

77 IDELR 191

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**Questions & Answers on Implementing
IDEA Part C During COVID-19**

Office of Special Education Programs

N/A

October 21, 2020

Related Index Numbers

352.20 Individualized Family Service Plan

352.16 Early Intervention

265.015 Implementation of IEP

Judge / Administrative Officer

N/A

Ruling

Responding to questions about implementing Part C services during the COVID-19 pandemic, the Office of Special Education Programs advised early intervention service providers and state lead agencies that they may determine that certain services cannot be provided due to mandated health restrictions. However, OSEP stated in a Q&A document that agencies and providers must provide prior written notice to the parent concerning which services cannot be implemented. Moreover, IFSP teams must determine which services can be implemented during the pandemic and amend the IFSP to reflect any changes in services or delivery methods.

Meaning

If health-related restrictions on in-person learning prevent certain services from being implemented exactly as described in an IFSP, the IFSP team must convene to consider other options, such as providing different services to meet the student's needs or different methods of delivering services, such as video-conferencing. To demonstrate that it made appropriate efforts to meet the student's needs and ensure educators implement the IFSP to the extent possible, the IFSP team should document the various options it considered, which options it rejected and why, and revise the IFSP to reflect any new services

or delivery methods.

Case Summary

Even when COVID-19-related restrictions make it impracticable to provide a particular service required by an infant's or toddler's IFSP, or impossible to provide the service in a natural setting, that doesn't end a lead agency's or EIS provider's obligations. Instead, the agency or provider must send the parent prior written notice, decide what services can be provided (including through alternative delivery methods), and update the IFSP so everyone knows what's being provided and how. In a Q&A document, OSEP acknowledged that public health responses to the pandemic may prevent lead agencies and EIS providers from implementing all of a student's Part C services. For example, agencies and providers may be unable to implement services in the child's home, a community setting, a daycare, or other natural environment, OSEP observed. When this occurs, OSEP stated, the agency or provider must provide the parents PWN as soon as possible explaining that the service cannot be implemented as stated in the IFSP. In addition, the IFSP team, including the parents, must determine which services can continue while pandemic-related health restrictions remain in effect, "and consider other services or alternate means of service delivery, if feasible and consistent with privacy interests, such as through the use of telecommunications, including telephone or videoconferencing, or consultative services to the parent," OSEP wrote. Finally, OSEP advised that the lead agency or EIS provider must document the team's decision and revise the IFSP accordingly. The revisions should reflect "the agreed-upon services that will be provided in light of the circumstances (e.g., program closures, social distancing or other measures) so that the IFSP is clear to the parents and all who are responsible for providing IDEA Part C services to the child," OSEP wrote.

Full Text

October 21, 2020

The Office of Special Education Programs (OSEP), within the U.S. Department of Education's (Department) Office of Special Education and Rehabilitative Services, issues this Question and Answer (Q & A) document in response to inquiries concerning implementation of the Individuals with Disabilities Education Act (IDEA) Part C provision of service in the current COVID-19 environment.

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

To review other Q & A documents that OSEP has provided related to COVID-19, please visit <https://sites.ed.gov/idea/topic-areas/#COVID-19>. Additional information specific to the COVID-19 pandemic may be found online at <https://www.ed.gov/coronavirus>. Additional OSEP early intervention (EI) resources, strategies and support materials are available at <https://ectacenter.org/>.

IFSP meetings and service provision

Part C of the IDEA provides funds to the State lead agency (State LA) to make EI services available to all eligible infants and toddlers with disabilities and their families living within the State. These EI services are provided in conformity with the child's individualized family service plan (IFSP), 34 C.F.R. § 303.13(a)(9). Under 34 C.F.R. § 303.340, for each infant or toddler with a disability, the State LA must ensure the development, review, and implementation of an IFSP developed by a multidisciplinary team, which includes the parents, that (a) Is consistent with the definition of that term in 34 C.F.R. § 303.20; and (b) Meets the requirements in 34 C.F.R. § 303.342 through 34 C.F.R. § 303.346. This document addresses the IFSP meeting, notice and other requirements related to service provision.

IFSP meetings and notice

Q1. How can parents, State LAs and their early intervention service (EIS) providers hold initial, periodic and annual IFSP meetings when LAs and EIS providers cannot conduct face-to-face meetings?

The Department recognizes that some States, due to operational constraints caused by the COVID-19 pandemic, are currently unable to conduct face-to-face IFSP meetings. IDEA Part C provisions in 34 C.F.R. § 303.342(d) require that the initial, annual and periodic IFSP meetings be held in settings and at times that are convenient for the family. Additionally, IFSP meetings need to be in the native language of the family or other mode of communication used by the family (unless this is not feasible). During the time of this pandemic when in-person meetings are not feasible or practicable, the Department is extending the flexibility for IFSP periodic reviews that is allowed in 34 C.F.R. § 303.342(b)(2) to the State LAs and local EIS providers to conduct initial and annual IFSP meetings through alternate means, such as through a telephone or video conference call (if feasible and consistent with privacy standards) if acceptable to the parents and other IFSP team meeting participants.

45-Day timeline

Q2. Does IDEA allow for flexibility in meeting the 45-day timeline for conducting the initial IFSP meeting?

Yes, in specific circumstances. The IDEA Part C 45-day timeline is required under 34 C.F.R. §§ 303.310, 303.342(a) and 303.345(c). The 45-day timeline applies to any screening offered by the State, the initial evaluation, the child and family assessment, and the initial IFSP meeting. The two exceptions to the 45-day timeline are when:

1) The child or parent is unavailable to complete the required activities (screening, initial evaluation, initial assessments of the child and family, and the initial IFSP meeting) due to exceptional family circumstances that are documented in the child's early intervention records; and

2) The parent has not provided consent for the screening (if applicable), the initial evaluation, or the initial assessment of the child despite documented and repeated attempts by the lead agency or EIS provider to obtain parental consent.

OSEP has also applied documented exceptional family circumstances when clear circumstances outside the State LA's or EIS provider's control, such as a hurricane, do not permit the underlying activity to occur and thus the child and family are unavailable as a practical matter.¹ In these very limited circumstances, under 34 C.F.R. § 303.310(c), the State LA or EIS provider must:

1) document in the child's early intervention record the exceptional circumstances; and

2) complete the activities as soon as possible after the documented exceptional circumstances no longer exist.

For at least two of the activities in the 45-day timeline, the evaluation of the child to determine eligibility and the child assessment, (but possibly also for all of the activities required) the inability to conduct an in-person observation may be critical to ensuring appropriate evaluation and assessment. Given that in-person meetings may not be feasible or advisable due to the pandemic related to COVID-19, the pandemic can constitute the basis for documented exceptional family circumstances to the 45-day timeline.

Service provision

Q3. What must a State LA and its EIS providers do if they cannot provide IDEA Part C services in accordance with the IFSP due to the pandemic?

In many cases, the public health responses related to COVID-19 may prevent EIS providers from delivering specific early intervention services in a child's IFSP. For example, Part C services on many IFSPs are to be provided in the child's natural environment, including the child's home and community settings (such as day care) that are natural or typical for a same-aged infant or toddler without a disability². When the lead agency or EIS provider

cannot provide IDEA Part C services in accordance with the IFSP, it must provide prior written notice to the parents as soon as possible. The child's IFSP Team, which includes the parents, must then determine which services can be provided to meet the child's needs during this time, and consider other services or alternate means of service delivery, if feasible and consistent with privacy interests, such as through the use of telecommunications, including telephone or videoconferencing, or consultative services to the parent. If the parent has previously agreed, or agrees during the pandemic, the prior written notice can be provided through electronic mail (email).³

The State LA and EIS providers must document the IFSP Team's determination and revise the child's IFSP to reflect the agreed-upon services that will be provided in light of the circumstances (e.g., program closures, social distancing or other measures) so that the IFSP is clear to the parents and all who are responsible for providing IDEA Part C services to the child. OSEP notes that, where feasible, early intervention services identified in the IFSP should be based on peer reviewed research to the extent practicable, but the Department understands that in light of the public health responses related to the COVID-19 pandemic, peer reviewed research may not be available for services provided remotely.⁴

¹This exception does not apply if the State LA or EIS provider staff are unavailable due to circumstances such as staffing shortages.

²See 34 C.F.R. § 303.344(d)(ii).

³See the previously issued Q & A on Part C Procedural Safeguards (June 30, 2020) for more information.

⁴See 34 C.F.R. § 303.344(d)(1).

Cases Cited

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