

OSERS' Return to School Roadmap

OCTOBER 21, 2021



Critical Messages – IEPs and the Provision of FAPE

- LEAs must ensure an IEP is in effect at the beginning of the school year for each child with a disability that provides FAPE – with heightened attention to consideration of special factors, including the child’s need for assistive technology services and devices, and social, emotional, behavioral, and mental health supports. See **Questions A-1, C-1, C-3, and C-6.**
- IDEA provides some flexibility in making changes to a child’s IEP, including the excusal and amendment provisions. See **Questions B-1 and B-2.**

Critical Message – Compensatory Services-1

- IEP Teams have a critical role in making individualized decisions about each child's present levels of academic achievement and functional performance and determining whether, and to what extent, compensatory services may be necessary to mitigate the impact of the COVID-19 pandemic on the child's receipt of appropriate services. See **Question D-4**.

Critical Message – Compensatory Services-2

- Factors IEP Teams can use when making compensatory services decisions. See **Question D-5**:
 - The child's present levels of academic achievement and functional performance.
 - Previous rates of progress.
 - Frequency and duration of special education and related services.

NOTE: In some circumstances, there may be controlling Federal or State law, including case law or specific SEA or LEA guidance that IEP Teams would be required to follow.

Critical Message – Addressing School-Related Health Needs-1

- Some parents have specific health and safety concerns about sending their children back to school for in-person instruction.
- Reopening schools safely is of utmost importance. SEAs and LEAs should put in place layered prevention strategies including promoting vaccination and universal and correct mask-wearing in schools. CDC recommends that everyone in K through 12 schools wear a mask indoors, including teachers, staff, students, and visitors, regardless of vaccination status.
- In determining FAPE, the IEP Team is responsible for considering and addressing the school-related health needs of a child with a disability who is at increased risk of serious illness if they contract COVID-19. Likewise, the placement team must consider the child's needs, based on the IEP, when determining an appropriate educational placement in the LRE. See **Questions C-7 and C-8.**

Critical Message – Addressing School-Related Health Needs-2

- A State or local law, regulation, rule, or policy that prohibits or limits COVID-19 prevention and risk reduction strategies in the regular education classroom or other settings where the child with a disability could interact with nondisabled peers could be inconsistent with IDEA's requirement to ensure a continuum of educational placements related to placement in the LRE. See **Question C-10**.
- Addressing the school-related health needs of CWD for FAPE is a long-standing IDEA requirement and affirmed by the U.S. Supreme Court. See specifically, [Irving ISD v. Tatro, 468 U.S. 883 \(1984\)](#).
- SEAs and OSEP have responsibility to ensure compliance that the school-related health needs of CWD are addressed. See **Question C-11**.

Critical Message – ESY and Compensatory Services

- A child's entitlement to ESY services needed for FAPE continues to apply even if schools do not provide other educational services during school breaks.
- The specific analysis and standards that an IEP Team may use to determine whether a child requires ESY services in order to receive FAPE are left to States to determine.
- A child could be entitled to both ESY and compensatory services. These are two separate determinations, but both must be based on a child's individual needs.
- These services have different standards and purposes.
- See **Questions E-1 and E-2**.

Critical Message – Supplementary Aids and Services

Definition:

- Aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§ 300.114 through 300.116. 34 C.F.R. § 300.42.
- Used throughout the document.

Specific Details – IEPs in Effect at the Start of the School Year-1

- Each LEA must have an IEP in effect for each child with a disability within its jurisdiction that identifies and addresses all the child's individual needs in order to provide FAPE.
- The LEA must ensure that each child with a disability has access to educational opportunities, including all special education and related services, necessary to receive FAPE.
- Overall: The document uses the term for “LEAs” instead of “Public Agencies.”

Specific Details – IEPs in Effect at the Start of the School Year-2

- It will be important for LEAs and parents to consider whether there are circumstances, such as an IEP that was developed that includes special education and related services to be delivered solely through virtual instruction, that cannot be modified to reflect in-person services for the upcoming school year. In these circumstances, the IEP Team would need to convene as soon as possible to determine what revisions to the child's IEP are necessary to ensure FAPE.
- Many students will have new or additional needs that may not have existed the last time the IEP was developed, that may have been brought on as a result of or due to challenges experienced during the pandemic. In such cases, the IEP Team will need to reconvene to ensure that an IEP is developed that includes appropriate supports and services to address any new needs.

Specific Details – IEPs in Effect at the Start of the School Year-3

- The document also restates OSEP's long standing position on contingency planning. See **Question A-3**.
- An IEP Team may implement a proactive strategy for preparedness in the event of future long-term school closures by developing a contingency plan. As part of a child's annual IEP Team meeting, developing a contingency plan would address the provision of service delivery to account for virtual learning or hybrid instruction. See also **Question A-4** in [Questions and Answers on Providing Services to Children with Disabilities During an H1N1 Outbreak](#) (Dec. 2009).

Specific Details – Consideration of Special Factors

- Two of the special factor considerations featured in the guidance are based on 34 C.F.R. § 300.324(a)(2):
 - Whether the child needs assistive technology devices and services.
 - For a child whose behavior impedes the child's learning or that of others, the use of positive behavioral interventions and supports, and other strategies to address that behavior.

Specific Details – Assistive Technology

- Assistive technology includes both devices and services:
 - See definitions in 34 C.F.R. §§ 300.5 and 300.6.
- On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE. 34 C.F.R. § 300.105.

Specific Details – Child Whose Behavior... 1

Examples of types of services that can be provided:

- Special education and related services may include counseling services for mental health needs (e.g., anxiety, depression, etc.), social skill instruction, explicit reinforcement of positive behavior, and explicit instruction in stress, anxiety, and depression management.
- Supplementary aids and services may include consultation with a professional with expertise in behavioral interventions to create a positive behavioral support plan, access to counselors, and access to targeted strategies supported by peer-reviewed research to support social, emotional, behavioral, or mental health needs (e.g., anxiety scaling, mindfulness exercises).

See **Question C-5**.

Specific Details – Child Whose Behavior... 2

- Program modifications could include adapting a homework assignment or adjusting a reading passage to reflect the child's reading comprehension level, while supports for school personnel may include training on additional positive behavioral supports and universal design for learning and access to consultation with related service providers and others with specialized expertise.
- Also addresses steps IEP Teams can take when considering behavioral supports for children with disabilities as they return to in-person instruction.

Specific Details – Compensatory Services-1

- Generally, many of the same types of individualized and child-centered deliberations that are appropriate for an IEP Team meeting discussing the child's IEP, would also be appropriate for an IEP Team to discuss when considering the need for, and extent of, compensatory services. See **Question D-4**.
- Examples of when compensatory services could be provided:
 - If there was a delay in the initial evaluation, eligibility determination, and identification, development and implementation of IEP for an eligible child.
 - If a student did not receive special education and related services that were appropriate to address all needs during the pandemic.
 - If some or all of a student's IEP was not fully implemented as written during the pandemic.
 - If meaningful transition services were not provided during the pandemic.

See **Question D-6**.

Specific Details – Compensatory Services-2

- Determinations about compensatory services may also apply to:
 - Transition services – early childhood and secondary.
 - Extended school year services.
 - Children who have exited special education.
 - Children who have moved to another jurisdiction within the State or another State.
- SEA, through its general supervisory responsibilities, must ensure that its LEAs take appropriate action to mitigate the adverse impact of any failure to provide appropriate services, such as lost skills and lack of progress, for children with disabilities.



Specific Details – Making Educational Placements-1

- States should provide technical assistance and conduct monitoring to ensure that FAPE is provided in the LRE. See 34 C.F.R. §§ 300.114(a), 300.119, 300.120.
- To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Specific Details – Making Educational Placements-2

- Generally, LEAs should not be providing virtual instruction to CWD when their non-disabled peers are receiving in-person instruction. See **Question G-3**.
- Prior to the COVID-19 pandemic, for schools that did not offer virtual instruction to all children, special education and related services provided virtually in the child's home was generally considered one of the most restrictive environments, as it typically provided little or no opportunity for the child to be educated with nondisabled peers. Virtual learning provided during the pandemic may be deemed less restrictive if it is available to all children and provides the child with a disability, meaningful opportunities to be educated and interact with nondisabled peers in the regular education environment.

Specific Details - Resolving Disagreements

- A parent may use the IDEA's dispute resolution procedures to resolve disagreements with the IEP Team's decision regarding compensatory services.
- It is important that parents review the State's procedural safeguards notice to ensure they understand the applicable timelines for these procedures.

See **Question H-1.**

Return to School Roadmap: Dear Partners Letter-1

- Emphasizes the importance of equitable access to high quality early intervention and special education and related services.
- Reiterates that, notwithstanding challenges of the pandemic, children with disabilities retain their rights to appropriate services under IDEA.
- Sets forth the expectation that all children will have the opportunity for full-time, in-person learning for the 2021-2022 school year. Reopening schools safely is of utmost importance and SEAs and LEAs should put in place layered prevention strategies in schools.

Return to School Roadmap: Dear Partners Letter-2

- Reiterates that SEAs and State Lead Agencies (LAs) have a reasonable degree of flexibility in how, but not whether, they monitor LEAs and EIS programs and providers.
- Notes that OSERS will monitor States' implementation of IDEA, including their exercise of general supervisory, accountability, and oversight responsibilities.
- Emphasizes the importance of SEA and LAs focusing general supervisory responsibilities on providing technical assistance and support to LEAs and EIS providers to (1) mitigate and address the impact of service disruptions; and (2) ensure full implementation of IDEA during the 2021-2022 year.

Return to School Roadmap: Child Find-1

- Pandemic-related challenges to child find:
 - A number of children have not registered for school or have unenrolled from their schools.
 - Many others received only virtual instruction.
- SEAs and LEAs may need to evaluate whether current child find procedures are sufficiently robust to ensure appropriate referral and evaluation of children who may have a disability under IDEA.

Return to School Roadmap: Child Find-2

- Reviews general child find requirements and responsibilities. See **Questions A-1 through A-4**.
- Provides examples of child find activities. See **Question A-5**.
- Addresses use of multiple sources of Federal funds to support child find activities. See **Question A-6**.
- Clarifies requirements regarding who can refer a child, who can initiate a request for an evaluation of a child, and LEA's response to a parent's request for an IDEA evaluation of their child. See **Questions B-1 and B-2**.

Return to School Roadmap: Child Find-3

- Child find considerations related to the pandemic
 - In general, child find is an SEA and LEA responsibility and LEAs should not rely solely on referrals by parents as the primary vehicle for meeting the child find requirement. See **Question C-1**.
 - A child must not be determined to be a child with a disability if the determinant factor is due to a lack of appropriate instruction in reading or math. 34 C.F.R. § 300.306(b). See **Question C-3**.
 - A child experiencing symptoms from long COVID must be referred for an initial evaluation if the child is suspected of having a disability under IDEA (e.g., other health impairment). See **Question C-4**.



Using IDEA Funds to Support Implementation

- ESSER/GEER funds: see question C-5 [Frequently Asked Questions Elementary and Secondary School Emergency Relief Programs Governor's Emergency Education Relief Programs.](#)
- IDEA State-level funds in 34 C.F.R. § 300.704(b)(4).
- IDEA State-level funds in 34 C.F.R. § 300.814.