

Title 6. Education

Chapter I. Division of Elementary and Secondary Education

Subchapter E. Special Education

Part 130. Procedural Requirements and Program Standards

Subpart 8. Individualized Education Program (IEP)

6 CAR § 130-801. Responsibility of public agencies for IEPs.

Each public agency shall ensure that:

(1) Except as provided in 34 C.F.R. §§ 300.320 – 300.324 and this subpart, an IEP is developed and implemented for each child with a disability served by that agency; and

(2) An IEP is developed and implemented for each eligible child placed in or referred to a private school or facility by the public agency.

6 CAR § 130-802. Definitions related to IEPs.

(a) **Individualized education program.** As used in this part, the term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 34 C.F.R. §§ 300.320 – 300.324.

(b) **Participating agency.** As used in 34 C.F.R. § 300.324(c)(1) and 6 CAR § 130-809, “participating agency” means a state or local agency, other than the public agency responsible for a student’s education, that is financially and legally responsible for providing transition services to the student.

6 CAR § 130-803. When IEPs must be in effect.

(a) **General.** At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in 34 C.F.R. § 300.320.

(b) **Implementation of IEPs.** Each public agency shall ensure that:

(1) An IEP:

(A) Is in effect before special education and related services are provided to an eligible child under this part; and

(B)(i) As soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

(ii) Exceptions to this would be when the meetings occur during the summer or other vacation period, or when there are circumstances which require a short delay, such as working out transportation arrangements.

(iii) However, unless otherwise specified in the IEP, the IEP services must be provided as soon as possible, but not later than thirty (30) calendar days following the IEP meeting;

(2) 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 its implementation; and

(3) Each teacher and provider described in subdivision (b)(2) of this section is informed of:

(A) His or her specific responsibilities related to implementing the child's IEP; and

(B) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the child's IEP.

(c) **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:

(1) Adopts the child's IEP from the previous public agency; or

(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in 34 C.F.R. §§ 300.320 – 300.324.

(d) **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:

(1) Conducts an evaluation pursuant to 34 C.F.R. §§ 300.304 – 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in 34 C.F.R. §§ 300.320 – 300.324.

(e) **Transmittal of records.** To facilitate the transition for a child described in subsections (c) and (d) of this section:

(1) 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

(2) 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.

6 CAR § 130-804. IEP meetings.

(a) **General.** Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability.

(b) **Initial IEPs — Provision for services.** Each public agency must ensure that:

(1) As set forth in 6 CAR § 130-603(a), procedures for initial evaluation of a child must be completed within sixty (60) calendar days of the written parental consent to evaluate; and

(2) Within thirty (30) calendar days of completing the administration of tests and other evaluation materials, an evaluation/programming conference must be

conducted by a group of qualified professionals and the parent of the child, as set out in 6 CAR § 130-605(a)(2) and 34 C.F.R. § 300.321 for the purpose of:

(A) Determining the:

- (i) Student's eligibility for special education and related services; and
- (ii) Educational needs of the child; and

(B) If appropriate, developing an IEP for the child.

(c) **Review and revision of IEPs.** Each public agency must ensure that the IEP team:

(1) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(2) Revises the IEP as appropriate to address:

(A) Any lack of expected progress toward the annual goals described in 34 C.F.R. § 300.320(a)(2) and 6 CAR § 130-808(a), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under 34 C.F.R. § 300.303 and 6 CAR § 130-701;

(C) Information about the child provided to, or by, the parents, as described in 34 C.F.R. § 300.503(a)(2) and 6 CAR § 130-605(a);

(D) The child's anticipated needs; or

(E) Other matters.

6 CAR § 130-805. IEP team.

(a) **General.** The public agency must ensure that the IEP team for each child with a disability includes:

(1) The parents of the child;

(2) Not less than a regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(3) Not less than one (1) special education teacher of the child, or where appropriate, not less than one (1) special education provider of the child;

(4) A representative of the public agency who is:

(A) Qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(B) Knowledgeable about the general education curriculum; and

(C) Knowledgeable about the availability of resources of the public agency;

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subdivisions (a)(2) – (a)(6) of this section;

(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) Whenever appropriate, the child with a disability.

(b) Transition services participants.

(1) Under subdivision (a)(7) of this section, the public agency must invite a child with a disability to attend the child’s IEP team meeting if a purpose of the meeting will be the:

(A) Consideration of the postsecondary goals for the child; and

(B) Transition services needed to assist the child in reaching those goals under 34 C.F.R. § 300.320(b).

(2) If the child does not attend the IEP team meeting, the public agency must take other steps to ensure that the child’s preferences and interests are considered.

(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority in implementing the requirements of 34 C.F.R. § 300.3-321(b)(1) and 6 CAR § 130-808(b), the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(4) If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with 34 C.F.R. § 300.320(b), the public agency must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(c) **Determination of knowledge and special expertise.** The determination of the knowledge or special expertise of any individual described in subdivision (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.

(d) **Designating a public agency representative.** A public agency may designate a public agency member of the IEP team to also serve as the agency representative, if the criteria in subdivision (a)(4) of this section are satisfied.

(e) **IEP team attendance.**

(1) A member of the IEP team described in subdivisions (a)(2) – (a)(5) of this section is not required to attend an IEP team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(2) A member of the IEP team described in subdivision (e)(1) of this section may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the:

(A) Parent, in writing, and the public agency consent to the excusal; and

(B) Member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting.

6 CAR § 130-806. Parent participation.

(a) **Public agency responsibility.** Each public agency must take steps to ensure that one (1) or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) **Information provided to parents.**

(1) The notice required under subdivision (a)(1) of this section must:

(A) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(B) Inform the parents of the provisions in 34 C.F.R. § 300.321(a)(6) and (c) and 6 CAR § 130-805(a)(6) and 6 CAR § 130-805(c) relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child.

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns sixteen (16), or younger, if determined appropriate by the IEP team, the notice also must:

(A) Indicate that a purpose of the meeting will be the consideration of postsecondary goals and transition services for the child in accordance with 34 C.F.R. § 300.320(b) and 6 CAR § 130-808(b);

(B) Indicate that the agency will invite the student; and

(C) Identify any other agency that will be invited to send a representative.

(c) **Other methods to ensure parent participation.** If neither parent can attend an IEP team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls consistent with 34 C.F.R. § 300.328 (related to alternative means of meeting participation).

(d) **Conducting an IEP team meeting without a parent in attendance.**

(1) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend.

(2) In this case the public agency must keep a record of the attempts to arrange a mutually agreed on time and place, such as:

(A) Detailed records of telephone calls made or attempted and the results of those calls;

(B) Copies of correspondence sent to the parents and any responses received; and

(C) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) **Use of interpreters or other action, as appropriate.** The public agency must take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) **Parent copy of child's IEP.** The public agency must give the parent a copy of the child's IEP at no cost to the parent.

6 CAR § 130-807. Development, review, and revision of IEP.

(a) Development of IEP.

(1) **General.** In developing each child's IEP, the IEP team must consider:

- (A) The strengths of the child and the concerns of the parents for enhancing the education of their child;
- (B) The results of the initial or most recent evaluation of the child;
- (C) The academic, developmental, and functional needs of the child; and
- (D) As appropriate, the results of the child's performance on any general state or district-wide assessment programs.

(2) **Consideration of special factors.** The IEP team must:

(A)(i) In the case of a child whose behavior impedes his or her learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

(ii) Such consideration may include the need to conduct a functional behavioral assessment of the child and/or develop a behavior intervention plan to address identified behavioral needs of the child.

(iii) See 6 CAR § 130-1101 et seq.;

(B) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(C) 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;

(D) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider 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 full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(E) Consider whether the child needs assistive technology devices and services.

(3) **Additional FAPE considerations.** The IEP team must consider whether the child:

(A)(i) Has available to him or her the variety of educational programs and services available to nondisabled children, including:

(a) Art;

(b) Music;

(c) Industrial arts;

(d) Consumer and homemaking education; and

(e) Vocational education.

(ii) This list of program options is not exhaustive and could include any program or activity in which nondisabled children participate; and

(B)(i) Is being afforded an equal opportunity for participation in nonacademic and extracurricular services and activities.

(ii) Nonacademic and extracurricular services and activities may include:

(a) Counseling services;

(b) Athletics;

(c) Transportation;

(d) Health services;

(e) Recreational activities;

(f) Special interest groups or clubs sponsored by the public agency; and

(g) Assistance in making outside employment available.

(4) Agreement.

(A) In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

(B) If changes are made to the child's IEP in accordance with subdivision (a)(4)(A) of this section, the public agency must ensure that the child's IEP team is informed of those changes.

(5) Consolidation of IEP team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

(6) Amendments.

(A) Changes to the IEP may be made either:

(i) By the entire IEP team at an IEP team meeting; or

(ii) As provided in subdivision (a)(4)(A) of this section, by amending the IEP rather than by redrafting the entire IEP.

(B) Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(b) Review and revision of IEP. In conducting a meeting to review and, if appropriate, revise a child's IEP, the IEP team shall consider the factors described in subsection (a) of this section.

(c) Requirement with respect to regular education teacher. The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the IEP of the child, including assisting in the determination of:

(1) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(2) Supplementary aids and services, program modifications, and support for school personnel consistent with 34 C.F.R. § 300.320(a)(4) and 6 CAR § 130-808(a)(2)(B).

(d) **Construction.** Nothing in this part shall be construed to require:

(1) The IEP team to include information under one (1) component of a child's IEP that is already contained under another component of the child's IEP; or

(2) That additional information be included in a child's IEP beyond what is explicitly required in Section 614 of the Individuals with Disabilities Education Act.

6 CAR § 130-808. Content of IEP.

(a) **General.** The IEP for each child with a disability must include:

(1) A statement of the child's present levels of academic achievement and functional performance, including:

(A) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or meet each of the child's other educational needs that result from the child's disability; or

(B) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2)(A) A statement of measurable annual goals, including academic and functional goals designed to:

(i) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(ii) Meet each of the child's other educational needs that result from the child's disability;

(B) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(3) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to:

(A) Advance appropriately toward attaining the annual goals;

(B) Be involved and make progress in the general curriculum in accordance with subsection (a)(1) of this section and to participate in extracurricular and other nonacademic activities; and

(C) Be educated and participate with other children with disabilities and nondisabled children in the activities described in this part;

(4) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subsection (a)(3) of this section;

(5)(A) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of a child on state and district-wide assessments consistent with Section 612(a)(16) of the Individuals with Disabilities Education Act; and

(B) If the IEP team determines that the child must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why the:

(i) Child cannot participate in the regular assessment; and

(ii) Particular alternate assessment selected is appropriate for the child;

(6) The projected date for the beginning of the services and modifications described in subsection (a)(2)(B) of this section, and the anticipated frequency, location, and duration of those services and modifications; and

(7) A description of:

(A) How the child's progress toward meeting the annual goals described in subsection (a)(2)(A) of this section will be measured; and

(B) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

(b) **Transition services.** Beginning not later than the first IEP to be in effect when the child turns sixteen (16), or younger, if determined appropriate by the IEP team and updated annually thereafter, the IEP must include:

(1) Appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

(c) **Transfer of rights at age of majority.**

(1) In Arkansas, beginning not later than one (1) year before the child reaches the age of majority under state law (age eighteen (18)), the child's IEP must include a statement that the child has been informed of his or her rights under Part B of the Individuals with Disabilities Education Act and 6 CAR § 130-901 et seq., if any, that will transfer to the child on reaching the age of majority, consistent with 34 C.F.R. § 300.520 and 6 CAR § 130-907.

(2)(A) The LEA must use the procedures established by the state for appointing the parent of a child with a disability, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the act if, under state law, a child who has reached the age of majority, but has not been determined not to be incompetent, can be determined to have the ability to provide informed consent with respect to the child's educational program.

(B) In Arkansas, state statutes at Arkansas Code § 28-65-101 et seq., and § 28-65-202 et seq., provide a mechanism whereby any individual may file a petition for

the appointment of himself or herself or some other qualified person as guardian of an incapacitated person.

(C) It is appropriate for the LEA to inform the parent of a student who may be determined to not have the ability to provide informed consent with respect to his or her education program to seek to obtain such legal guardianship from an appropriate circuit or juvenile court, dependent upon the age and status of the youth or young adult in question.

(d) Students with disabilities convicted as adults and incarcerated in adult prisons.

(1) Special rules concerning the content of IEPs for children with disabilities convicted as adults and incarcerated in adult prisons include requirements that do not apply to these populations, as follows:

(A) The requirements contained in Section 612(a)(16) of the act and 34 C.F.R. § 300.320(a)(6) and subdivisions (a)(4) and (a)(5) of this section, relating to the participation of children with disabilities in general assessments; and

(B) The requirements in 34 C.F.R. § 300.320(b) and subsection (b) of this section relating to transition planning and transition services with respect to children whose eligibility under Part B of the Individuals with Disabilities Education Act will end because of their age before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) Modifications of IEP or placement.

(A) Subject to subdivision (d)(2)(B) of this section, the IEP team of a child with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(B) The requirements of 34 C.F.R. § 300.320, 6 CAR § 130-802(a), and subsection (a) of this section relating to IEPs and 34 C.F.R. § 300.112 and 6 CAR § 130-1301(a) relating to LRE do not apply with respect to the modifications described in subdivision (d)(2)(A) of this section.

6 CAR § 130-809. Agency responsibilities for transition services.

(a) If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with 34 C.F.R. § 300.320(b) and 6 CAR § 130-808(b)(1), the public agency must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(b) Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

6 CAR § 130-810. Private school placements by public agencies.

(a) Developing IEPs.

(1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with 34 C.F.R. §§ 300.320 and 300.324 and 6 CAR §§ 130-807 and 130-808.

(2) The agency must ensure that a representative of the private school or facility attends the meeting.

(3) If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) Reviewing and revising IEPs.

(1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative:

(A) Are involved in any decisions about the child's IEP; and

(B) Agree to any proposed changes in the IEP before those changes are implemented.

(c) **Responsibility.** Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.