

2021-2022 LEGAL UPDATES FOR SPECIAL EDUCATORS

Oswego CUSD 308
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I. LEGISLATION



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LEGISLATIVE UPDATE

Primary Themes of Recent Illinois Student-Related Legislation:

- Diversity, equity, and inclusion
- Student mental health and safety
- Student sexual health and safety
- Reduction/elimination of use of time out, isolated time out, and physical restraint
- COVID relief

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SPECIAL ED LEGISLATION

Public Act 102-0057, eff. 7/9/21: Annual PUNS Guide to Parents:

This Act amended Section 2-3.163 of the *School Code* to provide that ISBE, **through school districts**, must provide SWDs' parents and guardians a copy of the Department of Human Services' guide, *Understanding PUNS: A Guide to Prioritization for Urgency of Need for Services*, each year at the student's annual review IEP meeting.

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SPECIAL ED LEGISLATION

Public Act 102-0150, eff. 7/23/21: High-Cost Special Education Funding Commission:

This Act added a new Section 14-17 to the *School Code* to create a High-Cost Special Education Funding Commission for the purpose of making recommendations for an alternative funding structure for high-cost special education students that is aligned to the principles of EBF.

(Note: Commission's report was submitted to Governor and General Assembly on 11/29/21, with recommendation for reimbursement calculation scaled so the highest amount goes to Tier I districts. Rationale was that Tier I and II districts should receive a greater share of available funds than Tier III and IV districts, and that funding should be placement neutral – i.e., regardless of whether placement is public or private.)

https://www.isbe.net/Documents_HCSEFC/Commission-Report-2021.pdf

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SPECIAL ED LEGISLATION

Public Act 102-0172, eff. 7/28/21: Extending Eligibility Age-Out:

This Act amended Section 14-1.02 of the *School Code* to extend student eligibility for special education services **through the end of the regular school year** in which they turn age 22 (unless they graduate with a regular high school diploma or are otherwise found ineligible prior to such time).

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SPECIAL ED LEGISLATION

Public Act 102-0173, eff. 7/28/21: COVID-19 Post-Secondary Transition Recovery Eligibility:

This Act added Section 5/14-17 to the *School Code*, which provides that if a student with an IEP reaches age 22 during the time in which their in-person instruction, services, or activities were suspended for a period of 3 months or more during the school year as a result of the COVID-19 pandemic, the student is eligible for such services during the 2021-2022 school year.

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SPECIAL ED LEGISLATION

Public Act 102-0173: COVID-19 Post-Secondary Transition Recovery Eligibility (cont.):

Also see ISBE's *Frequently Asked Questions: Public Act 102 – 0172 and Public Act 102-0173* (revised 9/21)

<https://www.isbe.net/Documents/FAQ-HB-40-HB-2748.pdf#search=Frequently%20Asked%20Questions%20Public%20Act%20102>

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SPECIAL ED LEGISLATION

Highlights of *Frequently Asked Questions: Public Act 102–0172 and Public Act 102-0173* (ISBE, revised 9/21):

- “School year” means regular school term per serving entity’s calendar, not summer school or ESY period.
- Staff holding LBS I or II or School Service Personnel endorsement will be considered appropriately licensed to serve these students.
- Age range groupings under 23 IAC 226.720(b) remain in effect.
- *IDEA* funds cannot be used beyond the age of 21, but tuition reimbursement for nonpublic facilities and special transportation reimbursement will continue.

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SPECIAL ED LEGISLATION

Highlights of *Frequently Asked Questions: Public Act 102–0172 and Public Act 102-0173* (cont.):

- For purposes of PA102-0173, 3 months means three consecutive calendar months. However, where there were not 3 consecutive months of suspension of in-person instruction, services, or activities but the cumulative suspension of in-person instruction in a regular school year far exceeded 3 months, districts should make an individual determination as to the impact on the student’s ability to progress towards his/her IEP goals and the need to offer the student the opportunity to return for the 2021-22 school year.

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SPECIAL ED LEGISLATION

Highlights of *Frequently Asked Questions: Public Act 102–0172 and Public Act 102-0173* (cont.):

- Hybrid periods of remote/in-person instruction are not exempt.
- Students whose parents opted for remote learning when in-person instruction, services, and activities were available are not eligible.
- Last IEP goals should be implemented unless otherwise mutually agreed; however, no IEP meetings or reevaluations are required.
- FAPE and procedural safeguards are not required under the Act but are “recommended” by the ISBE.
- No due process, only State complaints to address disagreements about these services.
- *IDEA* funds may not be used for these services.
- Staff holding LBS I or II or School Personnel endorsement will be considered appropriately licensed to serve these students.

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SPECIAL ED LEGISLATION

Public Act 102-0516, eff. 8/20/21: Career and Technical Education Opportunities:

This Act made various changes to the *School Code*, including amending Section 14-8.03 to require that:

- As a component of transition planning, a school district must provide a student with information about the school district's CTE opportunities and postsecondary CTE opportunities.
- A high school student with an IEP may enroll in the district's CTE program at any time if participation in a CTE program is consistent with the student's transition goals.
- CTE coordinator may be an additional necessary IEP team member for transition planning.

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SPECIAL ED LEGISLATION

Public Act 102-0254, eff. 8/6/21: Out-of-State Placements:

This Act amends Section 5/14-7.02 of the *School Code* to provide that prior to placing a student in an out-of-State special education residential facility, and at the annual review for a student already placed out-of-State, the school district must refer to the student or the parent/guardian the option to place the student in a special education residential facility located within Illinois, if any, that provides treatment and services comparable to those provided by the out-of-State facility.

Related Note: On 2/4/22 the ISBE adopted emergency rules permitting placement of students with disabilities in nonapproved private special education schools under certain limited circumstances.

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SPECIAL ED LEGISLATION

Public Act 102-0209, eff. 1/1/22: Extended Early Intervention Eligibility:

This Act amended the Early Intervention Services System Act to provide children who receive early intervention services prior to their third birthday and who are found eligible for an IEP and whose birthday falls between May 1 and August 31 may continue to receive early intervention services until the beginning of the school year following their third birthday.

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OTHER STUDENT-RELATED LEGISLATION

***Computer Literacy Skills* (Public Act 101-0654, eff. 3/8/21):**

This Public Act (among many other things) added Sections 10-20.73 and 27-22(3.5) to the *School Code* to require that:

- All school districts must ensure that students receive developmentally appropriate opportunities to gain computer literacy skills beginning in elementary school.
- For students entering the 9th grade *in 2022-2023* and each school year thereafter, required courses include at least one year of a course (which may be English, social studies, or any other subject) that includes intensive instruction in computer literacy.

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OTHER STUDENT-RELATED LEGISLATION

***Media Literacy* (Public Act 101-0055, eff. 7/9/21):**

Added new Section 27-20.08 to the *School Code* that requires public high schools to include a unit on media literacy in its curriculum ***beginning in the 2022-2023 school year.***

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OTHER STUDENT-RELATED LEGISLATION

Comprehensive Personal Health and Safety Education and Sexual Health Education (Public Act 102-0522, eff. 8/20/21):

New Sections 27-9.1a and 27-9.1b were added to the *School Code* that:

- Significantly expand the content of comprehensive personal health and safety programs to include age- and developmentally-appropriate and trauma-informed education that aligns with the National Sex Education Standards, including information on consent and healthy relationships, anatomy and physiology, puberty and adolescent development, gender identity and expression, sexual orientation and identify, sexual health, and interpersonal violence; and
- Include a focus on consent education.

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OTHER STUDENT-RELATED LEGISLATION

Sex Education and Sexting (Public Act 102-0412, eff. 8/20/21):

Amended Section 27-9.1 of the *School Code* to require that sex education course material and instruction in schools must include an age-appropriate discussion about sexting, including (i) possible legal, social, academic and other consequences; (ii) Internet safety and how sexting may pose a risk on the Internet; (iii) the identification of individuals in schools or a trusted community leader who may be contacted for assistance; and (iv) the development of strategies for resisting peer pressure and communicating in a positive manner.

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OTHER STUDENT-RELATED LEGISLATION

Expanded Restorative Measures for Bullying Prevention Policy and Procedures (Public Act 102-0241, eff. 8/3/21):

Section 27-23.7 of the *School Code* is amended to provide that “restorative measures” required in bullying prevention policies and procedures must include school-based alternatives to exclusionary discipline that increase student accountability if bullying is based on religion, race, ethnicity, or any other category that is identified in the *Illinois Human Rights Act*.

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OTHER STUDENT-RELATED LEGISLATION

Time Out, Isolated Time Out, and Physical Restraint (Public Act 102-0339, eff. 8/13/21):

Section 10-20.33 of the *School Code* was amended to align with the ISBE rules that have been in place since April 2020, as revised in June 2021, regarding the use of isolated time out, time out and physical restraint, and to provide some additional requirements.

Note: Further revisions to the ISBE’s RTO rules to align them with this Public Act were adopted on 1/19/22.

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OTHER STUDENT-RELATED LEGISLATION - PA 102-0339

Under Public Act 102-0339 schools:

- May use isolated time out, time out and physical restraint only under certain limited circumstances
- Are prohibited from using mechanical restraint and chemical restraint
- Are limited in using prone restraint to specific circumstances which will phase out after the 2021-2022 school year, subject to further restrictions by ISBE rules
- Are prohibited from depriving a student of certain specified necessities during time out/isolated time out

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OTHER STUDENT-RELATED LEGISLATION - PA 102-0339

- Must give written notice to parent/guardian no later than 2 school days after incident and, if requested, convene a meeting with school personnel within 2 school days of parent/guardian request
 - Post-RTO meeting must be separate from IEP or Section 504 meeting
 - Parent/guardian may request that the meeting be by phone or video conference
 - Must include student, if appropriate, and at least 1 staff member involved in the RTO incident; parent or guardian; at least 1 appropriate staff member not involved in the RTO incident (e.g., social worker, psychologist, nurse, or behavior specialist)

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OTHER STUDENT-RELATED LEGISLATION – PA 102-0339

- The post-RTO meeting must address:
 - The events that occurred prior to the RTO incident and any actions taken by school personnel or the student leading up to the incident
 - The incident of RTO
 - The events that occurred or actions taken following the RTO incident, whether the student returned to regular school activities, and, if not, how the student spent the rest of the school day
 - What school personnel could have done differently to avoid the RTO and what, if any, alternative courses of action the school can take to support the student and avoid the future use of RTO

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OTHER STUDENT-RELATED LEGISLATION – PA 102-0339

- A written summary of the post-RTO meeting and any agreements/conclusions reached must be made and becomes part of the student's temporary school record. If the parent/guardian does not request a post-RTO meeting within 10 school days, that fact must be documented as part of the student's school record.
- Schools must also provide information to parents/guardians on the standards for the use of RTO, parent and student rights, and the State complaint process.

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OTHER STUDENT-RELATED LEGISLATION - PA 102-0339

Under the Act, the ISBE was required to establish:

- Goals for a *systemic reduction and eventual elimination* of the use of isolated time out, time out and physical restraint
- A system of ongoing review, auditing, and monitoring of schools' (i) compliance with all documentation and reporting requirements, and (2) meeting ISBE's established goals

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OTHER STUDENT-RELATED LEGISLATION - PA 102-0339

The ISBE's RTO goals and benchmarks are:

1. **Reduction Goal:**

Over a 12-month period, a 25% reduction in the use of RTO for students experiencing over 5+ instances in a 30-day period

Benchmark Completion Date:

June 30, 2022

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OTHER STUDENT-RELATED LEGISLATION - PA 102-0339

ISBE's RTO goals and benchmarks (cont):

2. **Training Goal:**

Develop annual training in collaboration with external stakeholders based on field research and best practices focusing on crisis de-escalation; restorative practices; identifying signs of distress during RTO; trauma-informed practices; and behavior management practices.

Benchmark Completion Date:

July 1, 2022

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OTHER STUDENT-RELATED LEGISLATION - PA 102-0339

ISBE's RTO goals and benchmarks (cont):

3. **Resource Development Goal:**

Create an "Alternatives to Time Out and Restraint Recognition Program" to share best practices that work with students based on age, IEP, and placement.

Benchmark Completion Date:

July 1, 2022

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OTHER STUDENT-RELATED LEGISLATION - PA 102-0339

School districts have 3 years to meet the established reduction targets for the use of isolated time out, time out and physical restraint. Each school board is required to:

- Create a time out and physical restraint oversight team (including, but not limited to teachers, paraprofessionals, school service personnel, and administrators)
- Develop a school-specific plan for reduction and eventual elimination of RTO and procedures to implement the plan. Plans must include, but not be limited to:

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OTHER STUDENT-RELATED LEGISLATION - PA 102-0339

- Reduce and eventually eliminate a reliance on RTO for behavioral interventions and develop noncoercive environments
- Develop IEPs that are oriented toward prevention of the use of RTO with the intent that a plan be separate and apart from a student's IEP or Section 504 Plan
- Ensure that appropriate school personnel are fully informed of the student's history, including any history of physical or sexual abuse and other relevant medical and mental health information (subject to applicable confidentiality laws)
- Support a vision for cultural change that reinforces positive behavioral interventions and support rather than RTO; effective ways to de-escalate situations to avoid RTO; crisis intervention techniques that use alternatives to RTO
- Use of debriefing meetings to reassess what occurred and why and think through ways to prevent the use of RTO

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OTHER STUDENT-RELATED LEGISLATION - PA 102-0339

Each school board is also required to:

- Submit a report to ISBE each year for 3 years after effective date (unless exempt) on the progress made toward achieving the goals and benchmarks
- Modify plans as necessary to meet the goals and benchmarks
- Notify parents/guardians that the plan and reports are available for review

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OTHER STUDENT-RELATED LEGISLATION - RTO

Related Notes:

- Revisions to the ISBE's RTO rules to bring them into alignment with the new requirements of Public Act 102-0339 are pending.
- Revised ISBE guidance on RTO is also pending.
- ISBE Form 11-01 on RTO was last revised on 2/28/22.
- ISBE Form 11-01B on RTO complaints was released in 2/22.
- RTO Reduction Plan/Checklist for districts was released on 2/24/22.

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OTHER STUDENT-RELATED LEGISLATION (?)

PT Services (Public Act 102-0307, eff. 1/1/22):

This Act amends the *Illinois Physical Therapy Act* by adding a new requirement that a PT providing services to a patient diagnosed by a health care professional as having a chronic disease that may benefit from physical therapy must communicate at least monthly with the patient's treating health care professional to provide updates on the course of therapy.

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OTHER STUDENT-RELATED LEGISLATION

Student Mental Health Day Absences (Public Act 102-1577, eff. 1/1/22):

The compulsory attendance provisions of Section 26-1 of the *School Code* were amended to permit students to take up to 5 days of mental or behavioral health days off of school, without providing a doctor's note and with an opportunity to make up any missed work. After the 2nd mental health day used, students may be referred to appropriate school support personnel.

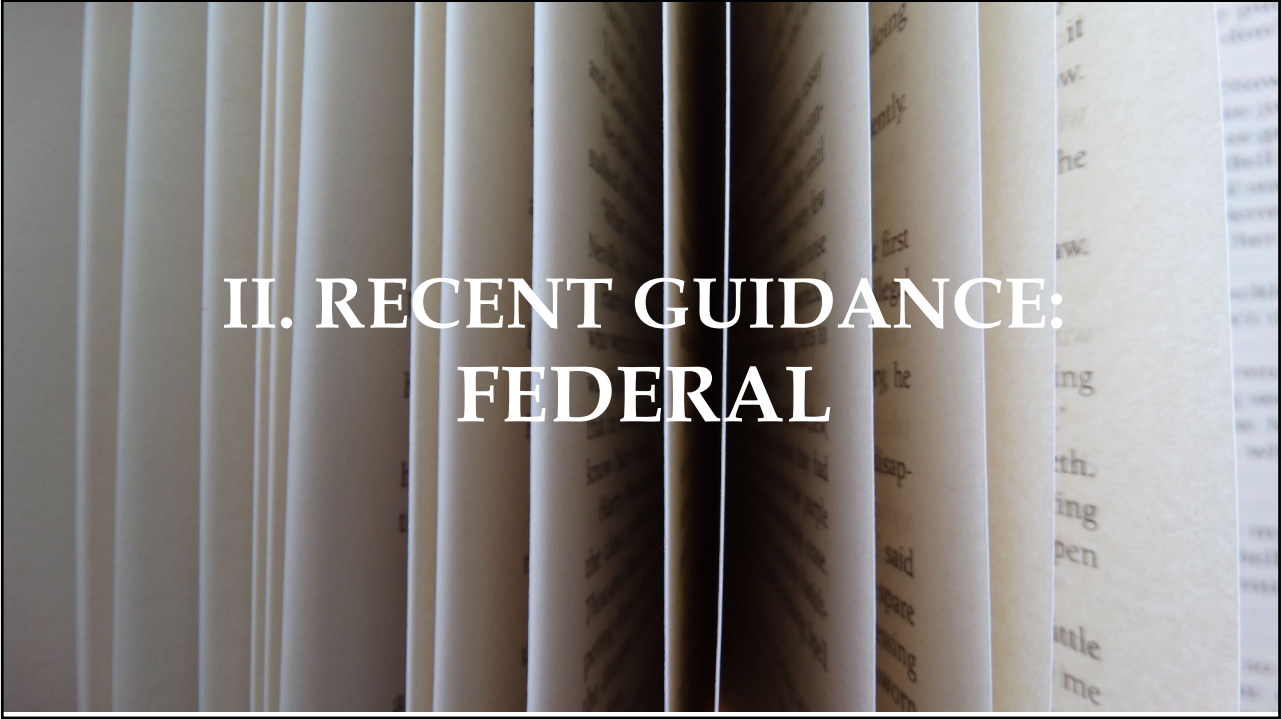
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OTHER STUDENT-RELATED LEGISLATION

Amended Suicide Prevention Policy (Public Act 102-0267, eff. 7/1/22):

Section 2-3.166 of the *School Code* (“Ann Marie’s Law”) has been amended to provide that the ISBE model suicide prevention and awareness policy, and any policy adopted by a school board, must include methods of intervention for students “identified as being at increased risk of suicide.” Such students now include those who (i) suffer from a mental health disorder, (ii) suffer from a substance abuse disorder, (iii) engage in self-harm or have previously attempted suicide, (iv) reside in an out-of-home placement (v) are experiencing homelessness, (vi) are LGBTQ, (vii) are bereaved by suicide, or (viii) have a medical condition or certain types of disabilities.

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II. RECENT GUIDANCE: FEDERAL

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RECENT FEDERAL GUIDANCE

1. *Long COVID under Section 504 and the IDEA: A Resource to Support Children, Students, Educators, Schools, Service Providers, and Families* (OCR/OSERS 7/26/21):

The CDC has identified long COVID as another term for post-COVID conditions. According to the CDC, post-COVID conditions “are a wide range of new, returning, or ongoing health problems people can experience more than four weeks after first being infected with the virus that causes COVID-19. Even people who did not have symptoms when they were infected can have post-COVID conditions.”

<https://sites.ed.gov/idea/files/ocr-factsheet-504-20210726.pdf>

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RECENT FEDERAL GUIDANCE

2. *Return to School Roadmap: Child Find Under Part B of the Individual with Disabilities Education Act* (OSERS 8/24/21):

<https://sites.ed.gov/idea/files/rts-idea-08-24-2021.pdf>

Question A-1: What is child find?

Answer: 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*.

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RECENT FEDERAL GUIDANCE

Return to School Roadmap: Child Find Under Part B of the Individual with Disabilities Education Act (cont.):

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...LEAs are responsible for carrying out child find obligations to all children residing within the jurisdiction.

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RECENT FEDERAL GUIDANCE

Return to School Roadmap: Child Find Under Part B of the Individual with Disabilities Education Act (cont.):

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...

(Note: The Illinois special education rules *do* require the use of RtI data as part of any SLD eligibility determination.)

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RECENT FEDERAL GUIDANCE

Return to School Roadmap: Child Find Under Part B of the Individual with Disabilities Education Act (cont.):

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.

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RECENT FEDERAL GUIDANCE

Return to School Roadmap: Child Find Under Part B of the Individual with Disabilities Education Act (cont.):

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

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RECENT FEDERAL GUIDANCE

Answer: Not necessarily...

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*....

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RECENT FEDERAL GUIDANCE

Return to School Roadmap: Child Find Under Part B of the Individual with Disabilities Education Act (cont.):

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., OHI) and may need special education and related services, 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.

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RECENT FEDERAL GUIDANCE

3. Return to School Roadmap: Development and Implementation of IEPs in the LRE Under the IDEA (OSERS 9/30/21):

This Q&A document (the 2nd in the series announced by OSERS) highlights several procedural and substantive requirements of *IDEA* relative to the development and implementation of IEPs, with a focus on considering the impact of COVID-19 on students in the IEP context. It addresses areas such as:

- Considering special factors, including AT needs
- Addressing social, emotional, behavioral, and mental health needs
- Addressing school-related health needs for students with underlying health conditions
- Determining appropriate measurable goals and considering the need for compensatory services
- Making placement and ESY decisions
- Considering transition services

<https://sites.ed.gov/idea/idea-files/return-to-school-roadmap-development-and-implementation-of-ieps/>

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RECENT FEDERAL GUIDANCE

Return to School Roadmap: Development and Implementation of IEPs in the LRE Under the IDEA (cont.)

Highlights include:

- To help ensure the provision of FAPE, IEP teams can identify how IEP instruction and services can be provided if circumstances require a change from in-person learning.
- Districts and cooperatives may continue to hold IEP meetings virtually after school buildings reopen if the parent agrees to a virtual meeting or if continued COVID-19 prevention practices necessitate it.
- For children with disabilities who have 1 or more underlying medical conditions that put them at increased risk of severe illness if they contract COVID-19, IEP teams should include an individual who knows about the health needs of the child, including whether COVID-19 prevention and risk reduction strategies may be needed – e.g., school health service staff, school nurses, or the child's health care professional, as appropriate.

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RECENT FEDERAL GUIDANCE

Return to School Roadmap: Development and Implementation of IEPs in the LRE Under the IDEA (cont.)

- If an IEP team is unwilling or unable to address the health and safety of a child with a disability due to state or local prohibitions in the use of masks, personal protective equipment, or other COVID-19 prevention and risk reduction measures, the district must provide PWN and the parent may use *IDEA's* dispute resolution procedures.
- Such a state or local law, regulation, rule, or policy could be inconsistent with the *IDEA's* requirement to ensure that a continuum of educational placements related to placement in the LRE.

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RECENT FEDERAL GUIDANCE

Return to School Roadmap: Development and Implementation of IEPs (cont.)

- It is critically important that IEP teams consider and address any adverse impacts of the COVID-19 pandemic on each child with a disability. This includes a discussion of whether the child may have new or different needs than had been determined prior to the pandemic.
- It is ED's position that many of the same types of individualized and child-centered deliberations that are appropriate for an IEP team would be appropriate when discussing the need for, and extent of, compensatory education services.

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RECENT FEDERAL GUIDANCE

Return to School Roadmap: Development and Implementation of IEPs (cont.)

- A child's IEP team may decide that compensatory services are needed to mitigate the impact of disruptions and delays in providing appropriate services to the child. Considerations may include:
 - If the initial evaluation, eligibility determination, and development and implementation of the IEP were delayed
 - If the special ed and related services were provided during the pandemic through virtual, hybrid, or in-person instruction were not appropriate to meet the child's needs
 - If some or all of the IEP could not be implemented using the methods of service delivery available during the pandemic – e.g., if PT or behavioral interventions in the IEP could not be provided through virtual means.

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RECENT FEDERAL GUIDANCE

Return to School Roadmap: Development and Implementation of IEPs (cont.)

- For states, districts, and cooperatives that do not use a process for making individualized determinations about “recovery services” or “COVID mitigation services,” such services likely would not be considered compensatory services.
- A child can be eligible for both compensatory and ESY services.

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III. SELECT CASE LAW UPDATES FROM 2021



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Child Find



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SELECT CASE LAW - CHILD FIND

See *D.C. v. Klein Independent School District*, 79 IDELR 4 (5th Cir. 6/17/21): District's delay in conducting an *IDEA* evaluation of a 5th grade student who received accommodations and increasingly intensive reading interventions under a Section 504 Plan (which noted that he had "secondary characteristics of dyslexia evident in reading comprehension and written expression") was unreasonable and a violation of the district's child find obligation.

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SELECT CASE LAW - CHILD FIND

See *West Haven (CT) Board of Education*, 121 LRP 36313 (OCR 7/1/21): District's delay in conducting a Section 504 evaluation of a student with a physical impairment was not justified by the district's "myriad and unique public health responsibilities" – e.g., addressing positive COVID-19 cases, implementing quarantining protocols, conducting contact tracing, and securing vaccinations for school personnel – and related need to "prioritize and use a triage approach" during the pandemic.

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SELECT CASE LAW - CHILD FIND

See *ISBE Case No. 2021-DP-0087* (9/24/21): A school district's use of RtI supports for reading for several years before an evaluation of the student was conducted and special education eligibility was established was a violation of the district's child find obligation. According to the hearing officer, it was unclear if the interventions were research-based, the student's teachers were not familiar with the interventions being provided, and there was limited communication between the RtI interventionists and the general education teachers about the student's performance. The hearing officer also noted that there were no specific guidelines in the district for when a student should be referred for an evaluation if she was not making progress in RtI.

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SELECT CASE LAW - CHILD FIND

ISBE Case No. 2021-DP-0087 (cont):

The hearing officer found in the parents' favor on all of their child find claims and noted that:

- The long-term use by a district of RtI services does not allow it to delay or deny an evaluation of a child suspected of having a disability.
- When a child does not make sufficient progress to meet age- or grade-level standards after being provided with research-based interventions, the district must promptly seek consent to evaluate. In this case, however, the district "effectively created, in its RtI system, a system parallel to that of the special education system."

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ISBE Case No. 2021-DP-0087 (cont):

- Find the student eligible under SLD (in the areas of basic reading skills, reading fluency, reading comprehension, and written expression), OHI, and Speech/Language Impairment
- Develop an IEP to address the deficits caused by these disabilities
- Place the student in a private special education day school for two years
- Provide numerous reading, written expression, executive functioning, and speech services until the student was enrolled in the private day school
- Pay for an independent speech/language evaluation
- Pay for the parents' private evaluation
- Pay for compensatory education services in an amount up to \$18,000 per year for three years

IEPs and IEP IMPLEMENTATION



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SELECT CASE LAW – IEPs

See *Rogich v. Clark County school District*, 79 IDELR 252 (D.Nev. 10/12/21): Two private evaluators of a student with multiple disabilities emphasized that she needed intensive multimodal, multisensory, research-based instruction in reading and math to make progress. District included “multisensory components of Orton-Gillingham” in the IEP, but court agreed with parents that this was insufficient in that district failed to specify which methodologies, if not O-G, could be consistently implemented by all of the student’s teachers.

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SELECT CASE LAW – IEP IMPLEMENTATION

See *Albuquerque Public Schools Board of Education v. Armstrong*, 121 LRP 41363 (D.N.Mex. 12/13/21): District’s failure to implement SPIRE reading program with fidelity resulted in lack of meaningful progress and denial of FAPE to a student with dyslexia. Court rejected parents’ argument that SPIRE was not effective for students with dyslexia but agreed that instruction should have been provided 4-5 times per week in groups of 6-8 students, rather than 2-3 sessions per week in groups of 10 or more.

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PRIOR WRITTEN NOTICE

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SELECT CASE LAW - PRIOR WRITTEN NOTICE

See *Thurman G. v. Sweetwater Independent School District*, 79 IDELR 66 (N.D.Tex. 7/26/21): Parents claimed (in part) that the district had issued insufficient prior written notices in that they did not include enough detail to allow the parents to have active, informed, and meaningful participation in educational decisions for their child with ID and S/LI. Court rejected this claim, noting that the district had actually provided very detailed PWNs explaining its proposed or refused actions and reasons why these actions were proposed or refused.

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SELECT CASE LAW - PRIOR WRITTEN NOTICE

See *In re: Student with a Disability*, 79 IDELR 84 (SEA DE 6/17/21): After the district's schools closed due to the pandemic, the parent of a student with DD was offered but did not provide her consent for virtual speech therapy. Parent requested in-person speech therapy, but the district declined this request. However, the district did not send a PWN. Per the IHO, the PWN should have been provided and this procedural error resulted in a denial of FAPE to the student.

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QUESTIONS?



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