



PENNSYLVANIA DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

August 30, 2023

PENN*LINK

TO: School District Superintendents
School District Special Education Directors
Intermediate Unit Executive Directors
Intermediate Unit Special Education Directors
Charter School Chief Executive Officers
Charter School Special Education Directors

FROM: Carole L. Clancy, Ed. D., Director
Bureau of Special Education

SUBJECT: Change in Age of Eligibility for Free and Appropriate Public Education

The Pennsylvania Department of Education (PDE) is writing to communicate an important policy change that will provide continued education services to special education students. This policy change will ensure students can access Free Appropriate Public Education (FAPE) as they are entitled under federal law.

Effective no later than September 5, 2023, all students entitled to FAPE and all of the rights and procedural safeguards under the Individuals with Disabilities Education Act (IDEA) and Chapter 14 of Title 22 of the Pennsylvania Code may remain enrolled in public school until they turn 22 years of age. This includes students who turned 21 and exited during or after the 2022-2023 school term.

Please share this memo with school staff, as this policy impacts the 2023-2024 school term.

Background

IDEA requires states to make FAPE available to “all children with disabilities residing in the state between the ages of 3 and 21, inclusive.” In Pennsylvania, every child between the ages of six and 21 years is entitled to attend the public schools in their school district of residence until graduation from high school or the end of the school term in which a student reaches the age of 21 years, whichever occurs first. Based on these legal provisions, the commonwealth previously made FAPE available to students with disabilities until the end of the school term in which they reach their 21st birthday.

Over the past decade, states that have been providing public education through adult education programs to individuals between the ages of 21 and 22 have extended the age of eligibility for special education through age 21 to comply with section 1412(a)(1)(B) of IDEA. In Pennsylvania, adult education programs are made available to individuals between the ages of 21 and 22. See 24 P.S. § 6403. These programs receive public funding and are free to students, are under public direction and supervision, and provide secondary education. Therefore, PDE

has concluded that Pennsylvania's adult education programs constitute public education for the purposes of section 1412(a)(1)(B) of IDEA, and Pennsylvania is required to make FAPE available to students with disabilities until their 22nd birthday. **This change is effective no later than September 5, 2023.**

Policy Revision

PDE has revised its guidance pertaining to INDIVIDUALS WITH DISABILITIES EDUCATION ACT PART B POLICIES AND PROCEDURES UNDER 34 CFR §§ 300.101—300.176 as follows: www.education.pa.gov/Documents/IDEAB.pdf

The Commonwealth of Pennsylvania ensures that all children with disabilities ages 3 years through 21 years residing in Pennsylvania have the right to a FAPE, including children with disabilities who have been suspended or expelled from school. The commonwealth shall make FAPE available to a child with a disability eligible under IDEA until the student turns 22. Notwithstanding any other provision of law to the contrary, a child eligible under IDEA who attains the age of twenty-one (21) years may remain enrolled in their resident district free of charge until their 22nd birthday.

Next Steps

LEAs should review the FAQs: <https://www.education.pa.gov/Pages/IDEABFAQ.aspx>.

They should then take the following steps to comply with this change in policy:

1. PDE will be contacting students with disabilities who turned 21 and exited during or after the 2022-2023 school term. LEAs should also contact those students and provide them the option to re-enroll and access FAPE until their 22nd birthday.
2. LEAs should include a link to PDE's webpage that contains the Amended Age-Out Policy, a copy of the Notice Letter, and a copy of the Penn Link Communication on their websites.
3. Upon enrollment, LEAs should provide FAPE in accordance with IDEA.

Please direct questions or requests for assistance to RA-PDESPECIAL@pa.gov.