

# SmartStart: FAPE -- Standards for Appropriate Education under IDEA

## [Overview](#) | [Key Points](#) | [Links](#) | [Additional Resources](#)

This SmartStart is updated with references to the IDEA 2004 statute, the 2006 IDEA Part B regulations, and the 2008 amendments to the Part B regulations.

### Overview

In exchange for accepting federal funds, states agree to comply with a number of conditions. One of these conditions is the IDEA-imposed requirement to provide FAPE in the form of special education and related services. 20 USC 1401(9). Special education is specially designed instruction to meet the unique needs of a child with a disability, and related services are the support services required to assist a child to benefit from instruction. 20 USC 1401(26) and 20 USC 1401(29). In the leading case on the issue of FAPE, the U.S. Supreme Court held that to provide FAPE, a district must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017).

### Key Points

These key-point summaries cannot reflect every fact or point of law contained within a source document. For the full text, follow the link to the cited source.

#### PARAMETERS OF FAPE

- FAPE is broadly defined in the 2006 IDEA Part B regulations as special education and related services that:
  - (a) Are provided at public expense, under public supervision and direction, and without charge;
  - (b) Meet the standards of the SEA, including the requirements of this part;
  - (c) Include an appropriate preschool, elementary school, or secondary school education in the state involved; and
  - (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320 through 34 CFR 300.324.

34 CFR 300.17.

- FAPE must be available to all children residing in a state between the ages of 3 and 21, including children with disabilities who have been suspended or expelled from school, as provided for in 34 CFR 300.530(d). 34 CFR 300.101(a).
- FAPE required by the IDEA must be tailored to the unique needs of a particular child. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017).
- When a child is fully integrated in the regular classroom, as the IDEA prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017).

#### LEVEL OF EDUCATION REQUIRED

- The IDEA does not guarantee any particular level of education and "cannot and does not" promise any particular educational outcome. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017) (citing *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982)).
- Following the U.S. Supreme Court's decision in *Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (1982), most courts held that districts were not required to maximize a student's educational performance. For example, in *J.L. v. Mercer Island School District*, 55 IDELR 164 (W.D. Wash. 2010), the District Court noted that the FAPE standard requires that districts offer a student some educational benefit, not that they attempt to remediate a student's deficiencies or maximize her potential. See also *Klein Indep. Sch. Dist. v. Hovem*, 59 IDELR 121 (5th Cir. 2012), cert. denied, 113 LRP 10911, 133 S. Ct.

- 1600 (2013). Furthermore, courts decided that districts need not cater to a parent's preference and place the student in what the parent considers the "better" placement. *Z.W. v. Smith*, 47 IDELR 4 (4th Cir. 2006, unpublished); *Bradley v. Arkansas Dep't of Educ.*, 106 LRP 21288, 443 F.3d 965 (8th Cir. 2006); and *A.S. v. New York City Dep't of Educ.*, 63 IDELR 246 (2d Cir. 2014, unpublished).
- According to a well-worn analogy from the 6th U.S. Circuit Court of Appeals, FAPE does not require a "Cadillac." Rather, it requires a "Chevrolet." The 6th Circuit observed: "The Act requires that the Tullahoma schools provide the educational equivalent of a serviceable Chevrolet to every handicapped student. Appellant, however, demands that the Tullahoma school system provide a Cadillac solely for appellant's use. We suspect that the Chevrolet offered to appellant is in fact a much nicer model than that offered to the average Tullahoma student. Be that as it may, we hold that the Board is not required to provide a Cadillac, and that the proposed IEP is reasonably calculated to provide educational benefits to appellant, and is therefore in compliance with the requirements of the IDEA." *Doe v. Board of Educ. of Tullahoma City Schs.*, 20 IDELR 617 (6th Cir. 1993), cert. denied, 111 LRP 3215, 511 U.S. 1108 (1994).
  - In *Andrew F. Douglas County School District RE-1*, 69 IDELR 174 (2017), the U.S. Supreme Court did not employ the Cadillac-Chevrolet analogy. However, the Court did reject a line of cases from Circuit courts that had held that the IDEA FAPE standard was merely more than *de minimis* educational progress.
  - The *Andrew F.* Court explained that "a student offered an educational program providing 'merely more than *de minimis*' progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to 'sitting idly ... awaiting the time when they were old enough to 'drop out.'" *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017) (quoting *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982)).

## MEASUREMENT OF FAPE BASED ON GRADES AND ADVANCEMENT

- Districts must offer IEPs that are reasonably calculated to enable children to make academic progress appropriate in light of children's circumstances. *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017).
- A FAPE standard not focused on student progress would "do little to remedy the pervasive and tragic academic stagnation that prompted Congress" to enact the IDEA. *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017).
- Achievement of passing grades and advancement from grade to grade in a regular classroom environment is not necessarily an indication that the student is receiving FAPE under the IDEA. According to the 4th Circuit, an evaluation of the student's circumstances as a whole is still required. See *Hall v. Vance County Bd. of Educ.*, 557 IDELR 155 (4th Cir. 1985).
- The 2006 IDEA Part B regulations detail, "Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade." 34 CFR 300.101(c).
- Evidence that a gifted high schooler with Asperger syndrome made significant progress in the spring of her sophomore year despite some behavioral challenges helped convince the 8th U.S. Circuit Court of Appeals that an Iowa district provided the student FAPE. The court denied the parent's request for reimbursement for the student's unilateral private school placement. *Sneitzer v. Iowa Dep't of Educ.*, 66 IDELR 1 (8th Cir. 2015).

## PERFORMANCE IN THE HOME

- If a student with a behavioral impairment makes adequate gains in school but no progress at home, he is still considered to be receiving an educational benefit. See *J.S.K. v. Hendry County Sch. Bd.*, 18 IDELR 143 (11th Cir. 1991).
- The parents of an elementary school student with autism could not point to their son's social and behavioral difficulties outside of school to demonstrate his continued need for special education services. The 6th U.S. Circuit Court of Appeals affirmed the District Court's ruling at 64 IDELR 308 that the student no longer qualified as a child with a disability under the IDEA. *Q.W. v. Board of Educ. of Fayette County, Ky.*, 66 IDELR 212 (6th Cir. 2015, unpublished).
- An Ohio elementary school student's difficulties with Common Core homework didn't constitute a denial of FAPE. At home, the student with ADHD began panicking and chewing on objects when faced with too many choices. She experienced anxiety when she was unable to complete her math homework using

the multiple strategies required by Common Core. The IHO noted that the student's grades, previous homework assignments, and other evidence indicated that she was progressing in the Common Core curriculum. The fact that the child was unable to complete a homework assignment didn't mean she wasn't receiving educational benefit at school, the IHO pointed out. *Rittman Exempted Vill. Sch. Dist.*, 115 LRP 14971 (SEA OH 03/31/15).

- Nonetheless, some courts have adopted a broader standard for an appropriate education than the above examples, considered the student's ability to generalize in the home, particularly for students with severe disabilities, and awarded compensatory education for deficiencies. See *M.C. and G.C. v. Central Reg'l Sch. Dist.*, 23 IDELR 1181 (3d Cir. 1996), *cert. denied*, 111 LRP 3211, 519 U.S. 866 (1996) (ruling that a school district did not provide educational benefit when the student's IEP failed to include several important objectives or strategies to address his behavioral problems and the need for parent training). But see *Thompson R2-J Sch. Dist. v. Luke P.*, 50 IDELR 212 (10th Cir. 2008), *cert. denied*, 110 LRP 798, 555 U.S. 1173 (2009), *abrogated on other grounds by Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017) (explaining that as long as a student makes educational progress in the classroom, the district does not have to ensure that the student is able to apply his learned skills outside of school).

## STATE STANDARDS FOR FAPE

- A state may adopt a more demanding standard of appropriateness than the IDEA. See *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (1982). Additionally, if the more stringent state standard is consistent with the IDEA, it may be enforceable in federal court. *Blackmon v. Springfield R-XII Sch. Dist.*, 31 IDELR 132 (8th Cir. 1999); and *Amann v. Stow Sch. Sys.*, 19 IDELR 618 (1st Cir. 1992), *cert. denied*, 110 LRP 48803, 510 U.S. 1181 (1994).
- However, some courts have already declined to find that "higher" state standards require districts to provide students with the best possible education. See, e.g., *O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233*, 28 IDELR 177 (10th Cir. 1998) (ruling that the Kansas FAPE standard, which stated that districts had to provide students with the services necessary to maximize their abilities, imposed the same obligations as the IDEA's FAPE standard); *Dong v. Board of Educ. of the Rochester Cmty. Schs.*, 31 IDELR 157 (6th Cir. 1999) (holding that a Michigan statute requiring districts to deliver services "designed to develop the maximum potential of each student with a disability" did not require districts to provide the best education possible); and *C.A.F. v. Terry*, 56 IDELR 34 (D. V.I. 2011) (concluding that the Virgin Islands' standard of FAPE, while higher than the federal standard, did not require the ED to provide the student with the best education available).

## Links

- [SmartStart: FAPE – Standards for Appropriate Education under Section 504](#)
- [SmartStart: FAPE – Differences Between IDEA and Section 504/ADA](#)
- [SmartStart: FAPE – Parameters of the Public Education](#)
- [SmartStart: FAPE – Entitlement to FAPE](#)
- [SmartStart: FAPE – Free Education](#)
- [SmartStart: FAPE – Defining Special Education](#)

## Additional Resources

Additional resources on this topic are available for purchase from LRP Publications:

- [What Do I Do When...® The Answer Book on Special Education Law – Sixth Edition](#)

Please share your experience and expertise. Forward any suggested additions or changes to this or other SmartStarts to [SmartStarteditor@lrp.com](mailto:SmartStarteditor@lrp.com).

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