

**OHIO DEPARTMENT OF EDUCATION, OFFICE FOR EXCEPTIONAL CHILDREN  
MEMO #2017-1**

**To:** Ohio Educational Agencies Serving Children with Disabilities

**From:** Sue Zake, Ph.D., Director of the Office for Exceptional Children

**Cc:** Superintendents and Administrators of School Programs with Students with Disabilities Placed by the District of Residence or a Court in Separate Facilities, including but not limited to, Educational Service Centers (ESCs), County Boards of Developmental Disabilities (DD) School Age Programs, Mental Health Day Treatment and Education Programs, Juvenile Detention Center (JDC) School Programs, Career and Technical Education Centers, and Nonpublic School Programs

**Date:** January 13, 2017

**Subject:** **Responsibility of a School District of Residence to Ensure Free Appropriate Public Education (FAPE) to its Students with Disabilities in Separate Public or Private Facilities**

---

**Overview**

This memo provides guidance on the responsibility of a school district of residence to ensure that students who receive educational services in separate public or private facilities as determined by the Individualized Education Program (IEP) team (or through court-ordered placement) are provided a free appropriate public education (FAPE) and that the students' educational programs meet state standards.

**FAPE for Students in Separate Facilities**

In Ohio, the school district of residence is responsible for ensuring that all requirements under Part B of the Individuals with Disabilities Education Act (IDEA) are met for every eligible child in its jurisdiction, regardless of where services are provided (e.g. separate or private facilities), unless otherwise stated in law. See Section 3323.02 of the Ohio Revised Code (ORC); see also Section 3301-51-01(A)(2)(a) of the Ohio Administrative Code (OAC).

To ensure that IDEA requirements are met and its students with disabilities receive FAPE, the district of residence is responsible for appropriately identifying children suspected of having a disability, developing each identified student's IEP and for delivering the services in the IEP. This may include contracting with other entities to provide some or all of the student's special education services.

For example, a student's IEP team may refer a student with a disability to a special education program in a facility operated by a county board of developmental disabilities, or may refer the student to a program in a facility operated by a private provider offering specialized services. In all instances, the district of residence retains the responsibility for ensuring that IDEA requirements are met and continue to be met, while the student is receiving services in the separate facility. This responsibility includes not only the development and implementation of a student's IEP, but also reporting requirements pursuant to applicable Education Management Information System (EMIS) rules.

Important note: When a district of residence has made FAPE available and a family chooses to enroll the child in a nonpublic school or placement option, the district is no longer responsible to ensure that FAPE is provided and services are delivered in accordance with the student's IEP.

### **Meeting State Standards for Students in Separate Facilities**

Federal and state laws require that IEPs for students with disabilities align with state educational standards. Regardless of whether a student receives educational services at the district of residence or in a separate public or private facility as determined by the student's IEP team (or through court-ordered placement), the district of residence must ensure that the educational programs for its students meet state standards.

Such educational programs may include, but are not limited to, programs offered by:

- Educational Service Centers;
- County Boards of Developmental Disabilities;
- Mental Health Day Treatment Centers;
- Career and Technical Education Centers/Joint Vocational Schools
- Juvenile Detention Centers; and
- Nonpublic Schools.

State standards established by the Ohio Department of Education that apply to all school districts are not limited to those school programs directly administered inside a district's own facilities. Unless otherwise stated, they are applicable to *each* educational program that the district accesses to meet the educational and social-emotional needs of its students with disabilities. While not an inclusive list, the following state standards apply:

- [Standards for Kindergarten through Grade 12 \(OAC Chapter 3301-35\)](#);
- [Positive Behavioral Intervention Supports \(PBIS\) and Restraint & Seclusion Standards \(OAC Section 3301-35-15\)](#); and
- [Operating Standards for the Education of Children with Disabilities \(OAC Chapter 3301-51\)](#).

In summary, the district of residence must ensure that its students continue to receive FAPE. School districts should routinely review their education policies and procedures to make sure that they take into account their students with disabilities, including those who receive services in separate public or private facilities.