



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

THE ASSISTANT SECRETARY

September 24, 2021

RE: Docket Number ED-2021-OSERS-0117

VIA EMAIL: [REDACTED]

Mr. Daniel Frumkin  
[REDACTED], Maryland

Dear Mr. Frumkin:

Thank you for contacting the U.S. Department of Education (Department). This letter is in response to your petition for rulemaking dated July 26, 2021, in which you request that the Department amend the Individuals with Disabilities Education Act (IDEA) regulations at 34 C.F.R. § 300.323(d)(2) to establish a timeline for providing access to a child's individualized education program (IEP) to teachers and service providers. Your petition was forwarded to the Department's Office of Special Education and Rehabilitative Services (OSERS). In accordance with 5 U.S.C. § 555(e), OSERS has carefully considered the information in your petition and respectfully denies your request for rulemaking on this matter for the reasons detailed below.

You petitioned the Department to revise the regulation in 34 C.F.R. § 300.323(d)(2) to include the **bold and underlined** language below:

(d) *Accessibility of child's IEP to teachers and others.* Each public agency must ensure that—

(2) **Before the beginning of each school year**, each teacher and provider described in paragraph (d)(1) of this section is informed of—

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

You state that this change will “remove ambiguity regarding when teachers and providers must be notified of IEP responsibilities, accommodations, modifications, and supports in accordance with the IEP before the first day of school.”

OSERS declines to amend the regulation as requested for several reasons. The IDEA statute and regulations are clear that every child's IEP must be in effect at the beginning of each school year. IDEA section 614(d)(2)(A) and 34 C.F.R. § 300.323(a). The statute and regulations also make clear that an IEP Team meeting may be convened at any time throughout the year, as warranted, pursuant to IDEA section 614(d)(4)(A) and 34 C.F.R. § 300.324(b), or by using the amendment

process provided under IDEA section 614(d)(3)(D) and 34 C.F.R. § 300.324(a)(4).<sup>1</sup> This could occur before or after the school year begins. After the development of, or revisions to, the IEP, the public agency must provide access to the IEP to the teachers and providers who are responsible for implementing the IEP as set forth at 34 C.F.R. § 300.323(d). For example, if an IEP is revised in December, teachers and service providers, including those responsible for IEP implementation during the remainder of the school year, must be made aware of changes to that child’s IEP within a reasonable amount of time. In such instances, it would be unreasonable and inconsistent with the purposes of IDEA to delay taking those steps until “before the beginning” of the following school year. As discussed below, IDEA provides sufficient protections and flexibility to account for the variety of timeframes during which an IEP may be developed or updated.

There is an inherent expectation that before a child’s IEP that is “in effect” can be implemented, all those responsible for implementing any part of it will be aware of the IEP content and their specific responsibilities related to implementing the IEP, including the provision of any specific accommodations, modifications, and supports, prior to the required implementation date. When an explicit timeline is not specified in the IDEA or its implementing regulations, the Department interprets that the requirement will be met within a reasonable period of time. The Department has not defined “a reasonable period of time” but has explained with respect to implementation of services in a child’s IEP, that “with very limited exceptions, IEPs for most children with disabilities should be implemented without undue delay following the IEP meetings...” and that “[t]here may be exceptions in certain situations. It may be appropriate to have a short delay (e.g., (1) when the IEP meetings occur at the end of the school year or during the summer, and the IEP Team determines that the child does not need special education and related services until the next school year begins); or (2) when there are circumstances that require a short delay in the provision of services (e.g., finding a qualified service provider, or making transportation arrangements for the child).” The Department has further noted that a pattern of practice within a given State of not making services available within a reasonable period of time (e.g., within a week or two following IEP meetings), could raise a question as to whether the State is in compliance, unless one of these exceptions applies. See 64 Fed. Reg. at 12579.

Finally, IDEA and the IDEA Part B regulations provide for the basic floor of protections, but certain aspects of implementation are better addressed by State and local education authorities. We believe that there is nothing in IDEA that would prevent a State from establishing a reasonable timeline in its rules implementing this IDEA requirement.

Accordingly, OSERS concludes that it would not be appropriate for the Department to undertake such rulemaking on this specific matter as you have requested.

We regret to read that your son experienced delays in receiving the services required by his IEP. As we previously advised in a July 13, 2021, email, under IDEA, a parent can pursue several

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<sup>1</sup> Although the public agency is responsible for determining when to conduct an IEP Team meeting, the parents of a child with a disability have the right to request an IEP meeting at any time. For example, if the parents believe that the child is not progressing satisfactorily, the parents, as a member of the IEP Team, can request an IEP Team meeting at any time during the year. See Appendix A to the 1999 final IDEA Part B regulations, 64 Fed. Reg. 12406, 12476 (Mar. 12, 1999).

dispute resolution options, if they disagree with a school's actions. A parent has a right to request mediation to resolve disputes using the IDEA's mediation process under 34 C.F.R. § 300.506. Also, a parent has the right to file a State complaint or a due process complaint to request a due process hearing. 34 C.F.R. §§ 300.151 through 300.153 and 300.507. For more information about how these procedures are implemented in the State of Maryland, or to file a State complaint, you may contact the Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services. Contact information for MSDE is provided below for your convenience:

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Early Intervention and Special Education Services  
200 W. Baltimore Street  
Baltimore, Maryland 21201  
Phone: 410-767-0238  
Email: [marcella.franczkowski@maryland.gov](mailto:marcella.franczkowski@maryland.gov)

You may also wish to visit MSDE's [Family Support & Dispute Resolution Branch \(marylandpublicschools.org\)](http://marylandpublicschools.org) web page, which includes web links to the State's model forms for State complaints and requests for mediation and/or due process.

Please note that Section 607(d) of the IDEA prohibits the Secretary of the Department from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of Section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA Section 607(e), this response is provided as informal guidance and is not legally binding. It represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented and does not establish a policy or rule that would apply in all circumstances.

Thank you for your petition. We share your dedication to the education of children with disabilities and appreciate your communication with the Department.

Sincerely,

/s/

Katherine Neas  
Acting Assistant Secretary