

281—41.102(256B,34CFR300) Limitation—exceptions to FAPE for certain ages.

41.102(1) Exceptions. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

- a. Children over the age provided in Iowa Code chapter 256B, unless otherwise provided in this rule.
- b. Certain children incarcerated in adult prisons.

(1) General. A child aged 18 to 21 who, in the last educational placement prior to incarceration in an adult correctional facility:

- 1. Was not actually identified as being a child with a disability under this chapter; and
- 2. Did not have an IEP under Part B of the Act.

(2) Inapplicability of exception. The exception in subparagraph 41.102(1)“b”(1) does not apply to a child with disabilities, aged 18 to 21, who:

- 1. Had been identified as a child with a disability under this chapter and had received services in accordance with an IEP, but who left school prior to incarceration; or
- 2. Did not have an IEP in the child’s last educational setting, but who had actually been identified as a child with a disability under this chapter.

c. Graduates with a regular high school diploma.

(1) General. Children with disabilities who have graduated from high school with a regular high school diploma.

(2) Inapplicability of exception. The exception in subparagraph 41.102(1)“c”(1) does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.

(3) Graduation is a change in placement. Graduation from high school with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with rule 281—41.503(256B,34CFR300).

(4) Rule of construction. As used in subparagraphs 41.102(1)“c”(1) to (3), the term “regular high school diploma” means the standard high school diploma awarded to the preponderance of students in the state that is fully aligned with state standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in Section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

d. Reserved.

e. Eligibility beyond period specified in Iowa Code chapter 256B. An agency may continue the special education and related services of an eligible individual beyond the time period specified in the Iowa Code if the person had an accident or prolonged illness that resulted in delays in the initiation of or in the interruption of that individual’s special education program. The AEA director of special education must request approval from the department, which may be granted for up to the individual’s twenty-fourth birthday.

41.102(2) Documents relating to exceptions. The state must ensure that the information it has provided to the Secretary regarding the exceptions in subrule 41.102(1) is current and accurate.

[ARC 7792C, IAB 4/17/24, effective 5/22/24]