

April 27, 2021

To: Representative Teresa Alonso Leon, Chair  
Members of the House Committee on Education  
From: Paul Terdal, Citizen; resident of NW Portland, HD36  
Re: Testimony in Support of HB3350

Dear Chair Alonso Leon and members of the committee,

I'm writing as a private citizen, and as the father of two boys receiving special education services, in support of HB3350, which would direct the Department of Education to establish a process to provide compensatory or recovery educational services and for parents to resolve related claims, and convene an advisory group to assist students with disabilities to meet their individual educational needs during the COVID-19 emergency.

Special education services are provided in accordance with the Individuals with Disabilities Education Act (IDEA), a federal statute that provides specific requirements and procedural safeguards along with substantial federal funding. Each eligible student has an Individualized Education Program (IEP), a legally binding plan developed by an "IEP Team" consisting of parents, teachers, and District representatives describing goals, objectives, and services to be delivered for the coming year. Districts lack the legal authority to revise the plan without IEP Team or parent consent.

Under IDEA, the State Education Agency (SEA), the Oregon Department of Education (ODE) is required to support Local Education Agencies (LEA) – school districts – in complying with IDEA, and is also required to enforce the law through investigations, orders and if necessary by withholding access to federal funds. Oregon law enables ODE to carry out its duties under the federal statute, but so long as Oregon accepts federal funding it lacks the authority to waive or suspend requirements for compliance or enforcement of IDEA.

When the COVID emergency struck last year, many districts were – understandably – scrambling to respond. At the direction of ODE, Districts reached out to parents of students receiving special education services to modify IEPs for compatibility with distance learning. Despite clear guidance from ODE and the US Department of Education that "Districts must implement students' IEPs to the maximum extent possible," many parents were pressured into signing IEP amendments that drastically reduced the services their children were receiving, with promises that "distance learning" was only temporary and regular educational services in school would be resumed within a matter of weeks.

In reality, of course, "Comprehensive Distance Learning" (CDL) has continued for more than a year for most of Oregon's students, leaving many without the services that they have needed, are legally entitled to, and that the state and federal governments have continued to pay for in full.

Under both the Trump and Biden administrations, the Federal government has been very clear that no aspect of IDEA has been waived – and that LEAs (Districts) and SEAs (ODE) must work with each individual student to provide recovery or compensatory education to make up for lost educational opportunity and progress during the COVID emergency.

Whether through HB3350 or other means, it is critical for ODE to take the lead in supporting students and Districts and providing them with a process to provide the recovery or compensatory education that the law requires.

Those of us who have the means and access to private legal counsel will enforce our rights and get our children the services they need and are entitled to. It is up to ODE – and to you, as our legislators – to ensure that this process is equitable and fair to ensure that everyone can do this efficiently and effectively.

As an “appendix” I have provided a list of key guidance provided by the US Department of Education in the spring of 2020, and I have attached copies of key documents.

Sincerely,

Paul Terdal

**Attachments:**

- US Department of Education, “QUESTIONS AND ANSWERS ON PROVIDING SERVICES TO CHILDREN WITH DISABILITIES DURING THE CORONAVIRUS DISEASE 2019 OUTBREAK” (dated 3/12/2020)
- US Department of Education Press Release, “Secretary DeVos Reiterates Learning Must Continue for All Students, Declines to Seek Congressional Waivers to FAPE, LRE Requirements of IDEA” (dated 4/27/2020)
- US Department of Education Report to Congress, “RECOMMENDED WAIVER AUTHORITY UNDER SECTION 3511(d)(4) OF DIVISION A OF THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (“CARES ACT”)” (dated 4/27/2020) [IDEA EXCERPTS ONLY]

## Appendix: COVID Guidance from US Department of Education

3/11/2020: US Center for Disease Control (CDC) issues Interim Guidance for Administrators of US K-12 Schools and Child Care Programs (<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools-h.pdf>) (subsequently updated on 3/12/2020, 3/25/2020 and 4/10/2020)

3/12/2020: US Department of Education issues FAQ on “PROVIDING SERVICES TO CHILDREN WITH DISABILITIES DURING THE CORONAVIRUS DISEASE 2019 OUTBREAK” (<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>)

“If an LEA closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child’s individualized education program (IEP) or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504. The Department understands there may be exceptional circumstances that could affect how a particular service is provided. In addition, an IEP Team and, as appropriate to an individual student with a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.”

“If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). SEAs, LEAs, and *schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP developed under IDEA*, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504)).”

*(emphasis added)*

3/21/2020: US Department of Education issues Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities (<https://www.oregon.gov/ode/students-and-family/healthsafety/Documents/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>)

“Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services – or even making decisions about how to provide services - IEP teams (as noted in the March 12, 2020 guidance) must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.”

4/27/2020: US Department of Education submits report to congress regarding recommended waiver authority. (<https://www2.ed.gov/documents/coronavirus/cares-waiver-report.pdf>)

“U.S. Secretary of Education Betsy DeVos today reaffirmed her long-held position that individualized education must take place for all students, including students with disabilities. As a result, the Secretary is not recommending Congress pass any additional waiver authority

concerning the Free Appropriate Public Education (FAPE) and Least Restrictive Environment (LRE) requirements of the Individuals with Disabilities Education Act (IDEA), reiterating that learning must continue for all students during the COVID-19 national emergency.”

<https://www.ed.gov/news/press-releases/secretary-devos-reiterates-learning-must-continue-all-students-declines-see-congressional-waivers-fape-lre-requirements-idea>)

The Department is not requesting waiver authority for any of the core tenets of the IDEA or Section 504 of the Rehabilitation Act of 1973, most notably a free appropriate public education (FAPE) in the least restrictive environment (LRE). The Department’s position is based on the principles that:

- Schools can, and must, provide education to *all* students, including children with disabilities;
- The health and safety of children, students, educators, and service providers must be the first consideration;
- The needs and best interests of the individual student, not any system, should guide decisions and expenditures;
- Parents or recipients of services must be informed of, and involved in, decisions relating to the provision of services; and
- Services typically provided in person may now need to be provided through alternative methods, requiring creative and innovative approaches.

*(emphasis original)*



# QUESTIONS AND ANSWERS ON PROVIDING SERVICES TO CHILDREN WITH DISABILITIES DURING THE CORONAVIRUS DISEASE 2019 OUTBREAK

MARCH 2020

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The Centers for Disease Control and Prevention (CDC) is responding to an outbreak of respiratory disease caused by a new coronavirus named coronavirus disease 2019 (COVID-19). The CDC has issued interim guidance to help administrators of public and private childcare programs and K–12 schools plan for and prevent the spread of COVID-19 among students and staff. See Interim Guidance for Administrators of US Childcare Programs and K–12 Schools to Plan, Prepare, and Respond to Coronavirus Disease 2019 available at: <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-for-schools.html>

This Questions and Answers document outlines states' responsibilities to infants, toddlers, and children with disabilities and their families, and to the staff serving these children. During an outbreak of COVID-19, local educational agencies (LEAs) and early intervention service (EIS) programs will need to collaborate with their state educational agency (SEA), Bureau of Indian Education (BIE), or local public health department, as appropriate, to address questions about how, what, and when services should be provided to children with disabilities.<sup>1</sup> It does not create or confer any rights for or on any person. This Q & A document does not impose any additional requirements beyond those included in applicable law and regulations. The responses presented in this document generally constitute informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented here and are not legally binding. The Q & As in this document are not intended to be a replacement for careful study of the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), and their implementing regulations. The *IDEA*, its implementing regulations, and other important documents related to the *IDEA* can be found at <http://sites.ed.gov/idea>. For more information on the requirements of Section 504 and Title II, and their implementing regulations, please consult <https://www2.ed.gov/policy/rights/quid/ocr/disabilityoverview.html>.

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<sup>1</sup> This document does not address when to dismiss a child or close a school or Part C state lead agency because school officials should work with their local health departments to make those decisions. School personnel and Part C EIS programs and providers, however, may consult the Centers for Disease Control and Prevention's (CDC's) guidance for recommendations regarding social distancing and school closure. The CDC's Web site contains information addressing both state and local public health officials and school administrators for school (K-12) responses to COVID-19 and resources for child care and early childhood programs. These documents, along with other recommendations, may be accessed at <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>.

QUESTIONS AND ANSWERS ON PROVIDING SERVICES TO CHILDREN WITH DISABILITIES DURING A  
COVID-19 OUTBREAK

**A. Implementing Part B of the *IDEA* and Section 504 during a  
COVID-19 outbreak**

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**Question A-1:** Is an LEA required to continue to provide a free appropriate public education (FAPE) to students with disabilities during a school closure caused by a COVID-19 outbreak?

**Answer:** The IDEA, Section 504, and Title II of the ADA do not specifically address a situation in which elementary and secondary schools are closed for an extended period of time (generally more than 10 consecutive days) because of exceptional circumstances, such as an outbreak of a particular disease.

If an LEA closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's individualized education program (IEP) or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504. The Department understands there may be exceptional circumstances that could affect how a particular service is provided. In addition, an IEP Team and, as appropriate to an individual student with a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.

If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504)).

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**Question A-2:** Must an LEA provide special education and related services to a child with a disability who is absent for an extended period of time because the child is infected with COVID-19, while the schools remain open?

**Answer:** Yes. It has long been the Department's position that when a child with a disability is classified as needing homebound instruction because of a medical problem, as ordered by a physician, and is home for an extended period of time (generally more than 10 consecutive school days), an individualized education program (IEP) meeting is necessary to change the child's placement and the contents of the child's IEP, if warranted. Further, if the IEP goals will remain the same and only the time in special education will change, then the IEP Team may add an amendment to the IEP stating specifically the amount of time to be spent in special education. If a child with a disability is absent for an extended period of time because of a COVID-19 infection and the school remains open, then the IEP Team must determine whether the child is available for instruction and could benefit from homebound services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. In so doing, school personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services. The Department understands there may be exceptional circumstances that could affect how a particular service is provided.

If a child does not receive services after an extended period of time, a school must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

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**Question A-3:** What services must an LEA provide if a public school for children with disabilities is selectively closed due to the possibility of severe complications from a COVID-19 outbreak?

**Answer:** If a public school for children with disabilities is closed solely because the children are at high risk of severe illness and death, the LEA must determine whether each dismissed child could benefit from online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. In so doing,

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school personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services. The Department understands there may be exceptional circumstances that could affect how a particular service is provided.

If a child does not receive services during a closure, a child's IEP team (or appropriate personnel under Section 504) must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

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**Question A-4:** If a child with a disability at high risk of severe medical complications is excluded from school during an outbreak of COVID-19 and the child's school remains open, is the exclusion considered a change in educational placement subject to the protections of 34 CFR §§ 300.115 and 300.116 and 34 CFR §§ 104.35 and 104.36.

**Answer:** If the exclusion is a temporary emergency measure (generally 10 consecutive school days or less), the provision of services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available, is not considered a change in placement. During this time period, a child's parent or other IEP team member may request an IEP meeting to discuss the potential need for services if the exclusion is likely to be of long duration (generally more than 10 consecutive school days). For long-term exclusions, an LEA must consider placement decisions under the *IDEA's* procedural protections of 34 CFR §§ 300.115 – 300.116, regarding the continuum of alternative placements and the determination of placements.

Under 34 CFR § 300.116, a change in placement decision must be made by a group of persons, including the parents and other persons knowledgeable about the child and the placement options. If the placement group determines that the child meets established high-risk criteria and, due to safety and health concerns, the child's needs could be met through homebound instruction, then under 34 CFR §300.503(a)(1), the public agency must issue a prior written notice proposing the change in placement. A parent who disagrees with this



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prior written notice retains all of the due process rights included in 34 CFR §§ 300.500-300.520.

For children with disabilities protected by Section 504 who are dismissed from school during an outbreak of COVID-19 because they are at high risk for health complications, compliance with the procedures described above and completion of any necessary evaluations of the child satisfy the evaluation, placement and procedural requirements of 34 CFR §§ 104.35 and 104.36. The decision to dismiss a child based on his or her high risk for medical complications must be based on the individual needs of the child and not on perceptions of the child's needs based merely on stereotypes or generalizations regarding his or her disability.

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**Question A-5:** May an IEP Team consider a distance learning plan in a child's IEP as a contingency plan in the event of a COVID-19 outbreak that requires the school's closure?

**Answer:** Yes. IEP teams may, but are not required to, include distance learning plans in a child's IEP that could be triggered and implemented during a selective closure due to a COVID-19 outbreak. Such contingent provisions may include the provision of special education and related services at an alternate location or the provision of online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, and may identify which special education and related services, if any, could be provided at the child's home.

Creating a contingency plan before a COVID-19 outbreak occurs gives the child's service providers and the child's parents an opportunity to reach agreement as to what circumstances would trigger the use of the child's distance learning plan and the services that would be provided during the dismissal.

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**Question A-6:** 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?

**Answer:** *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

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*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.

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**B. IDEA Part C and COVID-19**

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**Question B-1:** Must a state lead agency continue to provide early intervention services to infants and toddlers with disabilities during a COVID-19 outbreak if the offices are closed?

**Answer:** If the offices of the state lead agency or the EIS program or provider are closed, then Part C services would not need to be provided to infants and toddlers with disabilities and their families during that period of time. If the lead agency's offices are open but the offices of the EIS program or provider in a specific geographical area are closed due to public health and safety concerns as a result of a COVID-19 outbreak in that area, the EIS program or provider would not be required to provide services during the closure. If the offices remain open, but Part C services cannot be provided in a particular location (such as in the child's home), by a particular EIS provider, or to a particular child who is infected with COVID-19, then the lead agency must ensure the continuity of services by, for example, providing services in an alternate location, by using a different EIS provider, or through alternate means, such as consultative services to the parent.

Additionally, once the offices re-open, the service coordinator and EIS providers for each child must determine if the child's service needs have changed and determine whether the individualized family service plan (IFSP) team needs to meet to review the child's IFSP to determine whether any changes are needed. If offices are closed for an extended period and services are not provided for an extended period, the IFSP team must meet under 34 CFR § 303.342(b)(1) to determine if changes are needed to the IFSP and to determine whether compensatory services are needed to address the infant or toddler's developmental delay.

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**Question B-2:** What should a state lead agency or EIS program provider do to provide Part C services if its offices are open, but it cannot provide services in accordance with an infant's or toddler's IFSP during a COVID-19 outbreak?

**Answer:** If the offices remain open, but Part C services cannot be provided in a particular location (such as in the child's home), by a particular EIS provider, or to a particular child who is infected with COVID-19, then

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the lead agency must ensure the continuity of services, on a case-by-case basis and consistent with protecting the health and safety of the student and those providing services to the student. As an example, the lead agency may consider providing services in an alternate location, by using a different EIS provider, or through alternate means, such as consultative service to the parent. Once services are fully resumed, the service coordinator and EIS providers for each child must assess the child to determine if the child's service needs have changed and to determine whether the IFSP Team needs to meet to review the child's IFSP to identify whether changes to the IFSP are needed. If the offices are closed and services are not provided for an extended period, the IFSP Team must meet under 34 CFR § 303.342(b)(1) to determine if changes are needed to the IFSP and to determine whether compensatory services are needed.

If an EIS provider cannot provide Part C services in the child's home during a COVID-19 outbreak, but the EIS program or provider determines that it is safe to provide face-to-face Part C services in another environment such as a hospital or medical clinic, then the child could receive temporary services at the hospital or clinic. Additionally, if the lead agency or EIS provider determines that face-to-face Part C services should not be provided for a period of time, then the EIS provider or service coordinator may consult with the parent through a teleconference or other alternative method (such as e-mail or video conference), consistent with privacy interests, to provide consultative services, guidance, and advice as needed. However, determining how to provide Part C services in a manner that is consistent with the most updated public health and safety guidance is left to the discretion of the lead agency and the EIS program and provider serving a particular child and family.

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**Question B-3:** What activities other than service provision may and may not be provided with *IDEA* Part C funds both prior to and during a potential COVID-19 outbreak?

**Answer:** *IDEA* Part C funds may be used for activities that directly relate to providing, and ensuring the continuity of, Part C services to eligible children and their families. The state may use *IDEA* Part C funds to disseminate health and COVID-19 information to relevant parties, develop emergency plans to support the provision and continuity of

**QUESTIONS AND ANSWERS ON PROVIDING SERVICES TO CHILDREN WITH DISABILITIES DURING A  
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Part C services, or provide other information (e.g., how the lead agency staff or EIS programs or providers may provide alternate services or services in alternate locations as described in Question B-2) to relevant parties who need this information. Relevant parties may include parents of eligible children, childcare centers, staff in other locations where early intervention services are provided, EIS programs and providers, and primary referral sources. Other activities that relate to service provision, including the provision of service coordination, evaluations, and assessments, may also be funded. The state may not, however, use *IDEA* Part C funds to administer future COVID-19 vaccinations as it is a medical service under 34 CFR §303.13(c)(3).

## ARCHIVED INFORMATION

# Secretary DeVos Reiterates Learning Must Continue for All Students, Declines to Seek Congressional Waivers to FAPE, LRE Requirements of IDEA

APRIL 27, 2020

**Contact:** Press Office, (202) 401-1576, [press@ed.gov](mailto:press@ed.gov) (<mailto:press@ed.gov>)

WASHINGTON — U.S. Secretary of Education Betsy DeVos today reaffirmed her long-held position that individualized education must take place for all students, including students with disabilities. As a result, the Secretary is not recommending Congress pass any additional waiver authority concerning the Free Appropriate Public Education (FAPE) and Least Restrictive Environment (LRE) requirements of the Individuals with Disabilities Education Act (IDEA), reiterating that learning must continue for all students during the COVID-19 national emergency.

As requested by Congress in the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*, Secretary DeVos examined certain federal education laws to determine what, if any, additional waiver authority the Secretary believes is necessary to provide limited flexibility to state and local education agencies during this unprecedented time. The Secretary determined there is no reason that a student's access to FAPE cannot continue online, through distance education or other alternative strategies.

"We undertook this task acknowledging the reality that most students and teachers are at home today; yet, America's teachers want to keep teaching and students need to keep learning," said Secretary DeVos. "While the Department has provided extensive flexibility to help schools transition, there is no reason for Congress to waive any provision designed to keep students learning. With ingenuity, innovation, and grit, I know this nation's educators and schools can continue to faithfully educate every one of its students."

As the Department reviewed applicable federal law, it did so with these core principles in mind:

- The health and safety of America's students, teachers, parents, and administrators is a top priority.
- Learning must continue for all students.
- Decision-making must be based on what is best for students, not the "system."
- Parents must be informed about the impact waivers will have on their children's education and consent to those changes.
- Services typically or historically provided in person must naturally occur differently.

While not advising any waivers to the core tenets of IDEA, the Department is requesting that Congress consider additional flexibilities on administrative requirements under the Perkins Act, the Rehabilitation Act of 1973, and the IDEA.

The Secretary requested that Congress defer the work or repayment requirements or allow credit to be given for the service obligation for recipients of IDEA personnel preparation grants (personnel development scholarships) if employment was interrupted by COVID-19.

Regarding the Perkins Act, the Secretary is also recommending a waiver that would allow local education agencies (LEAs) to keep any funds allotted to them for the 2019-2020 academic year that they have not spent during the COVID-19 national emergency. Without this waiver, LEAs would otherwise lose this money and have to return it to the state.

The Secretary also requested Congress to permit Vocational Rehabilitation funds to be used to replace expired or spoiled food products at Randolph-Sheppard vending sites required to close due to COVID-19, thus providing support to vendors and allowing facilities to reopen more efficiently following the COVID-19 pandemic.

The Secretary recommended several additional waiver authorities relating to the Perkins Act, the Adult Education and Family Literacy Act, the IDEA, and the Rehabilitation Act of 1973. For a complete list of waiver recommendations and to access the full Recommendation of Waiver Authority report to Congress, click [here](https://www2.ed.gov/documents/coronavirus/cares-waiver-report.pdf) (<https://www2.ed.gov/documents/coronavirus/cares-waiver-report.pdf>).

The Department continues to update [ed.gov/coronavirus](https://www.ed.gov/coronavirus) (<https://www.ed.gov/coronavirus>) with information on COVID-19 for students, parents, educators and local leaders.

For more information about COVID-19, please visit the following websites: [coronavirus.gov](https://www.coronavirus.gov) (<https://www.coronavirus.gov>), [cdc.gov/coronavirus/2019-ncov/index.html](https://www.cdc.gov/coronavirus/2019-ncov/index.html) (<https://www.cdc.gov/coronavirus/2019-ncov/index.html>), and [usa.gov/coronavirus](https://www.usa.gov/coronavirus) (<https://www.usa.gov/coronavirus>).

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- College accreditation (<https://www.ed.gov/accreditation?src=rn>)
- Every Student Succeeds Act (ESSA) (<https://www.ed.gov/essa?src=rn>)
- FERPA (<https://studentprivacy.ed.gov?src=rn>)
- FAFSA (<https://fafsa.ed.gov/?src=edgov-rn>)
- 1098, tax forms (<https://www.ed.gov/1098-e?src=rn>)
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**REPORT TO CONGRESS  
OF U.S. SECRETARY OF EDUCATION BETSY DEVOS**

**RECOMMENDED WAIVER AUTHORITY  
UNDER SECTION 3511(d)(4) OF DIVISION A OF THE CORONAVIRUS AID, RELIEF,  
AND  
ECONOMIC SECURITY ACT (“CARES ACT”)**

**April 27, 2020**



## **Individuals with Disabilities Education Act and Rehabilitation Act of 1973**

### **Background**

Recognizing that implementation of the IDEA and the Rehabilitation Act can present difficult challenges during the COVID-19 pandemic, the Department has consistently emphasized (and will continue to do so) that schools and other recipients can and should find solutions for their students. Indeed, the Department is heartened to see many positive examples across the nation of teachers, schools, LEAs, States, as well as Vocational Rehabilitation (VR) agencies, rising to meet the needs of those who rely on them.

The Department is not requesting waiver authority for any of the core tenets of the IDEA or Section 504 of the Rehabilitation Act of 1973, most notably a free appropriate public education (FAPE) in the least restrictive environment (LRE). The Department's position is based on the principles that:

- Schools can, and must, provide education to *all* students, including children with disabilities;
- The health and safety of children, students, educators, and service providers must be the first consideration;
- The needs and best interests of the individual student, not any system, should guide decisions and expenditures;
- Parents or recipients of services must be informed of, and involved in, decisions relating to the provision of services; and
- Services typically provided in person may now need to be provided through alternative methods, requiring creative and innovative approaches.

In general, the following recommendations regarding the IDEA and the Rehabilitation Act acknowledge that students, individuals, families, and States are having to adapt to novel circumstances due to the pandemic national emergency. These recommended flexibilities are rooted in the need to minimize barriers to learning and issues arising from the use of funds in an extraordinary time. To that end, this report includes recommendations concerning the IDEA (Part C (Infants and Toddlers with Disabilities) to Part B (Assistance for Education of all Children with Disabilities) Transition, and Personnel Development Scholarships), as well as several provisions of the Rehabilitation Act relating to VR programs and funds.

### ***IDEA Waiver Authority Recommendations***

#### **1. Waiver Authority Recommendation (IDEA Part C to Part B Transition)**

Section 612(a)(9) of the IDEA (20 U.S.C. § 1412(a)(9))

Section 614(a)(1)(C)(i)(I) of the IDEA (20 U.S.C. § 1414(a)(1)(C)(i)(I))

Section 637(a)(9)(A)(ii)(II) of the IDEA (20 U.S.C. § 1437(a)(9)(A)(ii)(II))

## **Summary of Waiver**

This waiver authority would provide the Secretary with the authority to extend the IDEA Part B transition evaluation timelines (Part B initial evaluation), such that calculation of a timeline obligation shall resume no later than the day on which health and safety factors allow for face-to-face meetings to resume and the toddler is able to be evaluated. This waiver authority would also include explicit authorization for Part C services to continue during the delayed Part B transition evaluation timeline so that a toddler may continue to receive Part C services after his or her third birthday and until a Part B evaluation is completed and an eligibility determination made. This flexibility should allow for CARES Act funds or other Federal education funds (e.g., IDEA Part B funds) to be used to provide these services.

## **Rationale**

Without this flexibility, a toddler with a disability will lose access to services once he or she turns 3 years old. With this flexibility, the parent and the SEA or other lead agency may agree to continue providing early intervention services (Part C services) to toddlers with a disability until a Part B evaluation has been completed and an eligibility determination has been made. The funding mechanisms must be addressed, as Part B funds cannot be used for a child not yet eligible for Part B services, and Part C funds cannot be used for a child who has aged out of Part C.

## **2. Waiver Authority Recommendation (Personnel Development Scholarships)**

Section 662(h)(1) of the IDEA (20 U.S.C. § 1462(h)(1))

## **Summary of Waiver**

This waiver authority would allow the Secretary to grant a deferral of the work or repayment requirements or allow credit to be given for the service obligation if employment was interrupted by the COVID-19 national emergency.

## **Rationale**

Section 3519 of Division A of the CARES Act provides relief from the service obligation for those scholars receiving TEACH grants but does not address the IDEA personnel preparation grants. The IDEA personnel preparation grants, similar to TEACH grants, addressed in Division A of the CARES Act, have service obligation requirements that recipients may not be able to meet during the COVID-19 pandemic. However, unlike TEACH grants, the IDEA personnel preparation grants were not included in the CARES Act. If scholars in the program do not, within a specified period, fulfill the employment obligations required by the scholarship, the scholars face repayment penalties for part or all of their scholarships with interest.