

## Secretary Releases Waiver Recommendations on IDEA

On April 27, 2020, the U.S. Secretary of Education, Betsy DeVos, released a report to the Congress as directed by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES legislation required the Secretary to provide recommendations to the Congress on what, if any, waiver authorities the Congress should consider to provide limited flexibility to assist States and local educational agencies to meet the needs of students and adults with disabilities during the COVID-19 national emergency.

The report includes core principles were used in considering the recommendations:

- The health and safety of America’s students, teachers, parents, and administrators is a top priority;
- Learning must continue for all students;
- Decision-making must be based on what is best for students, not the “system;”
- Parents must be informed about the impact waivers will have on their children’s education and consent to those changes; and
- Services typically or historically provided in person must naturally occur differently.

The entire report includes discussions recommendations on Carl D. Perkins Career and Technical Education Act, Adult Education and Family Literacy Act, Elementary and Secondary Education Act and the Individuals with Disabilities Education Act and Rehabilitation Act of 1973.

There are two areas of recommendation related to IDEA and the Rehabilitation Act – transition from Part C to preschool special education and personnel development scholarships. The language from the report on these two areas is listed below:

“Recognizing that implementation of the IDEA and the Rehabilitation Act can present difficult challenges during the COVID-19 pandemic, the Department has consistently emphasized (and will continue to do so) that schools and other recipients can and should find solutions for their students. Indeed, the Department is heartened to see many positive examples across the nation of teachers, schools, LEAs, States, as well as Vocational Rehabilitation (VR) agencies, rising to meet the needs of those who rely on them.

The Department is not requesting waiver authority for any of the core tenets of the IDEA or Section 504 of the Rehabilitation Act of 1973, most notably a free appropriate public education (FAPE) in the least restrictive environment (LRE). The Department’s position is based on the principles that:

- Schools can, and must, provide education to *all* students, including children with disabilities;
- The health and safety of children, students, educators, and service providers must be the first consideration;
- The needs and best interests of the individual student, not any system, should guide decisions and expenditures;
- Parents or recipients of services must be informed of, and involved in, decisions relating to the provision of services; and
- Services typically provided in person may now need to be provided through alternative methods, requiring creative and innovative approaches.

In general, the following recommendations regarding the IDEA and the Rehabilitation Act acknowledge that students, individuals, families, and States are having to adapt to novel circumstances due to the pandemic national emergency. These recommended flexibilities are rooted in the need to minimize barriers to learning and issues arising from the use of funds in an extraordinary time. To that end, this report includes recommendations concerning the IDEA (Part C (Infants and Toddlers with Disabilities) to Part B (Assistance for Education of all Children with Disabilities) Transition, and Personnel Development Scholarships), as well as several provisions of the Rehabilitation Act relating to VR programs and funds.

### ***IDEA Waiver Authority Recommendations***

#### **1. Waiver Authority Recommendation (IDEA Part C to Part B Transition)**

Section 612(a)(9) of the IDEA (20 U.S.C. § 1412(a)(9))

Section 614(a)(1)(C)(i)(I) of the IDEA (20 U.S.C. § 1414(a)(1)(C)(i)(I))

Section 637(a)(9)(A)(ii)(II) of the IDEA (20 U.S.C. § 1437(a)(9)(A)(ii)(II))

### **Summary of Waiver**

This waiver authority would provide the Secretary with the authority to extend the IDEA Part B transition evaluation timelines (Part B initial evaluation), such that calculation of a timeline obligation shall resume no later than the day on which health and safety factors allow for face-to-face meetings to resume and the toddler is able to be evaluated. This waiver authority would also include explicit authorization for Part C services to continue during the delayed Part B transition evaluation timeline so that a toddler may continue to receive Part C services after his or her third birthday and until a Part B evaluation is completed and an eligibility determination made. This flexibility should allow for CARES Act funds or other Federal education funds (e.g., IDEA Part B funds) to be used to provide these services.

### **Rationale**

Without this flexibility, a toddler with a disability will lose access to services once he or she turns 3 years old. With this flexibility, the parent and the SEA or other lead agency may agree to continue providing early intervention services (Part C services) to toddlers with a disability until a Part B evaluation has been completed and an eligibility determination has been made. The funding mechanisms must be addressed, as Part B funds cannot be used for a child not yet eligible for Part B services, and Part C funds cannot be used for a child who has aged out of Part C.

## **2. Waiver Authority Recommendation (Personnel Development Scholarships)**

Section 662(h)(1) of the IDEA (20 U.S.C. § 1462(h)(1))

### **Summary of Waiver**

This waiver authority would allow the Secretary to grant a deferral of the work or repayment requirements or allow credit to be given for the service obligation if employment was interrupted by the COVID-19 national emergency.

### **Rationale**

Section 3519 of Division A of the CARES Act provides relief from the service obligation for those scholars receiving TEACH grants but does not address the IDEA personnel preparation grants. The IDEA personnel preparation grants, similar to TEACH grants, addressed in Division A of the CARES Act, have service obligation requirements that recipients may not be able to meet during the COVID-19 pandemic. However, unlike TEACH grants, the IDEA personnel preparation grants were not included in the CARES Act. If scholars in the program do not, within a specified period, fulfill the employment



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obligations required by the scholarship, the scholars face repayment penalties for part or all of their scholarships with interest.

The full report is located at:

<https://www.ed.gov/news/press-releases/secretary-devos-reiterates-learning-must-continue-all-students-declines-look-for-congressional-waivers-fape-lre-requirements-idea>

The next step is for the Congress to consider the Secretary's recommendations and decide if any waivers should be made to the current IDEA law. Any changes to IDEA in these or other areas would have to pass both houses of Congress and be signed into law by the President.