (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.
- (G) Extended school year services
- (1) General
 - (a) Each school district must ensure that extended school year services are available as necessary to provide FAPE, consistent with this rule.
 - (b) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with rule 3301-51-07 of the Administrative Code, that the services are necessary for the provision of FAPE to the child. Additionally, the school district shall consider the following when determining if extended school year services should be provided:
 - (i) Whether extended school year services are necessary to prevent significant regression of skills or knowledge retained by the child so as to seriously impede the child's progress toward the child's educational goals; and
 - (ii) Whether extended school year services are necessary to avoid something more than adequately recoupable regression.
 - (c) In implementing the requirements of this rule, a school district shall not:
 - (i) Limit extended school year services to particular categories of disability; or
 - (ii) Unilaterally limit the type, amount, or duration of those services.
 - (2) Definition

As used in this rule, the term "extended school year services" means special education and related services that:

 - (a) Are provided to a child with a disability:

- (i) Beyond the normal school year of the school district;
 - (ii) In accordance with the child's IEP; and
 - (iii) At no cost to the parents of the child; and
 - (b) Meet the standards of the Ohio department of education.
- (H) Nonacademic services
 - (1) Each school district 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.
 - (2) Nonacademic and extracurricular services and activities shall include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district and assistance in making outside employment available.
- (I) Physical education
 - (1) General

Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the school district enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.
 - (2) 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.
 - (3) Special physical education

If specially designed physical education is prescribed in a child's IEP, the school district responsible for serving the child must provide the services directly or make arrangements for those services to be provided through other public or private programs.
 - (4) Education in separate facilities

The school district responsible for serving 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 this rule.

(J) Program options

Each school district must take steps to ensure that children with disabilities served by the school district have available to them the variety of educational programs and services available to nondisabled children in the area served by the school district, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(K) Routine checking of hearing aids and external components of surgically implanted medical devices

(1) Hearing aids

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

(2) External components of surgically implanted medical devices

(a) Subject to paragraph (K)(2)(b) of this rule, each school district must ensure that the external components of surgically implanted medical devices are functioning properly.

(b) For a child with a surgically implanted medical device who is receiving special education and related services under this chapter of the Administrative Code, a school district 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).

(L) Placement of children by parents when FAPE is at issue

(1) General

This rule does not require a school district of residence to pay for the cost of education, including special education and related services, of a child with a disability at a nonpublic school or facility if that school district made FAPE available to the child and the parents elected to place the child in a nonpublic school or facility. However, the school district must include that child in the population whose needs are addressed consistent with rule 3301-51-08 of the Administrative Code.

(2) Disagreements about FAPE

Disagreements between the parents and a school district of residence regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in rule 3301-51-05 of the Administrative Code.

(3) Reimbursement for nonpublic school placement

If the parents of a child with a disability, who previously received special education and related services under the authority of the school district of residence, enroll the child in a nonpublic preschool, elementary school, or

secondary school without the consent of or referral by the school district of residence, a court or a hearing officer may require the school district of residence to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school district of residence had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards in this chapter of the Administrative Code that apply to education provided by the school districts.

(4) Limitation on reimbursement

The cost of reimbursement described in paragraph (L)(3) of this rule may be reduced or denied:

(a) If:

- (i) At the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the school district of residence to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a nonpublic school at public expense; or
 - (ii) At least ten business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the school district of residence of the information described in paragraph (L)(4)(a)(i) of this rule; or
- (b) If prior to the parents' removal of the child from the public school, the school district of residence informed the parents, through the notice requirements described in rule 3301-51-05 of the Administrative Code, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
- (c) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(5) Exception

Notwithstanding the notice requirement in paragraph (L)(4)(a) of this rule, the cost of reimbursement:

(a) Must not be reduced or denied for failure to provide the notice if:

- (i) The school prevented the parents from providing the notice;

- (ii) The parents had not received notice, pursuant to rule 3301-51-05 of the Administrative Code, of the notice requirement in paragraph (L)(4)(a) of this rule; or
 - (iii) Compliance with paragraph (L)(4)(a) of this rule would likely result in physical harm to the child.
- (b) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:
- (i) The parents are not literate or cannot write in English; or
 - (ii) Compliance with paragraph (L)(4)(a) of this rule would likely result in serious emotional harm to the child.

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