



Fall Forum 2021

Stimulus Funds and UGG, and You and Me, So Happy (Back) Together

Serving Students with Disabilities: Recent Guidance and Updates

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Agenda

- FAPE & COVID-19
 - *Initial Shutdown*
 - *2020-2021 School Year*
 - *2021-2022 School Year*
- OCR Investigations
- Annual Performance Report Updates





Free and Appropriate Public Education (FAPE) & COVID-19



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 CWDs 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)



FAPE during the COVID-19 Pandemic

“...no matter what primary instructional delivery approach is chosen, SEAs, LEAs, and individualized education program (IEP) Teams remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities.”

-OSEP Q&A 20-1: IDEA Part B Service Provision (Sept. 28, 2020)

- IEP Team is required to make an individualized determination whether and to what extent ‘compensatory services’ may be needed, including to make up for any skills that may have been lost

TRUE or FALSE?

The Biden Administration is sticking by the prior administration's position that if a district closes its school buildings due to COVID and does not provide any educational services to the general student population, then it would not be required to provide services under Sec. 504 during that same period.





OCR Q&A on Civil Rights and Reopening in the COVID-19 Environment: FAPE (May 13, 2021)

- Q1. Reiterates that Sec. 504 requirements apply to remote learning and all stages of reopening.
- Q2. Confirms that “if a school district closes its school buildings to slow or stop the spread of COVID-19 and does not provide any educational services to the general student population, including virtual learning, then it would not be required to provide services under Sec. 504 during that same period.”
- Q4. Schools may prioritize SWDs in returning to in-person learning.



2021 Guidance Documents

- Q&A on Civil Rights and School Reopening in the COVID-19 Environment (May 13)
- Long COVID under Section 504 and the IDEA (July 26)
- Q&A on the National Instructional Materials Accessibility Standard (NIMAS) (Aug. 9)
- ED COVID-19 Handbook
 - *Vol. 1: Strategies for Safely Reopening Elem. & Sec. Schools (Feb. 12)*
 - *Vol. 2: Roadmap to Reopening Schools Safely and Meeting all Students' Needs (April 9)*
 - *Vol. 3: Strategies for Safe Operation and Addressing the Impact of COVID-19 on Higher Education Students, Faculty, and Staff (June 4)*
- Supporting Child and Student Social, Emotional, Behavioral and Mental Health during COVID-19 Era (Oct. 19)
- OCR/CRD Supporting and Protecting the Rights of Students at Risk of Self-Harm in the Era of COVID-19 (Oct. 19)



2021 Guidance Documents

- Return to School Roadmap
 - *Return to School Roadmap under IDEA (Aug. 24)*
 - *Child Find Under IDEA, Part B (Aug. 24)*
 - *Development and Implementation of IEPs (Sept. 30)*
 - *Part C (Oct. 29)*
 - Provision of Early Intervention Services
 - Child Find, Referral, Eligibility



Child Find Considerations

- Question C-1: Unique Challenges for Conducting Child Find during Online or Virtual Learning
 - *Limited opportunity for casual observation of a child's learning abilities and early recognitions of issues*
- Question C-2: How to Enhance Child Find Activities to Address Challenges from Pandemic
 - *Additional screenings?*
 - *Additional efforts to increase awareness of special education supports*



Child Find Considerations

- Question C-3: If a student has received limited instruction due to educational disruptions as a result of the COVID-19 pandemic and also made little academic progress, should the student be referred for an evaluation to determine eligibility for special education and related services?
 - *Answer: Not necessarily.*



Child Find Considerations

- Question C-4: When a parent shares that their child contracted COVID-19, has long COVID, or has other post-COVID conditions, and the symptoms of the child's condition (such as fatigue, mood changes, or difficulty concentrating) are adversely impacting the child's ability to participate and learn in the general curriculum, must the child be referred for special education and related services?
 - *Answer: Yes.*



Addressing Social, Emotional, Behavioral, and Mental Health Needs of CWDs

- Exposure to trauma, disruptions in learning, physical isolation, and disengagement negatively affect mental health
- Disproportionate impact on underserved children
- A child whose behavior impedes their learning may need new or increased services and supports to receive FAPE
- IEP Teams should consider attendance, engagement, attention, behavior, progress, and home experience during the pandemic
- Schools should avoid routinely using discipline to address behaviors; consider developing or revising PBIS and other strategies, as appropriate



Addressing School Related Health Needs of CWDs with Underlying Medical Conditions

- C-8. “If a parent or other member of the IEP Team believes that COVID-19 prevention strategies are necessary for the provision of FAPE to the child, the IEP Team must consider whether and to what extent such measures are necessary, based on child-specific information, which may include medical or health records, diagnostic or other evaluative data, or information documented by medical or health professionals.”



Determining Appropriate Goals

- D-1. Addressing adverse impact of pandemic in 2020-2021 IEPs
 - *Ask: Does child have new or different needs than had been determined prior to the pandemic?*
 - *Consider revising IEP to address:*
 - Lost skills or lack of expected progress
 - Updated data that reflect child's PLOPs
 - All areas of need
 - Implementing COVID-19 prevention measures
- D-2. May an IEP Team revise the IEP goals to reflect a decline in child's knowledge and skill?
 - *Answer: Yes.*



Considering Need for Compensatory Services

- Term does not appear in IDEA statute; recognized by courts as a possible remedy or corrective action where FAPE not provided
- D-4. ED Encourages IEP Teams to:
 - *Consider input from, or encourage participation by, previous teachers and service providers*
 - *Consider how additional services can be provided in a manner that does not diminish the child's opportunities to interact with nondisabled peers*



Considering Need for Compensatory Services

- D-5. Factors IEP teams could consider...
 - *Present levels*
 - *The child's previous rate of progress toward IEP goals*
 - *Documented frequency and duration of services prior to disruptions caused by the pandemic*
- D-6. Situations where may be necessary...
 - *If the initial evaluation, eligibility determination, and IEP development were delayed*
 - *If services provided during the pandemic were not appropriate to meet child's needs*
 - *If IEP could not be fully implemented*
 - *If meaningful postsecondary transition services were not provided*



Considering Need for Compensatory Services

- D-8. Does the SEA have a role in ensuring that compensatory services needs are considered and addressed?
 - *Answer: Yes.*



Considering Need for Compensatory Services

- D-9. Some States are using terms such as ‘recovery services’ or ‘COVID mitigation services.’ Are these terms synonymous with compensatory services as defined by the Department?
 - *Answer: It depends.*



Considering Need for Compensatory Services

- D-10. Can compensatory services be provided to children who have graduated with a regular high school diploma or exceeded the age of eligibility for IDEA services?
 - *Answer: Yes.*



Requests for Virtual Instruction

- G-2. Under IDEA, is an LEA obligated to provide special education and related services through virtual instruction upon the parent's request?
 - *Answer: It depends.*



Resolving Disagreements

- H-1. If a parent disagrees with the IEP Team's decision regarding compensatory services, can they file a due process complaint or State complaint?
 - *Answer: Generally, yes.*



OCR Resource Collections - Sept. 2021

Back to School: Supporting Educational Environments Free from Discrimination

- Two Resource Collections Issued:
 - *Elementary Secondary Schools*
 - *Postsecondary Institutions*
- Collection of fact sheets, Q&As, letters to educators/school leaders, and other materials
- Organized into four sections:
 - *Title VI*
 - *Section 504 & Title II of ADA*
 - *Title IX*
 - *CRDC (Elem. & Sec. Version Only)*



Guidance on Section 504 & ADA Title II

Section 504 & ADA Title II

- General Overview
- Accessibility of Programs and Facilities
- Bullying & Harassment
- COVID-19
- Equal Access
- Retaliation
- Specific Illnesses and Medical Conditions
- Transition to Postsecondary Education

Elementary & Secondary Only

- Charter Schools
- Effective Communication
- FAPE
- Race Discrimination in Special Education
- Restraint and Seclusion

Postsecondary Only

- Auxiliary Aids and Services
- Student Veterans with Disabilities



Current OCR Investigations & Serving Students with Disabilities



**Have you ever been
the recipient of an
OCR complaint
and/or compliance
review?**





OCR Investigations: FAPE & COVID-19

“Disturbing reports” that school districts are denying students with disabilities equal access to education during the pandemic.

 Issued Notification Letters January 12, 2021

Fairfax County Public Schools

- *Allegedly declined to provide in-person instruction to SWDs but opened doors for general education students*
- *Subsequent additional student-specific complaints opened for investigation*

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*



OCR Investigations: FAPE & COVID-19

Los Angeles Unified School District

- *Investigation based on allegations in due process complaints filed against the district*

Indiana State Education Authority

- *Due process complaints filed by parents against the district-initiated investigation*
- *Allege “one-size fits all” remote program*
- *June 25, 2021: Case DISMISSED*

Investigations on their own are not evidence of a violation of law



OCR Directed Investigations

- Whether SEA may be preventing school districts in the state from considering or meeting the needs of students with disabilities as a result of the State's policy that prohibits school districts and individual schools from requiring the use of face masks to reduce the risk to students and others of contracting COVID-19 in school
- Focus on whether SWDs who are at heightened risk for severe illness from COVID-19 are prevented from safely returning to in-person education, in violation of Federal law.
- Notification Letters were issued August 30-Sept. 21, 2021



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OCR Agreement – Restraint & Seclusion

- Compliance Review, Saco Public Schools (Maine)
- Resolution Letter Issued Nov. 5, 2021
 - *Whether students received educational services during periods of restraint or seclusion and whether IEP teams assessed impact of time away on FAPE*
 - *Failure to reevaluate students despite behaviors that increased in frequency or intensity*
 - *Whether IEP teams received appropriate information in assessing these students and their needs*
 - *Questions accuracy of LEA reporting*



OCR Agreement – Restraint & Seclusion

Resolution Agreement Action Items

1. IEP Meetings to discuss district's use of restraint and/or seclusion, including whether compensatory or remedial services are necessary
2. Develop and/or revise criteria to guide decisions about when, in light of instances of restraint or seclusion, district may need to assess student's current interventions and supports
3. Provide OCR with list of SWDs subjected to restraint or seclusion during 2020-2021
4. Develop or revise its policy and/or written guidelines regarding non-disciplinary behavior-related dismissals or stay-home directives following restraint and/or seclusion incidents for SWDs



OCR Agreement – Restraint & Seclusion

Resolution Agreement Action Items

5. Review current practices regarding the relationship and involvement of the School Resource Officer (SRO)
6. Train the SRO on district's disciplinary policies and procedures on responding to the behavior of SWDs
7. Consult with SRO regarding access to educational records
8. Revise restraint and seclusion incident report form
9. Provide 504/Title II training to all district administrators, and all district staff who interact with students
10. Inspect all rooms available for seclusions
11. Plan to ensure accurate CRDC submissions



IDEA State Performance Plan (SPP) / Annual Performance Report (APR) Updates



IDEA Sec. 616. Monitoring, Technical Assistance, and Enforcement

- Congress requires ED make the states:
 - *Create a State Performance Plan (SPP)*
 - *Submit an Annual Performance Report (APR)*
 - *Face Consequences ('enforcement actions')*
 - *Monitor Implementation of IDEA at the local level*
 - *Publicly report local performance on SPP targets*

“The Secretary shall require States to monitor implementation...by [LEAs].” IDEA § 616(a)(1)(C)(i).



State Performance Plan (SPP)

IDEA § 616(b)

- Establishes measurable and rigorous targets for federal determined indicators based on OSEP's monitoring priorities
- For each indicator, the SPP establishes...
 - *Baseline Data*
 - *Targets for each year*
- New SPP for FFY 2020-2025
- Stakeholder Input Requirement



Annual Performance Report (APR)

IDEA § 616(b)(2)(c)(ii)

- States must annually report on progress under their SPP
- Mechanism for public reporting of performance on SPP indicator targets
- APR is due ~Feb. 1 each year



Review and Determination, IDEA § 616(d)

- OSEP reviews and determines a classification for each state:
 - 1) *Meets the Requirements*
 - 2) *Needs Assistance*
 - 3) *Needs Intervention*
 - 4) *Needs Substantial Intervention*
- Statutory Enforcement Consequences



FFY 2020-2025 SPP/APR

- Introduction
 - *General Supervision System*
 - *Technical Assistance System*
 - *Professional Development System*
 - *Stakeholder Involvement*
 - *Reporting to the Public*
- Indicator 1: Graduation Rate
- Indicator 2 : Drop-out Rate



FFY 2020-2025 SPP/APR

- Indicator 3: Academic Assessments
 - *A: Participation Rate*
 - *B: Proficiency Rate - General Assessment*
 - *C: Proficiency Rate - Alternate Assessment*
 - *D: Gap in Proficiency Rates for children with IEPs and for all students against grade level academic achievement standards*
- Indicator 4:
 - *A: Percent of LEAs that have Significant Discrepancy in rate of suspensions and expulsions > 10 days*
 - *B: Percent of LEAs that have significant discrepancy and policies/procedures/practices that contribute thereto, and do not comply with certain requirements*



FFY 2020-2025 SPP/APR

- Indicator 5: Least Restrictive Environment (LRE)
 - *A: Inside the regular class 80%+ of the day*
 - *B: Inside the regular class < 40% of the day*
 - *C: In separate schools, residential facilities, or homebound/hospital placements*
- Indicator 6: Preschool LRE
 - *A: Regular early childhood program*
 - *B: Separate special education class, separate school or residential facility*
 - *C: Receiving Special Educ. and Related Services in the Home*
- Indicator 7: Early Childhood Outcomes



FFY 2020-2025 SPP/APR

- Indicator 8: Facilitation of Parent Involvement
- Indicator 9: Disproportionate Representation – Special Education
- Indicator 10: Disproportionate Representation – Disability Category
- Indicator 11: Timely Initial Evaluation
- Indicator 12: Timely Part C to Part B Transition
- Indicator 13: Postsecondary Transition



FFY 2020-2025 SPP/APR

- Indicator 14: Postsecondary Outcomes
 - *A: Enrolled in higher ed*
 - *B: Enrolled in higher ed or competitively employed*
 - *C: Enrolled in higher ed or some other postsecondary education training program, or competitively employed*
- Indicator 15: Resolution Process Agreements
- Indicator 16: Mediation Agreements
- Indicator 17: State Systemic Improvement Plan (SSIP)



**Do you know your
SEA's/LEA's
determination?**



Link to LEA Maintenance of Effort Exception

- 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!!!*
- The LEA, however, is prevented from reducing MOE if:
 - *the LEA is identified as having significant disproportionality, OR*
 - *does not “meet requirements”*



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Questions?



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