



October 5, 2022

Dear State Directors of Special Education, Local Educational Agency Special Education Directors, Part B Section 619 Coordinators, Part C Coordinators, and Head Start Grant Recipients:

The U.S. Department of Education's Office of Special Education Programs (OSEP) and the U.S. Department of Health and Human Services' Office of Head Start (OHS) thank you for your tireless efforts and commitment to serving children and their families. You have worked incredibly hard to meet the individual needs of all children, including children with disabilities and their families, during the COVID-19 pandemic. OSEP and OHS acknowledge the disruptions to program operations and the additional challenges to provide a seamless continuum of early childhood education services, including for those children with disabilities who receive preschool special education and related services under section 619 of the Individuals with Disabilities Education Act (IDEA), during the pandemic. This disruption has impacted the social, emotional, and academic development and functional performance of many young children.<sup>1</sup> We also recognize the additional challenges associated with socio-economic factors affecting children and their families that have occurred during the pandemic.

Young children with disabilities and their families have been disproportionately affected by service disruptions.<sup>2</sup> As we start this new school year, OSEP and OHS want to emphasize the importance of providing children with disabilities and their families the services and supports that they need to thrive. The purpose of our correspondence is threefold. First, we want to remind you of the requirements under Part B of the IDEA to provide special education and related services to eligible preschool-aged children with disabilities. Second, we want to emphasize the importance of ongoing collaboration between the State educational agency (SEA), local educational agencies (LEAs), and their Head Start program partners to effectively meet IDEA requirements and ensure the provision of a free appropriate public education (FAPE)<sup>3</sup> to children

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<sup>1</sup> U.S. Department of Education, Office of Special Education and Rehabilitative Services, [Supporting Child and Student Social, Emotional, Behavioral, and Mental Health Needs](#) (2021).

<sup>2</sup> Center for Translational Neuroscience (2020, December 17). Overloaded: Families with Children Who Have Special Needs Are Bearing an Especially Heavy Weight, And Support Is Needed. *Medium*. <https://medium.com/rapid-ec-project/overloaded-families-with-children-who-have-special-needs-are-bearing-an-especially-heavy-weight-4e613a7681bd>.

<sup>3</sup> Free appropriate public education (FAPE) means special education and related services that (1) are provided at public expense, under public supervision, and without charge; (2) meet the standards of the SEA, including the requirements of IDEA; (3) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (4) are provided in conformity with an individualized education program that meets the requirements of 34 C.F.R. §§ 300.320 through 300.324.

with disabilities. Lastly, our letter provides resources that may be helpful under both Parts B and C of the IDEA as well as Head Start to assist you in implementing high-quality early childhood programs for all children.

### **IDEA Part B Requirements, Including Ensuring a Free Appropriate Public Education in the Least Restrictive Environment**

It is the long-standing policy of our Departments that young children with disabilities be included in high-quality early childhood programs, including Head Start. Expectations and requirements were outlined in the Departments' [Policy Statement on Inclusion of Children with Disabilities in Early Childhood Programs](#) (2015) and in OSEP's [Dear Colleague Letter on Preschool Least Restrictive Environments](#) (2017). Additionally, the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) released several [Return to School Roadmap](#) documents in 2021 to provide guidance interpreting requirements of IDEA, including providing FAPE in the least restrictive environment (LRE), in light of the many challenges of the pandemic and as schools and programs returned to in-person services. In January 2020, OHS released an Information Memorandum (IM) on Inclusion of Children with Disabilities ([ACF-IM-HS-20-01](#)) highlighting requirements in the Head Start Program Performance Standards (HSPPS) related to the inclusion of children with disabilities or suspected delays, including a list of resources for recipients' use in implementation efforts. In 2021, OHS included guidance and resources on the Early Childhood Learning and Knowledge Center (ECLKC) [website](#) to support programs as they returned to in-person operations, with special considerations for children with disabilities and suspected delays.

The Departments acknowledge that the pandemic continues to present challenges to implementing appropriate programs and services for young children. Further, opportunities for some young children with disabilities to participate in inclusive early childhood settings have been more limited. However, OSEP and OHS want to emphasize that, notwithstanding these challenges, children with disabilities retain their rights under IDEA to receive appropriate special education and related services in accordance with their individualized education programs (IEP). No IDEA requirements have been waived. However, particularly since the pandemic, both OSEP and OHS have quantitative data and other information that indicate—

- Initial evaluations to determine eligibility of children suspected of having a disability are being delayed;
- Special education and related services included in IEPs are not being provided timely, or IEPs are not being fully implemented; and
- Educational placement decisions for children with disabilities are not being made in accordance with IDEA's LRE requirements.

SEAs, LEAs, and Head Start programs all have responsibilities for implementing IDEA:

- SEAs are responsible for establishing and enforcing policies and procedures to ensure full implementation of child find and other IDEA requirements to ensure that FAPE is made available to all eligible children with disabilities in the State;
- LEAs are responsible for identifying, locating, and evaluating children suspected of having disabilities in a timely fashion and developing and implementing IEPs for eligible children with disabilities in accordance with the applicable IDEA requirements; and
- Head Start programs are responsible for referring children and families for IDEA evaluations as well as supporting implementation of children's IEPs.

Understanding the roles and responsibilities of each of these partners is imperative to successfully implement IDEA and ensure FAPE in the LRE is made available for all children with disabilities in the State.<sup>4</sup>

**Child Find:** The child find requirements in IDEA Part B require SEAs and LEAs to have policies and procedures in effect to ensure that all children with disabilities residing in the State who need special education and related services are identified, located, and evaluated, regardless of the severity of the disability, and consistent with IDEA requirements and the State's child find and eligibility standards. It should be noted that OSEP has previously issued [guidance](#) making clear that response to intervention strategies cannot be used to delay or deny a timely evaluation for a preschool child suspected of having a disability.

OSEP guidance issued throughout the pandemic has consistently communicated that IDEA requirements, including child find, are not waived and that the appropriate implementation of these requirements is more important than ever. As part of the IDEA Return to School Roadmap documents, OSERS issued additional guidance to SEAs, LEAs, parents, and other stakeholders, including Head Start programs, to reaffirm the importance of appropriate implementation of the child find obligations under Part B of the IDEA in [Child Find Under Part B of the IDEA](#) (Aug. 24, 2021).

Local Head Start programs are required to complete or obtain a current developmental screening to identify any concerns regarding a child's developmental skills within 45 calendar days of when the child first attends the program to identify children who may need further evaluation.

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<sup>4</sup> Although not discussed here, other Federal laws protect preschool-aged children with disabilities participating in public programs: Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and Title II of the Americans with Disabilities Act of 1990, as amended (ADA). These laws prohibit discrimination based on disability. Information about these laws is available on the websites of the [U.S. Department of Education's Office for Civil Rights](#) and the [U.S. Department of Health and Human Services Office for Civil Rights](#).

With parental consent, Head Start personnel are then required to make a referral to the LEA. 45 C.F.R. § 1302.33(a)(1).

**Initial Evaluation and Eligibility Determination:** LEAs must conduct the initial evaluation within 60 days from the date parental consent for the evaluation is received, or, if the State establishes a timeframe within which the initial evaluation must be conducted, within that timeframe. 34 C.F.R. § 300.301(c)(1). Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child must determine whether the child is a child with a disability as defined in 34 C.F.R. § 300.8 (i.e., whether the child has a disability and, by reason thereof, needs special education and related services) and the child's educational needs. 34 C.F.R. § 300.306(a)(1). If the child is found eligible as a child with a disability under IDEA, a meeting to develop an IEP must be conducted within 30 days of the determination that the child needs special education and related services. 34 C.F.R. § 300.323(c)(1). As soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the IEP. 34 C.F.R. § 300.323(c)(2).

**Development of the IEP:** The IEP is a written statement developed by the IEP Team, which must include the child's parent, and is intended to guide the educational program of a child with a disability. The IEP includes a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum or, in the case of a preschool-aged child, as appropriate, how the disability affects the child's participation in appropriate activities. The IEP also includes a statement of the measurable annual goals that are designed to meet the child's needs that result from their disability to enable the child to be involved in and make progress in the general education curriculum; and to meet each of the child's other educational needs that result from their disability. 34 C.F.R. § 300.320(a). The IEP documents the special education and related services, supplementary aids and services, and program modifications and supports for school and program personnel that are necessary to enable the child (1) to advance appropriately toward attaining the annual goals; (2) to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and (3) to be educated and participate with other children with disabilities and children without disabilities in those activities. 34 C.F.R. § 300.320(a)(4). In addition, the IEP must include an explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and in extracurricular and other nonacademic activities. 34 C.F.R. § 300.320(a)(5).

**Determination of the Educational Placement in the LRE for the Child:** After the child's IEP has been developed, the placement in which the IEP will be implemented is determined. Placement decisions for children with disabilities must be made on an individualized basis, based on the unique needs of each child (as described in the IEP), by a group of persons, including the

parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a)(1). The child's placement must be decided in conformity with the LRE provisions in 34 C.F.R. §§ 300.114 through 300.118, must be based on the child's IEP, and must be determined at least annually. 34 C.F.R. § 300.116(a)(2), (b)(1), and (b)(2). To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, must be educated with children without disabilities.

The placement group should consider how the child is developing and learning in their current early childhood program (e.g., Head Start), and must determine whether and what supplementary aids and services would be needed to enable the education of the child in the regular education setting to be achieved satisfactorily.<sup>5</sup> The placement group, which always includes the parent (34 C.F.R. § 300.116(a)), may determine that the Head Start classroom is the LRE in which the child's IEP can be implemented. In all cases, placement decisions must be individually determined on the basis of each child's abilities and needs (which are reflected in the child's IEP), and not solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience. Therefore, provider-related matters such as a shortage of IDEA personnel or differences in personnel requirements of the preschool program unrelated to the needs of the child (e.g., vaccination status or masking requirements), may not be factors considered when determining the educational placement in the LRE for a child with a disability.

**Collaboration with Head Start to Support Implementation of IEPs:** Head Start programs are required to design and implement a coordinated approach that ensures the full and effective participation of all children with disabilities and their families (45 C.F.R. § 1302.101(b)(3)). The Head Start Disability Services Coordinator serves as a resource for families to help navigate the special education system and to support the Head Start program's coordination with the LEA.

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<sup>5</sup> IDEA also requires that, if the nature or severity of the child's disability is such that education in regular classes cannot be achieved satisfactorily, even with the provision of supplementary aids and services, the placement group could then determine the child's placement in a setting other than the regular educational environment. 45 34 C.F.R. § 300.114(a)(2). The LEA must make available the full continuum of alternative placements, including instruction in regular classes, special schools, home instruction, and instruction in hospitals and institutions, to meet the needs of all children with disabilities for special education and related services. 45 34 C.F.R. § 300.115. If there is an LEA public preschool program available, the LEA may choose to make FAPE available to a preschool child with a disability in the LEA's public preschool program. If the LEA does not offer, or offers only a limited range of, public preschool programs, the LEA must explore alternative methods to ensure that the LRE requirements are met for each preschool child with a disability. These methods may include: (1) providing opportunities for the participation of preschool children with disabilities in preschool programs operated by public agencies other than the LEA (e.g., Head Start or community-based childcare); (2) enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children; (3) locating classes for preschool children with disabilities in regular public elementary schools; or (4) providing home-based services.

The Disability Services Coordinator works in collaboration with Head Start program staff to ensure services are provided with appropriate facilities, program materials, curriculum, instruction, staffing, supervision, and partnerships, at a minimum, consistent with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

The IDEA Return to School Roadmap guidance documents, including [Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the IDEA](#) (Sept. 30, 2021), clarify that, regardless of the COVID-19 pandemic, or the mode of instruction, children with disabilities are entitled to FAPE. The document provides guidance on topics that include 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 in order to receive FAPE, as well as the implications of delayed evaluations and/or provision of special education and related services as identified on a child's IEP.

### **Resolving Disagreements**

If a parent disagrees with an IEP Team decision or believes a public agency (e.g., LEA) has not followed IDEA requirements (e.g., initial evaluations are not completed timely or are not sufficiently comprehensive, special education and related services are not being provided in accordance with their child's IEP), IDEA provides a mechanism to file formal complaints — State complaints pursuant to 34 C.F.R. §§ 300.151 through 300.153 and due process complaints pursuant to 34 C.F.R. §§ 300.507 through 300.518 — and to request mediation pursuant to 34 C.F.R. § 300.506. Additional information is available in OSEP's Questions and Answers on IDEA Part B Dispute Resolution Procedures ([Jul. 23, 2013](#) and [Jun. 22, 2020](#)). The Center for Appropriate Dispute Resolution in Special Education (CADRE), an OSEP-funded technical assistance provider, has developed a series of [guides and videos](#) for parents and family members to use as companion resources<sup>6</sup> to OSEP's guidance documents.

The State complaint procedures in the IDEA implementing regulations provide for compensatory services as an available remedy when the SEA has found a failure or inability to provide appropriate services under IDEA in order to address the needs of the child (34 C.F.R. § 300.151(b)(1)). Similarly, courts have ordered such services to address the child's

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<sup>6</sup> This document contains examples of resources that are provided for the user's convenience. The inclusion of these resources is not intended to reflect their importance, nor is it intended to endorse any views expressed, or products or services offered, by these entities. These resources may include materials that contain the views and recommendations of various subject-matter experts as well as hypertext links, contact addresses, and websites to information created and maintained by other public and private organizations. The opinions expressed in any of these materials do not necessarily reflect the positions or policies of the U.S. Department of Education. The U.S. Department of Education does not control or guarantee the accuracy, relevance, timeliness, or completeness of any outside information included in the materials that may be provided by these resources.

needs after a failure or inability to provide FAPE over a given period of time. For further information about compensatory services, see, in particular, Section D of [Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the IDEA](#).

### **Collaboration Between Partners**

The IEP Team, with Head Start personnel, are encouraged to collaboratively strategize ways to ensure each child's IEP is implemented in the LRE as required by IDEA. For example, if there is a shortage of available special education and related services providers, the IEP Team may consider whether delivering the service virtually while the child is in the Head Start program is an appropriate methodology to meet the child's needs for the service identified on the child's IEP. The IEP Team may also consider if providing virtual coaching and consultation to Head Start personnel is an appropriate way to meet the child's needs for the service identified on the child's IEP. In addition, the IEP Team may consider using paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of special education and related services to the child.

OSEP and OHS strongly encourage SEAs, LEAs, and Head Start programs to prioritize building and maintaining collaborative relationships to ensure that young children with disabilities eligible under IDEA Part B and enrolled in Head Start programs receive FAPE in the LRE. Collaborative relationships require effort during normal operations. During challenging circumstances such as the pandemic, collaboration must be more intentional to ensure effective communication and coordination, particularly when programs have differing policies and procedures. The companion document, [Guidance on Creating an Effective Memorandum of Understanding to Support High Quality Inclusive Early Childhood Systems \(2022\)](#), provides strategies and considerations to effectively formalize working partnerships.

Additionally, our Departments and affiliated technical assistance centers have developed multiple resources to support programs in carrying out the requirements of IDEA and the program requirements of Head Start and implementing high-quality inclusive early childhood programming. The list attached to the end of this letter provides links to many resources that address important topics such as implementing IDEA child find requirements under both Parts B and C of the IDEA, development, and implementation of IEPs, making sound placement decisions, supporting children's social, emotional, behavioral, and mental health needs, and tools to develop and sustain high-quality inclusive early childhood systems at the State, community, program, and classroom levels. We encourage you to use this information as you collaborate to educate young children with disabilities in your State and local communities.

We value your continued partnerships to provide special education and related services while maintaining the health and safety of young children with disabilities enrolled in Head Start

programs. On behalf of our Departments, thank you for your hard work and dedication during these ever-changing times.

Sincerely,

/s/

Valerie C. Williams

Director

Office of Special Education Programs

U.S. Department of Education

/s/

Katie Hamm

Acting Director

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Human Services



## RESOURCES

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### General Information

- [Center for Appropriate Dispute Resolution in Special Education](#)
- [Center for Parent Information and Resources](#)
- [Centers for Disease Control and Prevention \(CDC\)](#)

### Office of Head Start (OHS)

- [Children with Disabilities](#)
- [COVID-19 & the Head Start Community: OHS COVID-19 Updates](#)
- [COVID-19 & the Head Start Community: Operating In-Person Services in Head Start](#)
- [Inclusion of Children with Disabilities ACF-IM-HS-20-01](#)

### U.S. Department of Education (ED)

- [COVID-19 Resources for Schools, Students, and Families: Special Education & Rehabilitative Services](#)
- [Dear Colleague Letter on Preschool Least Restrictive Environments](#)
- [Education in a Pandemic: The Disparate Impacts of COVID-19 on America's Students](#)
- [Letter to Educators and Parents Regarding New CDC Recommendations and Their Impact on Children with Disabilities](#)
- [Return to School Roadmap: Child Find Under Part B of the Individuals with Disabilities Education Act](#)
- [Return to School Roadmap: Development and Implementation of Individualized Education Programs](#)
- [Supporting Child and Student Social, Emotional, Behavioral and Mental Health Needs](#)

### Joint Guidance/Policy Statements/Letters

- [Guidance on Creating an Effective Memorandum of Understanding to Support High Quality Inclusive Early Childhood Systems \(2022\)](#)
- [Letter on Pediatric Vaccination Efforts](#)
- [Policy Statement on Inclusion of Children with Disabilities in Early Childhood Programs](#)

### Early Childhood Technical Assistance Center (ECTA)

- [Considerations for Developing State Policy and Guidance on Inclusion of Children with Disabilities in Early Childhood Programs](#)
- [Guiding Questions for Discussing Services in the LRE](#)
- [Indicators of High-Quality Inclusion](#)