



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

(May 29, 2020)

Background

As a part of the District of Columbia's response to coronavirus (COVID-19), the Office of the State Superintendent of Education (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](#); and April 15, 2020 available [here](#). Also see guidance issued by the US Department of Education (USED), Office of Special Education Programs (OSEP) on ensuring FAPE during the COVID-19 pandemic, 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 May 29, 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 April 15, 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: How can LEAs ensure students with disabilities have equal access to educational opportunities provided to the general student population, including the availability of distance learning materials?

A: LEAs should continue to provide, to the greatest extent possible, the special education and related services identified in students IEPs. ([OSEP Guidance A-1](#)). LEAs should provide any needed modifications or alternatives to make the curriculum and services accessible to students with disabilities. (See [USED Supplemental Fact Sheet p. 2P Guidance A-1](#)). In doing so, LEAs must make decisions that take into consideration the health, safety and well-being of all their students and staff. ([USED Supplemental Fact Sheet, p. 1](#)). LEAs should consider the availability of distance learning materials through multiple modalities (e.g., US Postal Service, electronic format, in-person pick-up, etc.) as part of needed

modifications or alternatives to make the curriculum accessible to students with disabilities. LEAs should additionally deploy flexible options for students to return work completed during distance learning. The health, safety and well-being of families and staff should be considered when making these decisions. Good faith efforts to employ equity and flexibility to ensure that students receive distance learning materials will ensure LEAs deliver services to students with disabilities to the greatest extent possible. Please see additional information on how LEAs and families can partner to ensure students receipt of services in question 2 below.

Q2: How can LEAs communicate with families during school closure about the delivery of IEP services through distance learning?

A: LEAs should continue to provide, to the greatest extent possible, the special education and related services identified in the student’s individualized education program (IEP). ([OSEP Guidance A-1](#)) In doing so, LEAs should ensure that school professionals delivering IEP services to the student (e.g., special education coordinators, classroom teachers, special education teachers and related-service providers) regularly communicate with families throughout the distance learning period. The frequency and method of communication may vary depending on the student’s individualized needs, parent needs for support to deliver distance learning, and the services and supports required by the student’s IEP.

Consistent and clear communication encourages parent and student participation in distance learning and other educational opportunities. These practices additionally ensure student availability for progress monitoring and create opportunities for LEA modification of supports as necessary to address student achievement. Activities that LEAs may consider to increase student engagement include, but are not limited to: scheduling service delivery at mutually agreeable times, LEA-specific identification of technical requirements for mobile platform access, and ensuring the availability of troubleshooting resources for mobile platforms. LEAs are encouraged to utilize distance learning plans or other forms of written communication to inform families of the services their child will receive, and should be available through distance learning.

The DC Public Charter School Board (PCSB) maintains a publicly available list of [LEA points of contact](#), including special education staff. LEAs should ensure that contact information is either up to date on their websites or that this information is up to date on the PCSB website, including email contact information for their special education points of contact at each campus so that parents and other stakeholders may know whom to contact.

Q3: Does refusal by a student or parent to participate in educational opportunities during school closure, including distance learning, constitute a revocation of consent for the continued provision of services under IDEA Part B?

A: No, refusal to participate in distance learning or other educational opportunities during school closure due to the COVID-19 health emergency does not constitute a revocation of consent for special education and related services under IDEA Part B. LEAs should collaborate with families to address written, verbal, and non-responsiveness from families regarding unavailability for distance learning. ([ED Supplemental Fact Sheet p. 2](#)). Please see question 2 above for additional information on flexibilities an LEA may exercise to encourage student participation in distance learning. Please also see the [OSSE Related Services Policy](#) for additional information on LEA obligations to continue to make service provision available in instances of interruptions in services including repeated or predictable student absences. This includes the requirement to maintain and provide accurate and clear documentation of

all instances of attempted service provision, including an explanation behind each missed session. ([OSSE Related Services Policy at p. 10-11](#)).

This guidance does not limit a parent’s right to revoke consent for all special education and related services at any time. ([34 CFR §300.9\(c\)\(1\)](#)). Parents must do so in writing, and LEAs must issue a prior written notice (PWN) in response. ([34 CFR §300.300\(b\)\(4\)](#)). Please see the [OSSE Initial Evaluation/Reevaluation Policy](#) for additional information on the requirements for parent revocation of consent for special education and related services and resulting LEA obligations.

Application of [DC Administrative Order No. 2020-02](#) (“License Waiver Order”)

Q4: How does the DC waiver of licensure requirements for healthcare providers apply to the provision of related services as defined in the IDEA?

A: This order offers flexibility for LEAs to provide related services through healthcare practitioners who are not licensed in DC but are properly licensed, registered, or certified and in good standing in their home jurisdiction.

Q5: How does the License Waiver Order apply to students receiving related services who are enrolled in a District LEA and whose location of service is in an out-of-state nonpublic school?

A: This order allows out-of-state healthcare practitioners to continue, during school closures due to COVID-19, to provide related services via telehealth to patients who have returned to DC and with whom they have an existing relationship. This allows students with out-of-state nonpublic location assignments who have returned home to continue to receive services via telehealth from their regular out-of-state provider.

LEA Recovery Planning and Compensatory Education

Q6: What is the procedural timeline for LEA completion of initial evaluations, triennial reevaluations, and annual IEP meetings delayed by circumstances related to COVID-19 upon return to normal operations?

A: During the COVID-19 public health emergency, LEAs should make attempts to meet IDEA procedural timelines to the greatest extent possible, and to reach agreements with parents on extension of procedural timelines where possible. OSSE, however, recognizes that LEAs will experience an unprecedented volume of workload related to IDEA compliance and updates to student programming upon return to normal operations, and this volume may begin during the phased re-opening of DC schools. LEAs should resume all activities delayed by circumstances related to COVID-19 as soon as possible. As part of recovery planning efforts, LEAs should identify delays due to student unavailability and impossibility and consider on a student-by-student basis a reasonable timeline for completion of the required activity (e.g., initial evaluation, reevaluation, IEP revision, etc.). In doing so, LEAs should consider the availability of student data, student-level recovery planning, and LEA-wide recovery planning activities. LEAs should communicate anticipated timeframes for completion of delayed procedural activities to families.

OSSE reminds LEAs of the requirement to document delayed procedural timelines due to student unavailability or impossibility via prior written notice (PWN) in the student’s Special Education Data System (SEDS) file. ([OSSE IDEA Part B FAQ, April 15, 2020, Q6 and 7](#)). LEAs are required to meet the due dates established through mutually agreed to extensions of time between the LEA and parent. LEAs are reminded that mutually agreed to extensions of time must also be documented via PWN in the students’ special education data system file. ([OSSE IDEA Part B FAQ, April 15, 2020, Q6 and 7](#)). For additional

information on how OSSE IDEA Part B monitoring will address procedural delays exceeding required regulatory timelines, please see the OSSE IDEA Part B FAQ issued on [April 15, 2020](#) at Q6 and Q7.

Q7: When must compensatory education decisions be made for individual students, and when may the delivery of compensatory education services begin?

A: There is no prescribed deadline for IEP team decisions regarding compensatory education or the delivery of compensatory education services resulting from circumstances related to COVID-19. The US Department of education has acknowledged that *once school resumes normal operations*, IEP teams must make individualized determinations as to whether compensatory education services are needed to address lapses in services. ([OSEP Guidance Question A-1](#), [USED Supplemental Fact Sheet at p.2](#)). LEAs should continue to collect student data during periods of distance learning and incorporate these activities into LEA-wide and student-level recovery planning. In doing so, the LEA will be positioned to assess and mitigate student regression upon return to normal operations. LEAs should additionally incorporate into recovery planning, the resources needed and the timeframes IEP teams will meet to make individualized compensatory education decisions. LEAs are encouraged to communicate transparently with families regarding student-level recovery planning, including anticipated timeframes for compensatory education discussions and service delivery, as appropriate. IEP teams should make individualized decisions regarding when a student's compensatory education services should begin and end, and the modality and method of receipt of those services. Please see OSSE's [March 25, 2020 IDEA Part B FAQ at Q11](#), and [April 15, 2020 IDEA Part B FAQ at Q3, Q4, and Q5](#) for additional guidance on IEP team decision-making related to compensatory education.

Q8: For students transferring between LEAs, is the previous or new LEA of enrollment responsible for the delivery of services contemplated to mitigate student regression and contribute to recovery of loss of learning that may have occurred during school closure due to COVID-19? For the delivery of compensatory education services?

A: LEAs are responsible for ensuring the delivery of services designed to mitigate student regression and address recovery of loss of learning that may have occurred during school closure due to COVID-19, as appropriate, to all students enrolled in their LEA. (See [OSEP Guidance Question A-1](#): "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 IEP.") This includes assessing the students' need for services, inclusion in the LEAs' school-wide recovery planning framework and delivering specialized instruction and related services as appropriate. LEAs are encouraged to draw on existing student data from the previous LEA of enrollment in conducting these activities. LEAs should incorporate this work into their existing IEP review and revision procedures for students transferring into their LEA as discussed in detail in the [OSSE IEP Implementation for Transfer Students Policy](#).

The previous LEA is responsible for the delivery of compensatory education services determined necessary for students enrolled in the LEA at the time of the IEP team decision, regardless of whether or not the student remains enrolled at the LEA.

Q9: May LEAs unenroll students for non-attendance while schools are closed due to the public health emergency?

A: No. Absences during a school closure are not recorded at the student level ([OSSE Data \(Attendance\) Guidance](#)). Therefore, an LEA may not unenroll a student due to non-attendance, because the student cannot accumulate the 20 or more full-day unexcused absences that would allow an LEA to unenroll the student when schools are open ([DC Code §38-236.04\(c\)](#)). Also, in order to receive equitable access to participate in the distance learning opportunities offered by the LEA during school closure, a parent must maintain the student's enrollment in the LEA.

Q10: May an LEA unenroll a student with a disability who has been expelled due to disciplinary events prior to or during school closure due to COVID-19?

A: No. LEAs, including public charter schools, may not unenroll a student with a disability from the LEA following expulsion. The LEA has a continuing responsibility to provide FAPE to the student with a disability during removal, including expulsion. A student with a disability may be removed to another setting but must continue to receive educational services to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP. ([34 CFR §300.530\(d\)\(1\)\(i\)](#)) During school closure due to COVID-19 circumstances, FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically. ([USED Supplemental Fact Sheet p. 1-2](#)). Students expelled due to disciplinary events prior to or during school closure due to COVID-19 should continue to receive equitable access to educational opportunities from the LEA in order to ensure the delivery of FAPE.

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.