



Updated Graduation Guidance Regarding FAPE

As the State Educational Agency (SEA) for Montana, the Montana Office of Public Instruction (OPI) is responsible for the general supervision of all educational programs for children with disabilities within the State, including each educational program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior). Montana law requires the OPI to ensure that the requirements of the Individuals with Disabilities Education Act (IDEA) are met and that each educational program for a child with a disability meets the standards of the IDEA, the education standards of the Montana Board of Public Education, and the requirements of the OPI.¹

This binding guidance sets out procedures to ensure that Montana local education agencies (LEAs) comply with the IDEA. The OPI issues this guidance in response to recent developments in federal case law and litigation brought against the State in federal district court.²

Pursuant to this guidance, all LEAs must make a free appropriate public education (FAPE) available to students with disabilities until their 22nd birthday. Further, this guidance clarifies that awarding a diploma to a high school student who completes his or her IEP goals *does not* terminate the student's eligibility under IDEA or LEA's obligation to provide that student with a FAPE.

1. Under the IDEA, Montana LEAs must make FAPE available to students aged 19 to 22.

The IDEA is a federal funding statute that assists states in funding special education and related services for students with disabilities.³ By accepting those

¹ Mont. Code Ann. § 20-7-403(11).

² See *A.H. v. Hedalen*, No. CV-25-20-H-DLC, ECF No. 1 (D. Mont. Mar. 4, 2025).

³ See *N.D. v. Reykdal*, 102 F.4th 982, 987 (9th Cir. 2024).

funds, states agree to the IDEA's conditions, including the requirement that the State must make a FAPE available to "all children with disabilities residing in the [S]tate between the ages of 3 and 21, inclusive."⁴ However, the IDEA includes an exception: the obligation to make a FAPE available does not apply to students aged 3, 4, 5, 18, 19, 20 or 21 in a State to the extent application to those students would be inconsistent with State law or practice with respect to the provision of public education to students of those ages.⁵

Montana law requires LEAs to provide a free public education to all students aged 5 years of age or older on or before September 10 of the year in which the student is to enroll but is not yet 19 years of age⁶ and LEAs must make FAPE available to students with disabilities aged 3 through 18.⁷ To the extent a LEA provides education to students ages 19, 20 or 21, students the same age with disabilities must be provided a FAPE.⁸ Historically this has been interpreted to mean that LEAs must provide FAPE to students with disabilities that are not yet 19 years of age on or before September 10 of the year the student is to enroll.

The obligation of providing FAPE to adult students with disabilities with regard to the age limitation provision of IDEA has been litigated in several federal courts. In looking at whether a State provides education to adult students, the federal courts have held that the obligation goes beyond what is offered in the public LEAs within the State to other nontraditional State sponsored educational options. Federal courts have continuously held that a State must make a FAPE available to students with disabilities between the ages of 19 to 22 when the State offers a form of free public education to nondisabled individuals in the same age range.⁹ The Ninth Circuit Court of Appeals (which Montana is a part of) has determined that state-sponsored public adult education programs—such as GED preparation programs—meet this definition, and trigger the State's obligation to

⁴ *Id.* (quoting 20 U.S.C. § 1412(a)(1)(A)).

⁵ 34 C.F.R. § 300.102(a)(1).

⁶ MCA 20-5-101(1)(a).

⁷ ARM 10.16.3122(1).

⁸ ARM 10.16.3121(2).

⁹ *Reykdal*, 102 F.4th at 992–94; *E.R.K.*, 728 F.3d at 985, 991–93; *see also A.R. v. Conn. State Bd. of Educ.*, 5 F.4th 155 (2d Cir. 2021); *K.L. v. Rhode Island Bd. of Educ.*, 907 F.3d 639, 655 (1st Cir. 2018).

make a FAPE available to students with disabilities until their 22nd birthday under the IDEA.¹⁰

Montana provides “free public education” to adults between the ages of 19 and 22 through the Montana Workforce Innovation and Opportunity Act (WIOA). Thus, despite state laws that make it permissive to provide special education services to students aged 19 to 22, following the precedent of the federal courts interpretation of the IDEA, and the [August 13, 2025 Judgment](#) from the United States District Court for the District of Montana, Montana is obligated to ensure a FAPE is made available to students with disabilities until they turn 22 years old. To comply, Montana LEAs are directed to make a FAPE available to students with disabilities until they turn 22 years old.

2. A diploma based on completion of IEP goals does not terminate a student’s eligibility under the IDEA.

As explained above, the IDEA requires Montana to make a FAPE available to eligible students until they turn 22.¹¹ However, if a student with disabilities graduates from high school with a regular high school diploma, that terminates the student’s IDEA eligibility and the school’s obligation to provide a FAPE.¹²

A current Montana Standards of Accreditation regulation provides that a student “eligible to receive special education services as identified under IDEA and who has successfully completed the goals identified on an individualized education program [IEP] for high school completion shall be awarded a diploma.” Mont. Admin. R. 10.55.805(4). This section has been interpreted to mean that a student with disabilities can be awarded a diploma if they complete their IEP goals. However, that interpretation is in violation of the IDEA. If a student with disabilities is awarded a diploma for IEP goal completion, that is *not* considered a “regular high school diploma” under the IDEA and does not limit the obligation to make FAPE available to the student.

¹⁰ *Reykdal*, 102 F.4th at 992–94; *E.R.K.*, 728 F.3d at 985, 991–93.

¹¹ *E.R.K.*, 728 F.3d at 986.

¹² 34 C.F.R. § 300.102(a)(3).

In 2017, the IDEA was amended to include the definition of a regular high school diploma as used in the Every Student Succeeds Act (ESSA). The IDEA regulations define a “regular high school diploma” as “the **standard** high school diploma awarded to the **preponderance** of students in the state that is fully aligned with State standards[.]”¹³ In other words, a “regular high school diploma” means the diploma that a school awards to the majority of students. A diploma tied to a student’s IEP goals does not meet this definition. In addition, significant guidance from the U.S. Department of Education in 2017 provides that a “regular high school diploma” does not include “a diploma based on meeting Individualized Education Program (IEP) goals.”¹⁴ Thus, receiving a diploma for completing one’s IEP goals is not the same thing as receiving a “regular high school diploma” and does not end the student’s right to receive a FAPE.

Schools must continue to make a FAPE available to students who receive a diploma based on modified requirements; for example, a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential, including receipt of a diploma by meeting their IEP goals for high school completion. These students did not meet the minimum graduation requirements in ARM 10.55.905.

¹³ 34 C.F.R. § 300.102(a)(3)(iv) (emphasis added).

¹⁴ United States Dep’t of Educ., “Every Student Succeeds Act High School Graduation Rate Non-Regulatory Guidance,” at 13 (Jan. 2017).

LEA Instructions on How to Comply with the Updated Graduation Guidance

1. All LEAs in Montana must make a FAPE available to students with disabilities until their 22nd birthday or until they are appropriately exited from special education.
2. Any student who aged out prior to their 22nd birthday or received a diploma based on modified requirements during the 2024-2025 school year may re-enroll in the LEA in which they are eligible to receive a FAPE, and the LEA must provide a FAPE to the student by implementing the student's last agreed upon IEP.
3. Within two weeks of receiving this Updated Graduation Guidance, the LEA must reach out to any student they exited during the 2024-2025 school year who either aged out prior to their 22nd birthday or received a diploma based on modified requirements by sending them the Notice of Continued Offer of FAPE, Request for Enrollment, and Updated Graduation Guidance to their last known address.
4. Students must submit the Request for Enrollment form to the LEA within 30 days of receipt of the Notice if they interested in reenrolling and scheduling an IEP meeting.
5. Upon receipt of a Request for Enrollment, the LEA must promptly reconvene the student's IEP team, within 30 days, to draft an updated IEP for the student.
6. If the student does not return the Request for Enrollment within 30 days, the LEA's obligation to make a FAPE available will be deemed satisfied.
7. If the LEA refuses to reenroll the student or convene the IEP team, the student may use any of the available dispute resolution options available under IDEA or contact OPI's Early Assistance Program for assistance.
8. Special education directors and cooperative directors must report back to OPI by December 1, 2025, by sending the following information via the [State of Montana File Transfer Service](#) to angie.woodrow2@mt.gov:
 - a. The names of the students they sent a Notice to Student for Continued Offer of FAPE;
 - b. The names of students that reenrolled; and
 - c. The names of students that did not respond.

LEA Technical assistance:

For individual questions or assistance please reach out to

Angie Griner

Email: angie.griner@mt.gov

Phone: 406-444-2046

LEA Funding

Because budgets have already been established for the 2025-2026 school year, additional funding is available for re-entry of any student who was exited from a FAPE during the 2024-2025 school year due to aging out before age 22 or receiving a diploma based on modified requirements. To receive further information regarding funding, please contact: OPIFAPE@mt.gov.

Notice for Continued Offer of FAPE

You are receiving this notice because our records indicate that you were exited from special education services, during the 2024-2025 school year due to either 1) reaching maximum age (also referred to as “aging out”) and did not receive a diploma or 2) you received a high school diploma based upon modified requirements (meaning you did not meet minimum graduation requirements set out in Administrative Rule of Montana 10.55.905).

If you are not yet 22 years old, you may enroll back into school and resume receiving special education services under your last implemented IEP. We will then convene an IEP team meeting within 30 days to update your IEP. If you would like to re-enroll, please fill out the attached Request for Enrollment form.

If you fill out the Request for Enrollment Form and the local education agency or school district refuses to enroll you and provide you with special education services, you may use any of the available dispute resolution options available under IDEA. For more information on dispute resolution, please contact OPI’s Early Assistance Program, (406) 444-2046, or review the information posted here: <https://opi.mt.gov/Educators/School-Climate-Student-Wellness/Special-Education/Dispute-Resolution>

Request for Enrollment

Please fill out the student section of this form and return it to the school district contact listed below within 30 days if you are interested in reenrolling in for the 2025-2026 school year.

Please reach out to the school district contact listed below with any questions you may have. Once we receive your form, we will contact you to schedule an IEP team meeting to update your IEP.

Student

Name: _____

Address: _____

Email: _____

Telephone: _____

I am interested in reenrolling for the 2025-2026 school year.

Signature: _____ Date: _____

School District

Please send the form to the following address or via email to:

School District Contact:

Name: _____

Address: _____

Email: _____

Phone number: _____

Date this form was sent to student by school district: _____