

# Greater Albany SD 8J Administrative Regulation

Code: **IGBAJ-AR**  
Adopted: 2/25/08  
Readopted: 8/12/13;1/04/18

## **Special Education - Free Appropriate Public Education (FAPE)\*\***

### 1. FAPE and Age Ranges

The district provides special education and related services to all resident school-age students with disabilities, including students enrolled in public charter schools located in the district, as provided below.

- a. "School-age children" are children who have reached 5 years of age but have not yet reached 21 years of age on or before September 1 of the current school year.
- b. The district will admit an otherwise eligible student who has not yet reached 21 years of age on or before September 1 of the current school year.
- c. An otherwise eligible person whose 21st birthday occurs during the school year will continue to be eligible for FAPE for the remainder of the school year.
- d. The district provides FAPE to students with disabilities who have been suspended or expelled from school in accordance with the special education discipline rules.

### 2. Nonacademic Services

- a. The district provides equal opportunity for students with disabilities for participation in nonacademic and extracurricular services and activities.
- b. Nonacademic and extracurricular services and activities may include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the district and assistance in making outside employment available.
- c. The district ensures that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of each individual child.

### 3. Graduation

- a. A student graduating with a regular high school or modified diploma is no longer entitled to FAPE.
- b. The district provides prior written notice a reasonable time before a student with a disability graduates with a regular high school or modified diploma.
- c. The district is not required to conduct a reevaluation before terminating eligibility due to graduation with a regular high school or modified diploma.
- d. Graduation with an alternative document:
  - (1) The district may award an alternative document meeting the criteria of the State Board of Education alternative document to a student with a disability.
  - (2) Graduation with an alternative document does not terminate eligibility, require an evaluation or require prior written notice.

- e. The district may, but is not required to, provide special education and related services to a student who has graduated with a regular or modified diploma.

#### 4. Incarcerated Youth

- a. The district has a plan, approved by the local Board, to provide or cause to be provided, appropriate education for children placed in a local or regional correctional facility located in the district.
- b. The district provides FAPE for students with disabilities ages 18 through 21 incarcerated as adults in an adult correctional facility if, in the last educational setting before their incarceration:
  - (1) Were identified as students eligible for special education; and
  - (2) Had an Individualized Education Program (IEP).
- c. The district's provisions of FAPE does not include:
  - (1) The requirements relating to participation of children with disabilities in statewide and district assessments.
  - (2) For students whose eligibility for services will end before their release, the requirements related to transition planning and transition service do not apply. The district makes this determination based on considerations of the sentence and eligibility for early release. Requirements relating to transition planning and transition services, with respect to the students whose eligibility will end, because of their age, before they will be eligible to be released from adult correctional facilities based on consideration of their sentence and eligibility for early release.
  - (3) The IEP team may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. Least restrictive environment requirements do not apply with respect to these modifications.
  - (4) The public agency responsible for the special education of students in an adult correctional facility is not required to provide notice of meetings to the parent or guardian<sup>1</sup> after rights transfer to the student.

#### 5. Residential Placement

If the IEP team determines that placement in a public or private residential program is necessary to provide FAPE to a student with a disability, the district ensures that the program, including nonmedical care and room and board, is provided at no cost to the parents or guardians of the student.

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<sup>1</sup>As used in this policy, the term parent includes legal guardian or person in a parental relationship. The status and duties of a legal guardian are defined in ORS 125.005 (4) and 125.300 - 125.325. The determination of whether an individual is acting in a parental relationship, for purposes of determining residency, depends on the evaluation of the factors listed in ORS 419B.373. The determination for other purposes depends on evaluation of those factors and a power of attorney executed pursuant to ORS 109.056. For special education students, parent also includes a surrogate parent, an adult student to whom rights have transferred and foster parent as defined in OAR 581-015-2000.

## 6. Physical Education

- a. The district makes physical education services, specially designed if necessary, available to every child with a disability receiving FAPE, unless the school enrolls children without disabilities and does not provide physical education to children without disabilities in the same grade.
- b. The district provides the opportunity to each child with a disability to participate in the regular physical education program available to nondisabled children unless the child needs specially designed physical education as prescribed in the child's IEP.
- c. If specially designed physical education is included in the child's IEP, the district must provide the services directly or make arrangements for those services to be provided through other public or private programs.
- d. If the child with a disability is enrolled full time in a separate facility, the district must ensure that the child receives appropriate physical education services.

## 7. Public Charter Schools

- a. The district serves children with disabilities attending public charter schools located in the district in the same manner and in accordance with applicable laws and rules governing the district's provision of services to children with disabilities in its other schools.
- b. The district shall, in consultation with the student's parent, guardian or person in parental relationship, provide FAPE to the student, in accordance with Oregon Administrative Rule (OAR) 581-015-2230(1), until the district implements the IEP from the previous district or develops, adopts and implements a new IEP that meets acceptable requirements. If the information received was in effect in a previous district in another state, the district will implement the IEP in accordance with OAR 681-015-2230(2).
- c. The district provides supplementary and related services on site at a district charter school to the same extent to which the district has a policy or practice of providing such services on the site to its other public schools.
- d. A school district in which a public charter school is located must provide Individuals with Disabilities Education Act (IDEA) funds to other public schools in the district, including proportional distribution based upon relative enrollment of children with disabilities, at the same time as funds are distributed to other public schools in the district.
- e. If a child with a disability enrolls in a charter school, the charter school is considered the school the child would attend if not disabled. Enrollment in any charter school is by parent or guardian choice. Enrollment in any out-of-district charter school does not require an interdistrict transfer agreement.

When a student enrolls in a public charter school, the district in which the public charter school is located shall:

- a. Provide written notification of the student's enrollment to the district in which the student resides;
- b. Request, in accordance with applicable confidentially provisions in state and federal laws, the records of the student, including all information related to an IEP developed for the student;
- c. Provide written notification to the student's parent, guardian or person in parental relationship to provide information about:
  - (1) The district's responsibility to identify, locate and evaluate to determine a student's need for special education and related services and to provide those special education services in the public charter school; and

- (2) The methods by which the district may be contacted to answer questions or provide information related to special education and related services.

When a student no longer is enrolled in a public charter school for any reason other than graduation, the district in which the public charter school is located shall notify:

- a. The district in which the student resided to provide notice:
  - (1) That the student no longer is enrolled in the public charter school; and
  - (2) That the district will provide the student education records including all information related to the student's IEP if the student seeks enrollment or services from the district in which the student resides.
- b. The student's parent, guardian or person in parental relationship to provide information about:
  - (1) The responsibility of the school district in which the student resides to identify, locate and evaluate students and implement services;
  - (2) The methods by which the student's resident district may be contacted to answer questions or provide information about special education and related services; and
  - (3) The responsibility of the district to provide student records, including information related to the student's IEP, if the student seeks enrollment or services from another district, including the parent's resident district.

#### 8. Recovery of Funds for Misclassified Students

The district ensures that students identified on the special education child count under Part B of the IDEA are limited to students who:

- a. Meet eligibility requirements under OAR 581-015-2130 to -2180;
- b. Have a current IEP that is being implemented;
- c. Are receiving a FAPE;
- d. Are enrolled in the district.

#### 9. Students with Disabilities under IDEA Enrolled in Public Benefits or Insurance

A district may use the State's Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for special education and related services required under IDEA, and permitted under the public benefits or insurance programs as specified below.

With regard to services required to provide FAPE to a child with disabilities under IDEA, a district:

- a. May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child with disabilities to receive FAPE under the IDEA, but may pay the cost that the parent otherwise would be required to pay; and
- b. May not use the child's benefits under a public insurance program if that use would:
  - (1) Decrease available lifetime coverage or any other insurance benefit;
  - (2) 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;

- (3) Increase premiums or lead to the discontinuation of insurance; or
- (4) Risk loss of eligibility for home and community-based waiver, based on aggregate health-related expenditures; **and**

Prior to accessing a student’s or parent’s public benefits or insurance for the first time, and annually thereafter, the district must provide prior written notification to the student’s parents and must obtain written consent<sup>2</sup> that:

- c. States the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to the student);
- d. States the purpose of the disclosure (e.g., billing for services under IDEA);
- e. Names the agency to which the disclosure may be made (e.g., Medicaid);
- f. Specifies that the parent understands and agrees that the public agency may access the parent’s or student’s public benefits or insurance to pay for services under IDEA;
- g. Acknowledges the district may not require parents to incur an out-of-pocket expense (i.e., payment of a deductible or co-payment incurred in filing a claim for special education or related services), but may pay the cost that the parent otherwise would be required to pay; and
- h. Acknowledges the district may not use the student’s benefits under a public insurance program, if that use would:
  - (1) Decrease available lifetime coverage of any other insured benefit;
  - (2) 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 student outside of the time the student is in school;
  - (3) Increase premiums or lead to the discontinuation of insurance; or
  - (4) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

10. Accessible Materials

- a. Districts must ensure the timely provision of print instructional materials, including textbooks that comply with the National Instructional Materials Accessibility Standards (NIMAS) for students who are blind or print disabled.
- b. Districts must ensure the timely provision of instructional materials in accessible formats to children who need instructional materials in accessible formats, including those children who are not blind or print disabled.

11. Extended School Year (ESY) services as per administrative regulations, Special Education - Individualized Education Program (IEP) - IGBAF-AR.

12. Assistive technology devices or services as per administrative regulations, Special Education - Individualized Education Program (IEP) - IGBAF-AR.

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<sup>2</sup>“Consent” means that the parent or adult student a) has been fully informed, in his/her native language or other mode of communication, of all information relevant to the activity for which consent is sought and b) understands and agrees in writing to the carrying out of the activity for which his/her consent is sought. Consent is voluntary of the part of the parent and meeting the requirements of consent provision for OAR 581-015-2090, IDEA and Family Education Rights and Privacy Act (FERPA).