



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

## **Guidance Related to Coronavirus (COVID-19): IDEA, Part B Provision of FAPE Frequently Asked Questions**

(April 15, 2020)

### **Background**

As a part of the District's response to the coronavirus (COVID-19) outbreak in the United States, OSSE issued guidance to support local education agencies (LEAs) on March 12, 2020, available [here](#). OSSE issued additional guidance on LEA obligations related to the provision of a free appropriate public education (FAPE) under Part B of the Individuals with Disabilities Education Act (IDEA) on March 25, 2020, available [here](#). Also see guidance issued by the U.S. Department of Education (USED), Office of Special Education Programs (OSEP) on ensuring FAPE during the COVID-19 outbreak, which can be accessed [here](#), and a supplemental fact sheet available [here](#).

### **Scope**

This document contains guidance on LEA responsibilities under Part B of IDEA relating to the provision of FAPE. This document generally constitutes informal guidance and does not impose any additional requirements beyond those included in applicable federal and local law and regulations.

### **Effective Date**

This guidance was issued on April 15, 2020, and will remain in effect until further notice.

### **Frequently Asked Questions**

OSSE continues to acknowledge that LEAs and schools are operating in a rapidly changing environment, under unprecedented circumstances lasting for unpredictable timeframes. We remain committed to being flexible and accommodating where possible, and offer the following additional guidance to provide clarity on questions and concerns OSSE has received from LEAs subsequent to the issuance of the March 25, 2020 FAQ. In the absence of federal or local guidance, LEAs should establish policies and procedures consistent with IDEA requirements.

#### IDEA Part B Procedures

#### **Q1: Can SEDS users use alternative means for parents to provide signature on required documents during this time.**

**A:** Yes, LEAs may document parent signatures using alternative means, including by email attachment of the parent's signature on required documents, standard mail, scanned document, photograph of the signed document, or electronic signature. OSSE recommends LEAs document the receipt of parent signature and resulting impact of the consent through prior written notice. For example, if a parent

provides a scanned copy of the parent's signature consenting to hold a virtual IEP team meeting, the LEA should document that agreement in a PWN.

In instances where electronic signature is used, LEAs must take steps to ensure the integrity of the consent process, including using an electronic signature format that identifies and authenticates a particular person as the source of the signature and indicates such person's approval of the information contained in the electronic consent.

**Q2: Are LEAs required to hold IEP Team meetings or complete IEP amendments for all students with disabilities receiving distance learning?**

**A:** No, IEP Team meetings and IEP amendments are not required for all students with disabilities to transition to distance learning. Generally, LEAs should continue to provide, to the greatest extent possible, the special education and related services identified in the student's IEP. ([OSEP Guidance A-1](#)) An LEA can provide FAPE to students with disabilities through distance learning models, even if some services are provided in a different manner than they are typically provided. ([USED Supplemental Fact Sheet p. 1-2](#)) LEAs should provide any needed modifications or alternatives to make the curriculum and services accessible to students with disabilities. ([USED Supplemental Fact Sheet p. 2P Guidance A-1](#)) Services that are not able to be provided should be addressed through an IEP Team meeting when school resumes. ([OSEP Guidance A-3](#)) If an LEA is providing educational opportunities, the LEA must ensure equal access to such opportunities for students with disabilities. IEP team meetings shall be considered on a case by case basis when a student receiving distance learning requires special considerations to equitably access the educational opportunities provided to all students. When necessary, OSSE encourages LEAs to conduct meetings via phone or video conference and to remain flexible and creative in their strategies to engage parents in these conversations. Alternatively, a parent of a child with a disability and the LEA 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 student's current IEP. ([OSSE IEP Amendment Policy](#))

OSSE reminds LEAs that IEP revisions should be based on student-specific needs, not services available through an LEA's distance learning program. The inability to provide services required by a student's IEP, including limitations due to an LEA's distance learning program, should be addressed through discussions related to compensatory education upon return to school. Please see Q3 for additional information on compensatory education. IEP revisions (either through IEP meetings or agreements to amend without a meeting) also are needed when the student with a disability is doing something different from the rest of his or her classmates, and thus needs an individualized determination, including but not limited to the following:

- The student is out of school for an extended period of time because he or she is sick with Covid-19 and the school remains open ([OSEP Guidance A-2](#))
- The student is out of school due to a higher risk of medical complications from Covid-19 when the school remains open ([OSEP Guidance A-4](#))

Please see the OSSE IEP Amendment Policy for additional information on the IEP amendment process, including procedures for completing IEP Amendments with and without holding IEP Team meetings. ([OSSE IEP Amendment Policy](#))

**Q3: When does a student need compensatory services, how should those services be determined, and how should those services be provided?**

**A:** If a student does not receive services for an extended period of time (generally more than 10 consecutive school days), an IEP team must make a subsequent individualized determination to decide whether a student with a disability requires compensatory services to make up for any skills that may have been lost because the student did not receive educational benefit. This could result from extended school closure, one or more of the student's IEP services that could not be provided remotely, a delay in provision of services during the transition to a distance learning model, or the student's unavailability to receive services due to sickness or other concerns. ([OSEP Guidance A-1, A-2, A-3, A-4](#), [USED Supplemental Fact Sheet p. 2](#)) LEAs will need to convene the IEP Team to make an individualized determination whether compensatory services are needed when school resumes.

An individualized determination whether compensatory services are needed must be made under applicable standards and requirements. The IDEA does not specifically address compensatory services, as such compensatory services were developed by courts as an equitable remedy for denials of FAPE. However, LEAs have broad flexibility through the IEP Team process to discuss and make an individualized determination with regard to what compensatory services are needed and how they should be provided. Compensatory services can come in many forms. For example, an IEP Team could decide that the student needs compensatory services before or after school or on the weekends. Or the IEP Team could decide to increase the student's IEP hours or services for a time-limited and time-certain period.

**Q4: What is the difference between compensatory education and extended school year services (ESY)?**

**A:** Compensatory services, which are intended to put the child in the position he or she would have been in had the LEA provided the services in the first place (*Reid v. Dist. of Columbia*, [43 IDELR 32](#) (D.C. Cir. 2005)), are separate and distinct from extended school year (ESY) services, which are intended to prevent significant loss of the benefits gained during the regular school year during school breaks ([OSSE ESY Policy p. 2-3, March 10, 2011](#)). However, this would not prevent the IEP Team from adding compensatory services into the student's regular ESY programming, as long as they do not interfere with it. The IEP Team can also decide that the LEA will provide compensatory services to student at the same time and place the LEA is providing ESY services to other students. Additional guidance on ESY certification is forthcoming.

**Q5: When LEAs resume normal operations, will LEAs be required to consider compensatory education services for every student who has a IEP?**

**A:** Yes, upon returning to normal operations, LEAs will likely need to consider whether or not compensatory education is appropriate for each student with a disability enrolled in their LEA during the timeframe during which the LEA was closed and all students received distance learning. Whether and to what extent each student receives compensatory education services, is an individualized determination made by the student's IEP team. ([USED Supplemental Fact Sheet p. 2](#))

#### IDEA Part B Compliance Monitoring

**Q6: How should LEAs document IDEA procedural delays exceeding required regulatory timelines (including, but not limited to the 60-day evaluation timeline), and mutually agreeable extensions of time between the LEA and parent for completion of IDEA procedural requirements?**

**A:** LEAs should issue a prior written notice (PWN) stating the reason for the delay (i.e. unavailability of the student in-person due to COVID-19 health and safety restrictions); what creative and flexible solutions were considered but ultimately determined unavailable; and any mutually agreed to extension of time, if applicable. PWNs addressing procedural delays should be maintained in the student's Special Education Data System (SEDS) file as a miscellaneous document, and designated with an appropriate naming convention to reflect the nature of the notification (for example, "PWN - delayed timeline" or "PWN-agreement to extend").

**Q7: How will IDEA procedural delays exceeding required regulatory timelines be addressed through LEA monitoring?**

**A:** Prior written notices completed in SEDS, as outlined in Q7 above, will be considered appropriate justification for procedural delays such as initial evaluation, reevaluation and C to B transition. LEAs will have the opportunity to upload documentation, including this PWN, into DC CATS as part of the ten (10) day correction window as part of the monitoring process. OSSE's monitoring team will consider submitted PWNs meeting the requirements identified in Q7 above as evidence of correction of findings of noncompliance.

**Q8: Will LEAs and OSSE be held accountable for correcting findings of noncompliance already identified prior to school closure?**

**A:** Yes, all findings of noncompliance under IDEA issued prior to March 16, 2020 should be corrected within the 365 day timeline as outlined in the [OSEP Memo 09-02 Timely Correction Memo](#). This includes completion of both the Prong 1 and Prong 2 process. In instances where LEAs are unable to make corrections of noncompliance due to COVID 19 school closure, LEAs should document all efforts to achieve compliance in accordance with OSSE guidance. Any supporting documentation from SEDS may be appropriate evidence for correction of noncompliance (Prong 1) when uploaded in DC CATS.

**Q9: How will IDEA monitoring activities be affected moving forward?**

**A:** OSSE acknowledges the importance of ensuring students with disabilities receive equitable access to services and recognizes that LEAs require flexibility in monitoring to meet student needs during this health crisis. OSSE is exploring flexibilities in its monitoring oversight activities and anticipates adjusting its schedule of monitoring activities. An updated monitoring schedule will be forthcoming.

#### IDEA Part B Fiscal

**Q10: What activities other than special education and related services may and may not be provided with IDEA Part B funds both prior to and during a COVID-19 outbreak?**

**A:** IDEA Part B funds may be used for activities that directly relate to providing, and ensuring the continuity of, special education and related services to children with disabilities. For example, an LEA may use IDEA Part B funds to disseminate health and COVID-19 information that is specifically related to children with disabilities, to develop emergency plans for children with disabilities, or to provide other information (e.g., guidance on coordination of the provision of services in alternate locations as described in Question A-5) to parties who may need such information, including school staff responsible for implementing IEPs, parents of eligible children, and staff in alternate locations where special

education and related services may be provided. LEAs, however, may not use IDEA Part B funds to develop or distribute general COVID-19 guidance or to carry out activities that are not specific to children with disabilities (e.g., general COVID-19 activities for all children and staff). Additionally, LEAs may not use IDEA Part B funds to administer future COVID-19 vaccinations to any children, including children with disabilities.

**Questions?**

If you have questions relating to this guidance please contact the Division of Systems and Supports, K-12 policy team at [OSSE.DSEpolicy@dc.gov](mailto:OSSE.DSEpolicy@dc.gov).