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Vol 39 No 1
Jan/Feb 2006



- | | |
|-----|---|
| 99 | Supreme Court Limits Sovereign Immunity in ADA Title II Suits |
| 11 | 50-State Roundup: Ensuring Children with Disabilities a Free Appropriate Public Education |
| 155 | D.C. Courts May Appoint Temporary Guardians in Emergency Situations |
| 51 | Washington Law Requiring SVP Hearing for Incompetent Respondents Upheld |
| 155 | VA Issues Final Rule on Restraint and Seclusion |
| 64 | Ninth Circuit Affirms Eight-Level Downward Departure Under Sentencing Guidelines for Childhood PTSD |
| 107 | Employees May Obtain Second Opinion As to FMLA Serious Health Condition |

Special Feature

50-State Roundup: Ensuring Children with Disabilities a Free Appropriate Public Education

*Andrea F. Blau & Amy L. Allbright

The reauthorized Individuals with Disability Education Improvement Act of 2004 (IDEIA)¹ represents over three decades of educational public policy evolution for children with disabilities. Congressional intent, in the provision of a free appropriate public education (FAPE), has shifted from a focus on increasing the number of children with disabilities given access to a public education to ensuring them “access to educational curriculum to meet the challenging expectations established for all children.”² The IDEIA reflects significant refinements in both the procedural and substantive due process³ and accountability measures⁴ in the provision of a FAPE within the least restrictive environment for children with disabilities. Most significantly, the Act explicitly reflects the Congressional purpose “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”⁵

In order to qualify for federal financial assistance under the IDEIA, states must show that they have in effect a policy—submitted to and approved by the Secretary of Education—that assures all children with disabilities the right to a FAPE.⁶ That policy must describe in detail the goals, programs, and timetables under which the state intends to educate these children.⁷ Neither Congress within the reauthorized IDEIA of 2004,⁸ nor the Department of Education regulations,⁹ promulgated pursuant to the 2004 Act, have modified or further clarified their definition of a FAPE from the original Education of All Handicapped Children Act of 1975:

[S]pecial education and related services which

- (A) have been provided at public expense, under public supervision and direction, and without charge,
- (B) meet the standards of the State educational agency,
- (C) include an appropriate preschool, elementary, or secondary education in the State involved, and
- (D) are provided in conformity with the individualized education program required under section 1414(a)(5) of this title.¹⁰

However, in 1982, the U.S. Supreme Court in *Board of Education of Hendrick Hudson Central School District v. Rowley*,¹¹ ruled that the FAPE requirement is satisfied when a state provides “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.”¹² The Court went on to state that this requirement does not require states to “maximize each [handicapped] child’s potential ‘commensurate with the opportunity provided other [non-handicapped] children.’”¹³ The Court cautioned courts “to avoid imposing their view of preferable educational methods upon the States,”¹⁴ pointing out that the Act left to the states and local educational agencies, in cooperation with parents and guardians, “[t]he primary responsibility for formulating the education to be accorded a handicapped child, and for choosing

the educational method most suitable to the child’s needs. . . .”¹⁵

Each state, including the District of Columbia, has its own statutory provisions prescribing the level of education to be accorded children with disabilities. (See chart on p. 13). Only eight states—Delaware, Kansas, Louisiana, Maryland, Massachusetts, Mississippi, Montana, and Wisconsin—explicitly define the term “FAPE” within their statutes.¹⁶ In doing so, these states adopt the IDEA’s definition. Delaware adds “vocational education” to its definition, but does not mention “preschool education.”¹⁷

Minnesota adopts the IDEA’s definition, but uses the term “special instruction and services” instead of “FAPE,”¹⁸ as does Ohio, which uses the term “appropriate public education.”¹⁹ Alaska defines “appropriate education” as personalized instruction with sufficient support services to permit educational benefit, adopting the *Rowley* standard,²⁰ while Washington defines the term as education directed to disabled students’ unique needs, abilities, and limitations.²¹

Eighteen states²² define the terms “related services” and “special education”—both of which are incorporated in the IDEA’s definition of FAPE—in the same way that the IDEA defines those terms.²³ Alabama adopts the IDEA’s definition of “related services” but uses the term “special services,” while Idaho uses the term “special education or special instructional service,” and Illinois employs the term “special educational facilities and services.”²⁴ Nevada adopts the IDEA’s definition of “special education,” but uses the term “special education program.”²⁵ Two states’ definitions of the term “special education” do not track the IDEA’s definition of that term. In New Mexico, the term means “the provision of services additional to, supplementary to or different from those provided in the regular school program by a systematic modification and adaptation of instructional techniques, materials and equipment to meet the needs of exceptional children.”²⁶ South Dakota defines the term as “educational services and auxiliary services provided children in need of special education or special education and related services . . . and shall include school instruction . . . to the extent that the child . . . is capable of profiting.”²⁷

Finally, it is important to note that California,²⁸ Mississippi,²⁹ and West Virginia³⁰ have explicitly included provisions disclaiming responsibility for providing educational standards greater than those noted within the IDEA. Missouri amended its statute, which “declared the policy of the state of Missouri to provide or to require public schools to provide to all handicapped and severely handicapped children . . . special educational services sufficient to meet the needs and maximize the capabilities of handicapped and severely handicapped children . . . ,” to provide or require only “a free appropriate education consistent with the provisions set forth in state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) and any amendments thereto.”³¹ In addition, Kansas’ statute—requiring special education services necessary to enable exceptional children to *receive educational benefits in accordance with their abilities or capacities*—and Tennessee’s statute—requiring special education services sufficient to meet the needs of handicapped children and *maximize their capabilities*—does not require school districts to provide educational services at higher level than that required by the IDEA.³² On the other hand, North Carolina’s statutory provision—the state policy is to ensure every child a fair and full opportunity to reach his or her full

potential—places a higher burden on local educational authorities (LEAs) to “eliminate the effects of the handicap, at least to the extent that the child will be given an equal opportunity to learn if that is reasonably possible.”³³ However, this heightened standard does not require LEAs to develop “utopian educational program for handicapped students.”³⁴

*Andrea F. Blau received a Ph.D. in Speech and Hearing Sciences from City University of New York in 1986. She has been nationally active in the implementation of the IDEA since 1972 with the passage of Pub. Law No. 94-142. Dr. Blau will be receiving her J.D. from the Benjamin N. Cardozo School of Law in New York in June 2006. Her major focus is the interplay of Constitutional, Administrative and Disability Law in shaping public policy.

*Amy L. Allbright, J.D., is the Managing Editor of the *Mental & Physical Disability Law Reporter*, which is published by the American Bar Association’s Commission on Mental and Physical Disability Law.

ENDNOTES

- ¹ Pub. L. No. 108-446, 118 Stat. 2647 (2004).
- ² 20 U.S.C. §1400(c)(5)(A)(i).
- ³ *Id.* at §1415.
- ⁴ *Id.* at §1414.
- ⁵ *Id.* at §1400(c)(1)(A).
- ⁶ *Id.* at §1412(1).
- ⁷ *Id.* at §§1412, 1413.
- ⁸ *Id.* at §1401(9)(A)–(D).
- ⁹ 34 C.F.R. §300.13(a)–(d).
- ¹⁰ 20 U.S.C. §1401(18).
- ¹¹ 458 U.S. 176 (1982).
- ¹² *Id.* at 203.
- ¹³ *Id.* at 198.
- ¹⁴ *Id.* at 207.
- ¹⁵ *Id.* at 207.
- ¹⁶ Del. Code Ann. tit. 14, §3101(2); Kan. Stat. Ann. §72-962(p); La. Rev. Stat. Ann. §17:1943(6); Md. Educ. Code Ann. §8-401(a)(3); Mass. Ann. Laws ch. 71B, §1; Miss. Code Ann. §37-23-133(d); Mont. Code Ann. §20-70-401(2); Wis. Stat. Ann. §115.76(7).
- ¹⁷ Del. Code Ann. tit. 14, §3101(2).
- ¹⁸ Minn. Stat. Ann. §125A.03(a).
- ¹⁹ Ohio Rev. Code Ann. §3323.01(D).
- ²⁰ Alaska Stat. §14.30.350(1).
- ²¹ Wash. Rev. Code Ann. §28A.155.020.
- ²² Alaska Stat. §14.30.350(7) & (9); Ariz. Rev. Stat. Ann. §15-761 subds. 29 & 32; Ark. Code Ann. §6-41-203(3); Cal. Educ. Code §56031; Conn. Gen. Stat. Ann. §10-76a(4); Idaho Code §33-2001; Ind. Code Ann. §20-35-1-7; Iowa Code Ann. §256B.2 subd. 2; Ky. Rev. Stat. Ann. §157.200(2) & (4); Me. Rev. Stat. Ann. tit. 20-A, §7001 subd. 5; Neb. Rev. Stat. §79-1125; N.Y. CLS Educ. §4401; N.H. Rev. Stat. Ann. §186-C:2 subds. IV & V; N.D. Cent. Code §15.1-32-01 subds. 1 & 2; Or. Rev. Stat. §343.035(15) & (18)(a), (b); Tenn. Code Ann. §49-10-102(4); Vt. Stat. Ann. tit. 16, §2942(2); Va. Code §22.1-213.
- ²³ 20 U.S.C. §1401(26)(A) & (B). “‘Related services’ means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.” Does not include medical devices that are surgically implanted, or the replacement of such devices. *Id.* at §1401(29). “‘Special education’ means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—
(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
(B) instruction in physical education.”
- ²⁴ Ala. Code §16-39-2(7); Idaho Code §33-2001; Ill. Comp. Stat. 5/14-1.08.
- ²⁵ Nev. Rev. Stat. §395.008.
- ²⁶ N.M. Stat. Ann. §22-13-6A.
- ²⁷ S.D. Codified Laws Ann. §13-37-2.
- ²⁸ Cal. Educ. Code §56000.
- ²⁹ Miss. Code Ann. §37-23-150 (added by Laws 1999, ch. 582, §17, effective July 1, 1999).
- ³⁰ W. Va. Code §18-20-1d.
- ³¹ Mo. Rev. Stat. §162.670 (amended by Laws 2002, H.B. No. 2023, §A).
- ³² *O’Toole v. Olath Unified Sch. Dist. No. 233*, 144 F.3d 692, 699-701 (10th Cir. 1998); *Logue ex rel. Logue v. Shawnee Mission Pub. Sch. Dist. No. 512*, 959 F. Supp. 1338, 1350 (D. Kan. 1997); *Doe ex rel. Doe v. Board of Educ. of Tullahoma City Sch.*, 9 F.3d 455 (6th Cir. 1993), *cert. denied*, 511 U.S. 1108 (1994).
- ³³ *Harrell v. Wilson County Sch.*, 293 S.E.2d 687, 690 (N.C. Ct. App. 1982).
- ³⁴ *Id.* at 691.

Law	FAPE-Related Definition	Statutory Standard ¹
Ala. Code §16-39A-2 <i>et seq.</i>	<p>§16-39A-3, A-2(1). Each school board must provide not less than 12 consecutive years of appropriate instruction and special services for exceptional children between ages 6 and 21.</p> <p>§16-39A-2(7). Special services: Services relating to instruction of exceptional children. Follows IDEA definition of “related services.”²</p>	§16-39A-5. Bd. of Educ. must adopt regulations covering qualifications of specialists for each type of exceptionality and standards for certification of exceptional children; minimum standards of instruction and special services to be provided for each type of exceptionality at each age or grade level; and reasonable qualifications for teachers, instructors, therapists, and other personnel needed to work w/ exceptional children.
Alaska Stat. §§14.30.180, 14.30.350 <i>et seq.</i>	<p>§14.30.350(1). “Appropriate educ.”: Personalized instruction w/ sufficient support services to permit educational benefit.</p> <p>§14.30.350(7). “Related services”: Follows IDEA. Refers to Dep’t of Educ. regulations— 34 C.F.R. §300.24.</p> <p>§14.30.350(9). “Special educ.”: Follows IDEA.³ Refers to 34 C.F.R. §300.26.</p> <p>§14.30.180. Available to children w/ disabilities ages 3-21.</p>	§14.30.180. Allow procedures and actions necessary to comply w/ IDEA.
Ariz. Rev. Stat. Ann. §15-761 <i>et seq.</i>	<p>§15-761 subdiv. 32. “Special educ.”: Follows IDEA.</p> <p>§15-761 subdiv. 29. “Related services”: Follows IDEA definition.</p> <p>§15-761 subdiv. 34. “Specially designed instruction”: Adapting content, methodology, or delivery of instruction to meet unique needs of child w/ disability and ensure access to general curriculum as identified in academic standards adopted by State Bd. of Educ.</p> <p>§15-761 subdiv. 2. Available to children w/ disabilities ages 3-21.</p>	§15-764. Governing Bd. of each school district/county school superintendent must provide special educ. and related services for all children w/ disabilities; employ supportive special personnel; educate children w/ disabilities in regular educ. classes where appropriate; provide necessary specialized transportation as required by pupil's IEP; and establish policy w/ regard to allowable pupil-teacher and pupil-staff ratios.
Ark. Code Ann. §6-41-101 <i>et seq.</i>	<p>§6-41-203(3). “Special educ.”: Follows IDEA, but adds IDEA “related services” required to assist children w/ disabilities in taking advantage of/responding to educational programs and opportunities.</p> <p>§6-41-203(1). Available to children w/ disabilities between ages 3 and 21.</p>	§6-41-202(a). Bd. of Educ. authorized to assign responsibility for providing FAPE to appropriate school district.
Cal. Educ. Code §56000 <i>et seq.</i>	§56031. “Special educ.”: Follows IDEA, but adds related services needed to assist individuals w/ special needs to benefit from specially designed instruction. Also adds that special educ. provides educ. in a manner that promotes maximum interaction between disabled and non-disabled in a manner appropriate to needs of both.	§56000. Disclaims responsibility for standard greater than IDEA.
Colo. Rev. Stat. §22-20-101 <i>et seq.</i>	§22-36-101. State to provide FAPE for handicapped children.	§22-20-102. State duty to provide educational opportunities to all children enabling them to lead fulfilling and productive lives and educate them in least restrictive environment.
Conn. Gen. Stat. Ann. §10-76a <i>et seq.</i>	<p>§10-76a(4). “Special educ.”: Follows IDEA definition, but adds related services. Also, special educ. must be developed in accordance w/ Commissioner’s regulations and subject to State Bd. of Educ. approval.</p> <p>§10-76a(7). “Related services”: Follows IDEA.</p> <p>§10-76a(2) & (5). Available to children w/ disabilities ages 3 until 21 or graduates high school, whichever occurs first.</p>	§10-76d(a)(1). Each Bd. of Educ. must provide professional services to identify children requiring special educ., identify these children w/in jurisdiction, determine their eligibility for special educ., prescribe suitable educational programs, and maintain record thereof and make reports as Commissioner may require.

Law	FAPE-Related Definition	Statutory Standard ¹
Del. Code Ann. tit. 14, §§3101, 3120 <i>et seq.</i>	§3101(2). “FAPE”: Follows IDEA, ⁴ but adds vocational educ. §3101(4) & (6). Available to handicapped persons ages 3-20.	§3110. Dep’t of Educ. shall make rules and regulations to carry out this and other titles relative to identification, evaluation, educ., training, and transportation of exceptional persons.
D.C. Code §§38-2501, -2551 <i>et seq.</i>	§38-2501. Students classified as “disabled” (defined in IDEA 20 U.S.C. §1401(a)(1)) must be placed in appropriate program of special educ. services.	§38-2501. Superintendent must develop Special Educ. Reform Plan that includes measurable goals, timelines for service delivery, and roles and responsibilities of all agencies providing related services.
Fla. Stat. Ann. §1003.57 <i>et seq.</i>	§1003.57. Each district school bd. shall provide (1) appropriate program of special instruction, facilities, and services for exceptional students as prescribed by State Bd. of Educ.; (2) necessary professional services for diagnosis and evaluation of exceptional students; (3) special instruction, classes, and services that meet Commissioner’s standards; and (4) information to parents of sensory-impaired students annually describing programs/instruction methods.	§1003.57. Also, every 3 years, each district school bd. must submit to Dep’t of Educ. its proposed procedures for provision of special instruction and services for exceptional students.
Ga. Code Ann. §§20-2-150, -152 <i>et seq.</i>	§§20-2-152(a), -150(a). All children and youth who are eligible for general and career educ. program under §20-2-151 and who have special educational needs are eligible for special educ. services thru age 21 or until they receive high school or special educ. diplomas or equivalent.	§20-2-152(a). Bd. of Educ. shall adopt classification criteria for each area of special educ. and criteria to determine eligibility of students for special educ. programs.
Haw. Rev. Stat. §§302A-101, -436 <i>et seq.</i>	§302A-436. Vital concern to the State that all exceptional children be provided instruction, special facilities, and special services for educ., therapy, and training to enable them to live normal competitive lives. §302A-101(1). “Exceptional children”: Those under age 20.	§302A-436. Dep’t of Educ. shall establish and administer instruction, special facilities, and special services for the educ., therapy, and training of exceptional children, and provide corrective therapy, together w/ academic, occupational, and related training. §302A-101(1). Specialized training, techniques, and equipment are required to enable exceptional children to attain maximum of their abilities or capacities.
Idaho Code §33-2001 <i>et seq.</i>	§33-2001. “Special educ.”/“special instructional service”: Follows IDEA, but adds related services.	§33-2002(2). Bd. of Educ. must determine eligibility criteria for children w/ disabilities, qualifications of special teachers and special personnel, programs of instruction, and minimum standards for classrooms and equipment to be used in administering this Act.
105 Ill. Comp. Stat. 5/14-1.01 <i>et seq.</i>	§14-1.08. “Special educational facilities and services”: Follows IDEA’s definition of “related services.” Must be approved by State Superintendent of Educ. §14-1.02. Available to children w/ disabilities between ages of 3 and 21.	§14-3.03. State FAPE plan must be approved by Bd. of Educ.
Ind. Code Ann. §20-35-1-1 <i>et seq.</i>	§20-35-1-7. “Special educ.”: Follows IDEA, but adds IDEA “related services” only when required to assist students to benefit from instruction. §20-35-1-2. Available to children w/ disabilities ages 3-21.	20-35-1-2. Provision of special educational program, from which child may be expected to benefit from instruction in surroundings designed to further educational, social, or economic status.
Iowa Code Ann. §256B.1 <i>et seq.</i>	§256B.2 subd. 2. “Special educ.”: Follows IDEA, but adds related services required to assist children requiring special educ. in taking advantage of/responding to educational programs and opportunities. §256B.2 subd. 1. “Children requiring special educ.”: Persons under age 21.	§256B.2 subd. 3. School districts and state-operated educational programs to provide/make provision for FAPE sufficient to meet the needs of all children requiring special educ. Provide level of educ. commensurate w/ level provided to children not requiring special educ.

Law	FAPE-Related Definition	Statutory Standard ¹
Kan. Stat. Ann. §72-962 <i>et seq.</i>	§72-962(p). ⁵ “FAPE”: Follows IDEA. §72-962(s). “Related services”: Follows IDEA.	§72-966(2) & (3). State Bd. of Educ. shall provide FAPE and special educ. and related services in accordance w/ state and federal law. Language in §72-962(f)(2)—special educ. services are necessary to enable them <i>to receive educational benefits in accordance with their abilities or capacities</i> —does not require school districts to provide educational services to exceptional children at higher level than that required by IDEA. ⁶
Ky. Rev. Stat. Ann. §157.200 <i>et seq.</i>	§157.200(2). “Special educ.”: Follows IDEA. §157.200(4) “Related services”: Follows IDEA. 707 Ky. Admin. Regs 1:290. Available to children w/ disabilities ages 3-21.	707 Ky. Admin. Regs 1:290. Local educational agencies must make FAPE available to children w/ disabilities based on unique needs and not disability.
La. Rev. Stat. Ann. §17:1941 <i>et seq.</i>	§17:1943(6). “FAPE”: Follows IDEA. §17:1943(1). Available to children w/ exceptionalities ages 3-21. (6). Includes children w/ disabilities suspended or expelled.	§17:1941. Duty of state and local educational agencies to provide FAPE to residents in least restrictive educational placements.
Me. Rev. Stat. Ann. tit. 20-A, §§7001, 7201 <i>et seq.</i>	§7001 subd. 5. “Special educ.”: Follows IDEA, but adds IDEA “related services.” §7001 subd. 2. “Exceptional student”: Individual age 5 on or b/f Oct. 15 and has not reached age 20 at start of school year. Does not include child who reaches age 5 between Sept. 1 and Oct. 15 who is already receiving FAPE thru Child Development services System and whose parent chooses not to enroll child in kindergarten until start of following school year. Must be educated w/ students in regular programs to maximum extent possible.	§7201 subd. 1. All school administrative units must provide equal educational opportunities for all exceptional students. ⁷
Md. Educ. Code Ann. §8-401 <i>et seq.</i>	§8-401(a)(3). “FAPE”: Follows IDEA. §8-403(b). Appropriate special educ. and related services available from birth through the end of school year in which child turns 21.	§8-407. All proceedings held and decisions made shall be in conformance w/ IDEA. §8-403(a). State and each local school system shall make FAPE available to each child w/ disability.
Mass. Ann. Laws ch. 71B, §1 <i>et seq.</i>	§1. “FAPE”: Follows IDEA. Assures, to maximum extent appropriate, children w/ disabilities educated w/ non-disabled children. “School age children”: Person ages 3-21 who has not attained high school diploma or equivalent.	§2. Bd. of Educ. shall promulgate regulations regarding educational programs for children w/ disabilities, including definition of disability that emphasizes thorough, narrative description of each child’s development potential so as to minimize possibility of stigmatization and assure FAPE in least restrictive environment. ⁸
Mich. Comp. Laws §380.1701 <i>et seq.</i>	§1751. Bd. of local school district shall provide special educ. programs and services designed to develop maximum potential of each handicapped person in its district for whom an appropriate educational or training program can be provided in accordance w/ intermediate school district special educ. plan.	§380.1701(a). Bd. of Educ. must develop, establish, and continually evaluate and modify state plan for special educ. that must provide for delivery of special educ. programs and services designed to develop the maximum potential of every handicapped person. Plan shall coordinate all special educ. programs and services.
Minn. Stat. Ann. §§120A.03, .05 125A <i>et seq.</i>	§125A.03(a). “Special instruction and services”: FAPE as defined in IDEA. (b). Must be provided from birth until July 1 after child w/ disability becomes age 21.	§125A.03(a). Every district must provide FAPE. “When a state provides for educational benefits exceeding the minimum federal standards set forth under <i>Rowley</i> , ⁹ the state standards are . . . enforceable thru the IDEA.” ¹⁰

Law	FAPE-Related Definition	Statutory Standard ¹
<p>Miss. Code. Ann. §37-23-1 <i>et seq.</i></p>	<p>§37-23-133(d), (h), (i). “FAPE”; “Related services”; “Special educ.”: Follow IDEA. (f). To maximum extent appropriate, children w/ disabilities, are educated w/ non-disabled children.</p> <p>§37-23-1 (1). Available to exceptional children ages 3-20.</p>	<p>§37-23-1. Dep’t of Educ. shall establish goals for children w/ disabilities that will promote IDEA’s purpose and are consistent, to maximum extent appropriate, with other Dep’t goals and standards. Every 2 years, progress toward meeting established performance goals shall be reported to the public.</p> <p>§37-23-5. Dep’t shall require educ. for exceptional children be designed to provide individualized appropriate special educ. and related services that enable exceptional children to reach appropriate and uniquely designed goals for success.</p> <p>Disclaims accountability for standard greater than IDEA.¹¹</p>
<p>Mo. Rev. Stat. §162.670 <i>et seq.</i></p>	<p>§162.675(4). “Special educational services”: Programs designed to meet the needs of handicapped children. Include IDEA “related services”: diagnostic and evaluation services, student and parent counseling, itinerant, homebound and referral assistance, organized instructional and therapeutic programs, transportation, and corrective and supporting services.</p> <p>§162.675(2) & (3). “Handicapped children” or “severely handicapped children”: Children under age 21.</p>	<p>§162.670. State policy to provide FAPE consistent w/ state and federal regulations implementing IDEA and its amendments.¹²</p>
<p>Mont. Code Ann. §20-7-401 <i>et seq.</i></p>	<p>§20-7-401(2). “FAPE”: Follows IDEA, but uses term “high school educ.” instead of “secondary educ.” that IDEA does.</p>	<p>§20-7-402. Conduct of special educ. programs must comply w/ policies recommended by Superintendent of Public Instruction and adopted by Bd. of Public Educ. Policies must ensure and include: placement in least restrictive environment; due process, including appointment of surrogate parent if necessary; use of evaluation team to identify child w/ disability and to plan IEPs; evaluation process consistent with IDEA; and other policies needed to ensure FAPE.</p>
<p>Neb. Rev. Stat. §79-1110 <i>et seq.</i></p>	<p>§79-1125. “Special educ.”: Follows IDEA, but adds IDEA “related services.”</p> <p>§79-1126. Act applies to child w/ disability from date of diagnosis or date of notification of school district of residence to age 21.</p>	<p>§79-1127. Bd. of Educ. of every school district shall provide special educ. programs and transportation for all resident children w/ disabilities who would benefit from such programs.</p>
<p>Nev. Rev. Stat §§388.440, 388.450, 395.001 <i>et seq.</i></p>	<p>§395.008. “Special educ. program”: Follows IDEA “special educ.” definition. Must be designed in accordance w/ minimum Bd. of Educ. standards.</p> <p>§388.450. Financial resources sufficient to ensure reasonably equal educational opportunity to pupils w/ disabilities and gifted and talented pupils residing in Nevada.</p> <p>§388.440. “Pupil w/ disability”: Person under age 22.</p>	<p>§§388.440-.520. Provide instruction specially designed in accordance w/ minimum Bd. of Educ. standards to meet disabled students’ unique needs.</p>
<p>N.H. Rev. Stat. Ann. §186-C:1 <i>et seq.</i></p>	<p>§186-C:1. Statutory purpose to ensure Bd. of Educ. and school districts provide FAPE.</p> <p>§186-C:2 subd. IV. “Special educ.”: Follows IDEA.</p> <p>§186-C:2 subd. V. “Educationally related services”: Follows IDEA “related services” definition.</p> <p>§186-C:2 subd I. Available to children w/ disabilities ages 3-20.</p>	<p>§186-C:1. State policy to provide all children w/ equal educational opportunities.</p>

Law	FAPE-Related Definition	Statutory Standard ¹
N.J. Stat. Ann. §18A:46-1 <i>et seq.</i>	§18A:46-6. Each Bd. of Educ. shall provide for identification and educ. of children between ages 3 and 21 residing in the district who require and would benefit from special educ. programs and services.	§18A:46-6. Each county child study team shall function in consultation w/ local Bds. of Educ. in fields pertaining to development and approval of public school programs for handicapped pupils.
N.M. Stat. Ann. §22-13-5 <i>et seq.</i>	§22-13-6A. "Special educ.": Systematic modification and adaptation of instructional techniques, materials, and equipment to meet needs of exceptional children.	§22-13-5. School districts must provide special educ. and related services appropriate to meet needs of exceptional children.
NY CLS Educ. §4401 <i>et seq.</i>	§4401. "Special educ.": Follows IDEA "special educ." definition, but adds transportation, an IDEA "related service." §4401 subd. 2. "Special services or programs": Special classes, transitional support services, resource rooms, direct and indirect consultant teacher services, assistive technology, travel training, home instruction, and special teachers <i>plus</i> "related services" as defined in IDEA. §4401. "Child w/ disability": Person under age 21.	§4403. Educ. Dep't has duty to use all means and measures necessary to adequately meet physical and educational needs of children w/ disabilities.
N.C. Gen. Stat. §115C-106 <i>et seq.</i>	§115C-106(b). State policy to provide FAPE. "Special educ.": Follows IDEA.	§115C-106(a). State policy to ensure every child fair and full opportunity to reach full potential. State policy places higher burden on local educational authorities (LEAs) to "eliminate the effects of the handicap, at least to the extent that the child will be given an equal opportunity to learn if that is reasonably possible." ¹³ Heightened standard does not require LEAs to develop "utopian educational program for handicapped students." ¹⁴
N.D. Cent. Code §15.1-32-01 <i>et seq.</i>	§15.1-32-01 subd. 1. "Related services": Follows IDEA. §15.1-32-01 subd. 2. "Special educ.": Follows IDEA, but adds IDEA "related services" to assist students in taking advantage of, or responding to, educational programs and opportunities. §15.1-32-01 4. "Student w/ disabilities": Individual at least age 3 but who has not reached age 21 b/f Sept. 1 of year in which individual turns 21.	§15.1-32-02. Superintendent of Public Instruction shall establish general state policy regarding special educ. and endeavor to ensure a cooperative special educ. program coordinating all available services. Superintendent shall also cooperate w/ private agencies and solicit their advice and cooperation in establishment of policy and in the coordination and development of special educ. programs.
Ohio Rev. Code Ann. §3323.01 <i>et seq.</i>	§3323.01(D). "Appropriate public educ.": Follows IDEA FAPE definition. §3323.01(A). "Handicapped child": Person under age 22.	§3323.02. Bd. of Educ. shall establish standards for special educ. and related services for all handicapped children in state, regardless of severity of their handicap.
Okla. Stat. Ann. tit. 70, §13-101 <i>et seq.</i>	§13-102. Any child determined to be eligible shall be permitted to receive special educ. and related services for a minimum period of 12 years.	§13-101. Bd. of Educ. authorized to modify and redefine by regulation the eligibility definitions as required to receive federal assistance under IDEA. Each school district shall provide special educ. and related services for all children w/ disabilities in accordance w/ IDEA.
Or. Rev. Stat. §§343.035, 339.115 <i>et seq.</i>	§343.035 (15). "Related services": Follows IDEA. §343.035(18)(a) & (b). "Special educ.": Follows IDEA.	§343.045. Bd. of Educ. shall establish by rule criteria to guide development and operation of special programs.
Pa. Stat. Ann. tit. 24, §13-1371 <i>et seq.</i>	§13-1371. "Children w/ exceptionalities": Children of school age ¹⁵ who have disabilities or are gifted and, thus, need specially designed instruction.	§13-1372. Bd. of Educ. shall adopt and prescribe standards and regulations for proper educ. and training of all exceptional children.

Law **FAPE-Related Definition** **Statutory Standard¹**

R.I. Gen. Laws §16-24-1 <i>et seq.</i>	§16-24-2. Available to children w/ disabilities ages 3-21.	§16-24-1. School committee shall provide type of special educ. that will best satisfy needs of child w/ disability, as recommended and approved by Bd. of Regents for elementary and secondary educ.
S.C. Code Ann. §§59-33-10, 59-30-40 <i>et seq.</i>	§59-33-10. Purpose: To provide an appropriate educ. for all handicapped children. §59-33-20 (c). “Special educ. services”: Include special classes, special housing, homebound instruction, special rental facilities, braillists and typists for visually handicapped children, transportation, maintenance, instructional materials, therapy, professional consultant services, psychological services, itinerant services, and resource services.	§59-33-30. Bd. of educ. must establish program of specialized educ. for all handicapped children and prescribe standards and approve procedures under which facilities are furnished and services provided.
S.D. Codified Laws Ann. §13-37-1 <i>et seq.</i>	§13-37-1. “Children in need of special educ. or special educ. and related services”: Persons under age 21. §13-37-1.3. School districts mandated to provide all children in need to special educ. w/ FAPE. ¹⁶ §13-37-2. “Special educ.”: Educational services and auxiliary services provided children in need of special educ./special educ. and related services and includes school instruction to extent child is capable of “profiting.”	§13-37-1.1. Bd. of Educ. may adopt rules governing standards for educational and non-educational programs (public and private) serving children in need of special educ. or special educ. and related services; appeal procedures for disputes involving their placement; and administration, funding, and personnel associated w/ special educ. or special educ. and related services.
Tenn. Code Ann. §49-10-101 <i>et seq.</i>	§49-10-102(4). Special educ. services: Follows IDEA, but adds IDEA “related services” and other services approved by Bd. of Educ. to assist children w/ disabilities in taking advantage of/responding to educational programs and opportunities. §49-10-102(1)(A). “Child w/ disabilities”: Child and youth ages 3-21.	§49-10-101(a)(1). State policy: To provide, as integral part of FAPE, special educ. services sufficient to meet disabled students’ needs and maximize capabilities. ¹⁷ §49-10-103(a). Bd. of Educ. must provide all regular and special educ. and corrective and supporting services required by children w/ disabilities so they can receive benefits of a FAPE. (c)(1). Children should be educated w/ non-disabled children.
Tex. Educ. Code Ann. §29.001 <i>et seq.</i>	§29.002. “Special services”: Special educ. instruction and related services required for student to benefit and for implementation of IEP. §29.003. Right to FAPE includes instruction in regular classroom or thru special teaching or contracts, supplemented by related services.	§29.001. Statewide plan consistent w/ IDEA for delivery of a FAPE to children w/ disabilities ages 3-21.
Utah Code Ann. §53A-15-301 <i>et seq.</i>	§53A-15-301(1)(a). Students w/ disabilities between ages 3 and 22 who have not graduated from high school w/ regular diploma entitled to FAPE.	§53A-15-301(1)(c). Bd. of Educ. shall adopt rules consistent w/ IDEA, which include appropriate and timely identification of students w/ disabilities; diagnosis, evaluation, and classification; standards for classes and services; multidistrict programs; delivery of service responsibilities; certification and qualifications for instructional staff; services for dual enrollment students attending public school part time.
Vt. Stat. Ann. tit. 16, §2941 <i>et seq.</i>	§2942 (2). “Special educ.”: Follows IDEA definition, but adds IDEA “related services.”	§2941. State policy that children w/ disabilities entitled to FAPE.
Va. Code §21.1-213 <i>et seq.</i>	§22.1-213. “Special educ. and related services”: Follow IDEA. §22.1-213. “Children w/ disabilities”: Persons 2-21.	§22.1-214A. Bd. of Educ. must prepare and supervise program of special educ. designed to ensure FAPE to children w/ disabilities.

Law	FAPE-Related Definition	Statutory Standard ¹
Wash. Rev. Code Ann. §28A.155.010 <i>et seq.</i>	§28A.155.020. “Appropriate educ.”: Educ. directed to disabled students’ unique needs, abilities, and limitations. Appropriate educational opportunity for all children w/ disabilities between ages of 3 and 21.	§28A.155.010. Ensure children w/ disabilities have opportunity for appropriate educ.
W. Va. Code §18-20-1 <i>et seq.</i>	§18-20-1. County Bds. must establish and maintain for all exceptional children between ages 5 and 21 special educational programs for any type or classification as the State Bd. shall approve.	§18-20-1. Bd. of Educ. shall adopt rules to assure that all exceptional children in the state receive an educ. in accordance with the mandates of state and federal laws. §18-20-1d. Bd. shall adopt basic model for IEP, and model shall comply with, but may not exceed, all state laws and federal laws, policies, rules, and regulations relating to providing education services to students w/ exceptional needs.
Wis. Stat. Ann. §§115.758, 115.76 <i>et seq.</i>	§115.76(7). “FAPE”: Follows IDEA. §115.76(14) & (15). “Related services” and “special educ.,” Follow IDEA. §115.76. Available to children w/ disabilities at least age 3 and who become 21 during school term and has not graduated from high school.	§115.758. Comply w/ IDEA.
Wyo. Stat. §21-2-501 <i>et seq.</i>	§21-2-501. Every child of school age w/ mental, physical, or psychological disability that impairs learning entitled to FAPE in accordance w/ capabilities.	§21-2-502. Each school district, subject to rules and regulations by state superintendent, must provide for appropriate diagnosis, evaluation, educ. or training and necessary related services.

¹ Refers to the measure, as determined by the statute, used to guide each state in the provision of special education services. States refer to their education departments differently within their statutes (e.g., Department of Education, Board of Education, Board of Regents, Public Education Department, etc.)

² 20 U.S.C. §1401(26)(A) & (B). “‘Related services’ means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.” Does not include medical devices that are surgically implanted, or the replacement of such devices.

³ *Id.* at §1401(29). “‘Special education’ means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—
(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
(B) instruction in physical education.”

⁴ *Id.* at §1401(9). “‘FAPE’ means special education and related services that—
(A) have been provided at public expense, under public supervision and direction, and without charge;
(B) meet the standards of the State educational agency;
(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
(D) are provided in conformity with the individualized education

program required under section 1414(d) of this title.”

⁵ Amendment, *see* 2005 Kansas Laws ch. 171 (H.B. 2331).

⁶ *See O’Toole v. Olath Unified Sch. Dist. No. 233*, 144 F.3d 692, 699-701 (10th Cir. 1998); *Logue ex rel. Logue v. Shawnee Mission Pub. Sch. Dist. No. 512*, 959 F. Supp. 1338, 1350 (D. Kan. 1997).

⁷ Must identify in its regulatory agenda, when feasible, proposed rule/provision of proposed rule anticipated to be more stringent than IDEA and its regulations. Also must explain justification for difference.
⁸ Bd. of Educ. jointly with the Dep’t of Mental Health, Mental Retardation, Public Health, Social Services and Youth Services; Massachusetts Commission for Blind; and Commission for Deaf and Hard of Hearing.

⁹ *Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).

¹⁰ *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658-59 (8th Cir. 1999).

¹¹ *See* Miss. Code Ann. §37-23-150 (added by Laws 1999, ch. 582, §17, effective July 1, 1999).

¹² *See* Laws 2002, H.B. No. 2023, §A. Prior to amendment, state policy was to provide all handicapped and severely handicapped children special educational services sufficient to meet their needs and maximize their capabilities.

¹³ *Harrell v. Wilson County Sch.*, 293 S.E.2d 687, 690 (N.C. Ct. App. 1982).

¹⁴ *Id.* at 691.
¹⁵ Children ages 6-21, as well as mentally retarded children who have reached age of less than 6 at which preschool programs are available to others. *See* 1973 Op. Atty. Gen. No. 35.

¹⁶ FAPE as defined by rules promulgated pursuant to chapter 1-26 by South Dakota Board of Education.

¹⁷ Statutory requirement did not increase the standard against which school district’s performance of obligations to provide education for handicapped children would be judged over the “floor level of providing an education plan “reasonably calculated to enable to receive educational benefits,” mandated by the IDEA. *Doe ex rel. Doe v. Board of Educ. of Tullahoma City Sch.*, 9 F.3d 455 (6th Cir. 1993), *cert. denied*, 511 U.S. 1108 (1994).