



Considerations for a Free Appropriate Public Education (FAPE)

The phrase “free appropriate public education” appears in the very first sentence of the Individuals with Disabilities Education Act (IDEA) and represents *the* foundational principle of IDEA. IDEA goes on to define FAPE as:

special education and related services that—

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324. (34 C.F.R. § 300.17; Iowa Admin. Code r. 281-41.17)

Special Education and Related Services

Special education means specially designed instruction that is provided to meet the unique needs of the eligible individual. To fully identify the special education services a learner needs, the IEP team must consider the adaptation of content, methodology or delivery of instruction which is needed to address the unique needs of the child that result from the child’s disability and ensure access of the child to the general curriculum, so that the child can meet the educational standards of the public agency that apply to all children. Related services are those supportive services that are required to assist the eligible individual to benefit from special education, such as special transportation and interpreter services. In Iowa, the definition of specially designed instruction also includes support services, which are “specially designed instruction and activities that augment, supplement or support the educational program of eligible individuals” (Iowa Admin. Code r. 281-41.409), such as speech-language services, occupational therapy, physical therapy, and audiology.

IEP teams should take note that special education and related services are the first items to be referenced in the definition of FAPE and everything else that is referenced falls under the consideration of special education and related services. The structure of this regulatory language establishes the most important responsibility of IEP teams in the consideration of FAPE is to determine the special education and related services needed by the individual. To do that, IEP teams must first take into account the unique needs of the eligible individual as a result of the individual’s disability and then the individual’s needs to access general curriculum and meet educational standards.

Public Expense, Under Public Supervision and Direction, and Without Charge

Special education and related services must be provided at public expense. Although the concept of without charge is widely understood, IDEA identifies two components of public expense: 1) under public supervision and direction and 2) without charge. This first requirement is often overlooked probably because the very nature of brick and mortar schools establishes organizational structures, policies and procedures that increase the likeliness of meeting the public supervision and direction requirements of IDEA. For example, special

education teachers collaborate with general education teachers and supervise paraprofessionals, related service providers work with other educators, administrators supervise and evaluate teachers. Seldom will a public agency fail to meet the requirement to provide public supervision and direction through brick and mortar delivery of services. Providing supervision and direction becomes more difficult if the district has contracted for services, yet still is an obligation under IDEA. One way of meeting this obligation is for the district to retain active participation on the IEP team.

The second requirement, providing education and related services to students with disabilities free of charge, is a more common consideration of districts and IEP teams. Generally speaking the educational costs for an eligible individual may be paid from either a general education fund or a special education fund, depending on the actual expense. Since students with disabilities are general education students first, expenses incurred for all students would come from the same source. This means that the fees imposed on all students would be equally imposed on nondisabled persons or their parents or guardians. Expenses related to providing special education and related services to the individual may be paid from special education funds. The nuances of what-is-and-isn't an allowable expense is complex. More detailed explanation can be found in the Department's document [FAQ on Permissive and Non-Permissive Uses of Special Education Funds](#).

Standards of the SEA

The state educational agency (SEA) administers many legislative requirements that establish the standards for education in Iowa. IEP teams must consider the general education curriculum and while the Iowa Core, Essential Elements or Early Learning Standards are certainly considerations for meeting SEA standards, they are not the only considerations. To meet the requirements of FAPE, the special education and related services provided must also meet the other educational standards established in Iowa. This includes Chapter 12, General Accreditation Standards; Chapter 103, Corporal Punishment, Physical Restraint, Seclusion, and other physical contact with students; and every other chapter of law that establishes standards for education in Iowa. This component of FAPE once again establishes that special education students are general education students first and always.

Appropriate Preschool, Elementary School, or Secondary School Education

Appropriate preschool, elementary school or secondary school education is often overlooked as a consideration of FAPE or embedded in the analysis of the appropriateness of the IEP (see next section). While the appropriateness of the education must consider the curriculum in which the individual participates, this FAPE requirement typically focuses on the extent to which the eligible individual participates in age appropriate activities with same-age peers and whether the eligible individual attends the same school they would if they were nondisabled. If the individual does not attend their neighborhood school, the reasons for attending elsewhere must be reasonable in light of the needs of the eligible individual and district authority to determine the school site for providing IDEA services. If the eligible individual attends a special school, the IEP team must consider the reasons why those services are needed and can't be provided in other, more integrated settings.

Individualized Education Program (IEP)

The individualized education program (IEP) serves as the articulation of the IEP team's vision of FAPE for an individual. It is the culmination of discussions on what is needed to assist the eligible individual to meet educational standards and address other needs of the disability in order to be prepared for further education, employment and independent living. Specifically, sections §§ 300.320 through 300.324 (Iowa Admin. Code rr. 281-41.320 through 41.324) describe the requirements for the contents of an IEP; the members of an IEP

team; ways for parents to participate; when IEPs must be in effect; and considerations for the development, review and revision of an IEP. Unfortunately, all too often these requirements have come to represent procedural compliance rather than considerations that result in the design and delivery of an appropriate educational program based on the individual's unique needs as a result of the disability. While these sections provide a detailed set of procedures, several themes predominate throughout them, including the accurate identification of:

- the participation of parents and other members of the IEP team;
- the eligible individual's present levels of performance to be involved and progress in general education curriculum;
- the goals the individual needs to be involved in and progress in the general education curriculum; and meet other needs as the result of the disability; and
- the special education and related services and supplementary aids and services the eligible individual will need to make progress on goals and in the general curriculum, participate in non-academics and extracurricular activities and be educated/participate with nondisabled children.

IEP teams that focus on defining the above in light of the individual's unique characteristics are more likely to identify an appropriate education for the individual. Of course, the concept of *appropriate* is one of the most nebulous terms (and cornerstones) of IDEA. Indeed, determining the appropriateness of an IEP has been the subject of many mediations, state complaints and district and federal court cases. The prevailing standard to determine FAPE was set by the U.S. Supreme Court in the 2017 *Endrew F.* decision (*Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017)). The *Endrew F.* standard for FAPE relies heavily on analysis of the IEP to determine whether the school offered an IEP "*reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.*"

Summary

Determination of FAPE must be made on an individual basis relying on identification of the individual's unique needs and the provision of special education and related services and supplementary aids and supports to meet those needs. FAPE is grounded in the standards of the state as they apply to the education of all children and must be provided at no charge under public supervision and direction. The IEP itself must be reasonably calculated to enable the individual to make appropriate progress in light of the individual's circumstances. Although a complex intertwining of concepts, the provision of FAPE is accomplished when IEP team members work together to carefully consider the needs of the eligible individual and identify appropriate ways to meet those needs.