

281—41.324(256B,34CFR300) Development, review, and revision of IEP.**41.324(1) Development of IEP.**

a. General. In developing each child's IEP, the IEP team must consider:

- (1) The strengths of the child;
- (2) The concerns of the parents for enhancing the education of their child;
- (3) The results of the initial or most recent evaluation of the child; and
- (4) The academic, developmental, and functional needs of the child.

b. Consideration of special factors. The IEP team must:

(1) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

(2) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(3) In the case of a child who is blind or visually impaired, provide for instruction in braille and the use of braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in braille or the use of braille, that instruction in braille or the use of braille is not appropriate for the child;

(4) Consider the communication needs of the child and, in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(5) Consider whether the child needs assistive technology devices and services, including accessible instructional materials.

c. Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of:

(1) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(2) Supplementary aids and services, program modifications, and support for school personnel consistent with paragraph 41.320(1) "e."

d. Agreement.

(1) In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes and instead may develop a written document to amend or modify the child's current IEP.

(2) If changes are made to the child's IEP in accordance with subparagraph 41.324(1) "d"(1), the public agency must ensure that the child's IEP team is informed of those changes.

(3) A public agency may only agree to make changes pursuant to subparagraph 41.324(1) "d"(1) concerning resources the public agency has the authority to commit.

e. Consolidation of IEP team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

f. Amendments. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting or as provided in paragraph 41.324(1) "d" by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

41.324(2) Review and revision of IEPs.

a. General. Each public agency must ensure that, subject to paragraphs 41.324(2) "b" and "c," the IEP team:

(1) Reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and

(2) Revises the IEP, as appropriate, to address the following:

1. Any lack of expected progress toward the annual goals described in paragraph 41.320(1)“b,” and in the general education curriculum, if appropriate;
2. The results of any reevaluation conducted under rule 281—41.303(256B,34CFR300);
3. Information about the child provided to or by the parents, as described in paragraph 41.305(1)“b”;
4. The child’s anticipated needs; or
5. Other matters.

b. Consideration of special factors. In conducting a review of the child’s IEP, the IEP team must consider the special factors described in paragraph 41.324(1)“b.”

c. Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP team, must, consistent with paragraph 41.324(1)“c,” participate in the review and revision of the IEP of the child.

41.324(3) Failure to meet transition objectives.

a. Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with subrule 41.320(2), the public agency must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

b. Construction. Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

41.324(4) Children with disabilities in adult prisons.

a. Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

(1) The requirements contained in Section 612(a)(16) of the Act and paragraph 41.320(1)“g” relating to participation of children with disabilities in general assessments.

(2) The requirements in subrule 41.320(2) relating to transition planning and transition services do not apply with respect to the children whose eligibility under Part B of the Act will end because of their age before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

b. Modifications of IEP or placement.

(1) Subject to subparagraph 41.324(4)“b”(2), the IEP team of a child with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the child’s IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(2) The requirements in rule 281—41.320(256B,34CFR300) relating to IEPs and rule 281—41.114(256B,34CFR300) relating to LRE do not apply with respect to the modifications described in subparagraph 41.324(4)“b”(1).

41.324(5) Interim IEP. An IEP must be in effect before special education and related services are provided to an eligible individual. This does not preclude the development of an interim IEP that meets all the requirements of rule 281—41.320(256B,34CFR300) when the IEP team determines that it is necessary to temporarily provide special education and related services to an eligible individual as part of the evaluation process, before the IEP is finalized, to aid in determining the appropriate services for the individual. An interim IEP may also be developed when an eligible individual moves from one LEA to another and a copy of the current IEP is not available, or either the LEA or the parent believes that the current IEP is not appropriate or that additional information is needed before a final decision can be made regarding the specific special education and related services that are needed. IEP teams cannot use interim IEPs to circumvent the requirements of this division. It is essential that the temporary provision of service not become the final special education for the individual before the IEP is finalized. In order to ensure that this does not happen, IEP teams shall take the following actions:

a. Specific conditions and timelines. Develop an interim IEP for the individual that sets out the specific conditions and timelines for the temporary service. An interim IEP shall not be in place for more than 30 school days.

b. Parent agreement and involvement. Ensure that the parents agree to the interim service before it is carried out and that they are involved throughout the process of developing, reviewing, and revising the individual's IEP.

c. Complete evaluation and make judgments. Set a specific timeline for completing the evaluation and making judgments about the appropriate services for the individual.

d. Conduct meeting. Conduct an IEP meeting at the end of the trial period in order to finalize the individual's IEP.

41.324(6) *Rules of construction—instruction in braille.* For an eligible individual for whom instruction in braille is determined to be appropriate, as provided in subparagraph 41.324(1)“b”(3), that eligible individual is entitled to instruction in braille reading and writing that is sufficient to enable the individual to communicate with the same level of proficiency as an individual of otherwise comparable ability at the same grade level. Instruction in braille reading and writing may only be provided by a teacher with an endorsement to teach individuals who are blind or visually impaired.

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