

# IDEA PART B & PART C COVID-19 QUESTION & ANSWER REVIEW

OFFICE OF SPECIAL EDUCATION PROGRAMS

U.S. DEPARTMENT OF EDUCATION

MARCH 11, 2021



Dr. Kate P. Moran  
*DMS IT Facilitator  
& State Lead  
OSEP*



Dr. Jennifer Simpson  
*Program IT Facilitator &  
State Lead  
OSEP*



Lisa Pagano  
*Policy Specialist  
OSEP*

- ▶ Pivot Activities
- ▶ COVID-19 MSIP Response and Background
- ▶ Dispute Resolution
- ▶ Procedural Safeguards
- ▶ Fiscal
- ▶ Evaluation Timelines
- ▶ Service Provision
- ▶ Common Questions and Additional Resources

- ▶ Provide TA on IDEA requirements during the pandemic:
  - Universal TA through webinars
  - Individual TA through monthly check-in calls with States
    - State Leads will have conversations with *all* States about COVID-19 guidance and activities to ensure service provision to children during the pandemic
  
- ▶ Ensure State guidance on service provision during the pandemic is consistent with IDEA requirements:
  - Where State website information appears inconsistent with IDEA, State Leads will follow up with the State and make sure that, where warranted, policies, procedures and guidance are revised.
  - Will use information gathered to draft additional OSEP guidance.
  
- ▶ TA Resource
  - [COVID-19 Guidance for IDEA programs: A Policy and TA Checklist for SEA Leaders](#)

- ▶ MSIP received over 400 inquiries related to the current pandemic. In response to these inquiries MSIP developed a series of Q&A documents which would address the various questions received by our stakeholders.

## Currently Posted

- ▶ Dispute Resolution Part B | Part C
- ▶ Procedural Safeguards Part B | Part C
- ▶ Fiscal
  - IDEA Fiscal Flexibilities Part B
  - Use of Funds Part B | Part C
  - Period of Availability Waiver Documents Part B | Part C
- ▶ Evaluation/Timelines Part C
- ▶ Service Provision Part B | Part C

## Under Consideration

- ▶ Addressing learning loss, including compensatory services
- ▶ Part C to B transition
- ▶ Fiscal issues
- ▶ Addressing Mental health/behavioral challenges with return to school.
- ▶ Data Collection, 618 Data Reporting, Assessment

- ▶ Questions and Answers: Providing Services to Children with Disabilities During the Coronavirus Disease Outbreak (March 2020)
- ▶ Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities (in conjunction with the Office for Civil Rights. March 21, 2020)



- ▶ Dispute Resolution in COVID-19 Environment Q&A Documents (June 22, 2020)
  - Documents address inquiries concerning the implementation of the IDEA dispute resolution procedures in the current COVID-19 environment
  
- ▶ Part B
  
- ▶ Part C
  
- ▶ TA Resource
  - <https://www.cadreworks.org/search/COVID>

- ▶ Procedural Safeguards in the COVID-19 Environment Q&A Documents (June 30, 2020)
  - Documents address inquiries concerning the implementation of the IDEA procedural safeguards in the current COVID-19 environment
  
- ▶ Part B
  
- ▶ Part C

## ▶ Electronic Signature Guidance

- [OSEP: Understanding the Confidentiality Requirements Applicable to IDEA Early Childhood Programs Frequently Asked Questions \(FAQS\)](#)
- [OSEP: Dear Colleague Letter - IDEA Infant and Toddler Coordinators Association](#)

## ▶ TA Resources

- <https://ectacenter.org/topics/disaster/coronavirus-faq.asp>
- <https://www.cadreworks.org/search/COVID>

- ▶ Use of Funds in the COVID-19 Environment Q&A Documents (June 25, 2020)
  - Documents address inquiries concerning the implementation of the IDEA use of funds in the current COVID-19 environment
  
- ▶ Part B
  
- ▶ Part C
  
- ▶ TA Resource
  - <https://cifr.wested.org/>

▶ [Flexibility on IDEA Part B Fiscal Requirements in the COVID-19 Environment Q&A Document](#) (June 26, 2020)

- Response to inquiries concerning flexibility in the implementation of the Individuals with Disabilities Education Act (IDEA) Part B fiscal requirements in the current COVID-19 environment

Related Guidance: [State Maintenance of Financial Support Waivers under Part B](#)

▶ TA Resources

- [Managing Resources Effectively in Response to COVID-19](#)
- [CIFR Open Door: Local Educational Agency \(LEA\) Maintenance of Effort \(MOE\) Fiscal Requirements and COVID-19 Implications](#)

- ▶ [Evaluation and Assessment Timelines for IDEA Part C in the COVID-19 Environment Q&A Document](#) (July 6, 2020)
  - Addresses inquiries concerning the implementation of the Individuals with Disabilities Education Act (IDEA) Part C evaluation and assessment timelines in the current COVID-19 environment

## ▶ TA Resources

- An extensive collection of information and resources have been developed for Part C and Part B 619 Preschool by DaSy and ECTA on Remote Screening, Evaluation, and Assessment  
<https://ectacenter.org/topics/earlyid/remote.asp>
- Key new resources include:
  - [Screening Tools for Children Birth to Age Five Years with Potential for Remote Administration](#)
  - [Determining A Child's Eligibility for Early Intervention Services Remotely](#)
  - [Norm-Referenced Assessment Tools for Children Birth to Age Five Years with Potential for Remote Administration for Eligibility Determination](#)
  - [Assessment Tools for Planning Instruction and Monitoring Young Children's Progress Remotely](#)

- ▶ Implementation of IDEA Provision of Services in the Current COVID-19 Environment Q&A Document
  - Documents address inquiries concerning implementation of IDEA provision of service in the current COVID-19 environment.
    - ❖ [Part B](#) (Sept. 28, 2020)
    - ❖ [Part C](#) (Oct. 21, 2020)



- ▶ Issued October 21, 2020
- ▶ Part C of the IDEA provides funds to the State lead agency (State LA) to make EI services available to all eligible infants and toddlers with disabilities and their families living within the State.

- ▶ These EI services are provided in conformity with the child's individualized family service plan (IFSP), [34 C.F.R. § 303.13\(a\)\(9\)](#). Under [34 C.F.R. § 303.340](#), for each infant or toddler with a disability, the State LA must ensure the development, review, and implementation of an IFSP developed by a multidisciplinary team, which includes the parents, that:
  - a) Is consistent with the definition of that term in [34 C.F.R. § 303.20](#); and
  - b) Meets the requirements in [34 C.F.R. § 303.342](#) through [34 C.F.R. § 303.346](#).

## IFSP Meeting and Notice

- ▶ Q1. How can parents, State LAs and their early intervention service (EIS) providers hold initial, periodic and annual IFSP meetings when LAs and EIS providers cannot conduct face-to-face meetings?

During the time of this pandemic when in-person meetings are not feasible or practicable, the Department is extending the flexibility for IFSP periodic reviews that is allowed in [34 C.F.R. § 303.342\(b\)\(2\)](#) to the State LAs and local EIS providers to conduct initial and annual IFSP meetings through alternate means, such as through a telephone or video conference call (if feasible and consistent with privacy standards) if acceptable to the parents and other IFSP team meeting participants.

## 45-Day Timeline

- ▶ Q2. Does IDEA allow for flexibility in meeting the 45-day timeline for conducting the initial IFSP meeting? **Yes, in specific circumstances.**
  - 1) The child or parent is unavailable to complete the required activities (screening, initial evaluation, initial assessments of the child and family, and the initial IFSP meeting) due to exceptional family circumstances that are documented in the child's early intervention records; and
  - 2) The parent has not provided consent for the screening (if applicable), the initial evaluation, or the initial assessment of the child despite documented and repeated attempts by the lead agency or EIS provider to obtain parental consent.

Given that in-person meetings may not be feasible or advisable due to the pandemic related to COVID-19, the pandemic can constitute the basis for documented exceptional family circumstances to the 45-day timeline.

## Service Provision

- ▶ Q3. What must a State LA and its EIS providers do if they cannot provide IDEA Part C services in accordance with the IFSP due to the pandemic?
  - The child's IFSP Team, which includes the parents, must then determine which services can be provided to meet the child's needs during this time, and consider other services or alternate means of service delivery, if feasible and consistent with privacy interests, such as through the use of telecommunications, including telephone or videoconferencing, or consultative services to the parent.
  
- ▶ TA Resource
  - [Remote Service Delivery and Distance Learning for Early Intervention](#)

- ▶ Issued September 28, 2020
- ▶ "No matter what primary instructional delivery approach is chosen, SEAs, LEAs, and IEP Teams remain responsible for ensuring FAPE is provided to all children with disabilities."
- ▶ If State and local decisions limit, or parental concerns which prevent in-person instruction due to health and safety concerns, SEAs, LEAs, and IEP Teams are not relieved of their obligation to provide FAPE to each child with a disability under IDEA.

Q1. What steps can an LEA take to ensure each child with a disability has an IEP in effect at the start of the 2020-2021 school year?

- ▶ Under [34 C.F.R. § 300.323\(a\)](#), at the beginning of each school year, each public agency, which includes LEAs, must have an IEP in effect for each child with a disability within its jurisdiction. To ensure that an appropriate IEP is in place for each child, the LEA may need to convene a meeting of the child's IEP Team, which includes the individuals described in Q2, to determine whether any revisions to the IEP are needed. [34 C.F.R. § 300.324\(b\)\(1\)](#).

Q1. What steps can an LEA take to ensure each child with a disability has an IEP in effect at the start of the 2020-2021 school year? (continued)

- ▶ As conditions continue to change throughout the country, some of the special education and related services included in a child's IEP may need to be provided in a different manner; however, all children with disabilities must continue to receive FAPE and must have "the chance to meet challenging objectives." Therefore, IEP Teams should identify how the special education and related services included in a child's IEP will be provided and should consider a variety of instructional methods and settings.



Q2. Which members of the IEP Team must participate in the review discussed in Q1?

- ▶ IEP Team members referenced in [34 C.F.R. § 300.321\(a\)](#) are generally required
- ▶ Excusal of a member from attending the IEP Team meeting if the parent and the public agency agree, in writing, and
  - Attendance of the member is not necessary because the member's area of the curriculum or related services IS NOT being modified or discussed in the meeting. OR
  - If the member's area of the curriculum or related services IS being modified or discussed in the meeting, the member submits written input prior to the meeting.

Q3. When is an LEA permitted to use the IEP amendment process in [34 C.F.R. § 300.324](#)?

- ▶ Involves changes to a child's IEP after the annual IEP Team meeting for a school year,
- ▶ The parent and the public agency may agree not to convene an IEP Team meeting for the purpose of making those changes,
- ▶ Instead, they may develop a written document to amend or modify the child's current IEP.

Q3. When is an LEA permitted to use the IEP amendment process in [34 C.F.R. § 300.324?](#) (continued)

- ▶ An amendment to an IEP cannot take the place of an annual IEP Team meeting.
- ▶ If changes are made to the child's IEP this way, the public agency must ensure that the child's IEP Team is informed of the changes.
- ▶ Upon request, a parent must be provided with a revised copy of the IEP with the changes incorporated.
- ▶ The prior written notice provision applies, even if the IEP is amended without convening an IEP Team meeting.

## Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations (September 2011)

- ▶ See in particular, Section C: IEP Team Membership and IEP Team Meetings

Q4. If extended school year (ESY) services were unable to be provided during the summer due to the COVID-19 pandemic, what additional steps can public agencies take to make FAPE available to children with disabilities who require such services?

- ▶ A child's entitlement to needed ESY services continues to apply even if schools and other facilities are closed due to COVID-19.
- ▶ While ESY services are typically provided to children with disabilities during the summer months, some ESY services, may not have been able to be delivered this past summer.
- ▶ In such instances, public agencies should consider providing ESY services to the child during the normal school year, during school breaks or vacations where appropriate to the child's needs and consistent with applicable standards.

## ▶ Timelines

- Initial evaluations (60 days or State-established timeline, including any allowable exceptions)
- Initial IEP (within 30 days of eligibility determination) and Annual IEP Team meetings
- Alternate means of meeting participation
- Reevaluations (at least once every three years)

## ▶ Completing Necessary Assessment Procedures

- ▶ NCSI-Archived Webinar Available: [Managing Education Resources in Response to COVID-19](#)
- ▶ [Virtual IEP Meeting Tip Sheets](#)
- ▶ [Tools to Support Effective Virtual Stakeholder Meetings](#)
- ▶ [Determining a Child's Eligibility for Preschool Special Education Services Remotely](#)

- ▶ Is it the school district's responsibility to ensure that children with disabilities understand how to interface effectively with their devices in order to access education?
  - In developing each child's IEP, the IEP Team must consider among other things, whether the child needs assistive technology devices and services to receive FAPE. See [34 C.F.R. § 300.324\(a\)\(2\)\(5\)](#).
  - An IEP Team may also consider whether parent counseling and training is required as a related service necessary for the child to benefit from special education.

***Parent counseling and training* means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP. See [34 C.F.R. § 300.34\(c\)\(8\)](#)**



## Resources:

- National Center on Accessible Educational Materials:  
<http://aem.cast.org>
- Part B Use of Funds: <https://sites.ed.gov/idea/idea-files/part-b-use-of-funds-in-the-covid-19-environment-q-a-document-june-25-2020/>
- Part C Use of Funds: <https://sites.ed.gov/idea/idea-files/part-c-use-of-funds-in-the-covid-19-environment-q-a-document-june-25-2020/>

## ▶ FERPA Guidance

- [Student Privacy Policy Office: FERPA and Coronavirus Disease 2019 \(COVID-19\) Frequently Asked Questions \(FAQs\) March 2020](#)
  - [Student Privacy Policy Office: FERPA and the Coronavirus Disease 2019 \(COVID-19\)](#)
  - [Protecting Student Privacy: FERPA and the Coronavirus \(March 12, 2020\)](#)
- ▶ The Student Privacy Policy Office also has a form on its website for stakeholders to use to submit a question:
- <https://studentprivacy.ed.gov/contact>

- ▶ Are the procedures and timelines for developing and implementing IEPs the same during the pandemic?
- ▶ What steps can parents take if they believe their child cannot receive FAPE when services are provided virtually?
- ▶ Are Federal, State, or local funds available for parents to obtain services from a private provider (e.g., tutor, therapist, etc.)?

- ▶ What is the LEA's responsibility to provide one-to-one aides or other supplementary aids and services?
  - The IEP Team should identify how the special education and related services included in a child's IEP will be provided and should consider a variety of instructional methods and settings.
  - The IEP Team determines the level of support the child requires – looking across all instructional methods -- fully virtual, fully in-person or a hybrid model
  
- ▶ Example:
  - Sign language interpreting services
  - Additional adult assistance needed for transition from classes located throughout the building

▶ Please visit:

- <https://sites.ed.gov/idea/topic-areas/#COVID-19>
- <https://osepideasthatwork.org/continuity-learning-during-covid-19-resource-database>

▶ Additional information specific to the COVID-19 pandemic may be found online at:

- <https://www.ed.gov/coronavirus>

▶ Additional supports

- [ECTA: Coronavirus Disease \(COVID-19\)](#)
- [ECTA: Supporting Families During the Pandemic](#)
- [NCSI: COVID-19 Resource Hub for Supporting Students with Disabilities](#)

