



**GUIDANCE ON SPECIAL EDUCATION  
FROM THE FEDERAL AND STATE  
DEPARTMENTS OF EDUCATION**

**AS OF 4/15/20**

# GUIDANCE FROM U.S. DEPARTMENT OF EDUCATION

“To be clear: ensuring compliance with the IDEA, Section 504, and the ADA should not prevent any school from offering educational programs through distance instruction.”

-- *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Students With Disabilities (March 21, 2020)*



# GUIDANCE FROM CALIFORNIA'S STATE DIRECTOR OF EDUCATION

Highlighted specific passages from U.S. Department of Education guidance of March 21, 2020:

“Federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities. The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency...”

-- *Official Message from the State Director of Education*  
*(March 22, 2020)*



# GUIDANCE FROM CALIFORNIA'S STATE DIRECTOR OF EDUCATION

Highlighted specific passages from U.S. Department of Education guidance:

“There may be additional questions about meeting the requirements of federal civil rights law; where we can offer flexibility, we will.”

*-- Official Message from the State Director of Education  
(March 22, 2020)*



# GUIDANCE FROM CALIFORNIA'S STATE DIRECTOR OF EDUCATION

“To that end, the USDOE supplemental fact sheet includes a list with information on those IDEA timeframes that may be extended...

In addition, the March 20, 2020 special education guidance from the CDE notes various LEA special education monitoring timelines that will be waived or extended, acknowledging that LEAs are necessarily focused on protecting the health and safety of students at this time.”

*-- Official Message from the State Director of Education  
(March 22, 2020)*



# WHAT STATE TIMELINES HAS CDE WAIVED/EXTENDED?

“In general, **for purposes of determining LEA compliance with special education timelines**, the CDE will consider the days of school site closure as days between the pupil’s regular school session, similar to school breaks in excess of five days planned in the instructional calendar (e.g. Thanksgiving break).

For annual or triennial IEP reviews that fall on a day when the LEA is closed due to COVID-19, the CDE will take the exceptional circumstances causing the delay into consideration **for purposes of LEA compliance monitoring.**”

*-- COVID-19 School Closures and Services to Students With Disabilities  
(Guidance from March 20, 2020)*



# PROPOSED IDEA WAIVERS

As part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was signed on March 27, 2020:

- Secretary of Education Betsy DeVos has until late April 2020 to submit to Congress:
  - Her recommendations re: what changes to the IDEA may be needed as a result of nationwide school closures

Note that Secretary DeVos cannot make changes to the IDEA herself. She can only recommend changes.

Only **Congress** has the power to make and approve such changes.



# PROPOSED IDEA WAIVERS

The U.S. DOE's Supplemental Fact Sheet from March 21, 2020 lists a number of "IDEA timeframes" that "may be extended," including:

- Due process timelines re: resolution sessions and hearing decisions
- Timelines/procedures re: annual IEP reviews and IEP amendments
- 60-day timeline re: initial eligibility determination
- Triennial review timelines
- IFSP timelines





# PROPOSED IDEA WAIVERS

National and state administrators' associations are lobbying for "flexibilities" during the pandemic around:

- **Timelines**
  - Initial and triennial evaluations, complaints
  - Annual IEP reviews, transition from Part C to Part B
- **Procedures**
  - Creation of "distance learning plan" in lieu of IEP amendments
  - IEP team meeting requirements re: developing such plans
- **Federal monitoring/state fiscal management**
  - State Performance Plan, Annual Performance Report, State Systemic Improvement Plan (req'mt that states report state-level data/meet federal targets on various indicators)
  - Maintenance of Effort (fed req'mt that special education spending be kept at the same amount or more each year)



# PUSHBACK AGAINST PROPOSED IDEA WAIVERS

Disability rights, education, and parent/family organizations are arguing that NO waivers are necessary. Their main points include:

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- Flexibility is already built into the IDEA.
- To protect health, FAPE may not be provided in the same manner-- and that's okay.
- Schools must plan for compensatory education to be provided.
- Parents must remain involved in all IEP team decisions.
- There should be frequent and clear communication and collaboration between schools and parents during this time.
- Parents' due process rights must remain intact.
- Congress must protect students' civil rights, and should provide robust funding for educating students with disabilities.

