



MOE, OCR, & Other Hot Topics Affecting Students with Disabilities

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Virtual Spring Forum 2021
The Future of the Federal Role in Education:
Bringing Clarity to Chaos

Agenda

- OCR Trends
- SEA and LEA Maintenance of Effort
- Returning to School
 - Truancy/Absenteeism
 - How to respond to parents who disagree with elimination of remote learning
 - Addressing Learning Loss--Accessibility

Office for Civil Rights Trends



Office for Civil Rights (OCR)

- Within Department of Education
- Enforces the following laws:
 - Title VI of the Civil Rights Act (race, color, national origin)
 - Title IX (sex)
 - Section 504 and Americans with Disabilities Act Title II (disability)
 - Age Discrimination Act (age)
- All recipients of federal financial assistance from ED are subject to OCR's jurisdiction
- Complaints and Compliance Reviews require a significant amount of time to defend/respond to

OCR Carries Out its Mission Through...

- Complaint Investigation and Resolution
 - Proactive Enforcement: Compliance Reviews
 - Monitoring of Resolution Agreements
 - Technical Assistance
- ALSO:
- Civil Rights Data Collection (CRDC)
 - Methods of Administration

OCR Operations



OCR Complaints – FY 2020

- 4,515 Section 504/Title II Complaints Received
- Top Five Areas of Allegations:
 - FAPE
 - Different Treatment/ Exclusion & Denial of Benefits
 - Retaliation
 - Academic adjustments/auxiliary aids
 - Disability Harassment

OCR Disability Related Priorities, FY 2020

- Inappropriate use of restraint & seclusion
- Bullying & Harassment based on disability
- Ensuring equal treatment
- Ensuring the provision of FAPE
- Effective accommodations

FAPE During the COVID-19 Pandemic

- "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."
 - Q & A on Providing Services to Children with Disabilities During the Coronavirus (March 12, 2020)



FAPE During the COVID-19 Pandemic

- "...schools must make local decisions that take into consideration the health, safety, and well-being of all their students and staff, as well as their obligation to ensure that students with disabilities are receiving a FAPE. This includes making *individualized decisions* regarding how to provide special education and related services to students with disabilities...failing to implement aids, services, or accommodations/modifications identified in a student's IEP or Section 504 plan could deny the student a FAPE...."
- OCR Q&A for K-12 Public Schools in the Current COVID-19 Environment (September 28, 2020)

Current Investigations

- "Disturbing reports" that school districts are denying students with disabilities equal access to education during the pandemic.
- Indiana State Education Authority
 - Due process complaints filed by parents against the district-initiated investigation
 - Alleged "one-size fits all" remote program
- Fairfax County Public Schools
 - Allegedly declined to provide in-person instruction to SWDs but opened doors for general education students



Current Investigations

- Seattle Public Schools
 - District is accused of telling its special education teachers "not to deliver specially-designed instruction" during the pandemic and prohibited teachers from adapting lessons for SWDs
- Los Angeles Unified School District
 - Investigation based on allegations in due process complaints filed against the district
- *Investigations on their own are not evidence of a violation of law*

OCR Resolution Agreement: Typical Remedies

- Review/revise policies & procedures
- Require IEP meetings/discussion of certain topics and submission of notes regarding the same
 - Require evidence comp-ed discussions were implemented
- Trainings
- ADA Compliance

IDEA Maintenance of Effort Requirements

IDEA Maintenance of State Fiscal Support (MFS)
IDEA Local Maintenance of Effort (MOE)



Maintenance of State Financial Support, 34 CFR § 300.163

- State requirement to not reduce the amount of state financial support for special education and related services (MFS) made available for children with disabilities
 - Includes ALL State funds
- Subsequent years rule
- Waiver permitted for exceptional or uncontrollable circumstance **REVISED GUIDANCE ISSUED March 2, 2021**
 - One fiscal year at a time
 - Contact state lead at OSEP for assistance
 - Note past OSEP decisions, proportionality of cuts analysis
- <https://www2.ed.gov/policy/speced/guid/idea/monitor/smfs-partb-waivers.html>

Failure to Meet State MFS

- Consequences for failure to maintain support:
 - ED reduces allocation for **any** FY following the FY in which the State fails to comply
 - Reduction is the same amount by which the State fails to meet the requirement
 - Following year reverts back to previous level of effort
- Ability of SEA to reduce its MOE is VERY RARE!
(IDEA Regs Section 300.230)

LEA Maintenance of Effort

The general rule:

- An LEA may not reduce the amount of local, or state and local, funds that it spent for the education of CWDs below the amount it spent for the preceding fiscal year.
- Subsequent years rule

Two components:

- Eligibility standard
- Compliance standard

LEA MOE – Eligibility Standard 300.203(a)

- For purposes of eligibility, the SEA must determine that the LEA has budgeted for the education of CWDs at least the same total or per capita amount from either local funds only or state and local funds as the LEA spent for that purpose from the same source for the most recent prior year for which information is available

LEA MOE – Compliance Standard 300.203(b)

- An LEA must not reduce the level of expenditures for the education of CWDs made by the LEA below the level of those expenditures from the same source for the preceding fiscal year.
- Consequence of Failure → SEA liable to pay back ED with nonfederal funds lesser of the amount of the failure, or the LEA's entire Part B subgrant for that fiscal year

LEA-MOE: Four Ways to Calculate 34 CFR 300.203(b)

1. Comparison of total expenditures using local funds only,
2. Comparison of total expenditures using State and local funds,
3. Comparison of the per pupil amount using local funds only, or
4. Comparison of the per pupil amount using State and local funds.

OSEP FAQs

- Must the LEA use the same method to meet the eligibility standard and compliance standard?
 - No, the LEA may use any of the 4 methods available to meet either standard.
- Can the LEA switch methods from year to year to meet MOE standards?
 - Yes, as long as it uses the correct comparison year and has auditable data to document that it met the standard under the relied-on method in that year.

Allowable Exceptions to LEA MOE 34 CFR 300.204

1. The voluntary departure or departure for just cause, of special education or related services personnel
2. A decrease in the enrollment of CWDs
3. A CWD with an exceptionally costly program (as determined by SEA) left the LEA, aged out, or no longer needs the program
4. The termination of costly expenditures for long-term purchases (equipment, construction, etc.)
5. The assumption of cost by the high cost fund operated by the SEA

OSEP FAQs

- May an LEA reduce its required level of expenditures by taking more than one exception in the same fiscal year?
 - Yes
- How does taking an exception in 300.204 affect the required amount of expenditures that an LEA must make in a subsequent year?
 - LEA can use the reduced level to meet MOE in subsequent years!
 - Assumes LEA spent the minimum required.

LEA MOE Exceptions 300.205(d) & 300.226(a)

- If the LEA receives an increase in its IDEA grant, it may reduce its MOE by half of the IDEA increase
 - Must use the reduction on ESSA allowable activities
- **Hello American Rescue Plan (ARP)!!**
 - 3 Billion FY 2021 (July 1, 2021-Sept 30, 2023) Supplemental IDEA Allocation!!!

LEA MOE Exceptions (cont)
300.205(d) & 300.226(a)

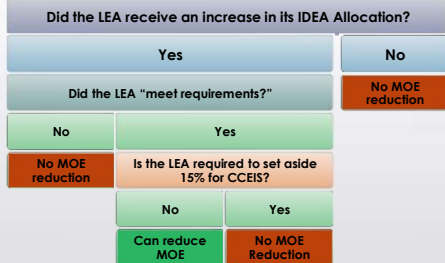
- However, the amount of LEA MOE reduction that an LEA can take is affected by an LEA's use of Part B funds for Coordinated Early Intervening Services (CEIS)
- Therefore, if an LEA elects to set-aside funds for voluntary CEIS, the LEA must subtract any CEIS set-aside from the LEA MOE reduction amount!

LEA MOE Exceptions (cont)
300.205(d) & 300.646

The LEA, however, is prevented from reducing its MOE, if the LEA is identified as having significant disproportionality:

- The LEA must set aside 15% of the IDEA funds for comprehensive CEIS – know as CCEIS to address factors contributing to significant disproportionality.

OR does not meet "meet requirements"



LEA Flexibility Adjustment to MOE 300.205

Examples:

- LEA's FY 21 ARP IDEA Supplemental Allocation provides \$100,000 more IDEA funds to the LEA than in prior fiscal year.
 - If the LEA set-aside \$0 on CEIS, then reduction of \$50,000.
 - If the LEA set-aside \$25,000 on CEIS, then reduction of \$25,000
 - If the LEA set-aside \$75,000 on CEIS, then no reduction permitted.
 - If the LEA was disproportionate and set aside \$25,000 on CCEIS, then no reduction permitted.

OSEP FAQs

- May an LEA use both allowable exceptions (300.204) and the local flexibility (300.205) to reduce its level of effort in the same fiscal year?
 - Yes.

LEA MOE Subsequent Years Rule 300.203(c)

- If LEA fails to meet MOE requirements, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA's reduced level of expenditures.

Applying the Subsequent Years Rule Which is the Comparison Year?

Fiscal Year	Required level of effort	Actual level of effort	Met/Failed
12-13	\$100	\$100	Met
13-14	\$100	\$90	Failed
14-15	\$100	\$90	Failed
15-16	\$100	\$110	Met
16-17	\$110	\$100	Failed

Consequence of the Moving Comparison Year...

- LEAs may need to keep "auditable data" on MOE indefinitely
 - E.g. Must use the last year in which the LEA met the standard under a particular method as the comparison year – even if that was 10 + years ago!



Failing the Eligibility Standard

- If the SEA determines an LEA fails to meet MOE eligibility standard using any of the 4 methods, the SEA must provide notice and opportunity for a hearing.
- If, after the hearing, the LEA is not eligible, the SEA retains the Part B subgrant and is required to provide SPED and related services directly to CWDs in the LEA.

Failing the Compliance Standard

- SEA payback to ED with nonfederal funds:
 - Lesser of the amount of the failure, or the LEA's entire Part B subgrant for that fiscal year
 - Can use most favorable method
- SEA can use State procedures to recover funds from LEA

OSEP FAQs

- May LEAs use their local, or State and local, funds to meet both LEA MOE requirements and a matching or MOE requirement for a separate federal program (e.g., Medicaid or Voc Rehab)?
 - Yes!
 - In fact, LEAs must include these funds when calculating the IDEA MOE eligibility and compliance standards.

Now It's Your Turn...

Fiscal Year	Local Only-Aggregate	State & Local-Aggregate	Child Count	Local Only-Per Capita	State & Local-Per Capita
2016	\$10,500	\$21,000	10	\$1,050	\$2,100
2017	\$10,400	\$21,600	8	\$1,300	\$2,700
2018	\$10,650	\$21,500	10	\$1,065	\$2,150
2019	\$10,800	\$22,200	12	\$900	\$1,850
2020	\$8,900	\$22,000	10	\$890	\$2,200



LEA MOE Tips in Challenging Times...

- Plan, Plan, Plan!
- Monitor, Monitor, Monitor!
- Identify Exceptions
- Consider LEA flexibility to adjust MOE based on ARP supplemental allocation
- Carefully consider funding sources
- Make it across the finish line...without a sweat!



Returning to School



Truancy & Absenteeism

- Estimated 3 million students have either been absent or are not actively participating in remote learning
 - More likely to be ELs, SWDs, other marginalized groups (less access to internet)
- How do we re-engage?

Truancy & Absenteeism: IDEA Considerations-Child Find

- *Department of Education, State of Hawaii v. Cari Rae S.*, 35 IDELR 90(Hawaii 2001): 159 absences, numerous behavior referrals, failing grades– triggered child find
- *Broward County (FL) Sch. Dist.*, 61 IDELR 265: found district failed to evaluate two kindergarten students in a timely manner after learning they were being treated for bipolar disorder

Truancy & Absenteeism: IDEA Considerations-Child Find

- *Hilliard City Sch. Dist.*, 61 IDELR 265 (OCR 2013):
 - District violated child find where private evaluation reports clearly linked attendance problems to disability
- Not an automatic determination!
- Ask: Is the truancy related to a student's disability?

Truancy & Absenteeism: IDEA Considerations

- Students who are already eligible for services and who then experience absenteeism –absences might need to be addressed regardless of whether disability related
- Ask: Is the student's absenteeism affecting their ability to learn?

Truancy & Absenteeism: IDEA Considerations

- May need to re-evaluate to address absenteeism
 - West Lyon Cmty. Sch. Dist, 68 IDELR 178 (SEA SD 2016)
- Districts tend to be successful where they can demonstrate a variety of methods were used to address absenteeism

Truancy & Absenteeism: IDEA Considerations

- *Downingtown Area School District*, 113 LRP 34703 (SEA PA 08/11/13) (District prevailed)
 - Multiple attendance plans
 - Small-group therapy
 - Advised parents to call school when student refused to leave home
 - Waited to file truancy petition

Truancy & Absenteeism: Non-punitive measures

- Hillsborough County: Florida
 - 7000 absentee students (SY2020)
 - Social worker door-knocking campaign
 - Homes, hotels, motels, shelters
 - Created Spanish language social media pages
 - Virtual community meetings
 - December 2020: All but 300 were located

Truancy & Absenteeism: Non-punitive measures

- Oakland Unified, California: provided stipends to teachers who spent time outside their work hours to locate truant students
- Key: Show you tried different modalities, no one-size-fits-all approaches!

Parents Disagree with the elimination of remote learning: now what?

- Change in placement?
- No blanket denials
- Use the IEP process!
 - Investigate student progress
 - Clarify obligation: "adequate progress" not optimal progress
 - Less progress in person is not an automatic denial of FAPE

Parents Disagree with the elimination of remote learning: now what?

- Emphasize benefit of in-person learning/ social-emotional obligation
- Document discussion
 - If more progress in remote learning—which services made a difference? Could in-person instruction be adapted
- Mediation?

Addressing Learning Loss--Accessibility

- ED. Vol. 1-2 of COVID-19 school reopening handbook:
- "...[I]nclusion of students with disabilities in district or schoolwide interventions to address lost instructional time does not relieve a district of its responsibility to make individualized decisions required under the IDEA about needed special education & related services.."

Addressing Learning Loss--Accessibility

- Remember accessibility and prohibition of discrimination requirements under Sec. 504 & the IDEA
- Ensure learning loss programs are comparable and individualized for each student

Questions?



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