

XI. Private (Including Religious) School Placement by Parents Where FAPE is Not at Issue

**Private (Including Religious)
School Placement by Parents
Where FAPE is Not at Issue
Definition of "Private School
Children with Disabilities"**

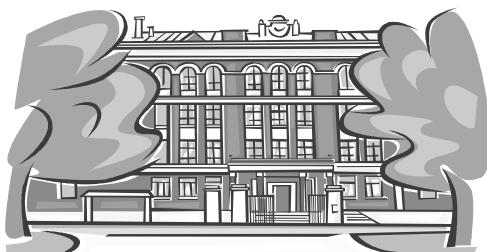


What the Federal Regs. Say ...

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in Sec. 300.13 or secondary school in Sec. 300.36, other than children with disabilities covered under Secs. 300.145 through 300.147. Sec. 300.130.

What the Regulations Mean ...

Many parents place their children with disabilities in private schools because they prefer a private school over the public school, even if the public school has offered a free appropriate public education (FAPE). The contents of this and the following pages pertain to those children placed in private (including parochial) schools where FAPE is not at issue. In other words, the parents agree with (or at least do not contest) the IEP offered by the public school, but for personal reasons have placed their child at a private school.



What Parents Should Know ...

The decision to place a child with a disability in a private school (when FAPE is not at issue) is sometimes done so the child with a disability can attend the same school as his or her siblings. Perhaps the parent attended the private school. Maybe the private school is a parochial school aligned with the particular church the family attends. Maybe the parents heard the child would receive a better education than at the public school.

Whatever their reason for the private placement, parents who have a child with a disability need to fully understand the legal consequences of a private placement. IDEA ensures only children who attend public schools a FAPE. As the following pages explain, children with disabilities placed in private schools by their parents may receive some, none, or all of the special education and related services the child would have received in the public school system.

Parents should be aware, however, that if the private school receives federal funds, Section 504 of the Rehabilitation Act would apply, which may require the private school to provide special education and/or related services for the child.

Private (Including Religious) School Placement by Parents Where FAPE is Not at Issue "Child Find"

Elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located. Sec. 300.131(f).

What the Federal Regs. Say ...

General - Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and Secs. 300.111 and 300.201. Sec. 300.131(a).

Child find design - The child find process must be designed to ensure: (1) The equitable participation of parentally-placed private school children; and (2) An accurate count of those children. Sec. 300.131(b).

Activities - In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children. Sec. 300.131(c).

Cost - The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under Sec. 300.133. Sec. 300.131(d).

Completion period - The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with Sec. 300.301. Sec. 300.131(e).

Out-of-State children - Each LEA in which private, including religious, elemen-

What the Regulations Mean ...

The "Child Find" portion of IDEA pertains equally to those children who attend private schools. The public school must have a plan in place to ensure that children who may have disabilities who attend private schools are identified and evaluated to determine eligibility for special education services.

Local schools cannot use money they are required to spend on children enrolled by parents in private schools on Child Find activities, including evaluations.

What Parents Should Know ...

The child find requirement is perhaps the only true safeguard that children have who are placed in private schools by their parents where FAPE is not at issue. If a child suspected of having a disability attends a private school, the public school must ensure that such child receives appropriate evaluations to determine whether the child would be entitled to special education services if the child attended the public school.

If the evaluations show the child would be eligible for services under IDEA, the parent must then choose whether to keep the child at the private school or enroll the child at the public school.

Private (Including Religious) School Placement by Parents Where FAPE is Not at Issue Expenditures

What The Federal Regs. Say ...

Formula - To meet the requirement of Sec. 300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21. Sec. 300.133(a)(1).

For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five. Sec. 300.133(a)(2)(i).

Calculating proportionate amount - In calculating the proportionate amount of Federal funds to be provided for paren-

tally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under Sec. 300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. Sec. 300.133(b).

Supplement, not supplant - State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part. Sec. 300.133(d).

What the Regulations Mean ...

Public schools must spend a proportionate amount of federal IDEA funding on children with disabilities who attend private schools. For example, if 100 children with disabilities resided in a school district, and six were placed in private schools by their parents, the district would be required to spend 6% of its federal special education funds on those six children. School districts may spend additional state or local funds, but are not required to do so. The amount spent on Child Find activities cannot count toward the proportionate amount.

What Parents Should Know ...

Parents should **not** place their child with a disability in a private school with the expectation that the public school will provide services, let alone provide services at the level the child was previously receiving at the public school.

Private (Including Religious) School Placement by Parents Where FAPE is Not at Issue Equitable Services Determined

the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. Sec. 300.137(c).

What the Federal Regs. Say ...

No individual right to special education and related services - No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Sec. 300.137(a).

Decisions - Decisions about the services that will be provided to parentally-placed private school children with disabilities under Secs. 300.130 through 300.144 must be made in accordance with paragraph (c) of this section and Sec. 300.134(c). The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities. Sec. 300.137(b).

Services plan for each child served under Secs. 300.130 through 300.144 - If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with Sec. 300.138(b); and ensure that a representative of the religious or other private school attends each meeting. If

What the Regulations Mean ...

No child placed in a private school when FAPE is *not* at issue has an individual right to special education services from the public school. After consulting with private school personnel as to the needs of children placed in private schools, the public school will decide which children will be offered services. For example, if five children attend private schools, the public school may serve just one or up to all five of the children, spending the same or different amounts on each child that the public school chooses to receive services.



What Parents Should Know ...

When parents place their child in a private school, the child is **no longer entitled to a FAPE** from the public school. Parents who place their child at a private school should be aware that the child may no longer receive **any services** from the public school.

Private (Including Religious) School Placement by Parents Where FAPE is Not at Issue Equitable Services Provided

What the Federal Regs. Say ...

The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of Sec. 300.18. Sec. 300.138(a)(1).

Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools. Sec. 300.138(a)(2).

Services provided in accordance with a services plan - Each parentally-placed private school child with a disability who has been designated to receive services under Sec. 300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in Secs. 300.134 through 300.137, it will make available to parentally-placed private school children with disabilities. The service plan must, to the extent appropriate, meet the requirements of Sec. 300.320, or for a child ages three through five meet the requirements

of Sec. 300.323(b) with respect to the services provided; and be developed, reviewed, and revised consistent with Secs. 300.321 through 300.324. Sec. 300.138(b).

What the Regulations Mean ...

Public schools must use qualified teachers and other personnel when providing services to children with disabilities who attend private schools, although they do not need to meet the "highly qualified special education teacher" requirements. While children with disabilities who attend public schools are entitled to FAPE, children placed in private schools by their parents are not. Children placed in private schools when FAPE is *not* at issue by their parents who are selected to receive services from the public school must have those services detailed in a "**services plan**."

What Parents Should Know ...

If the public school chooses to provide special education services to a particular child enrolled at a private school (where FAPE is *not* at issue), the services offered by the public school may differ greatly from what the child was offered had the child attended the public school. If services are provided, the child will have a "**services plan**" (not an IEP). Once in place, the public school must comply with the services plan.

Public schools must make sure that money spent on children attending private schools benefits the children with disabilities only, not the private school or the instruction provided at the private school.

**Private (Including Religious)
School Placement by Parents
Where FAPE is Not at Issue
Location of Services /
Transportation**

What the Federal Regs. Say ...

Services on private school premises - Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with the law. Sec. 300.139(a).

Transportation - If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation: From the child's school or the child's home to a site other than the private school; and from the service site to the private school, or to the child's home, depending on the timing of the services. LEAs are not required to provide transportation from the child's home to the private school. Sec. 300.139(b)(1).

Cost of transportation - The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of Sec. 300.133. Sec. 300.139(b)(2).

What the Regulations Mean ...

Public schools can choose whether to serve children placed in private schools

by their parents at a public school location or at the private school. If the children are served at a public school location, the public school must transport the child to the public school (from the child's home or the private school, depending on the time of day the services are provided) and back to the private school (or the child's home, depending on the time of day the services are provided). The cost of such transportation may be included in the total expenditures the public school spends on private school children. If the public school chooses to provide services at a private parochial school, services may be limited to the extent that public school funds cannot be used to promote religion.



What Parents Should Know ...

For those private school children the public school determines it *will* serve, parents have no say in where the services will be provided. That decision is up to the public school. However, if the public school chooses to provide the services at the public school or a setting other than at the private school, the public school is responsible for transporting the child to and from those services.

Private (Including Religious) School Placement by Parents Where FAPE is Not at Issue Due Process Complaints and State Complaints

What the Federal Regs. Say ...

Due process not applicable, except for child find - Except as provided in paragraph (b) of this section, the procedures in Secs. 300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of Secs. 300.132 through 300.139, including the provision of services indicated on the child's services plan. Sec. 300.140(a).

Child find complaints - to be filed with the LEA in which the private school is located - The procedures in Secs. 300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in Sec. 300.131, including the requirements in Secs. 300.300 through 300.311.

Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA. Sec. 300.140(b).

State complaints - Any complaint that an SEA or LEA has failed to meet the requirements in Secs. 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in Secs. 300.151 through 300.153. A complaint filed by a private school official under Sec. 300.136(a) must be filed with the SEA in accordance with the procedures in Sec. 300.136(b). Sec. 300.140(c).

What the Regulations Mean ...

The procedural safeguards of IDEA, including the right to a due process hearing, **DO NOT** apply to complaints that the public school failed to comply with the regulations and provide services to children attending private schools (when FAPE is *not* at issue).

The procedural safeguards of IDEA, including the right to a due process hearing, **DO** apply only to complaints that the public school failed to provide Child Find and evaluations of children with disabilities who attend private schools. Parents can use the "State Complaint" procedures (described in Section XIII) if they believe a violation of the laws pertaining to children who attend private schools when FAPE is not at issue has occurred.

What Parents Should Know ...

If parents place their child in a private school (when FAPE is *not* at issue), they forfeit their rights to most procedural safeguards contained in IDEA, including the right to a due process hearing regarding the services being provided. In this situation, the only matters parents can contest through a due process hearing are those of Child Find and evaluations. This makes sense because Child Find and evaluations are the only services mandatory for all children with disabilities who attend private schools.

If parents believe the public school is not complying with the legal requirements for children who are parentally-placed at a private school when FAPE is not at issue, parents can file a State Complaint with the Special Education Programs office, at (605) 773-3678.

XII. Special Topics

Special Topics

Transition of Children From Early Intervention (Part C) to Preschool Programs (Part B)

What the Federal Regs. Say ...

The State must have in effect policies and procedures to ensure that children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs...; by the third birthday of a child..., an IEP or ... an IFSP, has been developed and is being implemented for the child...; and each affected LEA will participate in transition planning conferences arranged by the designated lead agency.... Sec. 300.124.

Initial IEP Team meeting for child under Part C - In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. Sec. 300.321(f).

What the Regulations Mean ...

There must be a smooth transition from "Birth to 3" (Part C) programs to school programs, if the child is eligible to receive special education services under Part B of the Act. This occurs two ways: First, public school personnel should be invited to any transition planning meetings occurring prior

to the child turning age three; and second, with parent permission, the Birth to 3 program coordinator or other personnel must be invited to the child's initial IEP Team meeting. The IEP Team will look at existing data and determine if additional evaluations are needed to determine eligibility. This should occur early enough so that following parental consent, the evaluations can be completed and, if the child is found eligible, an IEP developed prior to the child's third birthday. The school must have an IEP in place no later than the child's third birthday if the child is eligible for special education.

What Parents Should Know ...

Some children get special services from birth to age three under Part C of IDEA, with services set out in an Individualized Family Service Plan (IFSP). For those children receiving services under Part C who will be transitioned to services under Part B, the school must have an IEP in place no later than the child's third birthday. Parents should make sure both Part C and Part B personnel work together to ensure a smooth transition. If parents believe their child will need special education services when turning age three, they should make sure the Birth to 3 program makes a referral.

If the required timelines for transition from Early Intervention (Part C) to a Preschool (Part B) program are not met, or if a child receiving Part C services is found not eligible under Part B, parents can assert their rights by using the State Complaint, mediation, and/or due process procedures.

Special Topics

Extended School Year (ESY)

Services

What the Federal Regs. Say ...

Each public agency must ensure that extended school year services are available as necessary to provide FAPE.... Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with Secs. 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child. In implementing the requirements of this section, 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.

Definition - As used in this section, the term 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 public agency; in accordance with the child's IEP; and at no cost to the parents of the child; and meet the standards of the SEA. Sec. 300.106.

What the Regulations Mean ...

The school must give extended school year (ESY) services to children who need them in order to receive a free appropriate public education. ESY is special education and/or related services beyond the regular school year. The school may

give ESY services during summer or other long vacations. The school cannot charge the parent for ESY services.

The IEP Team decides annually if a child needs extended school year (ESY) services. This may require a separate meeting. ESY is not just for children with certain disabilities. A child may need ESY services one year and not the next. The IEP Team looks at all appropriate factors. The IEP Team considers whether the child's gains made during the regular school year are threatened if the LEA does not give ESY services. The IEP Team should look at:

- the extent of the disability,
- the likelihood of significant regression,
- the probable time needed to relearn skills,
- whether parents can help,
- how quickly the child learns,
- whether lack of services over summer months will halt a student's progress toward developing critical life skills,
- whether the child is at a critical breakthrough period of a skill,
- if lack of services will intensify "interfering behavior" such as aggression or self-injury,
- other resources available to the child and family, and
- other appropriate factors.

ESY services are:

- to maintain the child's abilities for the next school year.
- given in a variety of places, such as home, school, or community.
- sometimes limited to related services such as occupational therapy or physical therapy.

Special Topics

Extended School Year (ESY) Services (cont.)

The IEP Team writes the ESY services into the IEP. If ESY services are determined to be needed for any of the reasons listed above, the IEP Team must determine the length of the school day, number of days per week, and the duration of the ESY services **based on the individual needs of the student.**

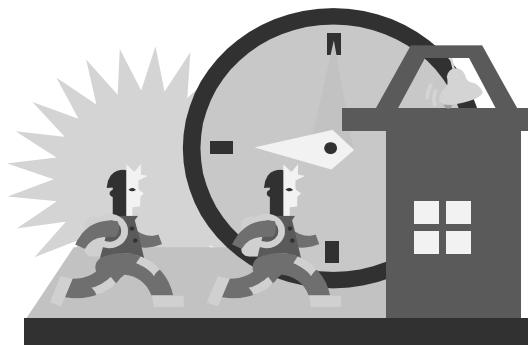
What Parents Should Know ...

ALL SCHOOLS must be prepared to provide ESY services if the children within the district are determined to require such services. In other words, a district cannot simply choose not to provide ESY services to its children with disabilities. Similarly, schools cannot choose to limit ESY services to children with specific disabilities or limit ESY services to specific services (e.g., only provide speech therapy).

Parents may have relevant information about their child that may help the IEP Team. Parents should request an IEP Team meeting to discuss ESY services if the team has not previously addressed that issue.

The amount of services provided per day, the number of days per week, and the duration of the services during the ESY period must be based on the individual needs of the child, **not the convenience or set schedule of the school district.**

Thus, decisions on whether a particular child requires ESY services, and if so, what those services will consist of, must be individualized. Once it is determined a child requires ESY services, the IEP Team must then determine when those services will start, how many hours per day/days per week the child will receive the services, and the duration of the services (e.g., four weeks, eight weeks, all summer). Again, these decisions must be based on the individual needs of the child, not administrative convenience.



TIP - ESY services must be discussed and addressed annually, and should be determined early enough to: 1) allow sufficient time for the school to develop the program; and 2) allow parents sufficient time to challenge the school's decision through the due process procedures prior to the time ESY services should begin.

ESY services are not limited to summertime. Consideration can also be given to other school breaks. ESY decisions are made by the IEP Team.

Special Topics

Parent Recordkeeping Tips

Why is It Important for Parents to Keep Records?

It is important to keep records for three main reasons. **First**, records provide a historical perspective of what your child's needs have been, what services have been provided, and the gains the child has made. **Second**, the most recent records are used to determine the child's present levels of academic achievement and functional performance, measurable annual goals, and services needed in the current and future IEPs, and are useful to parents in preparing for and attending IEP Team meetings. **Third**, if parents find themselves in a situation where they want to file for a due process hearing, their attorney may request to review records, sometimes going back several years, and may wish to use those records as evidence at the hearing.

It is important that parents keep all of their child's educational records. This means that parents, at a minimum, should keep a copy of all of their child's IEPs, evaluations, consent forms, meeting notices, correspondence to and from school personnel, disciplinary records, report cards, notes from telephone calls, etc. If parents have more than one child with a disability, it is important to **keep each child's records separate**. Parents should keep their child's records in a location where they know they can find them.

An organized system will aid parents when preparing for and attending meetings, re-

viewing progress, meeting with an advocate, Navigator, or other professionals, and preparing for a due process hearing.

Parents should **never** write on their "official" or "permanent" copy of their child's records. If parents want to write on a document, a copy should be made to write on, leaving a "clean" copy for the child's file. If parents find themselves needing to enclose documents when filing a complaint or needing to admit records at a due process hearing or in court, the copies should be free of writing beyond what was originally intended to be on the document. One option for putting personal notes on a document without making a separate copy is through the use of self-adhesive sticky notes.

In
South Dakota ...

Parents residing in South Dakota may obtain a parent record-keeping system called the FILE (Folder of Information and Life Experiences). The FILE System was developed to help parents organize the information they gather. This record-keeping system consists of color-coded folders printed with simple instructions and/or inserts, all enclosed in a durable plastic expandable carrying-case.

The FILE System is available to all South Dakota families caring for a child with a disability and/or special health care needs. Parents may obtain a FILE by calling **South Dakota Parent Connection at 1-800-640-4553**.

Special Topics

Children Who Transfer Districts During School Year

What the Federal Regs. Say ...

Each public agency must ensure that assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with Sec. 300.301(d)(2) and (e), to ensure prompt completion of full evaluations. Sec. 300.304(c)(5).

IEPs for children who transfer public agencies in the same State - If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either adopts the child's IEP from the previous public agency; or develops, adopts, and implements a new IEP that meets the applicable requirements in Secs. 300.320 through 300.324. Sec. 300.323(e).

IEPs for children who transfer from another 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 public agency in a new State, and enrolls in a new school within the same school year, the new public agency (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 public agency), until the new public agency conducts an evaluation pursuant to Secs.

300.304 through 300.306 (if determined to be necessary by the new public agency); and develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in Secs. 300.320 through 300.324. Sec. 300.323(f).

Transmittal of records - To facilitate the transition for a child described in paragraphs (e) and (f) of this section - 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, pursuant to 34 C.F.R. 99.31(a)(2); and the previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency. Sec. 300.323(g).

What the Regulations Mean ...

When parents move to a new district during the school year, the new school must begin providing special education services immediately, providing services "comparable" to those contained in the child's IEP until the new district either adopts the existing IEP or develops a new one. The same rule applies whether the child had moved in-state or from another State, with the exception of a reference to evaluating the child first, if necessary, when the child is from another State.

What Parents Should Know ...

When parents move to a new district, the new district is responsible for "promptly" attempting to obtain records from the old district. The old district, in turn, must promptly respond to the request.

Special Topics

Functional Behavioral Assessment / Behavioral Intervention Plan

What the Federal Regs. Say ...

Consideration of special factors [from Development, review, and revision of IEP] - The IEP Team must in the case of a child whose behavior impedes the child's learning or that of others, consider the use of *positive behavioral interventions and supports*, and other strategies, to address that behavior. Sec. 300.324(a)(2).

Services [from "Authority of school personnel" in Discipline] - A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must continue to receive educational services, as provided in Sec. 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 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. The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting. Sec. 300.530(d).

Determination that behavior was a manifestation [from "Manifestation determination" in Discipline] - If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must either conduct a *functional behavioral assessment*, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a *behavioral intervention plan* for the child; or if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan. Sec. 300.530(f).

Functional Behavioral Assessment

A functional behavioral assessment (FBA) is a means of discovering the function or purpose of the child's behaviors. The child is observed by a few members of the IEP Team and data is recorded. This data can enlighten the team as to the reasons for the behavior. Is the behavior a way for the child to communicate his/her needs? Is the behavior exhibited a way to escape an adult-directed activity? Does the child want someone's attention and exhibit negative behaviors in order to receive that attention? Is the academic work too hard,

Special Topics

Functional Behavioral Assessment / Behavioral Intervention Plan (cont.)

which can cause frustration, or too easy, which can lead to boredom? Are the problem behaviors displayed mostly in the morning? Are they displayed with a certain teacher? Are they displayed on a certain day of the week?

There can be a variety of reasons for why children exhibit behaviors. The key factor in conducting a functional behavioral assessment is to figure out what the child is trying to communicate and what supports and strategies the IEP Team can develop in order to assist the child so that his/her learning or that of others is not as greatly affected by the behavior. Once the team knows the reason(s) for the behaviors, a behavioral intervention plan can be developed with positive behavioral supports and strategies.

Behavioral Intervention Plan

An effective behavioral intervention plan (BIP) is written as a detailed procedure to reduce/eliminate problem behaviors. A BIP should include the student's problem behaviors, the function or purpose of the behavior (which should be determined by completing a FBA), behavior goals, methods of teaching the desired replacement behaviors, accommodations to assist the student in displaying the replacement behaviors, and positive reinforcements for displaying the desired replacement behaviors.

BIPs should not be used in a negative way

or used to punish the child. For example, if an IEP Team writes a BIP to indicate that a child will only get recess if he does not exhibit the problem behaviors, the team is not writing an effective BIP. If the BIP indicates that the child will receive in-school suspension or has to go to the principal's office every time he exhibits the problem behaviors, the BIP is not written appropriately. The purpose of a BIP is to teach appropriate replacement behaviors and reward the child when those replacement behaviors are exhibited. The IEP Team should figure out what the problem behavior is, how and with what the child should be taught to replace the problem behavior, and what the child could be rewarded with for displaying the appropriate behaviors. The key word in "positive behavioral support plan" is the word *positive*.

If a manifestation determination meeting is taking place, it means that a change of placement is being considered. If a child's behaviors are found to be a manifestation of the disability, the IEP Team must conduct a functional behavioral assessment if one has not already been completed on the child before the behavior occurred that prompted the school to seek a change in placement.



TIP - It would seem more proactive for the IEP Team to recognize the child's behaviors early on and conduct a FBA and implement a BIP **before** the behaviors reached a level to where a change of placement would be considered.

Special Topics

Special Education Teacher Qualifications

What the Federal Regs. Say ...

General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. Sec. 300.156(a).

Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school - (i) Has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in 34 CFR 200.56(a)(2)(ii) as such section was in effect on November 28, 2008), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the teacher must meet the certification or licensing requirements, if any, set forth in the State's public charter school law; (ii) Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (iii) Holds at least a bachelor's degree. Sec. 300.156(c)(1).

A teacher will be considered to meet the standard in paragraph (c)(1)(i) of this section if that teacher is participating in an alternate route to special education certification program under which the teacher (A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching; (B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program; (C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and (D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and the State ensures, through its certification and licensure process, that the provisions in paragraph (c)(2)(i) of this section are met. Sec. 300.156(c)(2).

Policy. In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain personnel who meet the applicable requirements described in paragraph (c) of this section to provide special education and related services under this part to children with disabilities. Sec. 300.156(d).

Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to meet the applicable requirements described in paragraph (c) of this section, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part.

Sec. 300.156(e).

Special Topics

Special Education Teacher Qualifications (cont.)

What the Regulations Mean ...

IDEA requires that teachers who want to teach special education obtain a minimum of a bachelor's degree, pass a State special education teacher licensing exam, and hold a license that shows they are certified to teach within their particular State.

Teachers may also become qualified by participating in an alternative route to special education certification program by receiving high-quality professional development before and while teaching in the classroom, receiving intense supervision from another certified special education teacher, assuming functions of a teacher for a specific period of time not to exceed three years, and demonstrating progress toward full State certification.

Parents are not allowed to file for a due process hearing because of a school's failure to provide a qualified teacher. On the other hand, parents can use the State Complaint process to address a school's failure to provide a qualified teacher for a student or a group of students.



What Parents Should Know ...

If a parent questions whether their child's special education teacher is qualified, they should bring their concern to the principal or superintendent at the child's school. The administrator should be able to tell the parent if the teacher is qualified or if the teacher is in the process of obtaining special education certification to become qualified. If a parent is not satisfied with the administrator's answer, a State Complaint may be filed with the SEA.

Teachers hired by private schools are not covered under the qualified teacher requirements. They also do not apply to teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children.

While parents cannot file a Due Process Complaint directly on the issue of a district's failure to provide a qualified teacher, if a child's teacher is not qualified, it may bear directly on whether the district is providing appropriate services (FAPE) based on the child's unique needs.

Special Topics

Use of Paraprofessionals and Assistants

What the Federal Regs. Say ...

The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. Sec. 300.156(a).

Related services personnel and paraprofessionals - The qualifications under paragraph (a) ... must include qualifications for related services personnel and paraprofessionals that: Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and ensure that related services personnel ... allow paraprofessional and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services ... to children with disabilities. Sec. 300.156(b)(1), (2)(iii).

What the Regulations Mean ...

Paraprofessionals may be used by schools to *assist* special education teachers and related services personnel in providing services to children with disabilities. They must meet minimum requirements, work within defined roles, and be provided sufficient training and supervision in order to provide appropriate services to children with disabilities.

Paraprofessionals cannot develop or write IEPs, or sign IEPs as a special education teacher.

They cannot assess (test) students with disabilities as required for initial evaluations and re-evaluations, or write lesson plans or other plans for instruction. They can, however, follow plans developed by a highly qualified teacher and must meet regularly with their supervising teacher/provider to monitor and discuss student progress, and must be supervised by a highly qualified special educator as they instruct students.

What Parents Should Know ...

The amount or type of training and supervision paraprofessionals/assistants require will depend on the role defined by the position and the needs of the child. For example, paraprofessionals assisting teachers with children with autism may require more, or at least different, training and supervision than one assisting a therapist. Specific training needs, based on a child's unique needs, can be addressed in the IEP under "supports for school personnel."

In
South Dakota ...

Paraprofessionals and assistants. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with this section may be used to assist in the provision of special education and related services to children with disabilities under Part B of the Individuals with Disabilities Education Act. At a minimum, the following standards must be met: (1) Paraprofessionals must have a high school diploma or GED; (2) Paraprofessionals must work within defined roles and responsibilities as identified by the school district; (3) Paraprofessionals must work under the supervision of, and be evaluated by, certified staff; and (4) Each school district must describe the training to be provided paraprofessionals in the staff development component of the district's comprehensive plan under § 24:05:16:05. ARSD 24:05:16:01.

Special Topics

Prohibition on Mandatory Medication

What the Federal Regs. Say ...

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 Secs. 300.300 through 300.311, or receiving services under this part. Sec. 300.174(a).

Rule of construction - Nothing in paragraph (a) of 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 Sec. 300.111 (related to child find). Sec. 300.174(b).

What the Regulations Mean ...

A school can never prohibit a child from attending school, receiving an evaluation, receiving special education services, receiving related services, or otherwise condition services if a parent refuses to

put their child on medication. It is the parents' decision, along with the advice of the child's physician, whether a child will be placed on medication. The school has no say in this matter. However, the school personnel may discuss a child's particular behaviors, and academic and functional performance with the parents and the need for evaluations for special education and related services.

What Parents Should Know ...

Many times parents are placed in a tough spot regarding their child and medication. Parents should not feel bullied by the LEA into placing their child on medication. While schools may find it easier to deal with a medicated child, some parents are strongly against this practice and cannot be forced to go against their beliefs of what they feel is best for their child and family. Schools must take children "as is" (medicated or not), and provide appropriate services based on the child's needs.



Special Topics

Use of Parents' Insurance and Public Benefits

What the Federal Regs. Say ...

Children with disabilities who are covered by public benefits or insurance - 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 this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section. Sec. 300.154(d)(1).

With regard to services required to provide FAPE to an eligible child under this part, the public agency: 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 Part B of the Act; 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 pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay; may not use a child's benefits under a public benefits or insurance program if that use would decrease available lifetime coverage or any other insured benefit; 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; in-

crease premiums or lead to the discontinuation of benefits or insurance; or risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and must obtain parental consent, consistent with Sec. 300.9, each time that access to public benefits or insurance is sought; and notify parents that the parents' 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. Sec. 300.154(d)(2).

Children with disabilities who are covered by private insurance - With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents' private insurance proceeds **only if the parents provide consent consistent with Sec. 300.9**. Each time the public agency proposes to access the parents' private insurance proceeds, the agency must obtain parental consent in accordance with paragraph (e)(1) of this section; and inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents. Sec. 300.154(e).

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 this part, to ensure FAPE the public agency

Special Topics

Use of Parents' Insurance and Public Benefits (cont.)

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). Sec. 300.154(f).

What the Regulations Mean ...

LEAs are permitted to fund related services by tapping into a child's private insurance or public benefits, such as Medicaid, so long as the parent's permission (consent) is obtained. However, districts cannot require a parent to sign up or enroll for a public benefit program or to access private insurance in order for their child to receive FAPE under Part B. A school also cannot require a parent to pay any out-of-pocket expenses, such as a deductible, co-insurance, or co-pay amount for filing a claim under their private insurance or public assistance, and may use Part B funds to reimburse parents if these charges occur. The LEA may not use a child's benefits if that use would decrease the child's available lifetime coverage, increase premiums, discontinue benefits or insurance, cause parents to have to pay for services outside of school that otherwise would have been

covered, or affect the child's eligibility for home and community-based waivers. LEAs must obtain parental consent to tap into these benefits and also notify the parents that if they refuse to allow access to a child's benefits, it in no way affects the services the school is required to provide. Thus, regardless of parental consent, the school must provide services to the child that the IEP Team deems necessary.

What Parents Should Know ...

Sometimes parents are reluctant to give out the child's Medicaid number or private insurance information to the school. However, if there is no chance of negatively affecting the child's coverage and parents are not required to pay any out-of-pocket expenses, giving out the information can only help a child receive the services he or she needs. Schools are always in need of more funding. Sometimes they need a little extra help from third parties to assist with funding the needed services.

According to the federal regulations, LEAs must obtain consent each time a school accesses the child's public benefits or private insurance. Schools found the paperwork was never-ending, considering a single child could be receiving OT, PT, and ST numerous times a month, many months a year. To avoid unending consent forms, it may be allowable for a consent form for accessing a child's benefits from Medicaid or private insurance to cover a month or months at a time.

Special Topics

Section 504 of the Rehabilitation Act of 1973

What the Federal Regs. Say ...

No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefit of, or be subject to discrimination under any program or activity receiving federal financial assistance.... 29 U.S.C. Sec. 794(a).

Section 504's detailed regulations pertaining to educational services are contained at 34 C.F.R. Sec. 104.1 *et seq.*

What the Regulations Mean ...

Section 504 is an anti-discrimination law that applies to any recipient of federal funds. Because school districts receive federal IDEA funds, they must comply with the requirements of Section 504. Schools do not receive funding for Section 504, so services provided must be paid for with general funds.

To be eligible, a child must have a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is treated as having such an impairment. This is a broader definition than IDEA, so children who do not qualify for services under IDEA may qualify under Section 504.

The Section 504 regulations pertaining to elementary and secondary education require that children receive a FAPE, but

FAPE under Section 504 means receiving services that are equal to that of children without disabilities. It prohibits certain practices as discriminatory and requires schools to take affirmative steps to ensure an appropriate education. Section 504 addresses discrimination in services provided and access to education. It requires either special or regular education services. It requires related services, with or without the child also receiving special education services. It requires comparable facilities, meaning that if a classroom for children with disabilities is located in a separate building, the facilities must be comparable in quality.

While not nearly as detailed as IDEA, Section 504 contains requirements for evaluations, least restrictive environment, and many procedural safeguards similar to IDEA, including the right to a hearing.

What Parents Should Know ...

If a child is found not to qualify for special education services, parents should insist that the determination be made as to whether the child qualifies for services under Section 504. Section 504 does not require a written plan, but parents should insist that Section 504 services be put in writing in a "504 Plan" so that the school's commitment is in writing.

Parents who believe the school is discriminating against their child, i.e., violating Section 504, can file a complaint with the Office for Civil Rights or request a hearing.

Special Topics

Early Intervening Services

What the Federal Regs. Say ...

General - An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to Sec. 300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. Sec. 300.226(a).

Activities - In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include (1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and (2) Providing educational and behavioral evaluations,

services, and supports, including scientifically based literacy instruction. Sec. 300.226(b).

Construction - Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability. Sec. 300.226(c).

Reporting - Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA on (1) The number of children served under this section who received early intervening services; and (2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period. Sec. 300.226(d).

Coordination with ESEA - Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section. Sec. 300.226(e).



Special Topics

Early Intervening Services (cont.)



What the Regulations Mean ...

IDEA 2004 allows districts to use up to 15 percent of federal IDEA funds to provide *Early Intervening Services* to children NOT on IEPs who are having academic or behavioral difficulties, emphasizing grades K to 3. The money allocated can be spent on staff development and services to children.

If children are receiving *Early Intervening Services*, they have no right to FAPE under IDEA and no right to procedural protections under IDEA. However, *Early Intervening Services* cannot be used to delay an initial evaluation of a child under IDEA.



What Parents Should Know ...

If a child receives *Early Intervening Services*, no rights under IDEA apply. These are simply general education students receiving extra help, with the intent that the extra help may prevent the child from needing special education services.

There is no timeline on *Early Intervening Services*, meaning the school is un-

der no timeline to refer for special education services if *Early Intervening Services* are tried. However, the "Child Find" requirements of IDEA still apply. A child suspected of having a qualifying disability must be evaluated (with parental consent) so that such determination can be made. Parents, of course, can make a referral for an initial evaluation at any time.

While *Early Intervening Services* cannot be used to delay an initial evaluation and, if determined eligible, provision of special education services, parents of children receiving *Early Intervening Services* should be vigilant to make sure schools do not use *Early Intervening Services* as a delaying tactic.

Parents should also thoroughly evaluate the amount and type of services or individual attention/instruction their child is receiving as *Early Intervening Services* before either requesting an initial evaluation for special education services or consenting to the provision of special education services. Depending on the amount or type of *Early Intervening Services* provided, the possibility exists that a child could receive less services if on an IEP. Parents should ask for a meeting to discuss this and evaluate the benefits of each program for their child.

Special Topics

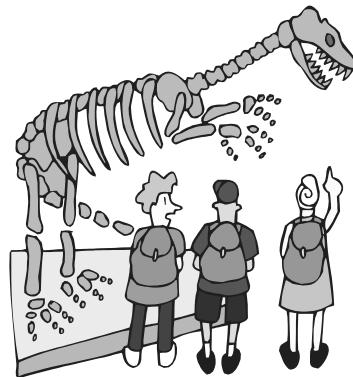
Free Appropriate Public Education (FAPE) / Age of Eligibility

What the Federal Regs. Say ...

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 Sec. 300.530(d). Sec. 300.101(a).

FAPE for children beginning at age 3
- Each State must ensure that the obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and an IEP or an IFSP is in effect for the child by that date, in accordance with Sec. 300.323(b). 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. Sec. 300.101(b).

Children advancing from grade to grade - 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. Sec. 300.101(c)(1).



What the Regulations Mean ...

The right to FAPE under Part B extends from age three through 21. Children who are suspended or expelled from school are also entitled to a FAPE. (See Section XIV).

A child who has been evaluated and determined eligible under Part B prior to the child's third birthday must have an IEP (or IFSP when allowed) in place no later than the child's third birthday; however, if the child's third birthday occurs during the summer, the IEP Team will determine when services will begin (e.g., prior to summer, during the summer, or when school starts in the Fall).

A child does not need to be failing in school or does not have to have been retained at least one grade in order to be found eligible for special education services.



Special Topics

Free Appropriate Public Education (FAPE) / Age of Eligibility (cont.)

What Parents Should Know ...

The 2006 regulations make it clear that a child does not have to fail or be retained in order to be found eligible for services. When a child is advancing from grade to grade, the question is whether the child nonetheless needs special education services.

The term, "appropriate," is not easily defined. In 1982, the United States Supreme Court defined it as "reasonably calculated to enable the child to receive educational benefits." However, the Court did not set out a specific standard indicating how much "benefit" is enough to meet the "appropriateness" standard. In 2017, the Court held, "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Rather than attempt to set an all-encompassing standard, the Court stated, "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created."

Because what is appropriate is an individualized determination based on the unique needs of each child, it will always be a source of potential debate.



In
South Dakota ...

A child's eligibility for special education or special education and related services continues from age 3 through completion of an approved public or nonpublic school secondary program or through age 21, as designated in that child's IEP. ARSD 24:05:22:04.01.

A student who is enrolled in school and becomes 21 years of age during the fiscal year shall have free school privileges during the school year. ARSD 24:05:22:05.

Each school district shall provide special education or special education and related services for children less than three years of age who are in need of prolonged assistance. ARSD 24:05:22:04.

"Prolonged assistance" is defined at ARSD 24:05:24.01:15 (See Section V).

Special Topics

Graduation Requirements

What the Federal Regs. Say ...

The obligation to make FAPE available to all children with disabilities does not apply with respect to the following: ... Children with disabilities who have graduated from high school with a regular high school diploma. Sec. 300.102(a)(3)(i).

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. Sec. 300.102(a)(3)(ii).

Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with Sec. 300.503. Sec. 300.102(a)(3)(iii).

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. Sec. 300.102(a)(3)(iv).



What the Regulations Mean ...

Children with disabilities who graduate with a regular high school diploma lose their eligibility for special education services from the local school district. For a child to lose his or her eligibility for FAPE, the diploma **must** be a regular high school diploma, **NOT** an alternative type of degree, certificate, etc., and not a certificate of attendance or something similar.

Graduation with a regular high school diploma is a "change in placement," which means that parents (or a child who has reached age of majority) must receive written notice that when the child graduates, his or her eligibility for special education services will end.

What Parents Should Know ...

Because graduation with a *regular high school diploma* is a change in placement, in that all services from the district end, the school must provide sufficient written notice that this will occur. In South Dakota, the school must inform parents (or the child if of age of majority and rights have transferred) at least one year in advance that the child will graduate and the school's responsibility will end. Typically, this will be done at an IEP Team meeting and docu-

Special Topics

Graduation Requirements

(cont.)



mented in the child's IEP. If a school does not provide such notice at least one year prior to graduation, the school cannot legally graduate a child with a disability if the parents or student contest the graduation.

For those students who do not receive a regular high school diploma, their eligibility for special education services continues. For example, if a child with a disability has dropped out of school or otherwise completed a GED, that student is still eligible to receive special education services from the school.

Allowing students with disabilities who will not receive a regular diploma with their class to participate in graduation ceremonies is a local decision.

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). Graduation from high school with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with this article.

The instructional program shall be specified on the individual educational program. The individual educational program shall state specifically how the student in need of special education or special education and related services will satisfy the district's graduation requirements. The IEP team may modify the specific units of credit described in § 24:43:11:02. Parents must be informed through the individual educational program process at least one year in advance of the intent to graduate their child upon completion of the individual educational program and to terminate services by graduation.

For a student whose eligibility terminates under the above graduation provisions, or due to exceeding the age eligibility for a free appropriate public education, a school district shall provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals. ARSD 24:05:27:12.

In
South Dakota ...

Graduation requirements - Completion of an approved secondary special education program with a regular high school diploma signifies that the student no longer requires special education services. A regular

