



Mark Schultz, Acting Assistant Secretary
Office of Special Education and Rehabilitative Services (OSERS)
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20202-7100

Laurie VanderPloeg, Director
Office of Special Education Programs (OSEP)
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20202-7100

March 31, 2020

Dear Acting Assistant Secretary Schultz and Director VanderPloeg:

The members of the Council of Administrators of Special Education (CASE) and the National Association of State Directors of Special Education (NASDSE) are fierce supporters of the Individuals with Disabilities Education Act, its implementing regulations, and individuals with disabilities. We believe all children and youth with disabilities have a right to a **free appropriate public education** in the least restrictive environment with strong protections for all parties involved. When parents and families collaborate with schools and states, outstanding outcomes are possible. In no other situation in our organizations' history can we find a time where we have asked for limited flexibilities in implementing the IDEA. However, now more than ever, schools and states need to be focused on what is important - providing an appropriate, accessible, accommodated educational program to all students in light of their current circumstances.

When the *Education for All Handicapped Children Act*, Pub. L. No. 94-142, 89 Stat. 773 (1975) was passed, Congress anticipated that a group of people with knowledge about a child would come together to develop an educational plan. During the most recent reauthorization of the law in 2004, Congress reaffirmed its commitment to students with disabilities with an emphasis on learning in the general education environment. The United States Supreme Court recently added their opinion that progress for students with disabilities should be “appropriate in light of the child’s circumstances.” *Andrew F. v. Douglas Cty Sch. Dist. Re-1*, 137 U.S. 988 (2017). In none of these laws or opinions are there special sections regarding how state and local education agencies should act during a global pandemic which has shuttered the vast majority of schools nationwide and forced teachers into the provision of instruction through other means. Yet, this is exactly the predicament that we find ourselves in today, and so we are called upon to implement a law that was not built for this situation.

On March 27, 2020, Congress passed, and the President signed the CARES Act which requires Secretary DeVos to write a report with information regarding flexibility that might be necessary during the COVID-19 pandemic. Specifically, the Act states:

“Not later than 30 days after the date of enactment of this Act, the Secretary shall prepare and submit a report to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate, and the Committee on Education and Labor and the Committee on Appropriations of the House of Representatives, with recommendations on any additional waivers under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et., the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), and the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) the Secretary believes are necessary to be enacted into law to provide limited flexibility to States and local educational agencies to meet the needs of students during the emergency involving Federal primary responsibility determined to exist by the President under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191(b)) with respect to the Coronavirus Disease 2019 (COVID-19).”

Given this language and your roles as the principal advisors to the Secretary on matters related to special education and students with disabilities, we ask for three areas of temporary and targeted flexibility: Timelines, Procedures, and Fiscal Management.

Timeline Flexibilities

One of the most challenging aspects of IDEA facing an LEA or SEA at this time is the multitude of timeline requirements for evaluation, eligibility, transition, and IEP teams under the law. It is for this reason that timeline requirements should be paused from the day schools closed due to the pandemic and extended for *not more than 45 school days* after regular school year in-person instruction has resumed for the following:

- *60-day initial evaluation timelines and re-evaluation triennial due dates [34 C.F.R. § 300.301(c); 34 C.F.R. § 300.303(b)(2)].*
In some situations, a child who was being evaluated for special education and related services prior to the pandemic may be experiencing new needs as a result of this crisis and their learning situation (new mental health needs, parent/guardian unemployment, food insecurity, etc.). Additionally, testing protocols are not easily administered or manipulated virtually, and the results of the evaluations could be questionable.
- *Annual IEP review timelines [34 C.F.R. §300.324(b)(1)].*
The IEP meeting is meant to be a collaborative process between parents/guardians and the LEA. Even in the best of circumstances nuances around body language and vocabulary of special education services can result in misunderstandings between the parties. While holding IEP meetings via phone, computer, or electronic means are all good options, none will replace a face-to-face meeting. Further, not all families or schools have access to technology allowing for meetings to take place via phone or video call. It is for this reason IEP annual review timelines should be relaxed, and LEAs and families should be given the option, if desired, to convene together (at the request of the parent or the LEA) when in-person meetings become available.
- *Complaint timelines [34 C.F.R. 34 C.F.R. §300.508; C.F.R. § 300.510(a) and (c); 34 C.F.R. § 300.515(a) and (c)].*
In the rare instances where parents and local education agencies find themselves in a dispute, IDEA provides state education agencies the responsibility to have a system of impartial hearing officers and state complaints. These complaint systems are necessary components, and with state education agencies being shuttered, hearing officers, attorneys, parents, and others working from home, and additional stressors being put on an already challenging process, we appreciate the current state authority to be flexible in the timeline to resolve these complaints without corrective actions. However, additional flexibility will be needed surrounding timelines to resolve all types of due process complaints.
- *Part C to Part B Transition Timelines [34 C.F.R. § 300.124].*
Early childhood transition from Part C to Part B is another important area where flexibility will be required in order to ensure that IEPs written at such a critical time in a child's life are thoughtful, well developed and situated in the context of high-quality early education rather than during a global crisis which has caused school building closures. Specifically, the component of the law to identify a child on or before their third birthday should be paused.

It is our belief that school districts and parents should continue to work together on behalf of children with disabilities to meet the requirements of the IDEA as best as possible. However, the Department of Education and members of Congress should understand that in some situations, despite our best efforts, meeting these requirements in the middle of a pandemic is not possible. It is for this reason that these timelines must be extended during this period when school districts are unable to provide services in a typical manner.

Procedural Flexibilities

In addition to the timeline requirements, the IDEA requires several procedures that are meant to ensure that collaboration occurs between parents and the local education agency. These requirements are in place to develop and offer FAPE for any child eligible for special education and are a critical feature of the law. During a pandemic, we believe this collaboration is no less important but may need to look differently and require more flexibility to ensure all children's needs are met, to the

maximum extent practicable. Procedural flexibility with an emphasis on local education agencies and parents making “good faith” efforts in light of the current circumstances is needed. Therefore, we urge you to consider flexibilities to the following:

- *Documentation of FAPE under each district’s circumstances and IEP meeting procedures [34 C.F.R. § 300.323(c)(1); 34 C.F.R. §300.324(b)(1); 34 C.F.R. §300.324(a)(4)(i); 34 C.F.R. §300.328].*

The current information from your office (*Questions and Answers on Providing Services to Children with Disabilities During the CoronaVirus Disease 2019 Outbreak*, March 12, 2020) suggests that every school district in the country will be changing a child’s placement after ten days of school closure. Decisions about changes in placement are made after discussions by the IEP team, which includes the parent. However, in this situation, the decision to change a child’s placement has been forced upon parents and schools by the COVID-19 pandemic. We, therefore, suggest that all IEPs written before schools closed be maintained. In situations where the current IEP does not sufficiently describe the services that are being provided during the pandemic, a separate document could be created, for example, in a ‘distance/continual learning plan.’ The plan should be clearly communicated after consultation with the parent. In addition, team meeting requirements should be flexible during the development of the documentation of the new plan. The development of the plan would maintain IEPs and placements to avoid a stay-put placement (in the home environment) under a due process complaint during this national crisis. No IEPs would need to be amended under this plan.

Further, it should be recognized that school districts and parents are grappling with new situations. Resources are varied between school districts and homes. In a typical situation, not impacted by the global pandemic, none of this is taken into account.

- *Data collection and corrective action plans [34 C.F.R. § 300.152]*

It is important that the standards set forth under the IDEA related to district and state performance plans be temporarily adjusted to provide the greatest flexibility possible. Items of concern include, but are not limited to, submission of Comprehensive Coordinated Early Intervening Services (CCEIS) data, the State Systemic Improvement Plan (SSIP), State Performance Plan (SPP)/Annual Performance Report (APR), and state monitoring and enforcement. We support the state and LEA focus on providing services to students, rather than diverting attention to corrective action or other paperwork.

Fiscal Management Flexibilities

The IDEA requires local education agencies to verify maintenance of financial efforts of LEAs and SEAs toward special education year to year. In addition, school districts are required to set aside IDEA funds under CCEIS procedures toward addressing disproportionality. The current pandemic has created financial circumstances that require flexibilities to the following:

- *Maintenance of Effort [34 C.F.R. §300.203-205], Comprehensive Coordinated Early Intervening Services set-aside funds [34 C.F.R. §300.205; 34 C.F.R. §300.326] and Proportionate Share [34 C.F.R. § 300.133]*

CASE and NASDSE are deeply dedicated to maintaining investments in both special education and issues of disproportionate representation as required by IDEA. However, under these emergency circumstances, local education agencies may not be able to expend the monies planned between March and June, 2020. As we send this letter, seven states have closed their doors for in-person instruction for the remainder of the school year. While many districts have agreed to keep staff on salary, it is not guaranteed, and it cannot be an expectation. Proportionate share dollars might not have been expended and may look different for the remainder of the school year. Therefore, flexibility regarding CCEIS, proportionate share, and MOE is necessary for the remainder of this school year. We recommend MOE be waived for the 2019-2020 school year and that unspent CCEIS and proportionate share dollars are carried over to the 2020-2021 school year.

In summary, the areas under which we are requesting flexibility is as follows:

- §300.124 Transition of children from the Part C program to preschool programs.
- §300.152 Minimum State complaint procedures.
- §300.203 Maintenance of effort.
- §300.301 Initial evaluations.
- §300.303 Reevaluations.
- §300.324 Development, review, and revision of IEP.
- §300.510 Resolution process.

- §300.515 Timelines and convenience of hearings and reviews.
- §300.600(e) State monitoring and enforcement.

To be clear, we expect that these flexibilities should only be granted in this specific circumstance (COVID - 19) and that state and local education agencies, parents, and families should continue to work together in the interests of children with disabilities. However, it is clear to us that the IDEA, the Rehabilitation Act, and other federal laws were not written anticipating a global pandemic that has closed a large majority of schools across the country, and for this reason we urge you to seek these specific flexibilities.

Should you have any questions or concerns or if our organizations and members can be of service to you, please do not hesitate to reach out.

Sincerely,

Phyllis Wolfram

Executive Director

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About CASE

CASE, [The Council of Administrators of Special Education](#), is the largest division of the [Council for Exceptional Children](#). With close to 4500 members, it is the professional organization of choice for special education administrators across the country. CASE's mission is to provide leadership and support to members by shaping policies and practices that impact the quality of education. *Disclaimer:* The views, opinions and information expressed in this statement by CASE may not reflect the official policies or positions of the Council for Exceptional Children (CEC). *CONTACT:* Phyllis Wolfram at (417)-496-5986

About NASDSE

NASDSE, the [National Association of State Directors of Special Education](#), is a premier membership organization that supports state leaders of special education throughout the United States and its Territories. Our mission and vision is to improve individual and organizational success for state leaders of special education by providing relevant services that guide positive systemic change and results thereby ensuring students with disabilities will live, learn, work and participate in their communities. *CONTACT:* John Eisenberg at (571) 414-7371