

# XIV. Free Appropriate Public Education (FAPE)

IDEA Regulations: FAPE	Nebraska Rule 51: FAPE
<p><b>Section 300.17 Free appropriate public education</b></p> <p>Free appropriate public education or FAPE means special education and related services that—</p> <ul style="list-style-type: none"><li>(a) Are provided at public expense, under public supervision and direction, and without charge;</li><li>(b) Meet the standards of the SEA, including the requirements of this part;</li><li>(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and</li><li>(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of <a href="#">§§300.320 through 300.324</a> [Exception for prior local plans, Notification of LEA or State agency in case of ineligibility, LEA and State agency compliance, Joint establishment of eligibility, &amp; requirements for establishing eligibility].</li></ul> <p><b>Section 300.101 Free appropriate public education (FAPE).</b></p> <ul style="list-style-type: none"><li>(a) General. A free appropriate public education 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, as provided for in §300.530(d).</li><li>(b) FAPE for children beginning at age 3.<ul style="list-style-type: none"><li>1. Each State must ensure that—<ul style="list-style-type: none"><li>i. The obligation to make FAPE available to each eligible child residing in the State begins no later than the child’s third birthday; and</li></ul></li></ul></li></ul>	<p><b>003.24 Free appropriate public education or FAPE</b> means special education and related services that are provided at public expense, under public supervision, and direction, and without charge; meet the standards of the state including the requirements of this Chapter; include an appropriate preschool, elementary school, or secondary school education in Nebraska and are provided in conformity with an individualized education program (IEP) that meets the requirements of 92 NAC 51-007</p> <p><b>004 Responsibility for Special Education Programs</b></p> <p><b>004.01</b> All providers of special education services shall be under the general supervision of the Nebraska Department of Education for the purpose of meeting the standards of this Chapter. School districts and approved cooperatives shall ensure that all children with verified disabilities, from birth through the school year in which the child reaches age twenty-one, including children who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE) which includes special education and related services to meet their unique needs. School districts and approved cooperatives responsibility to ensure the availability of FAPE includes ensuring the availability of FAPE for resident children in detention facilities, correctional facilities, jails, and prisons.</p> <p><b>004.02</b> The school district or approved cooperative shall ensure that FAPE is available to any individual child with a disability who needs special education and related services,</p>

## IDEA Regulations: FAPE

ii. An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).

2. If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

### (c) Children advancing from grade to grade.

1. Each State 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.

2. 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 LEA for making eligibility determinations.

### 300.102 Limitation—exception to FAPE for certain ages.

(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

1. Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.

2.

i. Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be

## Nebraska Rule 51: FAPE

even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.

**004.02A** The determination that a child described in 92 NAC 51-004.02 is eligible under this Chapter must be made on an individual basis by the multidisciplinary evaluation team.

### 004.03 Exceptions to the Requirement to Provide a Free Appropriate Public Education

**004.03A** Children with disabilities who have graduated from high school with a regular high school diploma are not eligible to receive a FAPE.

**004.03A1** The exception in 92 NAC 51-004.03A does not apply to children who have graduated but have not been awarded a regular high school diploma.

**004.03A2** Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with 92 NAC 51-009.05.

**004.03A3** As used in 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 developmental credential (GED).

### 007.07C Services

**007.07C2** Physical education services, specially designed if necessary, must be made available to every child with a verified disability receiving a free, appropriate public education, unless the school district or approved cooperative enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades

## IDEA Regulations: FAPE

provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility—

**A.** Were not actually identified as being a child with a disability under §300.8; and

**B.** Did not have an IEP under Part B of the Act.

**ii.** The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who—

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

**B.** Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under §300.8.

**3.**

**i.** Children with disabilities who have graduated from high school with a regular high school diploma.

**ii.** The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.

**iii.** Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.

## Nebraska Rule 51: FAPE

**007.07C2a(1)** The child is enrolled full time in a separate facility; or

**007.07C2a(2)** The child needs specially designed physical education as prescribed in the child's individualized education program.

**007.07C2b** If specially designed physical education is prescribed in a child's individualized education program, the school district or approved cooperative responsible for the education of that child shall provide the services directly or make arrangements for it to be provided through other public or nonpublic programs.

**007.07C2c** The school district or approved cooperative responsible for the education of a child with a verified disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services.

**007.07C2a** Each child with a verified disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless:

**007.07C3** Each school district or approved cooperative shall ensure assistive technology devices or assistive technology services, or both, as defined in 92 NAC 51-003.02 and 003.03 are made available to any child with a disability if required, as part of the child's:

**007.07C3a** Special education under 92 NAC 51-003.56;

**007.07C3b** Related services under 92 NAC 51-003.49; or **007.07C3c** Supplementary aids and services under 92 NAC 51-003.59 and 008.01A.

## IDEA Regulations: FAPE

iv. As used in paragraphs (a)(3)(i) through (iii) of this section, the term regular high school diploma means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

4. Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.

### 300.103 FAPE—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support that are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part 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.

## Nebraska Rule 51: FAPE

007.07C3d 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 a free appropriate public education. 007.07C4 The school district or approved cooperative shall 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 each school age child with a verified disability an equal opportunity for participation in those services and activities.

007.07C4a Nonacademic and extra-curricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district or approved cooperative, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district or approved cooperative and assistance in making outside employment available.

### 007.08 Programs for Children who Transfer School Districts or Approved Cooperatives

007.08A Transfer within the same state – If a child with a disability (who had an IEP that was in effect in a previous school district or approved cooperative in Nebraska) transfers to a new school district or approved cooperative in Nebraska, and enrolls in a new school within the same school year, the new school district or approved cooperative (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the

## IDEA Regulations: FAPE

(c) Consistent with §300.323(c), the State 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.

### Section 300.104 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.

### Section 300.105 Assistive technology.

(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's—

1. Special education under §300.39;
2. Related services under §300.34; or
3. Supplementary aids and services under §§300.42 and 300.114(a)(2)(ii).

(b) 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.

### Section 300.106 Extended school year services.

(a) General.

1. Each public agency must ensure that extended school year services are available

## Nebraska Rule 51: FAPE

child's IEP from the previous school district or approved

**007.08A1** Adopts the child's IEP from the previous school district or approved cooperative; or

**007.08A2** Develops, adopts, and implements a new IEP that meets the applicable requirements of 92 NAC 51-007. **007.08B** Transfer from outside the state – If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a school district or approved cooperative in Nebraska, and enrolls in a new school within the same school year, the new school district or approved cooperative (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous school district or approved cooperative), until the new school district or approved cooperative:

### **012.09 Children with Disabilities Who Are Covered by Public Benefits or Insurance**

**012.09B** With regard to services required to provide FAPE to an eligible child under Part B, the school district or approved cooperative:

**012.09B1** May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under this Chapter.

### **015.02 Children Placed In a Nonpublic School by Parents As a Means of Obtaining Special Education and Related Services; FAPE is At Issue**

**015.02A** This Chapter does not require a school district or approved cooperative to pay for the cost of education, including special education and related services, of a child

## IDEA Regulations: FAPE

as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

2. Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.
3. In implementing the requirements of this section, a public agency may not—
  - i. Limit extended school year services to particular categories of disability; or
  - ii. Unilaterally limit the type, amount, or duration of those services.

**(b) Definition.** As used in this section, the term extended school year services means special education and related services that—

1. Are provided to a child with a disability—
  - i. Beyond the normal school year of the public agency;
  - ii. In accordance with the child's IEP; and
  - iii. At no cost to the parents of the child; and
2. Meet the standards of the SEA.

### **Section 300.107 Nonacademic services.**

The State must ensure the following:

**(a)** Each 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.

## Nebraska Rule 51: FAPE

with a disability at a nonpublic school or facility if that school district or approved cooperative made FAPE available to the child and the parents elected to place the child in a nonpublic school or facility as a means of obtaining special education and related services. However, the school district or approved cooperative shall include that child in the population whose needs are addressed consistent with 92 NAC 51-015.03.

### **015.03C Provision of Services for Parentally-placed Nonpublic School Children**

**015.03C1a** Parentally-placed nonpublic school children with disabilities are eligible for the provision of a free appropriate public education from the school district or approved cooperative in which they reside. Services available under such circumstances are referred to as a Free Appropriate Public Education (FAPE).

**015.03C1a(1)** An IEP shall be developed and implemented in accordance with 92 NAC 51-007 for each resident nonpublic school child receiving FAPE.

**015.03C1b** Parentally-placed nonpublic school children with disabilities who are attending a nonpublic school located outside of their district of residence may receive special education and related services (referred to as equitable services) from the district in which the nonpublic school is located or a free appropriate public education (FAPE) from the district in which they reside, but not both. The decision on whether to receive equitable services or FAPE is at the discretion of the child's parent.

## IDEA Regulations: FAPE

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the 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.

### Section 300.108 Physical education.

The State must ensure that public agencies in the State comply with the following:

(a) General. 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.

(b) 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—

1. The child is enrolled full time in a separate facility; or
2. The child needs specially designed physical education, as prescribed in the child's IEP.

(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the 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.

(d) Education in separate facilities. The public agency responsible for the education of a child

## Nebraska Rule 51: FAPE

**015.03C2** Each school district or approved cooperative must maintain in its records, and provide to the Nebraska Department of Education the following information related to parentally-placed nonpublic school children attending nonpublic schools located in the school district or approved cooperative:

**015.03C3** Special education and related services (FAPE or equitable services) provided to parentally-placed nonpublic school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

**003.23 Extended school year services** means special education and related services that: are provided to a child with a disability, beyond the normal school year of the school district or approved cooperative, in accordance with the child's IEP, at no cost to the parents of the child, and meet the requirements of 92 NAC 51.

### **007.07C5 Extended School Year Services (ESYS)**

**007.07C5a** Each school district or approved cooperative shall ensure that extended school year services are available as necessary to provide a free appropriate public education consistent with 92 NAC 51-007.07C5b.

**007.07C5b** Extended School Year (ESY) services must be provided only if a child's IEP team determines, on an individual basis, in accordance with Section 007, that the services are necessary for the provision of a free appropriate public education.

## IDEA Regulations: FAPE

with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

### **Section 300.110 Program options.**

The State must ensure that each public agency takes 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 agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

### **Section 300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.**

**(a)** Hearing aids. Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

**(b)** External components of surgically implanted medical devices.

1. Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.
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).

## Nebraska Rule 51: FAPE

**007.07C5c** In implementing the requirements of this section, a school district or approved cooperative may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

**007.07C6** The need for related services of an instructional nature shall be documented on the IEP present level of performance, goals, and objectives, and shall be based on documented diagnostic evidence. Determination of the need for a related service for a child with a verified disability does not require the additional verification of a secondary disability.



# District Considerations for Policy and Procedure Development

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## Sample district policy statements

[Xyz school district] will provide a free appropriate public education to children with disabilities eligible for special education services in accordance with state and Federal regulations. An IEP outlines each student's individual education plan and will be reasonably designed to meet the unique educational needs of the student.

## Procedural considerations

- What procedures are needed to ensure goals and services are individualized and reasonably calculated? For example, during IEP development procedures, identify steps for goal building and service decisionmaking. Example steps include the following:
  - » Summarize multiple sources of data reflecting the student's strengths and weaknesses (e.g., evaluation and assessments results, observation, progress toward annual goals, etc.), that is, present levels of performance.
- What procedures are needed to ensure accommodation/modifications and assistive technology needs are considered by the team and are tailored to appropriately meet the student's needs?
- Determine a reasonably measurable goal based on the student's current data. Review the [Questions and Answers \(Q&A\): IDEA Funding & U.S. Supreme Court Case Decision Endrew F. v. Douglas County School District Re-1. – December 2017](#). The guidance includes the following statement:

*“. . . the standard for determining whether an IEP is sufficient to provide FAPE is whether the child is offered an IEP reasonably calculated to enable the child to make progress that is appropriate in light of the child's circumstances. At least once a year, IEP Teams must review the child's IEP to determine whether the annual goals for the child are being achieved. The IEP Team also may meet periodically throughout the course of the school year, if circumstances warrant it. For example, if a child is not making expected progress toward his or her annual goals, the IEP Team must revise, as appropriate, the IEP to address the lack of progress.”*
- Consider embedding FAPE reviews as part of district self-monitoring procedures of IEP. For example, are the IEPs individualized (e.g., not all students in the same class or grade have the same IEP)?
- What procedures are needed to ensure FAPE for transfer students and students attending nonpublic schools?
- What procedures are needed to ensure access to nonacademic and extracurricular services with the appropriate accommodations/modifications?

## Guidance resources

- [Shortened Days Guidance Document](#)
- [Guidelines for Educational Interpreters](#)
- [Dear Colleague Letter on the Inclusion of Behavioral Supports in Individualized Education Programs \(PDF\)](#)
- [Questions and Answers \(Q&A\): IDEA Funding & U.S. Supreme Court Case Decision Endrew F. v. Douglas County School District Re-1. – December 2017 \(PDF\)](#)