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

OSEP QA 21-05

RETURN TO SCHOOL ROADMAP: CHILD FIND UNDER PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

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The U.S. Department of Education's (Department) Office of Special Education and Rehabilitative Services (OSERS) has received multiple requests from a diverse group of stakeholders asking that the Department issue new guidance interpreting requirements of the Individuals with Disabilities Education Act (IDEA) in light of the many challenges of the COVID-19 pandemic and as more schools and programs are returning to in-person services. Topics 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 a free appropriate public education (FAPE).[1] 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.[2] The purpose of the Return to School Roadmap IDEA guidance documents,[3] which focus on school reopening efforts, is to support the full implementation of IDEA requirements. The documents also serve to clarify that, regardless of the COVID-19 pandemic, or the mode of instruction, children with disabilities are entitled to FAPE, and infants and toddlers with disabilities and their families to appropriate IDEA Part C services.

[1] 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. 34 C.F.R. § 300.17.

[2] Additional guidance, including requirements of Part C of IDEA, will be forthcoming.

[3] This Q&A document does not impose any additional requirements beyond those included in applicable law and regulations. It does not create or confer any rights for or on any person. The responses presented in this document generally constitute informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented here and are not legally binding and does not establish a policy or rule that would apply in all circumstances. The questions and answers in this document are not intended to be a replacement for careful study of IDEA and its implementing regulations. The IDEA, its implementing regulations, and other important documents related to IDEA and the regulations are found at: https://sites.ed.gov/idea/

OSERS is issuing this guidance to State educational agencies (SEAs), local educational agencies (LEAs),[4] parents,[5] and other stakeholders to reaffirm the importance of appropriate implementation of the child find obligations under Part B of the IDEA. An effective child find system is an ongoing part of a State's responsibility to ensure that FAPE is made available to all eligible children with disabilities. The child find requirements in IDEA require SEAs and LEAs to have policies and procedures in effect to ensure that all children with disabilities residing in their respective jurisdictions who need special education and related services are identified, located, and evaluated, regardless of the severity of the disability, and consistent with the State's child find and eligibility standards.

It is particularly important that we provide information about the IDEA Part B child find requirements at this time since, as a result of the COVID-19 pandemic, a number of children have not registered for school or have unenrolled from schools. Many others have received instruction only virtually. Given these challenges, as they prepare to return to full-time, in-person learning for the 2021-2022 school year, SEAs and LEAs may need to evaluate whether their current child find procedures are sufficiently robust to ensure the appropriate referral and evaluation of children who may have a disability under IDEA.

[4] To make this document more user-friendly, OSERS has used the term "LEA" in place of "public agency." Public agency is defined in 34 C.F.R. § 300.33 to include the SEA, LEAs, educational services agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

[5] The term "parent" is defined at 34 C.F.R. § 300.30.

A. GENERAL CHILD FIND REQUIREMENTS

Question A-1: What is child find?

Answer: The child find requirements in IDEA Part B require States 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. This requirement includes identification of children who are suspected of having a disability, including for example, children suspected of having long COVID or suspected of having post-COVID conditions that meet the definition of a disability under IDEA.[6] (See, Question C-4 below for more information about long COVID/other post-COVID conditions.) This responsibility includes implementing child find activities for children who are experiencing homelessness or are wards of the State, highly mobile and migrant children, English learners, and parentally-placed private school children with disabilities, as well as those suspected of having developmental delays as defined in 34 C.F.R. § 300.8(b). It also includes children who have complex medical needs and who reside in nursing homes because of serious health problems and those who are in correctional facilities. 34 C.F.R. § 300.111(b)-(c). Child find activities typically involve a screening process to determine whether the child should be referred for a full and individual evaluation to determine eligibility for special education and related services. States must identify, locate, and evaluate all children with disabilities residing in the State and who may need special education and related services, regardless of where the child may live or attend school in the State or even if the child is advancing from grade to grade. 34 C.F.R. § 300.111(c)(1).

Question A-2: Who is responsible for conducting child find activities?

Answer: As stated in the response to Question A-1, the State, through the SEA and all LEAs that receive an IDEA Section 611 or IDEA Section 619 subgrant, is responsible for implementing the child find requirements. LEAs may include educational service agencies (ESAs) as defined in 34 C.F.R. § 300.12, public charter schools (including virtual charter schools) established as an LEA under State law, and any other entities that meet the definition of an LEA in 34 C.F.R. § 300.28. In most instances, the LEA where the parents of a child with a disability reside is responsible for ensuring that the child is identified, located, and evaluated. However, under 34 C.F.R. § 300.131(a), if a parent enrolls a child in a private school located in an LEA other than where the child resides, the LEA where the private school is located is responsible for child find activities.

[6] For more information see the Department's Long COVID under Section 504 and the IDEA: A Resource to Support Children, Students, Educators, Schools, Service Providers, and Families (Jul. 26, 2021).

Question A-3: **Do the child find obligations apply to children enrolled in public charter schools?**

Answer: Yes. The child find requirements apply to children enrolled in public charter schools, including virtual charter schools, that operate as LEAs themselves or are public schools of an LEA. 34 C.F.R. §§ 300.111(a)(1)(i), 300.201, and 300.209. If a child is enrolled in a charter school that is part of an LEA, the LEA would be responsible for implementing child find requirements for children attending the charter school, unless State law assigns responsibility to some other entity. 34 C.F.R. § 300.209(b)(2)(i). If the child is attending a charter school that operates as its own LEA, the charter school LEA would be responsible for implementing child find requirements, unless State law assigns responsibility to some other entity.[7] 34 C.F.R. § 300.209(c). If the child is enrolled in a charter school that is neither an LEA nor a school of an LEA, the SEA is responsible for ensuring the child find requirements are met.

Question A-4: **Do the child find obligations apply to children enrolled by their parents in private schools or who are home schooled?**

Answer: Yes. As a result of the educational disruptions due to the COVID-19 pandemic, a considerable number of students withdrew from public schools to attend private schools or were home schooled. As stated in the responses to Questions A-1 and A-2, SEAs and LEAs are responsible for carrying out child find obligations to all children residing within the jurisdiction. 34 C.F.R. §§ 300.111 and 300.201. This includes children whose parents have chosen to home school them or place them in private schools, rather than enrolling them in the public schools. Generally, the LEA where the child's parents reside is responsible for conducting child find activities, including initial evaluations and reevaluations, for children who are home schooled. As noted in the response to Question A-2, the LEA in which the private school is located is responsible for child find activities for parentally placed private school children, which could be different than where the child resides. 34 C.F.R. § 300.131.

There are several possible ways that an LEA within which private elementary or secondary schools are located can meet its child find responsibilities. For example, the LEA may assume the responsibility itself, contract with another LEA (including the LEA where the child's parent resides) or make other arrangements by contracting with a third party to conduct child find activities. Note also, that under 34 C.F.R. § 300.134(a)(2), during consultation between the LEA and private school officials and parent representatives, the LEA must discuss how parents, teachers, and private school officials will be informed of

[7] U.S. Department of Education, Office of Special Education and Rehabilitative Services, Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under the Individuals with Disabilities Education Act (Dec. 28, 2016).

the child find process. During consultation, the LEA can solicit ideas from participants about ways to engage and educate stakeholder groups about what is involved in locating, identifying, and evaluating children with suspected disabilities under IDEA who are enrolled by their parents in private schools. Examples of such practices include, but are not limited to, the following: holding professional development sessions for private school teachers on IDEA's evaluation and reevaluation requirements; posting flyers in private school facilities to inform stakeholders of the availability of child find; and facilitating round table discussions with community members.

Question A-5: **What are some examples of child find activities?**

Answer: Many SEAs and LEAs undertake organized initiatives throughout the year to identify preschool- and school-aged children with disabilities. These activities can include public awareness campaigns by the LEA or in partnership with a school's parent teacher association (PTA) that include information provided in languages spoken in the community and target a wide audience including parents and families, daycare and early childhood education providers, summer camps, medical providers, homeless shelters, religious institutions, and kindergarten roundup (i.e., events hosted by elementary schools to facilitate a child's transition from home to formal education). For older children, activities can include locally administered assessments that measure student academic growth, screening private school students and home school students, meeting with mental health practitioners, sharing information with nonprofit organizations that focus on families and children, and coordinating with State agencies that provide services to children and young adults. Also, the LEA's outreach efforts and interagency collaboration with housing programs, such as those funded by the Housing and Urban Development, can help to identify children who are homeless and may be in need of special education.[8] With the increased use of social media, SEAs and LEAs should consider posting child find notices on their websites and social media pages.

Question A-6: **In conducting child find activities under IDEA Part B, may an LEA use regular IDEA Part B funds and the additional IDEA Part B funds appropriated under Section 2014 of the American Rescue Plan Act (ARP Act), or funds received under the Elementary and Secondary School Emergency Relief Fund (ESSER Fund) and the Governor's Emergency Education Relief Fund (GEER Fund) authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA)?**

Answer: Yes. IDEA Part B funds (both the regular IDEA Part B funds and the additional IDEA Part B funds appropriated under the ARP Act), and funds provided to States and LEAs through the ESSER Fund and the GEER Fund

[8] Homeless Liaison Toolkit | 2020 Edition — https://nche.ed.gov/homeless-liaison-toolkit/

may be used for child find activities. However, under 34 C.F.R. § 300.131(d), if an LEA uses funds from its IDEA Part B allocations to carry out child find activities for parentally-placed children in private schools, these expenditures may not be considered in determining if the LEA has met the requirement under 34 C.F.R. § 300.133(a) to spend a proportionate amount of IDEA Part B funds on the provision of special education and related services for parentally-placed children with disabilities attending private schools located in the LEA.

An LEA may also want to consider using these funds to address any backlog of initial evaluations not completed within the timeline or that were delayed due to circumstances related to the COVID-19 pandemic. Funds could be used to hire additional special education and related services staff; contract with outside vendors and practitioners to perform assessments, consistent with State procurement rules; pay costs associated with training existing staff to acquire the necessary expertise and qualifications to conduct evaluations; and upgrade assessment and evaluation tools, such as those that perform auto-calculations of data to reduce burden and streamline report-writing.

B. REFERRAL AND INITIAL EVALUATION

Question B-1: **Who can refer a child to determine whether the child is suspected of having a disability under IDEA?**

Answer: IDEA's child find requirements permit referrals from any source who believes a child may be eligible for special education and related services. Any source includes, but is not limited to, a parent, teacher, health care provider, or other individual with knowledge about the child.

However, consistent with the child find requirements and with the parental consent requirements under IDEA and the implementing regulations, only the child's parent or the child's LEA may initiate the request for an initial evaluation LEA. 34 C.F.R. § 300.301(b).

Question B-2: **Must the LEA agree to conduct an initial evaluation if the child's parent makes a formal request?**

Answer: No. If the LEA does not suspect the child has a disability, it may deny the parent's request for an initial evaluation. In this circumstance, the LEA must provide written notice to the parent, consistent with 34 C.F.R. § 300.503(b), that explains, among other things, why the LEA refuses to conduct an initial evaluation and the information that was used as the basis to make that decision. The parent may challenge the LEA's refusal by requesting a due process hearing under 34 C.F.R. § 300.507 or filing a State complaint under 34 C.F.R. § 300.153. See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540, 46636 (Aug. 14, 2006); OSEP Memorandum 11-07 (Jan. 21, 2011).

However, if the LEA believes the child may have a disability under IDEA, it must obtain the parent's informed consent, consistent with 34 C.F.R. § 300.9, to conduct an initial evaluation. 34 C.F.R. § 300.300(a). The evaluation must be conducted within 60 days of receiving parental consent or within the State-established timeline for conducting the evaluation. 34 C.F.R. § 300.301(c)(1). Although IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department's consistent and longstanding interpretation of the IDEA that evaluations be conducted within a reasonable period of time after the agency's receipt of a formal request for evaluation, if the LEA agrees that an initial evaluation is needed.[9]

Question B-3: **Can an LEA require that all students participate in general education multi-tiered systems of support (MTSS) or other general education interventions prior to referring a child for special education?**

Answer: No. MTSS is a comprehensive continuum of evidence-based, systemic practices to support a rapid response to students' needs with regular observation to facilitate data-based instructional decision-making. Many LEAs have implemented successful MTSS frameworks, thus ensuring that children who simply need short-term and targeted, or intensive interventions are provided those interventions, IDEA, however, does not require, or encourage, an LEA to use an MTSS approach prior to a referral for evaluation or as part of determining whether a child is eligible for special education or related services.

A parent may request an initial evaluation at any time to determine if their child is a child with a disability, regardless of whether the child has participated in an MTSS framework. 34 C.F.R. § 300.301(b). The implementation of MTSS strategies cannot be used to delay or deny the provision of a full and individual initial evaluation, pursuant to 34 C.F.R. §§ 300.304 through 300.311, to a child suspected of having a disability under 34 C.F.R. § 300.8.[10] It would be inconsistent with the evaluation provisions at 34 C.F.R. §§ 300.301 through 300.111 for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an MTSS framework.

If the responsible LEA does not suspect that the child has a disability, and denies a parent's request for an initial evaluation, the responsible LEA must provide prior written notice to the parent explaining why the LEA refuses to

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[9] See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Fed. Reg. 46540, 46637 (Aug. 14, 2006); OSEP Memorandum 11-07 (Jan. 21, 2011); and OSEP Memorandum 16-07 (Apr. 29, 2016).

[10] This requirement applies regardless of the referral source (e.g., parental referral, including parents of children who are homeschooled, and public and private school programs, including preschool programs). See also OSEP Memorandum 16-07 (Apr. 29, 2016); and OSEP Memorandum 11-07 (Jan. 21, 2011).

conduct an initial evaluation and the information that was used as the basis for this decision as well as a copy of the notice of procedural safeguards. 34 C.F.R. §§ 300.503 and 300.504. As noted in the response to Question B-2, the parent may challenge the LEA's refusal by requesting a due process hearing or filing a State complaint. See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540, 46636 (Aug. 14, 2006); and OSEP Memorandum 11-07 (Jan. 21, 2011).

C. CHILD FIND CONSIDERATIONS RELATED TO THE COVID-19 PANDEMIC

Question C-1: **What are some of the unique challenges for conducting child find when children participate in online or virtual learning?**

Answer: Generally, children who attend virtual schools or, as experienced during the pandemic, receive instruction virtually, do not have the same degree of face-to-face interactions and in-person contacts with a teacher or other school staff as children who attend brick-and-mortar schools on a full-time basis. As such, teachers of these students have limited opportunity for casual observation of a child's learning abilities and early recognition of issues that may impact their learning. Child find procedures that rely mainly on informal teacher observation and referral may require additional consideration for such children. Where virtual instruction limits or prevents the teacher's interaction and contact with a child, the SEA and LEA should examine whether existing child find policies and procedures are effective in meeting the State's responsibilities of identifying, locating, and evaluating children who may need special education and related services, such as activities described in Question A-5. In general, as child find is an SEA and LEA responsibility, LEAs serving children virtually should not rely solely on referrals by parents as the primary vehicle for meeting IDEA's child find requirements.

Question C-2: **How might States and LEAs enhance their child find activities during the 2021-2022 school year to address the challenges resulting from educational disruptions due to the COVID-19 pandemic?**

Answer: SEAs and LEAs should reexamine the efficacy of their existing child find practices and initiate new activities in light of the educational disruptions caused by the COVID-19 pandemic. For example, LEAs may have to conduct additional screenings of children whose academic and behavioral needs may require an evaluation to determine eligibility for special education and related services consistent with 34 C.F.R. §§ 300.304 through 300.311. Additional efforts can be made in increasing awareness of special education supports for students of all ages through coordinated efforts with SEAs, LEAs, and associated public agencies to highlight the effects of the COVID-19 pandemic on academic performance and social-emotional, behavioral, and mental health needs. Further, efforts can be made to increase awareness of and access to

developmental screenings by placing information booths and providing information about the screening process in settings frequented by families (e.g., health departments, physician's offices, public parks, amusement parks, shopping malls, and children's stores), conducting social media campaigns on multiple online platforms, partnering with other stakeholders such as the PTA, or holding screening events in the community. See response to Question A-5 for additional examples of child find activities.

Question C-3: **If a student has received limited instruction due to educational disruptions as a result of the COVID-19 pandemic and also made little academic progress, should the student be referred for an evaluation to determine eligibility for special education and related services?**

Answer: Not necessarily. Levels of student performance primarily attributable to limited instruction do not mean the student requires special education and related services under IDEA. IDEA's child find and eligibility procedures are designed to identify, locate, and evaluate students with a suspected disability to determine whether, as a result of the disability, the student requires special education and related services. IDEA's regulations in 34 C.F.R. § 300.306(b) specifically state that a child must not be determined to be a child with a disability if the determinant factor is due to a lack of appropriate instruction in reading or math. LEAs must examine individual referrals for special education and should work with families to determine additional general education supports and interventions that can appropriately meet the child's needs that are attributable to limited instruction as a result of the COVID-19 pandemic and not because the child is suspected of having a disability under IDEA. LEA staff should document these supports when they provide prior written notice to parents under 34 C.F.R. § 300.503, explaining the reasons why the LEA will not conduct an evaluation to determine eligibility for special education and related services for their child.

Question C-4: **When a parent shares that their child contracted COVID-19, has long COVID, or has other post-COVID conditions, and the symptoms of the child's condition (such as fatigue, mood changes, or difficulty concentrating) are adversely impacting the child's ability to participate and learn in the general curriculum, must the child be referred for special education and related services?**

Answer: Yes. If a child experiencing symptoms from long COVID is suspected of having a disability (e.g., other health impairment) and needs special education and related services under IDEA, they must be referred for an initial evaluation to determine the impact of the long COVID symptoms and the child's academic and functional needs.[11]

[11] For more information see the Department's Long COVID under Section 504 and the IDEA: A Resource to Support Children, Students, Educators, Schools, Service Providers, and Families (Jul. 26, 2021).