

Chapter 2

SPECIAL EDUCATION SERVICES AND SUPPORTS

What This Chapter Is About

All of the laws that help students with disabilities attend public school share common themes. The intention behind these laws is to help students with disabilities overcome the historical barriers to attending school. Public schools must provide services and supports that:

- ◆ Are free of charge;
- ◆ Are designed following the proper process and take into account information from all people who know the student; and,
- ◆ Are reasonably calculated to help the student learn.

The school's duty to provide services in this way is known as a "free appropriate public education" or FAPE. This chapter will describe FAPE and the different kinds of services and supports that schools must consider when providing it.

"Special education" is available to students with disabilities who need special programs or supports to succeed in school. "Related services" include transportation and any developmental, corrective, and other supportive services required to help a student benefit from special education.

In Michigan, special education and related services are sometimes provided in "categorical" programs (based on certain types or "categories" of disability) apart from the general education program. Special education and related services must also be provided in charter schools, alternative schools, juvenile detention and juvenile justice programs, and private schools in some situations.

Advocacy Hints in Chapter 2

- ◆ Assert your right to give informed written consent before the school district bills Medicaid or your private insurance for a service provided at school (Page 3).
- ◆ Make sure your child has access to the general curriculum (Page 4).
- ◆ Ask for special education services if your child needs them, even if he or she is making passing grades and moving from grade to grade (Page 5).
- ◆ Request supplementary aids and services to help meet your child's disability-related educational needs in a general classroom setting (Page 6).

- ◆ Check your ISD's waivers if your child is attending a class that has a mandatory school year that is longer than the year for general education schools (Page 9).
- ◆ Your child does not have to attend a categorical program just because he or she has a particular disability, and has the right to be with students without disabilities even when attending a categorical program (Page 11).
- ◆ If your child uses an assistive technology device, that device should be available for use at home if necessary to help your child learn (Page 13).
- ◆ Ask for specialized transportation in your child's IEP if he or she is having trouble with the school district's general transportation (Page 14).
- ◆ Ask for a functional assessment of behavior and a behavior support plan when your child needs it, not just in cases of expulsion or long-term suspension (Page 15).

Federal and state laws require schools to provide services and supports to students with disabilities. What level of service is required? This chapter answers that question and describes the range of services and supports available under the law.

Free Appropriate Public Education (FAPE)

Federal law requires schools to provide a free appropriate public education and defines this as special education and related services that:

- ◆ have been provided at public expense under public supervision and direction, and without charge;
- ◆ meet the standards of the state educational agency;
 - include an appropriate preschool, elementary, or secondary school education in the state involved; and
 - are provided in conformity with the individualized education program (IEP). **34 CFR 300.17.**

“Free”

“Free” means at no charge. The school must provide special education and related services, including evaluations, at no cost to parents.

May a school district bill Medicaid or private insurance for services provided in school? The answer is yes, under certain conditions. A district may not:

- ◆ require a parent to sign up for public benefits or insurance programs;
- ◆ limit services only to those covered by Medicaid or insurance;

- ◆ require parents to incur expenses such as co-payments or deductibles;
- ◆ use services in such a way that decreases lifetime benefits or takes away from services needed outside of school;
- ◆ use services in such a way that increases the parents' premiums, leads to cancellation of coverage, or makes the child ineligible for other programs; or,
- ◆ seek reimbursement without parental consent. **34 CFR 300.154(d).**

► **Advocacy Hint: Consent is written and informed.** The requirement that schools seek consent to bill Medicaid or private insurance is a new requirement added by the 2004 IDEA Amendments. "Consent" under IDEA means knowing and written consent. **34 CFR 300.9.**

A free education does not mean there will be no expense at all to parents. As with students who do not have disabilities, there are incidental fees that are normally charged during the school year, such as lab fees, field trip charges, charges for special events, plays, or football games.

Appropriate Education

Historically, an "appropriate" education was defined using a two-prong standard developed by the U.S. Supreme Court in Board of Education of Hendrick Hudson Central School Dist. Westchester County v. Rowley, 102 S.Ct. 3034 (1982). Under Rowley, a program was appropriate if it was:

- ◆ Designed using the IEP process; and,
- ◆ Reasonably calculated, based on the student's individual needs, to confer educational benefit.

The Supreme Court's March 2017 decision in Endrew F. v. Douglas County School District, 137 S.Ct. 988 (2017) announced a new and more demanding standard for educating students with disabilities. The Court's unanimous decision, authored by Chief Justice Roberts, requires that:

- ◆ Schools must provide students with disabilities capable of keeping up with (or catching up to) their non-disabled peers with the special education that will enable them to meet the academic standards that apply to all children and to advance from grade to grade.

- ◆ Schools must provide the small group of students with the most significant cognitive disabilities, who are not able to meet generally applicable academic standards, with the instruction and services they need to meet ambitious and challenging goals.

The Supreme Court emphasized that schools must be held to a “markedly more demanding” standard for providing education to a child with a disability. The Court declared that the special education that schools provide to students with disabilities must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” For students being educated in regular classrooms with their non-disabled peers, the special education provided must be reasonably calculated to allow the child to meet academic standards and advance from grade to grade. The Court assumed that students would be “fully integrated” in regular classrooms if they were capable of meeting academic standards and advancing from grade to grade. For children whose disabilities prevent them from being “fully integrated” in regular classrooms, the Court said, their special education must be “appropriately ambitious” and enable the child to meet “challenging objectives.”

When is a program appropriate? Here are some factors to consider:

- ◆ the program is based on a multidisciplinary evaluation, not just to determine eligibility, but to suggest suitable programs and services for the student;
- ◆ the program contains specially designed instruction to meet the unique needs of the student rather than a “one size fits all” approach;
- ◆ the program offers services that increase the student’s opportunity to benefit from education based on need rather than availability;
- ◆ the program is designed to help the student attain self-sufficiency and make progress in the general curriculum;
- ◆ the program offers meaningful benefit gauged in relation to the child’s potential;
- ◆ the program has specific goals and can be measured by meaningful criteria;
- ◆ the program is periodically reevaluated; and,
- ◆ the program is in the appropriate and least restrictive educational setting.

► **Advocacy Hint: Linked to curriculum.** IDEA now links special education to the general curriculum. Services and supports that are not designed to help students progress in the general curriculum (whether they help students in their academic achievement or their functional capabilities) may no longer be sufficient to meet the “appropriate” standard. **34 CFR 300.320(a). See Appendix 2-2**

“Appropriate” is not the best possible education, nor does it give parents the right to demand a particular school, classroom, teacher, or teaching methodology in most cases. In some situations, however, when the program chosen by the school district has not worked or obviously will not work, parents might be able to challenge the school’s choice of setting or staff as not being appropriate.

Special Education

IDEA defines special education as:

. . . specially designed instruction, at no cost to parents, to meet the unique needs of a student with a disability, including (i) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) instruction in physical education. 34 CFR 300.39.

In order to be eligible for special education, an IEP team must decide that a student needs services or supports to succeed in school because of a disability. If the student does not need services or supports in school, the student is not eligible for special education even though the student has a disability. For example, if a student with a physical disability does not need specially designed instruction, but fits into the available general classroom without any extra support, the student is not eligible for special education. In contrast, a student who is deaf or hard of hearing may be totally integrated into a general classroom, with the exception of one hour per week with a resource teacher. This student does need specially designed instruction - the instruction provided by the resource teacher. This student is eligible for all appropriate special education programs and services. The important point to remember is that any student who needs specially designed instruction to meet his or her unique needs is eligible for special education and related services.

► Advocacy Hint: It’s not just about grades. Sometimes schools will tell parents that their children do not qualify for special education because they are receiving passing grades. The 2006 federal rule changes clarified that a child who is making passing grades or moving from grade to grade may still have needs that qualify him or her for special education services. **34 CFR 300.101(c); 71 Fed.Reg. 46580 (8/14/06).**

Transition. Special education also includes transition services to address the needs of students 16 and older. Transition services are:

Activities ... designed within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. 34 CFR 300.43.

Extended school year. Special education also includes “extended school year” (ESY) services which are provided “beyond the normal school year of the public agency.” **34 CFR 300.106(b).** Extended school year services must be provided to individual students who need them to receive

a free appropriate public education. For example, if a student regresses each summer and does not recoup his skills within a reasonable time, or if he needs supports to ensure development of an emerging skill, extended school year services may be necessary to ensure an appropriate education.

The Michigan Rules currently provide extended school year services automatically to students in certain classes, such as classes for students with severe cognitive impairment or severe multiple impairments. **R 340.1738; R 340.1748.** School districts cannot unilaterally limit the type, amount or duration of extended school year services. **34 CFR 300.106(a)(3).**

Supplementary Aids and Services

One way to provide special education is to supplement the educational program provided in a general education classroom. The extra support provided to a student in a general education program is a supplementary aid or service. IDEA defines “supplementary aids and services” as:

... aids, services, and other supports that are provided in regular education classes or other education-related settings to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate. **34 CFR 300.42.**

► Advocacy Hint: Appropriate for the student, not others. There is sometimes confusion about what it means to integrate students with disabilities into the general education classroom “to the maximum extent appropriate.” It may be helpful to add “appropriate for the student with the disability” to the end of the statement so the intent is clear; any time away from general education must benefit the student with the disability, not necessarily the other students in the class, the teacher, or the school district. Time in a resource room is a benefit to a student with a disability because it offers additional help on academic subjects beyond the usual help the students get in the general education classroom. Likewise, time spent in speech therapy benefits the student because it increases success in communication in all aspects of general school life.

OSEP has provided a summary of the support services the courts have found to be required for specific students under the umbrella of “supplementary aids and services.” They include:

- ◆ modification to the general class curriculum;
- ◆ assistance of a resource room teacher on a periodic basis;
- ◆ special training for the general education teacher;
- ◆ provision of note takers and instructional aides;
- ◆ computer devices and other technological aids;
- ◆ co-teaching or teacher consultant services; and,

- ◆ social work services. **OSEP Memorandum 95-9, 21 IDELR 1152 (1994).**

It may be possible that the services that help a student to be successful in general education classes can be provided in that setting as well. These are sometimes referred to as “push in” services, as opposed to “pull out” services which would be provided outside of the general education setting.

Students with disabilities must also have an equal opportunity to participate in school-related or -sponsored nonacademic and extracurricular activities, including:

- ◆ counseling services;
- ◆ athletics and recreational activities;
- ◆ transportation;
- ◆ health services;
- ◆ special interest groups or clubs sponsored by the educational agency;
- ◆ referrals to agencies that provide assistance to people with disabilities; and
- ◆ employment of students, both by the educational agency and assistance in making outside employment available. **34 CFR 300.107(b).**

IDEA requires schools to provide appropriate and necessary supplementary aids and services to allow children with disabilities to participate in these activities. **34 CFR 300.107(a).** Section 504 also states that nonacademic and extracurricular activities must be accessible to all students with disabilities, and requires that students with disabilities be permitted to participate with other students in those activities to the maximum extent appropriate. **29 USC 794.**

Categorical Special Education Programs

Federal law directs the states to provide special education programs and services in conformity with each eligible student’s IEP. Federal law, however, leaves decisions regarding the actual methods for delivery of special education and services to the state. In Michigan, the state rules state that an intermediate school district, local school district, or other agency must meet general requirements for all programs and services for students with disabilities. **R 340.1733.** Some of these are:

- ◆ **Classrooms** — The size, light, ventilation and heat in special education classrooms must be equal to that of classrooms or areas where related services are provided for students who do not have disabilities. **R 340.1733(a).**
- ◆ **Supplies and Equipment** — Special education students must be provided supplies and equipment equal to those provided for general education students. In addition, supplies and equipment necessary to implement the IEP must be provided. **R 340.1733(g).**

- ◆ **Transition Services** — Transition services must be available to special education students. Transition services must be provided in accordance with a worksite based learning plan that is signed by the parents, school, and employer. **R340.1733(i)**. The plan must identify standards of attainment, job activities, time and duration of the program, and wages to be paid the student. A staff person must be designated to visit the student's job site at least once every 30 calendar days to monitor the student's progress and assess the placement in terms of health, safety and welfare of the student.

- ◆ **Age Range of Students in the Classroom** — The rules governing age ranges are complex and governed by **R 340.1733**:
 - Special education classrooms located in separate facilities attended only by students under 16 years of age who have disabilities shall not exceed a four-year age span, except for students with severe cognitive impairments or severe multiple impairments.

 - The age range standards for special education classrooms located in general education buildings are different. When students under 16 attend special education classes in a general education building, age ranges may not exceed six years or the age span of the other students in the building, whichever is less.

 - When special education classrooms are located in high school buildings, the age range may not exceed the age range of the other students attending the school. There is an exception for general education high schools. Students with disabilities may be served in such high schools through age 26.

 - The maximum age range for classrooms for students with severe cognitive impairments or severe multiple impairments under 16 years of age is six years regardless of whether the classroom is located in a separate facility or in a general education building.

 - Special education classrooms for students with moderate or severe cognitive impairments or severe multiple impairments may exceed permissible age ranges only when there are a small number of such students, the class is part of the ISD plan, and it is necessary for feasibility and student needs.

Specific Requirements for Categorical Programs

The Michigan Administrative Rules for Special Education provide requirements for certain categories of programs. The most important requirements are listed below.

Programs for Students with Severe Cognitive Impairment, R 340.1738:

These must have at least one teacher and two aides for a maximum of 12 pupils. The maximum number of students may total 15 if an additional aide is assigned. At a minimum, a program must have one full-time teacher and one full-time aide. The school year must consist of a minimum of 230 days and 1,150 hours of instruction. Teachers are responsible for the instruction and must coordinate the activities of aides and other personnel. A registered nurse must be available.

► **Advocacy Hint: Waivers at work.** Many ISDs have obtained waivers of the 230-day requirement while keeping the instructional hour requirement. As a result, students in these programs often attend school for fewer, but longer, days in the summer.

Programs for Students with Moderate Cognitive Impairment, **R 340.1739:**

There must be one teacher and one aide for a maximum of 15 students. There must be one lead teacher with a maximum of three aides to serve up to 30 pupils.

Programs for Students with Mild Cognitive Impairment, **R 340.1740:**

Elementary programs for students with mild cognitive impairment must serve no more than 15 different students. When an elementary program for students with mild cognitive impairment has 12 or more students in the room at one time, an aide must be assigned to the program. Secondary programs for students with mild cognitive impairment must have not more than 15 different students in the classroom at any one time, and the teacher must be responsible for the educational programming for no more than 15 different students.

Programs for Students with Emotional Impairment (EI), **R 340.1741:**

There must be no more than ten students in the class at any one time; no more than 15 students can be the responsibility of one teacher.

Programs for Students who are Deaf or Hard of Hearing (HI), **R 340.1742:**

A special class with one teacher must have no more than seven students in the class. Group amplification devices deemed necessary by the IEPT must be provided. The school must ensure that the devices work properly.

Programs for Students with Visual Impairment (VI), **R 340.1743:**

Class size must be determined on the basis of severity of disability. In no case may a teacher serve more than eight students in one class, or have responsibility for the educational programming for more than ten students. Low vision aids, excluding prescription eyeglasses, must be available and functioning properly.

Programs for Students with Physical/Other Health Impairments, **R 340.1744:**

Programs for the physically and otherwise health impaired must not have more than ten students in the classroom at any one time, and the teacher must be responsible for the educational programming for no more than 15 different students.

Programs for Students with Speech/Language Impairments (SLI), **R 340.1745:**

The extent of instructional services must be based on the student's individual needs as

determined by the IEPT. Size and composition of groups are determined by the service provider, in conjunction with the district director of special education and the building principal. They must take the severity and multiplicity of the disabilities of the students into account to allow adequate time for all of the following: diagnostics, report writing, consulting with parents and teachers, IEPT meetings, and travel. In no case may the individual provider's caseload exceed 60 pupils. An authorized provider is a teacher of SLI or a person otherwise credentialed under **R 340.1792**.

Homebound and Hospitalized (HH) Programs, **R 340.1746:**

Homebound services must be initiated WITHIN 15 SCHOOL DAYS after verification of a medical disability that requires a student to remain at home. Hospital services for a student who cannot attend school for a physical or medical disability must be initiated when it is determined that it is medically feasible to do so. A teacher providing home or hospital instruction must be responsible for no more than 12 pupils at any one time. Students must receive a **MINIMUM** of two nonconsecutive hours of instruction per week. Therapists may supplement but not substitute for a teacher's time. To the extent possible, the homebound/hospitalized program must have the same curriculum content as the program the student regularly attends.

Programs for Students with Learning Disabilities, **R 340.1747:**

There must not be more than ten students in the classroom at any one time, and the teacher must not be responsible for the educational programming of more than 15 different students.

Programs for Students with Severe Multiple Impairments (**SXI**), **R 340.1748:**

One full-time teacher and two aides are required for a maximum of nine pupils. At least one teacher and one full time aide must be employed by every program. The school year must be AT LEAST 230 SCHOOL DAYS and 1,150 INSTRUCTIONAL HOURS. A registered nurse must be reasonably available.

Resource Programs, **R 340.1749a(2)(a)(b)**, **R 340.1749b(2)(a)(b):**

Resource Programs may not serve more than 10 students at a time and not more than 18 (elementary) or 20 (secondary) different students. The resource room teacher may either provide direct instruction to the students on their caseload, or provide support to the general education classroom teachers serving the students on the resource room teacher's caseload.

If the special education teacher (resource room teacher) to whom the student is assigned does not have an endorsement in the area which matches the student's disability, the IEPT shall determine if a teacher consultant with such credentials is needed to provide consultation, resources, and support services to the resource teacher. **R 340.1749a(5); R 340.1749b(4)**.

Early Childhood Special Education Programs, **R 340.1754:**

An early childhood special education program with an approved teacher may be provided for students from-birth through five years of age as specified by the IEP Team. The program must be available for a minimum of 360 clock hours and 144 days of instruction. The program must not

have more than 12 students for one teacher and 1 aide at any one time and the teacher must not be responsible for the educational programming of more than 24 different students. Early childhood special education programs must also have a parent education component.

Early Childhood Special Education Services, R 340.1755:

Non-classroom services must be provided at a minimum of two hours per week, for no less than 72 clock hours within 180 school days. Services may be provided in a school or a home setting by a teacher or related services provider. The program shall include a parent participation and education component.

Programs for Students with Severe Language Impairments, R 340.1756:

This program serves only young children with disabilities or developmental delay, or elementary students who are determined to have a severe disability in the comprehension or expression of language. The program must not have more than 10 students at one time, and the teacher must be responsible for the education programming for no more than 15 different students.

Programs for Students with Autism Spectrum Disorder, R 340.1758:

Specific requirements for programs for students with autism shall be met using either of the following alternatives:

- ◆ Programs that consist of one classroom program for students with autism. These programs shall have no more than five students and shall be served by a teacher of students with autism spectrum disorder. Programs that have more than one classroom may have more than five students in a room, if the average student-to-teacher-and-aide ratio does not exceed five students to one teacher and one aide. A classroom with three or more students shall have one aide.
- ◆ Programs described in the intermediate school district plan and approved by the State Board of Education as assuring the provision of educational programming for students with autism spectrum disorder.

► **Advocacy Hint: A person is not a label.** A student does not have to attend a program which corresponds to his or her qualifying disability. For example, a student who is eligible under the learning disability category is not limited to attending school in a learning disabled program.

Related Services

Under federal law “related services” are available to every student who has a disability and is eligible for special education. Related services include transportation and any developmental, corrective, and other supportive service that may be required to help a student benefit from special education.

Federal law lists some of the specific related services that a student may receive, including:

- ◆ audiology;
- ◆ counseling services;
- ◆ early identification and assessment;
- ◆ interpreting services;
- ◆ medical services for evaluation purposes;
- ◆ occupational therapy;
- ◆ orientation and mobility;
- ◆ parent counseling and training;
- ◆ physical therapy;
- ◆ psychological services;
- ◆ recreation;
- ◆ rehabilitation counseling;
- ◆ school health and school nurse services;
- ◆ social work;
- ◆ speech and language therapy; and
- ◆ transportation. **34 CFR 300.34.**

This list is not exhaustive and does not include all the services that may be necessary. If the student requires a service in order to benefit from special education, that service must be provided even though it is not specifically mentioned in IDEA. A list of related services is in an Appendix at the end of this chapter.

Although related services do not usually include physician services, they do include such services provided to determine a child's medically related disability that results in the child's need for special education and related services. **34 CFR 300.34(c)(5)**. Related services include many important and useful services. The key to eligibility for a specific related service is that the IEP Team must determine that the service is necessary to allow the student to benefit from special education. For example, an emotionally impaired student might not be able to concentrate on studies without the benefit of counseling to help resolve problems and control inappropriate behavior. Counseling, then, is a related service that *must* be offered to that student.

Assistive Technology Devices and Services

Schools must provide the assistive technology devices and services necessary to improve the functional capabilities of students with disabilities and ensure that students benefit from their education. These devices and services can be considered special education, related services, or supplementary aids and services to students placed in general classrooms. **34 CFR 300.105(a).**

According to Federal law, an “assistive technology device” is any item, piece of equipment or product system whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. **34 CFR 300.5.** Assistive technology devices are those items such as computers or wheelchairs, which are used to improve the functions of the student affected by the disability.

An “assistive technology service” means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. This includes:

- ◆ evaluation and functional evaluation in the individual’s customary environment;
- ◆ purchasing, leasing, or otherwise providing for the acquisition of devices;
- ◆ selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, and replacing the devices;
- ◆ coordinating and using other therapies, interventions, or services with the technology devices such as those associated with existing education and rehabilitation plans and programs;
- ◆ training or technical assistance for a student with a disability, or if appropriate, the family of an individual with a disability; and
- ◆ training or technical assistance for professionals including individuals providing education and rehabilitation services, employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life functions of individuals with disabilities. **34 CFR 300.6.**

At the very least, at the request of the parents or school staff, schools must provide an evaluation to see if the student requires assistive technology. The need for assistive technology devices and services is determined for each student at the student’s IEP team meeting. If the team determines that the student is in need of assistive technology or services as special education or a related service, a statement of the nature and amount should be included in the IEP.

► **Advocacy Hint: What about homework?** If a student’s IEP team determines that home use of a device is necessary to provide FAPE for the student, the student must be allowed to use the device at home. **34 CFR 300.105(b).**

Physical Education

IDEA regulations state that “each student with a disability must be afforded the opportunity to participate in the regular physical education program available to other students unless:

- ◆ the student is enrolled full-time in a separate facility; or
- ◆ the student needs specially designed physical education as prescribed in the student's individualized education program." **34 CFR 300.108(b)**.

If a student needs specially designed physical education, and it is prescribed as part of the student's educational program, the agency responsible for the student's education must provide those services directly or make arrangements to provide them through other agencies. **34 CFR 300.108(c)**.

Transportation

General transportation is available to all students, including special education students, who qualify as determined by local school board policy. If general transportation meets the needs of a student with a disability, it is not a related service in the student's IEP.

Specialized transportation, defined as travel to and from school and specialized equipment (such as special or adapted buses, lifts, and ramps), is a related service. **34 CFR 300.34(c)(16)**. Specialized transportation must be provided to special education students at no charge if identified in the IEP.

Each intermediate school district must coordinate or provide for additional or specialized services as determined by IEP specifications. The plan for providing services must be included in each ISD's plan for delivery of special education programs and services. **R 340.1832(i)**.

► **Advocacy Hint: Ask for specialized transportation.** If your child's disability makes it difficult to ride the general transportation school bus, ask that specialized transportation be written into the IEP as a related service.

Behavior Planning and Supports

Related services include evaluations and services necessary to provide behavior supports required to help students with disabilities benefit from special education. For example, the definition of "psychological services" includes "assisting in developing positive behavioral intervention strategies." **34 CFR 300.34(c)(10)(vi)**. The definition of "social work services in schools" includes the same service. **34 CFR 300.34(c)(14)(v)**. Finally, the list of services in the Federal rules is not exhaustive, and the Office of Special Education Programs noted in the comments to the new rules that behavior support planning and services is not limited just to work performed by psychologists or school social workers. **71 Fed.Reg. 46569 (8/14/06)**.

► **Advocacy Hint: Behavior support when needed.** Some schools mistakenly deny a parent's request for a functional assessment of behavior or a behavior support plan in situations where a student has not been out of school for 10 days or more. The Federal rules and their interpretation clarify that behavior support planning and services are related services that can be the subject of evaluations and can be included in IEPs as related services.

Services and Supports in Charter Schools

Charter schools are public schools. Each charter school has all the responsibilities and functions of a school district. Students in charter schools have the same rights under IDEA and Michigan special education law as do students in other public schools. The charter schools have Student/Child-Find responsibilities, must evaluate students, hold IEP team meetings, and develop and implement IEPs for their students. They must provide special education and related services, including behavior supports, and may suspend and expel special education students only in the ways prescribed in IDEA and the Michigan Administrative Rules for Special Education.

They must also provide due process hearings when requested by parents and are accountable through the complaint and monitoring processes.

Services and Supports in Alternative Schools

Alternative education programs are usually provided by school districts or by a group of districts to serve general education high school students (very occasionally middle school age students) who have behavioral or other issues that appear to preclude the students from remaining in the general education setting. Some alternative schools are set up and monitored by family courts. Some are even set up as charter schools.

Most of the students in these programs are at high risk for dropping out of school. They may also serve students who have been suspended, or in some cases, expelled from the general education setting. Classes are usually small and often have a significant behavior support component. Students may return to the general education setting after some specific accomplishment or may finish out their high school years in the alternative education programs.

The majority of teachers in alternative education programs are general education teachers. Few alternative programs have certified special education teachers.

Occasionally a decision will be made by the general education administration, based on issues not related to the student's disability, to place an eligible special education student in an alternative education setting. When this occurs, the student retains all special education rights, and special education services on the student's IEP continue to be provided. This includes specialized instruction, related services including behavioral services, and consultative services. In 1993, the Office for Civil Rights investigated the Comstock Park (MI) Public School and determined that the alternative school did not offer special education services to students with disabilities, thereby denying these individuals a FAPE in violation of Section 504 at **34 CFR 104.33(a) and (b)**, and **34 CFR 104.35**.

Special Education in Juvenile Justice Facilities

Special education students who are held in a juvenile detention facility are also entitled to FAPE. Students who enter the juvenile justice system must begin receiving educational programming within 5 calendar days of admission. If the student who is admitted is suspected of having a disability, the procedures that are outlined elsewhere in this manual for evaluating and identifying students as special education eligible must be followed.

Within 5 days of admission to the facility, the superintendent of the student's district of residence must be notified of the educational placement of the student. Education reports must be sent by certified mail to the superintendent of the district of residence by certified mail, with parent consent, within 5 days from the date of release from the facility. **R 340.1757.**

Additionally, Michigan Rehabilitation Services has an obligation to assist older students with disabilities who will be transitioning from the juvenile justice facility back into the community, by helping prepare a plan for discharge which may include job preparation, further education, and/or the coordination of agencies that will be involved with the student upon discharge.

Services and Supports in Nonpublic Schools

IDEA now has extensive provisions regarding the role of public schools in providing special education and related services to private school students. In general, the private school student's rights depend on whether the student was placed there by his or her parents for personal reasons or whether the student was placed at the private school in order to receive a free appropriate public education.

Under IDEA, there are three ways a student can end up in private school seeking special education services.

First, the parents can simply choose the private school for their own reasons, without challenging the appropriateness of the public school's program. This is sometimes called a unilateral parental placement, and the student's rights in such a situation are very limited. Such a student does not have a legally enforceable right to a FAPE or the services to which he or she would be entitled if enrolled in public school. **34 CFR 300.137(a).** Instead, the public school system must determine the percentage of students enrolled in private school and devote a similar percentage of services to these students in general, and not as a result of the individual needs of specific students. **34 CFR 300.133.**

Second, the IEP team can decide that the student requires a private school placement to provide all or part of a free appropriate public education. For example, an IEPT can decide that a preschool student needs extensive interaction with non-disabled peers and place the student part-time in a private preschool at the school's expense, since the public school does not operate a general education preschool program. If the student is placed or referred to private school by the public school, then the student is entitled to a FAPE and has all the rights a public school student has. **34 CFR 300.146.**

Third, the parents may choose to place the student in private school not for personal reasons, but

because the parents feel that the public school is not offering a FAPE and/or a program in the least restrictive environment. In such a case, IDEA places upon the parents the duty to first provide the public school with notice of the intent to place the student in private school, either by raising their concerns and intent at the most recent IEP meeting or by providing written notice of their intent to place the student in private school at least ten business days prior to removing the student from public school. If the parents do not provide this notice, they may later lose their right to tuition reimbursement if a hearing officer or court finds that the public school failed to offer a FAPE in the LRE. **34 CFR 300.148(c)**. If the parents do provide the required notice, initiate a hearing, and prove the public school's failure to offer a FAPE, the parents are entitled to reimbursement of tuition and associated costs of the private school placement. **34 CFR 300.148(b)**.

Sometimes, a student will already be attending private schools. The parents may choose to place the student in private school not for personal reasons, but because the parents feel that the public school is not offering a FAPE and/or a program in the least restrictive environment. In such a case, IDEA places upon the parents the duty to first provide the public school with notice of the intent to place the student in private school, either by raising their concerns and intent at the most recent IEP meeting or by providing written notice of their intent to place the student in private school at least ten business days prior to removing the student from public school. If the parents do not provide this notice, they may later lose their right to tuition reimbursement if a hearing officer or court finds that the public school at the time the parents or teacher believe the student may have a disability. In this case, the parents or the school may contact the public school district in which the parents live to have the student evaluated. **34 CFR 300.131**.

Services and Supports in Home Schools

In Michigan, home schools can either be registered or non-registered. The Nonpublic School Act, PA 302 of 1921, permits the Superintendent of Public Instruction to inquire into the records of enrollment, teacher qualifications, and course of study of a registered nonpublic (home) school, usually by requiring that the parents complete a Nonpublic School Membership Report.

Registered home schools are treated under the law as private or other non-public schools and are entitled to all the benefits of these schools. Students in non-registered home schools, usually called Exemption "F" schools, **MCL 380.1561(3)(f)**., are not entitled to services, but may attend non-core courses in the public school.

Appendix 2-1

IDEA Related Services – 34 CFR 300.34.

(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) Individual related services terms defined. The terms used in this definition are defined as follows:

(1) Audiology includes —

- Identification of children with hearing loss;
- Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
- Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
- Creation and administration of programs for prevention of hearing loss;
- Counseling and guidance of children, parents, and teachers regarding hearing loss; and
- Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) Counseling services —

- Means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) Early identification and assessment of disabilities in children —

- Means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) Interpreting services includes —

- The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and
- Special interpreting services for children who are deaf-blind.

(5) Medical services —

- Means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6) Occupational therapy —

- Means services provided by a qualified occupational therapist; and
- Includes —
 - A. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
 - B. Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
 - C. Preventing, through early intervention, initial or further impairment or loss of function.

(7) Orientation and mobility services —

- Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
- Includes teaching children the following, as appropriate:
 - A. Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
 - B. To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;
 - C. To understand and use remaining vision and distance low vision aids; and
 - D. Other concepts, techniques, and tools.

(8) Parent counseling and training —

- Means assisting parents in understanding the special needs of their child;
- Providing parents with information about child development; and
- Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(9) Physical therapy —

- Means services provided by a qualified physical therapist.

(10) Psychological services include —

- Administering psychological and educational tests, and other assessment procedures;
- Interpreting assessment results;
- Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
- Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
- Planning and managing a program of psychological services, including psychological counseling for children and parents; and
- Assisting in developing positive behavioral intervention strategies.

(11) Recreation includes —

- Assessment of leisure function;

- Therapeutic recreation services;
- Recreation programs in schools and community agencies; and
- Leisure education.

(12) Rehabilitation counseling services —

- Means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, **29 U.S.C. 701 et seq.**

(13) School health services and school nurse services —

- Means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(14) Social work services in schools includes —

- Preparing a social or developmental history on a child with a disability;
- Group and individual counseling with the child and family;
- Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
- Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
- Assisting in developing positive behavioral intervention strategies.

(15) Speech-language pathology services includes —

- Identification of children with speech or language impairments;
- Diagnosis and appraisal of specific speech or language impairments;
- Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- Provision of speech and language services for the habilitation or prevention of communicative impairments; and
- Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(16) Transportation includes —

- Travel to and from school and between schools;
- Travel in and around school buildings; and
- Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

Appendix 2-2

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

November 16, 2015

Dear Colleague:

Ensuring that all children, including children with disabilities, are held to rigorous academic standards and high expectations is a shared responsibility for all of us. To help make certain that children with disabilities are held to high expectations and have meaningful access to a State's academic content standards, we write to clarify that an individualized education program (IEP) for an eligible child with a disability under the Individuals with Disabilities Education Act (IDEA) must be aligned with the State's academic content standards for the grade in which the child is enrolled.¹ Research has demonstrated that children with disabilities who struggle in reading and mathematics can successfully learn grade-level content and make significant academic progress when appropriate instruction, services, and supports are provided.² Conversely, low expectations can lead to children with disabilities receiving less challenging instruction that reflects below grade-level content standards, and thereby not learning what they need to succeed at the grade in which they are enrolled.

The cornerstone of the IDEA is the entitlement of each eligible child with a disability to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet the child's unique needs and that prepare the child for further education, employment, and independent living. 20 U.S.C. §1400(d)(1)(A). Under the IDEA, the primary vehicle for providing FAPE is through an appropriately developed IEP that is based on the individual needs of the child. An IEP must take into account a child's present levels of academic achievement and functional performance, and the impact of that child's disability on his or her involvement and progress in the general education curriculum. IEP goals must be aligned with grade-level content standards for all children with disabilities. The State, however, as discussed

¹The Department has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf. The purpose of this guidance is to provide State and local educational agencies (LEAs) with information to assist them in meeting their obligations under the IDEA and its implementing regulations in developing IEPs for children with disabilities. This guidance does not impose any requirements beyond those required under applicable law and regulations. It does not create or confer any rights for or on any person. If you are interested in commenting on this guidance or if you have further questions that are not answered here, please e-mail iepgoals@ed.gov or write to us at the following address: U.S. Department of Education, Office of Special Education and Rehabilitative Services, 550 12th Street SW., PCP Room 5139, Washington, DC 20202-2600.

²For a discussion of this research see *Improving the Academic Achievement of the Disadvantaged; Assistance to States for the Education of Children With Disabilities*, Final Rule, 80 Fed. Reg. 50773, 50776 (Aug. 21, 2015).

on page five, is permitted to define alternate academic achievement standards for children with the most significant cognitive disabilities.³

Application of Provisions in the Elementary and Secondary Education Act of 1965 to Children with Disabilities

Since 2001, the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), has required each State to apply the same challenging academic content and achievement standards to all schools and all children in the State, which includes children with disabilities. 20 U.S.C. §6311(b)(1)(B). The U.S. Department of Education (Department), in its regulations implementing Title I of the ESEA, has clarified that these standards are grade-level standards. 34 CFR §200.1(a)-(c). To assist children with disabilities in meeting these grade-level academic content standards, many States have adopted and implemented procedures for developing standards-based IEPs that include IEP goals that reflect the State's challenging academic content standards that apply to all children in the State.

Interpretation of "General Education Curriculum"

Under the IDEA, in order to make FAPE available to each eligible child with a disability, the child's IEP must be designed to enable the child to be involved in and make progress in the general education curriculum. 20 U.S.C. §1414(d)(1)(A). The term "general education curriculum" is not specifically defined in the IDEA. The Department's regulations implementing Part B of the IDEA, however, state that the general education curriculum is "the same curriculum as for nondisabled children." 34 CFR §300.320(a)(1)(i). In addition, the IDEA Part B regulations define the term "specially designed instruction," the critical element in the definition of "special education," as "adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children." 34 CFR §300.39(b)(3) (emphasis added). Otherwise, the IDEA regulations do not specifically address the connection between the general education curriculum and a State's academic content standards.

³ In accordance with 34 CFR §200.1(d), for children with the most significant cognitive disabilities who take an alternate assessment, a State may define alternate academic achievement standards provided those standards are aligned with the State's academic content standards; promote access to the general curriculum; and reflect professional judgment of the highest achievement standards possible. See also 34 CFR §300.160(c)(2)(i).

Analysis

The Department interprets “the same curriculum as for nondisabled children” to be the curriculum that is based on a State’s academic content standards for the grade in which a child is enrolled. This interpretation, which we think is the most appropriate reading of the applicable regulatory language, will help to ensure that an IEP for a child with a disability, regardless of the nature or severity of the disability, is designed to give the child access to the general education curriculum based on a State’s academic content standards for the grade in which the child is enrolled, and includes instruction and supports that will prepare the child for success in college and careers. This interpretation also appropriately harmonizes the concept in the IDEA regulations of “general education curriculum (i.e., the same curriculum as for nondisabled children),” with the ESEA statutory and regulatory requirement that the same academic content standards must apply to all public schools and children in the State, which includes children with disabilities.

The IDEA statutory and regulatory provisions discussed above, the legislative history of the IDEA, and clarification the Department has provided on the alignment of the IEP with a State’s content standards in the Analysis of Comments and Changes to the 2006 IDEA Part B regulations also support this interpretation. When it last reauthorized the IDEA in 2004, Congress continued to emphasize, consistent with the provisions in the ESEA, the importance of “having high expectations for [children with disabilities] and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible.” 20 U.S.C. §1400(c)(5)(A). The Senate Report accompanying the 2004 reauthorization of the IDEA also explained that “[f]or most children with disabilities, many of their IEP goals would likely conform to State and district wide academic content standards and progress indicators consistent with standards based reform within education and the new requirements of NCLB.” S. Rep. No. 108-185, 105th Cong., 1st Sess. 29 (Nov. 3, 2003).

The Analysis of Comments and Changes accompanying the 2006 IDEA Part B regulations also included important discussion that further clarifies the alignment of an IEP with a State’s academic content standards under the ESEA, explaining: “section 300.320(a)(1)(i) clarifies that the general education curriculum means the same curriculum as all other children. Therefore, an IEP that focuses on ensuring that the child is involved in the general education curriculum will necessarily be aligned with the State’s content standards.”⁴

⁴ See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540, 46662 (Aug. 14, 2006); see also 71 Fed. Reg. 46579.

The Department's interpretation of the regulatory language "general education curriculum (i.e., the same curriculum as for nondisabled children)" to mean the curriculum that is based on the State's academic content standards for the grade in which a child is enrolled is reasonable. This interpretation is also necessary to enable IDEA and ESEA requirements to be read together so that children with disabilities receive high-quality instruction that will give them the opportunity to meet the State's challenging academic achievement standards and prepare them for college, careers and independence. Therefore, in order to make FAPE available to each eligible child with a disability, the special education and related services, supplementary aids and services, and other supports in the child's IEP must be designed to enable the child to advance appropriately toward attaining his or her annual IEP goals and to be involved in, and make progress in, the general education curriculum based on the State's academic content standards for the grade in which the child is enrolled.

Implementation of the Interpretation

Based on the interpretation of "general education curriculum" set forth in this letter, we expect annual IEP goals to be aligned with State academic content standards for the grade in which a child is enrolled. This alignment, however, must guide but not replace the individualized decision-making required in the IEP process.⁵ In fact, the IDEA's focus on the individual needs of each child with a disability is an essential consideration when IEP Teams are writing annual goals that are aligned with State academic content standards for the grade in which a child is enrolled so that the child can advance appropriately toward attaining those goals during the annual period covered by the IEP. In developing an IEP, the IEP Team must consider how a child's specific disability impacts his or her ability to advance appropriately toward attaining his or her annual goals that are aligned with applicable State content standards during the period covered by the IEP. For example, the child's IEP Team may consider the special education instruction that has been provided to the child, the child's previous rate of academic growth, and whether the child is on track to achieve grade-level proficiency within the year.

⁵The IEP must include, among other required content: (1) a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; (2) a statement of measurable annual goals, including academic and functional goals, designed to 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 (3) 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 advance appropriately toward attaining the annual goals, and to be involved in and make progress in the general education curriculum in accordance with the child's present levels of performance. 34 CFR §300.320(a).

The Department recognizes that there is a very small number of children with the most significant cognitive disabilities whose performance must be measured against alternate academic achievement standards, as permitted in 34 CFR §200.1(d) and §300.160(c). As explained in prior guidance,⁶ alternate academic achievement standards must be aligned with the State's grade-level content standards. The standards must be clearly related to grade-level content, although they may be restricted in scope or complexity or take the form of introductory or pre-requisite skills. This letter is not intended to limit a State's ability to continue to measure the achievement of the small number of children with the most significant cognitive disabilities against alternate academic achievement standards, but rather to ensure that annual IEP goals for these children reflect high expectations and are based on the State's content standards for the grade in which a child is enrolled.

In a case where a child's present levels of academic performance are significantly below the grade in which the child is enrolled, in order to align the IEP with grade-level content standards, the IEP Team should estimate the growth toward the State academic content standards for the grade in which the child is enrolled that the child is expected to achieve in the year covered by the IEP. In a situation where a child is performing significantly below the level of the grade in which the child is enrolled, an IEP Team should determine annual goals that are ambitious but achievable. In other words, the annual goals need not necessarily result in the child's reaching grade-level within the year covered by the IEP, but the goals should be sufficiently ambitious to help close the gap. The IEP must also include the specialized instruction to address the unique needs of the child that result from the child's disability necessary to ensure access of the child to the general curriculum, so that the child can meet the State academic content standards that apply to all children in the State.

An Example of Implementation

We provide an example of how an IEP Team could apply the interpretation of "general education curriculum" set forth in this letter. For example, after reviewing recent evaluation data for a sixth grade child with a specific learning disability, the IEP Team determines that the child is reading four grade levels below his current grade; however, his listening comprehension is on grade level. The child's general education teacher and special education teacher also note that when materials are read aloud to the child he is able to understand grade-level content. Based on these present levels of performance and the child's individual strengths and weaknesses, the IEP

⁶See U.S. Department of Education Non-regulatory guidance: Alternate achievement standards for students with the most significant cognitive disabilities August 2005) available at: <https://www2.ed.gov/policy/elsec/guid/altguidance.pdf>

Team determines he should receive specialized instruction to improve his reading fluency. Based on the child's rate of growth during the previous school year, the IEP Team estimates that with appropriate specialized instruction the child could achieve an increase of at least 1.5 grade levels in reading fluency. To ensure the child can learn material based on sixth grade content standards (e.g., science and history content), the IEP Team determines the child should receive modifications for all grade-level reading assignments. His reading assignments would be based on sixth grade content but would be shortened to assist with reading fatigue resulting from his disability. In addition, he would be provided with audio text books and electronic versions of longer reading assignments that he can access through synthetic speech. With this specialized instruction and these support services, the IEP would be designed to enable the child to be involved and make progress in the general education curriculum based on the State's sixth grade content standards, while still addressing the child's needs based on the child's present levels of performance.⁷ This example is provided to show one possible way that an IEP could be designed to enable a child with a disability who is performing significantly below grade level to receive the specialized instruction and support services the child needs to reach the content standards for the grade in which the child is enrolled during the period covered by the IEP.⁸ We caution, though that, because the ways in which a child's disability affects his or her involvement and progress in the general education curriculum are highly individualized and fact-specific, the instruction and supports that might enable one child to achieve at grade-level may not necessarily be appropriate for another child with the same disability.

Summary

In sum, consistent with the interpretation of "general education curriculum (i.e., the same curriculum as for nondisabled children)" based on the State's academic content standards for the

⁷For information on developing, reviewing, or revising the IEP for a child with limited English proficiency, see: *Questions and Answers Regarding Inclusion of English Learners with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives*

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/q-and-a-on-elp-swd.pdf>.

⁸While the Department does not mandate or endorse specific products or services, we are aware that many States have issued guidance addressing standards-based IEPs. For example see Minnesota Department of Education, *Developing Standards-Based IEP Goals and Objectives A Discussion Guide* available at:

https://education.state.mn.us/mdeprod/idcplg?IdcService=GET_FILE&dDocName=050483&RevisionSelectionMethod=latestReleased&Rendition=primary. States and LEAs also may consider reviewing the following examples from OSEP-funded projects regarding implementation of standards-based IEPs: *inForum: Standards-Based Individualized Education Program Examples* available at: www.nasdse.org/portals/0/standards-basediepexamples.pdf. For an example of annual goals aligned with State academic content standards for a child taking the alternate assessment based on alternate academic achievement standards, see: an issue brief provided by the OSEP-funded National Center and State Collaborative (NCSC), *NCSC Brief 5: Standards-based Individualized Education Programs (IEPs) for Children Who Participate in AA-AAS* available at: <http://www.ncscpartners.org/Media/Default/PDFs/Resources/NCSCBrief5.pdf>.

grade in which a child is enrolled set forth in this letter, an IEP Team must ensure that annual IEP goals are aligned with the State academic content standards for the grade in which a child is enrolled. The IEP must also include the specially designed instruction necessary to address the unique needs of the child that result from the child's disability and ensure access of the child to the general education curriculum, so that the child can meet the State academic content standards that apply to all children, as well as the support services and the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals.

Opportunities for Input

We are interested in receiving comments on this document to inform implementation of this guidance. If you are interested in commenting on this document, please e-mail your comments to iepgoals@ed.gov or write to us at the following address: US Department of Education, 550 12th Street SW, PCP Room 5139, Washington, DC 20202-2600. Note that we are specifically interested in receiving input from the field on examples of models of alignment of IEP goals with State content standards that are working well at the State and local level, and how this guidance could be implemented for children with disabilities who are English learners and children with the most significant cognitive disabilities. We will share appropriate models with you in further communications as they become available. We would also be glad to help answer your questions and help with your technical assistance needs in this important area.

We ask you to share this information with your local school districts to help ensure all children with disabilities are held to high standards and high expectations. Thank you for your continued interest in improving results for children with disabilities.

Sincerely,

/s/
Michael K. Yudin
Assistant Secretary

/s/
Melody Musgrove
Director
Office of Special Education Programs