

290-8-9.04(3)

290-8-9.04(4)(e)

(3) **Age Requirements.** The following age requirements apply to the provision of special education and related services:

(a) Preschool children with disabilities by the child's third birth date. Public agencies may not use school admission cut-off dates to deny special education services for eligible preschool children. However, these children may not attend the regular kindergarten program, unless they meet the age requirements.

(b) Children with disabilities who have not earned an Alabama High School Diploma and who have not reached their twenty-first birthday by August 1. These children are entitled to services up to age 21, even if it means that instruction is provided in excess of 12 years. A child who turns 21 on or after August 1 is entitled to begin and complete the school year. ~~This rule goes into effect beginning July 31, 2008.~~

(4) **Parental Consent for Services.**

(a) A public agency that is responsible for making FAPE available to a child with a disability must obtain written informed consent from the parent of the child before the initial provision of special education and related services to the child. This consent may be obtained after an eligibility determination has been made, but must be obtained prior to the provision of special education and related services.

(b) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(c) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services under (a) and (b) of this section, the public agency:

(i) May not use the mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make available FAPE to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(iii) Is not required to convene an IEP Team meeting or develop an IEP in accordance with these rules.

(d) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:

(i) May not continue to provide special education and related services to the child, but must provide prior written notice before ceasing the provision of special education and related services;

(ii) May not use the mediation procedures or the due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(iv) Is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services.

(e) If a parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public

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

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

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

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

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

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

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

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

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

(b) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child.

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

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1. May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE;

2. May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided, but may pay the cost that the parents otherwise would be required to pay;

3. May not use a child's benefits under a public insurance program if that use would:

(i) Decrease available lifetime coverage or any other insured benefit;

(ii) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(iii) Increase premiums or lead to the discontinuation of benefits or insurance; or

(iv) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;

4. Must obtain one time written parental consent, after notifying parents of their rights and protections consistent with these rules and notified annually thereafter. ~~consistent with these rules each time that access to public benefits or insurance is sought;~~ and

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

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

~~1. Obtain parental consent and in accordance with these rules; and~~

~~2. Inform the parents that their refusal to allow the public agency access to 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.~~

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

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

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(8) **In-School Suspension.** A day of in-school suspension is not a removal from a child's educational program for disciplinary reasons as long as the child is afforded the opportunity to continue to appropriately participate in the general education curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in his or her current placement.

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Statutory Authority: Ala. Code Title 16, chapter 39; 20 U.S.C. 1400 et seq.; 34 CFR §300.

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290-8-9-.10 Administration.

Each public agency must develop and implement procedures that will ensure that FAPE is available to children with disabilities from ages 3-21.

(1) **Residency.** For children with disabilities who are not residing with their parents or who are enrolled in a program outside the jurisdiction of their residence, the following rules apply.

(a) For children with disabilities who have been determined to be wards of the State or who reside in group homes, detention facilities, nursing homes, and private facilities, it is the responsibility of the LEA where the facility is located to ensure that FAPE is made available. This rule applies to students with disabilities who are incarcerated in local city and county jails. This rule does not apply to students with disabilities who are incarcerated in adult correctional facilities under the Department of Corrections.

(b) The LEA where a child with a disability resides is responsible for offering FAPE to a child with a disability. However, should a parent unilaterally place their child in a day-care center or other program outside of the jurisdiction of residence, the LEA of residence is not responsible for providing FAPE if appropriate services are available in the LEA of residence. If the LEA where the parent unilaterally placed the child has a policy of accepting children from outside its jurisdiction, it will be responsible for ensuring that FAPE is provided to these children in accordance with the LEA's out of district policies. If not, these children would not be entitled to receive FAPE from the LEA where the day-care center or other program is located.

(c) Refer to (8) of this section for specific requirements relating to children unilaterally placed in private elementary or secondary schools by their parents.

(2) **Forms.** *In the implementation of these rules, education agencies must utilize all forms required by the State Department of Education. Forms are required to be completed and entered into the selected Student Information System(SIS).*

(3) **Special Education Agency Plan for Children with Disabilities.** Public agencies must develop, according to state and federal requirements, a written plan for providing special education and related services. The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the IDEA.

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(b) Each student with a disability as defined by IDEA must earn the course credits outlined in ~~Ala. Admin. Code r. 290-3-1-.02(8)(g)~~Ala. Admin. Code r. 290-3-1-.02(8.1)(g-1) and take the AHSGE at least once (Spring of the 11th grade) in order to be awarded the AOD. Each student with a disability that is pursuing the AOD must be provided the opportunity to continue working toward earning the AOD if that student is determined, through the reevaluation process, to no longer qualify for special education services. .

(c) Each student with a disability who accumulates the required number of Carnegie Units for graduation, but does not pass the AHSGE-must be awarded a graduation certificate and afforded the opportunity to participate in public agency activities related to graduation.

(d) Each student with a disability who passes the AHSGE, but does not accumulate the required number of Carnegie Units for graduation must be awarded a graduation certificate and afforded the opportunity to participate in public agency activities related to graduation.

(e) Each student with a disability who successfully completes his or her IEP must be awarded a graduation certificate and afforded the opportunity to participate in public agency activities related to graduation.

(f) Where a student with a disability has participated in graduation activities with nondisabled age-appropriate peers but has not earned an Alabama High School Diploma, that student is entitled to FAPE until he or she exits school with a regular diploma or to age 21.

(g) It is the intent and desire of the State Board of Education that graduation activities and procedures for awarding the standard, advanced or any other diploma or graduation certificate to an eligible student, including a student with a disability, be integrated and identical with no distinctions/differentiations made in regard to the way the exit document is awarded or presented.

(h) Diploma Requirements. (Refer to Diploma Requirements of Public School Governance AAC Rule 290-3-1-.02(8).

(10) Reports. Public agencies that are receiving state and/or federal dollars and are providing special education and related services to students with disabilities must complete reports as required by the SDE, including those relating to the performance of children with disabilities participating in programs carried out under Part B of the IDEA.

(11) Medication. State and LEA personnel are prohibited from requiring a child to obtain a prescription for a substance covered under 21 U.S.C. § 812 (c) et seq. for a child as a condition of attending school, receiving an evaluation, or receiving services. However, nothing in this provision shall be construed to prohibit teachers and other school personnel from 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.

(12) Migratory Children with Disabilities. LEAs shall cooperate with the United States Secretary of Education's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities to electronically exchanging, among the States, health and educational information regarding those children.

(13) Funding for Early Intervening Services.

(a) An LEA may not use more than 15 percent of its Part B funds, 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

SUPP. NO. 13-3

SPECIAL EDUCATION SERVICES

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