



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

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Dear Special Education and Early Intervention Partners:

The U.S. Department of Education's (Department) Office of Special Education and Rehabilitative Services (OSERS) is committed to ensuring that infants and toddlers with disabilities and their families, and children with disabilities, have successful early intervention and educational experiences in the upcoming school year. Since March 2020, due to the COVID-19 pandemic, we have all been challenged to provide services and supports to children with disabilities in ways we could never anticipate. As a result, OSERS wants to emphasize the importance of infant and toddlers with disabilities and their families receiving equitable access to high-quality early intervention services and children with disabilities receiving special education and related services in accordance with the [Individuals with Disabilities Education Act \(IDEA\)](#).

Infants and toddlers with disabilities and their families and children with disabilities were disproportionately affected by the pandemic compared to their peers without disabilities.<sup>1</sup> Even with the support of the special education and related services required by their individualized education programs (IEPs), some children with disabilities experienced difficulty accessing the general education curriculum in ways that could allow them to make meaningful progress. Parents, educators, and related services providers responded to the unprecedented challenge of the COVID-19 pandemic by finding new ways to collaborate so that the needs of children with disabilities could continue to be met. Despite these efforts, some children with disabilities were unable to progress toward achieving the functional and academic goals included in their IEPs. Similarly, some infants and toddlers with disabilities and their families were unable to achieve the expected outcomes described in their individualized family service plans (IFSPs).

Early on in the pandemic, OSERS issued [Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak](#) (March 12, 2020), and a [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities](#) (March 21, 2020). OSERS also released a series of [Questions and Answers documents](#) from June 2020 through October 2020. In the [Questions and Answers on IDEA Part B Service Provision](#) (September 28, 2020), OSERS made clear that, for the 2020–2021 school year, no IDEA requirements were waived. OSERS further clarified that, no matter what primary instructional delivery approach was chosen for that

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<sup>1</sup> This has been well documented. See for example: [Special education amid pandemic poses challenges for Metro Atlanta schools](#); [How COVID-19 Has Affected Special Education Students](#); [Behaviors in children with autism spectrum disorder increased during COVID-19, experts say](#).

year, State educational agencies (SEAs) and local educational agencies (LEAs) remained responsible for ensuring that a free appropriate public education (FAPE) was available to all children with disabilities and implementing Part B requirements. Similarly, OSERS released companion guidance regarding IDEA [Part C provision of services](#) (October 20, 2020) to clarify that IDEA Part C requirements remained in effect, notwithstanding the pandemic. Likewise, State lead agencies (LAs) for Part C and early intervention service (EIS) providers remained responsible for ensuring the provision of early intervention services to infants and toddlers with disabilities and their families and implementing Part C requirements.

Subsequently, OSERS has received multiple requests from a diverse group of stakeholders asking that the Department clarify expectations and requirements for implementing IDEA in light of the many challenges of the COVID-19 pandemic and as more schools and programs are returning to in-person services. These inquiries address a range of topics, such as: meeting timelines, ensuring implementation of initial evaluation and reevaluation procedures, determining eligibility for special education and related services, and providing the full array of special education and related services that children with disabilities need to receive FAPE. Similarly, stakeholders have inquired about the implications of delayed evaluations and early intervention services to infants and toddlers with disabilities and their families served under IDEA Part C.

As a part of the Department's [Return to School Roadmap](#), OSERS will release IDEA guidance documents in the coming weeks and months which focus on school reopening efforts and are intended to support the full implementation of IDEA requirements by SEAs, LEAs, LAs, and EIS providers. The Return to School Roadmap IDEA guidance documents are also intended to provide useful information to parents of infants, toddlers, and children with disabilities. The documents will focus on those topics most closely related to ensuring that, regardless of the COVID-19 pandemic or the mode of instruction, children with disabilities receive FAPE, and that infants and toddlers with disabilities and their families receive early intervention services.

### **Moving Forward: School Year 2021–2022 and Beyond**

With the availability of vaccinations for all adults and for a growing number of children, the influx of new Federal funds, especially the Elementary and Secondary School Emergency Relief Fund made available by the American Rescue Plan Act of 2021 (ARP Act), and additional IDEA Part B and Part C funds made available under Section 2014 of the ARP Act, the Department expects that all LEAs will provide every student with the opportunity for full-time, in-person learning for the 2021–2022 school year. The Department recognizes that some parents may have specific health and safety concerns about sending their children back to in-person instruction because of the perceived health risk to the student's immediate family and to other household members — even as parents are also concerned about their child missing the instructional and social and emotional opportunities that come with in-person learning.<sup>2</sup> Therefore, 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.

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<sup>2</sup> [ED COVID-19 Handbook Volume 1: Strategies for Safely Reopening Elementary and Secondary Schools.](#)

The Centers for Disease Control and Prevention (CDC) recommends that everyone in K through 12 schools wear a mask indoors, including teachers, staff, students, and visitors, regardless of vaccination status. SEAs and LEAs may use ARP Act funds, as appropriate, to ensure the health and safety of all students and teachers as part of the reopening efforts. OSERS encourages families and educators to continue to review the Department's and CDC's websites for updated guidance on ensuring the health and safety of all students and educators.<sup>3</sup>

We recognize that SEAs, LEAs, LAs, and EIS providers have worked hard to meet children's needs and provide required services, given the unprecedented educational disruptions and other challenges resulting from the pandemic.<sup>4</sup> OSERS wants to reiterate and emphasize that, notwithstanding these challenges, infants and toddlers with disabilities and their families and children with disabilities retain their rights to receive appropriate services under IDEA. This includes ensuring that IEPs are in effect for children with disabilities at the start of the upcoming school year, and all other rights of children with disabilities and their parents under IDEA Part B are protected. Similarly, IDEA Part C requires IFSPs to be implemented and that all other rights of parents and their infants and toddlers with disabilities must be protected.

With few exceptions,<sup>5</sup> IDEA does not provide waiver authority to the Department; thus, OSERS is unable to grant waivers under IDEA Parts B and C to SEAs or LAs as a result of the pandemic or to otherwise create safe harbors from potential or existing litigation by parents or others. SEAs and LAs continue to have a reasonable degree of flexibility in how, but not whether, they monitor their LEAs and EIS programs and providers, using multiple components of the State's general supervision system. The Department will monitor States' implementation under Parts B and C of the IDEA, which includes reviewing whether States used alternative methods of exercising their general supervisory, accountability, and oversight responsibilities.

Looking forward, we emphasize the importance of SEAs and LAs focusing their general supervisory responsibilities on providing technical assistance and support to LEAs and EIS providers to—(1) mitigate and address the impact of service disruptions on the progress of infants and toddlers with disabilities and their families and children with disabilities, with a particular emphasis on children who have been most impacted by the pandemic; and (2) ensure full implementation of IDEA during the 2021–2022 school year.

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<sup>3</sup> [COVID-19 Resources for Schools, Students, and Families | U.S. Department of Education; https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html).

<sup>4</sup> States have reported that these difficulties include the following: challenges with providing the equipment and technology, including Wi-Fi access, needed for children to participate in virtual learning; having adequate personnel to provide early intervention, special education, and related services due to COVID-related illness and employees' concerns for their safety and the safety of their families; and taking the necessary health and safety precautions required for public facilities to reopen.

<sup>5</sup> A notable exception is the authority to grant a waiver of the IDEA's maintenance of State financial support requirement under 34 C.F.R. § 300.163.

Thank you for your continued support and partnership in improving early intervention services for infants and toddlers with disabilities and their families and education access and opportunities for children with disabilities.

Sincerely,

/s/

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Acting Assistant Secretary,  
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/s/

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