

March 22, 2020

U.S. Department of Education Issues Additional Guidance on Timelines Under the IDEA

On March 21, 2020, the United States Department of Education, Office for Civil Rights/Office for Special Education and Rehabilitative Services (OCR/OSERS) issued additional guidance on servicing students with disabilities during the COVID-19 pandemic.

After our initial alert on the provision of special education services during the COVID-19 pandemic "[Coronavirus: The Provision of Special Education Services and Mandated School Closings](#)" our office received numerous inquiries relative to the timelines imposed by the IDEA. The following summarizes the federal guidance:

Teletherapy: While New Jersey's Office of Special Education Programs (OSEP) has not yet formally retracted or retreated from its prior position that certain related services could not be provided using a "teletherapy" model, the federal guidance specifically recognizes the viability of this approach during this extraordinary time. On March 19, 2020, both houses of the NJ legislature passed [A3813](#) which specifically authorizes the provision of speech therapy and counseling via telepractice. We will be monitoring this bill for the Governor's approval.

Due Process Hearings/Resolution Sessions: In the event that your district receives a petition for due process, we recommend holding the resolution session via telephone/videoconferencing within 15 days. However, if that is not possible, the federal guidance reminds districts that the timelines for resolution may be extended by mutual agreement of the parties provided you obtain that consent in writing. Upon expiration of the agreed-upon resolution period, the matter will be transmitted to the Office of Administrative Law (OAL) and either party may request an adjournment of the initial date. As of Friday, March 20, 2020, OSEP was still transmitting cases to the OAL reportedly based upon guidance received from the US DOE.

IEP Meetings: The requirements to review IEPs annually remain in effect. To the extent possible, these meetings should be held via videoconferencing or telephonically. CSTs should address changes to each student's IEP which may be necessitated by virtue of distance learning.

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IEPs can also be amended, upon consent, without a meeting. Encourage your CSTs to review their cases to determine if any of their cases would lend themselves to written IEP amendments.

Eligibility/Evaluations: If the CST has already found the student eligible, the IEP must be developed within thirty (30) days of the determination. There is no relaxation of this timeframe. We recommend that you determine how you will receive written consent for implementation and notify parents if this is a change to the district's general practice/procedure.

Re-evaluations: Still must be considered every three years. The Team needs to initially determine if new assessments are necessary or if eligibility can be determined from the information already available. If the determination can be made from the information available, it can be done without a meeting and without parental consent. If the Team determines that additional assessments are unnecessary, obtain written consent from the parents.

Initial evaluations: This is the most difficult question by far. The federal guidance offers no clear answer here and seems to suggest that the regular timelines must be followed. However, in light of Executive Order #107, it is clear that students will not be able to be produced for evaluations for the pendency of the Executive Order. Thus, the initial evaluative timeline will not apply. 34 C.F.R. 300.301(d)(1).

The full text of the guidance can be found here:

[Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#)

The special education attorneys at SPSK are readily available should you have any questions regarding the provision of special education services in this novel educational environment.

DISCLAIMER: This Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client.