



DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

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TO: Local Education Agencies (LEAs)
Public Agencies (providing educational services to children with disabilities)

CC: DC Public Charter School Board

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SPECIAL EDUCATION UPDATES FOR SCHOOL YEAR 2018-19

On July 1, 2018, two important changes to local special education requirements went into effect in accordance with the Enhanced Special Education Services Amendment Act of 2014. First, the timeline for completion of an initial evaluation was shortened, making District of Columbia law consistent with the Individuals with Disabilities Education Act (IDEA). Second, secondary transition planning must be conducted for the first individualized education program (IEP) to be in effect after a child with disability turns 14.ⁱ

On July 13, 2018, OSSE issued a short [rulemaking](#) to update 5-E DCMR Chapter 30 (Special Education) to address these two changes in the law and to incorporate longstanding *existing* federal and local requirements addressed in a variety of other authoritative sources including compulsory attendance regulations ([5-A DCMR § 2199 – definition of enrollment](#)) and guidance.ⁱⁱ In other instances the new regulatory language is intended to clarify areas of frequent confusion and respond to local education agency (LEA) calls for a more practical approach to special education responsibility for students with disabilities who transfer between District of Columbia LEAs between school years.

Please see below for an overview of these changes, including information about relevant conforming changes made to OSSE's special education compliance monitoring and the Special Education Data System (SEDS).

Important reminders are labeled and **bolded** for emphasis.

I. LOCAL SPECIAL EDUCATION LAWS AND REGULATIONS

A. Obligations to Provide a Free Appropriate Public Education (FAPE)

OSSE issued final regulations to formalize existing obligations to provide FAPE and clarify the timelines for such obligations. A variety of preexisting regulatory sources address these requirements, and the changes in 5-E DCMR Chapter 30 provide comprehensive requirements combining these sources. The requirement to make FAPE available is established in IDEA at 34 CFR § 300.101, while FAPE obligations in relation to enrollment are further governed by 5-A DCMR § 2199.

Except under specific circumstances explained below, the LEA responsibility to make FAPE available is as follows:

- For DC Public Schools, the responsibility to make FAPE available extends to all children with disabilities between the ages of three (3) and twenty-two (22) years old, who are residents of the District of Columbia but are not enrolled in a public charter LEA, and children with disabilities attending private and religious schools in the District of Columbia, pursuant to the requirements of IDEA. (5-E DCMR § 3002.1(b))
- For public charter LEAs, the obligation to determine eligibility for special education services or to provide special education services on an existing IEP is triggered upon completion of the registration of the student in the Student Information System (SIS) by the LEA upon receipt of required enrollment forms and letter of enrollment agreement, in accordance with subparagraph (4) in the definition of enrollment in 5-A DCMR § 2199. (5-E DCMR § 300.1(c))

If a child is registered in the Student Information System (SIS) for more than one LEA, the most recent date of documented parental consent for enrollment shall determine the LEA that is responsible for making FAPE available to the child. (5-E DCMR § 3002.9(c))

NEW: For children transferring between LEAs between school years, the new LEA's obligation to make FAPE available begins on the first day of the new LEA's school year. (5-E DCMR § 3002.9(b)) Most notably, this means that, for children receiving extended school year (ESY) services, the prior LEA is responsible for providing ESY services.

B. Early Childhood Transition

Under IDEA, states and LEAs are required to ensure a smooth and effective transition for each child transitioning from early intervention services under IDEA Part C to special education and related services under IDEA Part B. (34 CFR 300.124; 5-E DCMR § 3002.1(h)) Although the July 13, 2018 rulemaking incorporated these requirements into local special education regulation for the first time, these requirements are not new and have been previously communicated. For more information, please see [OSSE's Dear Colleague Letter on Key IDEA Requirements Related to D.L. v. District of Columbia \(August 2017\)](#).

For children transitioning from early intervention services under IDEA Part C to special education and related services under IDEA Part B, the LEA shall ensure a smooth and effective transition pursuant to 34 CFR § 300.124, including ensuring that: (1) the LEA participates in transition planning conferences, as appropriate; (2) the LEA has developed an IEP by the child's third birthday; and (3) the LEA is implementing the IEP by the child's third birthday. (5-E DCMR § 3002.9(a))

For public charter LEAs, the requirement to develop an IEP by the child's third birthday applies to any child who is currently enrolled in the public charter LEA or has completed the registration process for the upcoming school year. (5-E DCMR § 3002.9(a)(2)(A))

For DCPS, the requirement to develop an IEP by the child's third birthday applies to any child who is a resident of the District of Columbia, and who is not enrolled in a public charter LEA. (5-E DCMR § 3002.9(a)(2)(A))

The requirement to implement the IEP by the child's third birthday includes the provision of all special education and related services in the child's IEP. Specialized instruction must be provided by the child's third birthday, or if the child turns three on a non-instructional day, must be provided on the first school day after the child's third birthday. (5-E DCMR § 3002.9(a)(3))

REMINDER: All related services must be provided at least once within 14 days of the child's third birthday. If the child turns three during the summer and the child does not qualify for related services as part of their ESY services, all related services must be provided at least once within 14 days of the first day of school after the summer.

C. Sources of Referral for Initial Evaluation

A referral for initial evaluation may be oral or written. Upon receiving an oral referral for an initial evaluation, the LEA must assist any outside referral source (including, but not limited to, the parent and other public agencies) to document an oral referral in writing, and must document the date of any oral referral within three business days of receipt. (5-E DCMR § 3004.6; 5-E DCMR § 3004.7)

For all children, the LEA must treat a referral from the following individuals as a request for initial evaluation in accordance with 34 CFR 300.301(b): the child's parent; the child, provided that educational rights have transferred to the child; an employee of the LEA in which the child is enrolled, who has knowledge of the child; and an employee of a public agency, as defined by 34 CFR § 300.33, who has knowledge of the child. 34 CFR § 300.33 defines a public agency as including the SEA (OSSE), LEAs, educational service agencies (ESAs) (34 CFR § 300.12), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. (5-E DCMR § 3004.1)

REMINDER: For children under the age of six , the LEA must also treat a referral from the following individuals as a request for initial evaluation: pediatrician or other medical professional, including physicians, hospitals, and other health providers; child development facilities, including day care

centers, child care centers, and early childhood programs; District agencies and programs, including IDEA Part C programs (DC Early Intervention Program (EIP), also known as Strong Start); community and civic organizations; and advocacy organizations. (5-E DCMR § 3004.2) The LEA must notify the parent of receipt of any referral received under §3004.2. This notification must include information regarding the initial evaluation process, parental consent requirements, and resources the parent may contact for assistance. (5-E DCMR § 3004.5)

NEW: For children transitioning from Part C early intervention services to Part B special education and related services, effective August 1, 2018, the invitation to a child’s transition conference sent from the DC Early Intervention Program, also known as Strong Start, to an LEA will serve as each potentially transitioning student’s referral date.

D. Initial Evaluation Timeline

Previously, LEAs were required to complete an eligibility determination within 120 calendar days of referral for initial evaluation. As of July 1, 2018, per the Enhanced Special Education Services Act of 2014, LEAs must make reasonable efforts to obtain parental consent within 30 calendar days of referral for initial evaluation, and must complete an eligibility determination within 60 calendar days of parental consent. (DC Code § 38-2561.02(a) and 5-E DCMR §3005.2.) The new timeline applies to referrals for initial evaluation received on or after July 1, 2018. The 120-day timeline will apply to referrals for initial evaluation received on or prior to June 30, 2018. In all cases, LEAs are still required to develop an individualized education program (IEP) for eligible children with disabilities within 30 calendar days of the eligibility determination. (34 CFR 300.323(c)) Please see sections II and III below for more information about changes made to OSSE compliance monitoring and the Special Education Data System (SEDS) as a result of this timeline change.

The LEA must not delay or deny a timely initial evaluation to conduct screenings or implement pre-referral interventions. (5-E DCMR § 3004.3)

REMINDER: As part of an initial evaluation for children under the age of six, the LEA must review relevant information provided by any agency, medical professional, service provider, child care provider, early childhood program, or relative who may have relevant information regarding the child; and IDEA Part C assessments and other related data. (5-E DCMR § 3005.4(b)) LEAs may, but are not required to, review relevant information from these sources for children of any age.

E. Reasonable Efforts to Obtain Parental Consent for Initial Evaluation

Reasonable efforts to obtain parental consent include at least three documented attempts made on at least three different dates using at least two of the following modalities: (1) Telephone calls made or attempted and the results of those calls; (2) Correspondence sent to the parents and any responses received; or (3) Visits made to the parents’ home or place of employment and the results of those visits. (5-E DCMR § 3005.2(b)) Attempts that are clearly ineffective, such as repeat calls to a disconnected telephone number, are not considered reasonable efforts to contact the parent.

NEW: Additionally, LEAs must begin reasonable efforts to obtain parental consent no later than ten business days from the referral date. (5-E DCMR § 3005.2(c))

Please note: Notwithstanding the requirement to initiate reasonable efforts within 10 business days, for LEAs invited to attend a transition conference for a child transitioning from Part C early intervention services, OSSE does not expect LEAs to contact parents for the purpose of obtaining consent prior to the transition conference *if* the transition conference is scheduled to occur within 30 calendar days. OSSE will develop further guidance related to expectations and best practices for conducting reasonable efforts within this context.

The initial evaluation timeline does not apply if the LEA has made and documented reasonable efforts to obtain parental consent and the parent of a child repeatedly fails or refuses to produce the child for the evaluation. Additionally, the initial evaluation timeline does not apply if the child enrolls in a new LEA after the initial evaluation process timeline has begun, but before an eligibility determination has been made by the child's previous LEA, provided that the new LEA is making sufficient progress to ensure prompt completion of the evaluation, and the parent and new LEA agree to a specific time when the evaluation will be completed, not to exceed an additional thirty (30) days. (5-E DCMR § 3005.2(d))

Please note that, if a parent fails to respond to the request for parental consent, an LEA may issue prior written notice (PWN) notifying the parent that the LEA will not proceed with the evaluation process due to parent refusal or non-response, and advising that the parent may submit another referral for initial evaluation to reinitiate the evaluation process. Completing a PWN and closing the referral in SEDS will result in the deletion of any information or data entered in the Analysis of Existing Data section. For LEAs that have made reasonable efforts within 30 calendar days of referral, the LEA is encouraged to leave the referral open for up to an additional 30 days in case parents may subsequently respond to the request for parental consent.

F. Extended School Year (ESY) Services

NEW: For children transferring between LEAs between school years, the new LEA's obligation to make FAPE available begins on the first day of the new LEA's school year. (5-E DCMR § 3002.9(b)) As such, for children receiving extended school year (ESY) services, the prior LEA is responsible for providing ESY services.

G. Secondary Transition Planning Age

Previously, LEAs were required to include appropriate secondary transition planning goals and assessments in the first IEP in effect after a student with a disability reached 16 years of age or earlier if the IEP Team deemed it appropriate. As of July 1, 2018, per the Enhanced Special Education Services Act of 2014, the age for this requirement was broadened to require secondary transition planning for students with disabilities who reach the age of 14 years of age. The new secondary transition requirement applies to students with disabilities age 14 and older as of July 1, 2018. (5-E DCMR § 3009.6)

Secondary transition planning within an IEP includes transition assessments and services, including:

- Appropriate measurable postsecondary goals based upon age- appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and the transition services needed to assist the child in reaching those goals; and
- A statement of inter-agency responsibilities or any needed linkages before the child leaves the school setting. (5-E DCMR § 3009.6)

If the IEP team determines that transition services are not needed, a statement to that effect and the basis upon which the determination was made must be included in the student’s IEP. (5-E DCMR § 3009.6(c))

OSSE expects LEAs to consider and develop secondary transition goals and activities as part of the next annual IEP review for each student with a disability over the age of 13 throughout the 2018-19 school year. For these students, if an LEA must amend the student’s current IEP prior to the next annual IEP review, the LEA is not required to address secondary transition planning to complete the IEP amendment.

H. Prior Written Notice

The July 2018 regulations clarify that an LEA must document in the system of record (SEDS) each time prior written notice (PWN) is provided to a parent. LEAs must generate the PWN in SEDS and then document delivery of the PWN to the parent in the communications log, including the date and mode of delivery (for example, mail, email, or in person delivery).

For questions related to special education requirements, regulations, or policies, please contact Christie Weaver-Harris, Policy Manager, at Christie.Weaver-Harris@dc.gov.

II. SPECIAL EDUCATION COMPLIANCE MONITORING

A. Initial Evaluation Timeline

Under IDEA, an initial evaluation must be completed within 60 days of receiving parental consent for evaluation or a state-established timeline, if different. (34 CFR § 300.301(c)(2)). As of July 1, 2018, DC’s timeline is the same and, accordingly, OSSE’s monitoring framework for initial evaluation timeliness will be adjusted to accommodate the changes in requirements.

OSSE will conduct twice yearly monitoring of initial evaluation timeliness, and LEAs will begin receiving findings for noncompliance related to the new initial evaluation timeline during the 2018-2019 school year.

For the purposes of federal reporting, OSSE will monitor initial evaluation timeliness (Indicator 11) in terms of compliance with the requirement to complete the eligibility determination within 60 calendar days of parental consent. Findings of noncompliance will be issued to LEAs when initial eligibility determinations do not occur within 60 calendar days following parental consent. Additionally, for the 2018-19 school year, OSSE will monitor the local requirement to conduct reasonable efforts to obtain parental consent within 30 days of referral by reviewing LEA compliance and providing technical assistance as necessary.

As stated above, the new timeline applies to all referrals for initial evaluation received on or after July 1, 2018. The 120-day timeline will continue to apply to referrals for initial evaluation received on or prior to June 30, 2018. **Please note: The OSSE monitoring team reviews SEDS data, including the communications log, and does not solely rely on SEDS compliance indicators to determine compliance with IDEA requirements.**

NEW: Previously, when monitoring to determine if parental consent for initial evaluation was obtained and documented appropriately, OSSE reviewed underlying documentation to confirm that the date the parent signed the parental consent form was recorded as the date of parental consent in SEDS. **Going forward, when monitoring compliance under the new initial evaluation timeline, the date when the LEA receives the signed parental consent form will be considered the official date of parental consent and therefore start the 60 calendar day timeline for the LEA to complete the eligibility determination.** In many cases the date the parent signs a consent form and the date the form is received by the LEA will be the same. However, to ensure sufficient underlying documentation, the LEA must date stamp or sign and date the parental consent form upon receipt, upload the form into SEDS, and record the date the LEA received the form as the date of parental consent in SEDS when prompted to do so.

B. Secondary Transition Planning Age

For the purposes of federal reporting, OSSE will continue to analyze and report statewide compliance with 34 CFR § 300.320(b) which requires secondary transition planning goals and activities to be included in the first IEP in effect after a student with a disability reaches 16 years of age. For the 2018-19 school year, in consideration of local requirements, OSSE will review LEA-level three-year secondary transition program improvement plans for all LEAs serving students ages 13 and older and provide technical assistance as necessary.ⁱⁱⁱ OSSE expects LEAs to fully implement secondary transition requirements for students age 13 and older, and encourages LEAs to take advantage of optional supports available from OSSE.

C. Early Childhood Transition

To support the District's efforts to provide timely services to our youngest children with disabilities, OSSE will also conduct focused monitoring of initial evaluation timeliness for children ages three through six. For more information on additional special education requirements for children under the age of six, please refer to [OSSE's Dear Colleague Letter on Key IDEA Requirements Related to D.L. v. District of Columbia](#) issued in August 2017.

D. Window for Correction of Non-Compliance

For monitoring of initial evaluation timeliness (Indicator 11), early childhood transition (Indicator 12), and special conditions monitoring of reevaluation timeliness, during the ten day correction period, LEAs will no longer be permitted to demonstrate that noncompliance was corrected by holding the overdue event. However, within the ten day correction window, LEAs still may produce documentation that an event occurred timely but was not recorded (or recorded incorrectly) in SEDS.

For questions related to IDEA compliance monitoring, please contact Karen Donaldson, Supervisory Education Compliance Specialist, at Karen.Morgan-Donaldson@dc.gov.

III. SPECIAL EDUCATION DATA SYSTEM (SEDS) UPDATES

On July 1, 2018, a number of changes were made to SEDS, as described below.

A. Initial Evaluation Timeliness

SEDS now calculates initial evaluation timeliness based on the new timelines described above. Please note that, while local law requires only that reasonable efforts be made to obtain parental consent within 30 days – not that LEAs are required to obtain parental consent within 30 days – SEDS has been configured to establish a due date for parental consent for initial evaluation that is 30 calendar days after the date of referral that was manually entered in SEDS. This is in support of the requirement that LEA reasonable efforts to obtain parental consent begin no later than ten business days after referral, and the expectation that reasonable efforts are made in such a manner and timeframe that parental consent is obtained within the 30 day window. The eligibility determination must be completed within 60 calendar days after the date of parental consent entered in SEDS. The following additional compliance symbols have been added to assist LEAs in meeting obligations under the new requirements:

- *“P” yellow yield sign and red stop sign*: Student has been referred for initial evaluation and the LEA is required to conduct reasonable efforts to obtain parental consent for the initial evaluation within 30 calendar days. Reasonable efforts to obtain parental consent must begin within ten business days of the initial referral date. If the referral for initial evaluation was made prior to July 1, 2018, please complete the eligibility determination based on the previous 120 calendar day timeline and disregard this compliance symbol. This is to serve as a visual reminder to make reasonable efforts to obtain parental consent if not done so already. The LEA has an ongoing obligation to continue making reasonable efforts, as appropriate, if parental consent is not obtained within 30 calendar days.
- *“E” yellow yield sign and red stop sign*: Student has been referred to special education under IDEA Part B and an eligibility determination is due within 60 calendar days of the date of Parental Consent to Evaluate. If the referral for initial evaluation was made prior to July 1, 2018, please complete the eligibility determination based on the previous 120 calendar day timeline and disregard this compliance symbol.

As a reminder, the date the LEA receives the signed parental consent form will be treated as the official date of parental consent. LEAs should date stamp or sign and date the parental consent form upon receipt, upload the form into SEDS, and enter the date the LEA received the form as the date of parental consent when prompted to do so.

For referrals made prior to July 1, 2018: Although SEDS now calculates timeliness based on the new timelines for all existing and new referrals in the system, LEAs will continue to be held to the old 120-day timeline for all referrals made prior to July 1, 2018. However, because of the system change, LEAs may see indications of noncompliance in SEDS that do not apply to pre-July 1, 2018 referrals. *The compliance symbols within SEDS serve as visual reminders to assist users in timely completion of IDEA responsibilities; all compliance symbol definitions were updated to help provide clarity regarding the July 1 shift.* OSSE apologizes for any confusion. **If prompted to provide rationale for a noncompliant or untimely eligibility determination for a referral made prior to July 1, 2018, please indicate in the text box provided that the referral was made prior to July 1, 2018 and the eligibility determination was made timely in accordance with the 120-day timeline.**

B. Referral Acknowledgment Page

Text edits were made to instructional and help notes regarding required referral sources and appropriate documentation of oral referrals. Additional referral sources were added in accordance with 5-E DCMR § 3004 and will populate accordingly based on the child's age. An outdated note about written referrals was deleted from the Referral Acknowledgment Cover Sheet.

C. Analyze Existing Data Page

For each area to consider, a checkbox was added to allow LEAs to indicate when Part C or other early childhood data or information was considered. Text edits were made to an instructional note regarding requirements related to reasonable efforts to obtain parental consent for initial evaluation.

D. IEP Process Page

Post-Secondary Transition Plan: SEDS now requires a secondary transition plan to be included in the first IEP in effect when the child turns 14 years old. For these students, if an LEA must amend a student's IEP prior to the annual IEP review, the LEA is not required to address secondary transition planning. OSSE expects LEAs to consider and develop secondary transition goals and activities as part of the next annual IEP review for each student with a disability over the age of 13 throughout the 2018-19 school year.

Extended School Year (ESY): Text edits were made to an instructional note reminding LEAs to consider ESY services for children transitioning from Part C early intervention services.

Services and Supplemental Aids: An instructional note was added regarding the initial provision of services following the development of an IEP, including requirements related to timely service provision for children transitioning from Part C early intervention services (as described above).

E. Prior Written Notice

Pop-up notifications were added for each action that requires the provision of prior written notice (PWN) to the parent. The LEA should document the delivery of the PWN in the communications log after finalizing and delivering the PWN.

F. Reports

A new field was added to the assessment report so the National Provider Identified (NPI) number required for Medicaid billing can be included for all related service providers.

For general questions related to SEDS, please contact Shenee Akinmolayan, Applications and Data Operations Manager, at Shenee.Akinmolayan@dc.gov.

For student-specific questions, please contact the OSSE Data, Assessment and Research (DAR) liaison assigned to your LEA. The 2018-19 school year list is available online [here](#).

ⁱ A third important change went into effect for the DC's early intervention program for infants and toddlers with disabilities. As of July 1, 2018, a child is eligible for IDEA Part C services if the child is age birth through two and demonstrates a delay of 25 percent, using appropriate diagnostic instruments and procedures, in one of the following developmental areas: physical development (including vision and hearing); cognitive development; communication development; social or emotional development; or adaptive development. See D.C. Code DC Code § 3108.4.

ⁱⁱ The July 13, 2018 rulemaking also updated 5-A DCMR Chapter 31 (Early Intervention Program for Infants and Toddlers with Disabilities) to incorporate the new IDEA Part C eligibility criteria established by the Enhanced Special Education Services Act of 2014.

ⁱⁱⁱ Affected LEAs have submitted these plans to OSSE. If you have questions about the review of your LEA's plan, please contact your IDEA LEA monitor.