

**§ 300.112**

**34 CFR Ch. III (7-1-02 Edition)**

**§ 300.112 Amendments to State policies and procedures.**

**§§ 300.114-300.120 [Reserved]**

STATE ELIGIBILITY—SPECIFIC  
CONDITIONS

(a) *Modifications made by a State.* (1) Subject to paragraph (b) of this section, policies and procedures submitted by a State in accordance with this subpart remain in effect until the State submits to the Secretary the modifications that the State decides are necessary.

**§ 300.121 Free appropriate public education (FAPE).**

(a) *General.* Each State must have on file with the Secretary information that shows that, subject to § 300.122, the State has in effect a policy that ensures that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE, including children with disabilities who have been suspended or expelled from school.

(2) The provisions of this subpart apply to a modification to a State's policies and procedures in the same manner and to the same extent that they apply to the State's original policies and procedures.

(b) *Required information.* The information described in paragraph (a) of this section must—

(b) *Modifications required by the Secretary.* The Secretary may require a State to modify its policies and procedures, but only to the extent necessary to ensure the State's compliance with this part, if—

(1) After June 4, 1997, the provisions of the Act or the regulations in this part are amended;

(1) Include a copy of each State statute, court order, State Attorney General opinion, and other State documents that show the source of the State's policy relating to FAPE; and

(2) Show that the policy—

(i)(A) Applies to all public agencies in the State; and

(2) There is a new interpretation of this Act or regulations by a Federal court or a State's highest court; or

(B) Is consistent with the requirements of §§ 300.300-300.313; and

(ii) Applies to all children with disabilities, including children who have been suspended or expelled from school.

(3) There is an official finding of non-compliance with Federal law or regulations.

(c) *FAPE for children beginning at age 3.* (1) Each State shall ensure that—

(Authority: 20 U.S.C. 1412(c)(2) and (3))

**§ 300.113 Approval by the Secretary.**

(a) *General.* If the Secretary determines that a State is eligible to receive a grant under Part B of the Act, the Secretary notifies the State of that determination.

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with § 300.342(c).

(b) *Notice and hearing before determining a State is not eligible.* The Secretary does not make a final determination that a State is not eligible to receive a grant under Part B of the Act until after providing the State reasonable notice and an opportunity for a hearing in accordance with the procedures in §§ 300.581-300.586.

(2) If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin.

(d) *FAPE for children suspended or expelled from school.* (1) A public agency need not provide services during periods of removal under § 300.520(a)(1) to a child with a disability who has been removed from his or her current placement for 10 school days or less in that

(Authority: 20 U.S.C. 1412(d))

school year, if services are not provided to a child without disabilities who has been similarly removed.

(2) In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the public agency, for the remainder of the removals, must—

(i) Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP, if the removal is—

(A) Under the school personnel's authority to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under § 300.519(b) (§ 300.520(a)(1)); or

(B) For behavior that is not a manifestation of the child's disability, consistent with § 300.524; and

(ii) Provide services consistent with § 300.522, regarding determination of the appropriate interim alternative educational setting, if the removal is—

(A) For drug or weapons offenses under § 300.520(a)(2); or

(B) Based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement, consistent with § 300.521.

(3)(i) School personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under § 300.519 (§ 300.520(a)(1)).

(ii) The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed because of behavior that has been deter-

mined not to be a manifestation of the child's disability, consistent with § 300.524.

(e) *Children advancing from grade to grade.* (1) Each State shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child is advancing from grade to grade.

(2) The determination that a child described in paragraph (a)(1) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making those determinations.

(Authority: 20 U.S.C. 1412(a)(1))

**§ 300.122 Exception to FAPE for certain ages.**

(a) *General.* The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in one or more of those age groups.

(2)(i) Students aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility—

(A) Were not actually identified as being a child with a disability under § 300.7; and

(B) Did not have an IEP under Part B of the Act.

(ii) The exception in paragraph (a)(2)(i) of this section does not apply to students with disabilities, aged 18 through 21, who—

(A) Had been identified as a child with disability and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(B) Did not have an IEP in their last educational setting, but who had actually been identified as a "child with a disability" under § 300.7.