



Mississippi Federal Program Conference

Day 2: IDEA

Jennifer Mauskapf, Esq.
jmauskapf@bruman.com

www.bruman.com

Monica Munin, Esq.
mmunin@bruman.com

IDEA Hot Topics

Equitable Services and the Proportionate Share

Time and Effort Documentation

Significant Disproportionality & CEIS/CCEIS

Maintenance of Effort

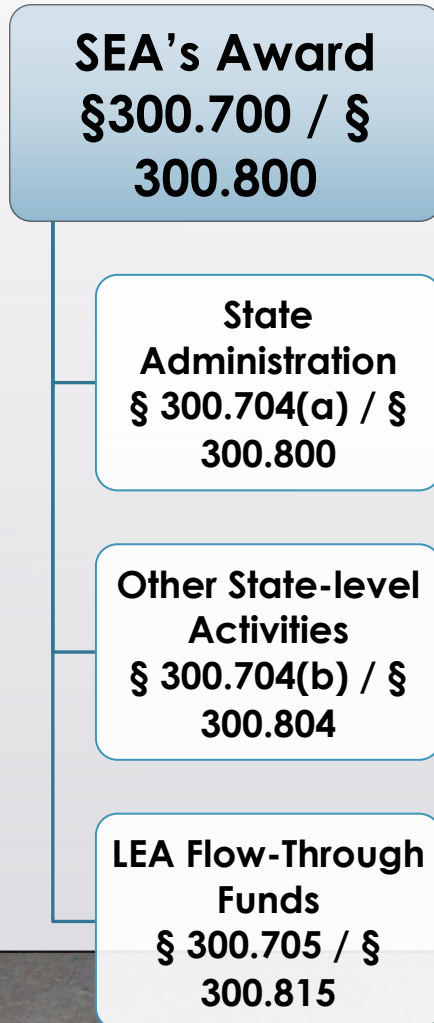
Supplement Not Supplant

State Complaint and Due Process Case Studies

Legal Resources

- **IDEA Website** - <https://sites.ed.gov/idea/>
- **Code of Federal Regulations: 34 CFR Part 300**
 - http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title34/34cfr300_main_02.tpl
 - <http://idea.ed.gov/download/finalregulations.pdf>

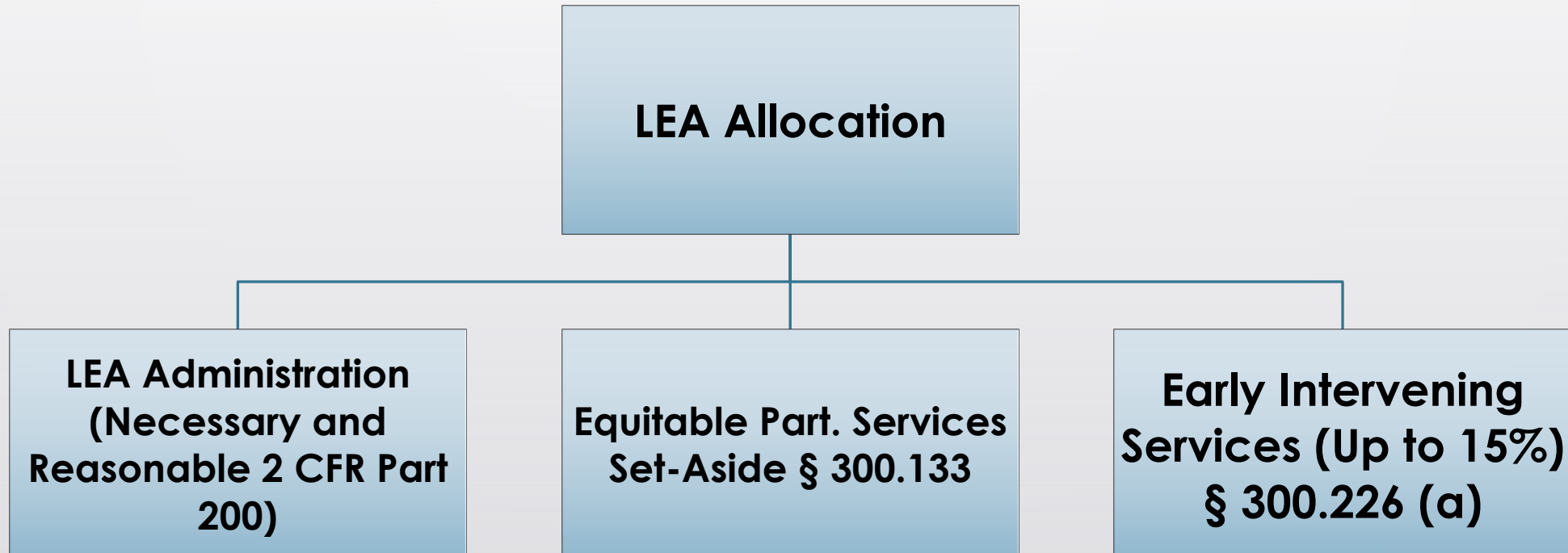
Distribution of IDEA Funds



- State Administration is Capped
 - Same reservation as FY 2004 or \$800,000 (plus rate of inflation)
- Other State-level Activities is Capped
 - Amount Equal to 10% of SEA Allocation of FY 2006 (adjusted cumulatively for inflation)
 - No Reasonable Adjustments



LEA-level “Set Asides”



IDEA Equitable Services

Child Find

Consultation

Proportionate Share

Provision of Services



Equitable Services & Child Find

“Each LEA must locate, identify and evaluate all children with disabilities who are enrolled by their parents in non public, including religious, elementary and secondary schools located in the school district served by the LEA.”

34 CFR § 300.131 (a) (2006)

→ LEA must identify all “parentally placed non public school children” with disabilities

Parentally-Placed Non Public School Children w/ Disabilities 34 CFR §§ 300.130 – 300.144

☐ Who are these children?

- ☐ Voluntarily enrolled by their parents in non public schools
- ☐ Not referred to non public schools to receive FAPE

☐ Right to “equitable participation services” in IDEA, Part B

- ☐ NO individual right to services, not entitled to FAPE

☐ **Must spend proportionate share of Part B subgrant funds on providing special education and related services**

- ☐ LEA makes final decisions on services – type, how, where, by whom
- ☐ “Services Plan” vs. IEP
- ☐ “Must Spend” → special carry-over rule

IDEA Consultation Requirements

- “Timely and meaningful” consultation
- Who?
 - Non public school representatives
 - Representatives of parents of parentally-placed non public school children with disabilities

CONSULTATION: Must be “Timely and Meaningful”

- **Timely**
 - Before the LEA makes any decisions
- **Meaningful**
 - Genuine opportunity for parties to express their views
 - Views seriously considered
 - Not unilateral offer without opportunity for discussion
- **BUT NOTE:**
 - LEA has final decision

Required Consultation Topics

- 1- Child find process
- 2- Proportionate share of Part B funds
 - How calculated (Appendix B)
 - *Crucial to have accurate count of eligible children*
- 3- Consultation Process
 - How will consultation operate throughout the year to ensure parentally-placed non public school children with disabilities can meaningfully participate?

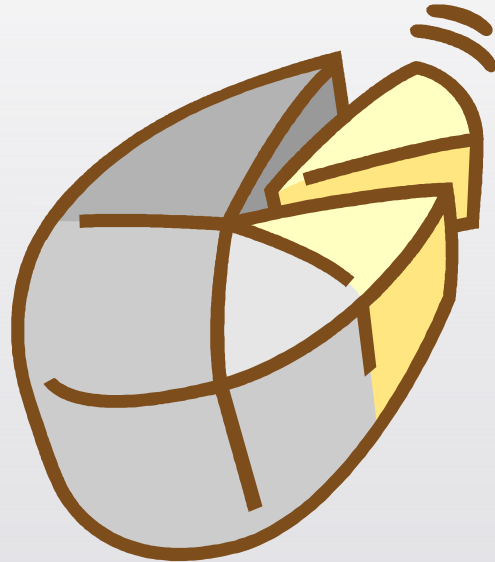
Required Consultation Topics (cont)

- 4- Provision of special education & related services
 - a- How, where, and by whom
 - b- Types of services
 - c- How apportioned if funds insufficient for all
 - d- How and when decisions will be made
- 5- How LEA will provide written explanation when LEA final decision on services disagrees with non public school officials

Proof of Consultation

- ☐ Written explanation by LEA regarding services
 - ☐ Must include explanations where LEA disagrees with views of non public school representatives
- ☐ Signed, “**written affirmation**” from representatives of participating non public schools after timely and meaningful consultation has occurred
 - ☐ Attendance/Sign-in sheet NOT sufficient
- ☐ If no affirmation provided within “reasonable period of time” after consultation, forward to SEA documentation of consultation process

Proportionate Share



The Proportionate Share Set Aside

- LEA must calculate the proportionate share for parentally-placed non public school children with disabilities before earmarking funds for any early intervening activities in § 300.226. (Appendix B to regulations)
- How are numbers of parentally-placed non public school children with disabilities derived?
 - **LEA** determines the number, after consultation requirements

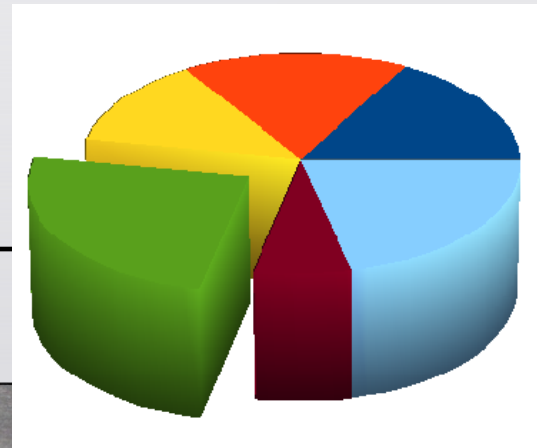
Calculating the Proportionate Share

Number of eligible parentally-placed
non public school CWDs

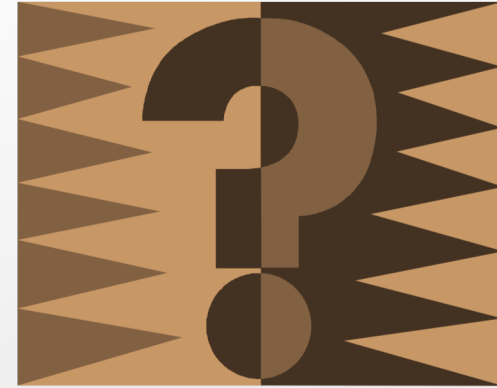
Total number of eligible CWDs in the LEA
(public and non public)



% of LEA IDEA, Part B Grant for
Equitable Services to Parentally-
Placed CWDs



Calculate the Proportionate Share



- LEA Child Find Results:
 - A total of 20,000 SWDs
 - Of those, 2,000 are parentally placed SWDs
 - Half of the eligible parentally placed SWDs participate in equitable services
- What % of the LEA's IDEA, Part B Grant for Equitable Services should be used for providing equitable services to Parentally-Placed CWDs?

Applying the Calculation...

Number of eligible parentally-placed
non public school CWDs

➤ **2,000**

=

% of LEA IDEA, Part B Grant for
Equitable Services to Parentally-
Placed CWDs

➤ **0.1 = 10%**

Total number of eligible CWDs in the LEA
(public and non public)

➤ **20,000**

- REMEMBER: Calculation based on students eligible, not just those participating.

Carryover

- “...LEA must spend” the proportionate share
 - If fails to spend entire proportionate share for the given year → LEA must obligate remaining funds for equitable services for a carry-over period of one additional year.
- At end of carry-over year?
 - Assuming LEA is in compliance with Child Find, consultation, and other IDEA equitable services requirements → LEA may use the unexpended funds to pay for other allowable Part B expenditures for that same LEA.

Delivery and Provision of Services

- Requirement is to provide “special education and related services (including direct services)”
 - Not required to provide direct services exclusively
 - Possibilities: consultative services, equipment or materials for eligible parentally placed CWDs, training for non public school teachers and other non public school personnel
 - No individual right to services
 - Does NOT include Child Find activities
- Provided directly by LEA or through non public company
- May be on-site at non public school, with safeguards

Personnel Qualifications (20 USC 1412(a)(14))

- Do NOT apply to:
 - Non public school teachers or paraprofessionals
 - Third party contractor teachers or paraprofessionals
- DO apply to:
 - LEA teachers teaching non public school students
 - LEA paraprofessionals
- G-3. States may exceed IDEA requirements and require teachers in non public schools hold certain credentials or certifications if consistent with State law.

Services Plan

- 34 CFR §§ 300.132(b) and 300.138(b)
- To the extent appropriate, must be developed, reviewed, and revised in accordance with the IEP requirements in 34 CFR §§ 300.321-324
 - Review periodically and revise as necessary
 - Parent participation in review and development



LEA Maintains Control

- LEA plans, designs, and implements program (through timely and meaningful consultation)
- LEA controls all finances
 - *Includes maintaining title to materials, equipment, and property purchased with those funds

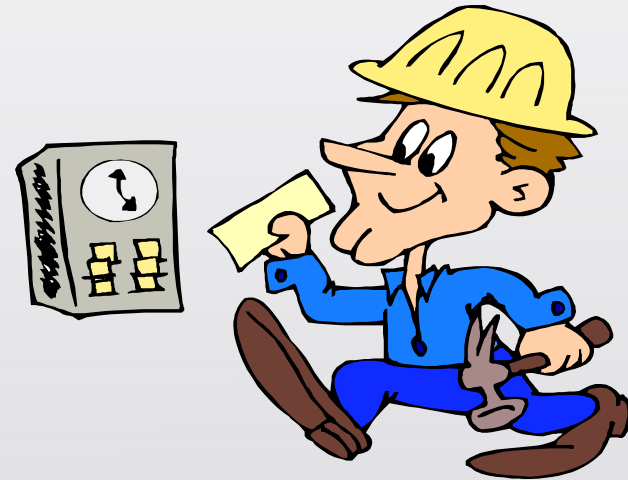


NEW PROPOSED GUIDANCE!!!

Revised December 2020

- Available at: <https://sites.ed.gov/idea/files/qa-parentally-placed-private-schools-12-2020.pdf>
- Emphasis on the ability of religious & faith based institutions to participate in equitable services or provide equitable services
- Added emphasis on consultation as an on ongoing process rather than an annual meeting
- Transportation changes?
- Equipment management?
- Enforcement of rights for parents and private school officials

Time and Effort Documentation



Documenting Staff Salaries

- Must document staff salaries (2 CFR 200.403(a))
- Based on records that accurately reflect the work performed and identify the cost objective that the employee is working on.
- Examples:
 - Schoolwide Program
 - Title I Public School Administration (if admin is not consolidated)
 - Title II Administration
 - Equitable Services
 - Equitable Services Administration
 - Parental Involvement
 - Consolidated Administration (ESSA Section 8203)



Documenting Staff Salaries

- Must document staff salaries (2 CFR 200.430(i))
- Based on records that accurately reflect the work performed and identify the cost objective that the employee is working on.
 - Examples:
 - Schoolwide Program
 - Title I Public School Administration (if admin is not consolidated)
 - Title II Administration
 - Equitable Services
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WHY? 200.403(a); 200.430(i) And WHO must keep T&E? 200.430(i)(1) & (4)

- WHY? Any employee funded by federal grants must maintain documentation showing that their time is allocable to a federal program.
 - That documentation must be based on records that **accurately reflect the work performed.**
 - Everything else feeds back into this standard
- WHO? Time and effort must be collected for all employees (not contractors) whose salaries are:
 - Paid in whole or in part with federal funds
 - Used to meet a match/cost share requirement



Minimum Standards for Documentation

200.430(i)(1)

Time and effort records MUST:

1. Be supported by a system of internal controls which provides reasonable assurance charges are accurate, allowable and allocable;
2. Be incorporated into official records;
3. Reasonably reflect total activity for which employee is compensated;
4. Encompass all activities (federal and non-federal);
5. Comply with established accounting policies and practices; and
6. Support distribution among specific activities or cost objectives.

Old Circular A-87 Rule

Semi-Annual Certifications


If an employee works on a **single cost objective**:

- After the fact
- Account for total activity
- Signed by employee **or** supervisor
- Every six months (at least twice a year)

Personnel Activity Report (PAR)

If an employee works on **multiple cost objectives**:

- After the fact
- Account for total activity
- Signed by the employee
- Prepared at least monthly and coincides with one or more pay periods



May our agency continue to follow our time and effort system under the Prior OMB Circular Rules?

Yes!

If your agency had a compliant system under A-21, A-87, or A-122 that should meet the requirements under the UGG.

Significant Disproportionality and CEIS/CCEIS

Significant Disproportionality Regulations

- Promulgated under the Obama administration (December 2016)
- Intended to address disparities in the treatment of minority students with disabilities
- Established a standard methodology to determine disproportionality across 14 categories and 7 race and ethnicity groups
 - 14 categories related to disability, placement and discipline and 7 race and ethnicity groups = 98 risk ratios
 - What is deemed “significant” is (still) defined by states

What is Significant Disproportionality?

- Significant disproportionality based on race and ethnicity with respect to:
 - Identification of children as CWDs, including a particular impairment
 - Placement in a particular setting
 - Incidence, duration and type of disciplinary actions, including suspensions
- Significant Disproportionality is different from:
 - **Disproportionate representations** – States identify LEAs with disproportionate representation of racial and ethnic groups in sped that is the result of inappropriate identification
 - **Significant discrepancy** – States identify LEAs with significant disparities by race and ethnicity or by disability status in the rate of long-term suspensions and expulsions of CWDs.

Significant Disproportionality

- In February 2018 the Trump administration delayed implementing the regulations until July 1, 2020.
 - The date for children ages three to five was pushed to July 1, 2022

The delay (published in the Federal Register July 2018) allowed States to move forward with the new methodology but delayed formal enforcement so that ED could review whether or not the rule was effective.



Significant Disproportionality

- *COPAA v. DeVos* (March 7, 2019) vacated the 2018 regulation delaying implementation of the December 19, 2016 Equity in IDEA regulation on significant disproportionality. ED was ordered to immediately reinstate the 2016 rules.
- In Fall of 2019, ED announced that it would **NOT** seek to appeal the ruling.



Significant Disproportionality

- States were required to set risk- ratios (all 98!!) and ensure compliance with the new regulations
- Significant Disproportionality Reporting Forms were due by May 15, 2020 as part of the SEA grant application submission.





Enforcement of Significant Disproportionality Regulations

What happens if my LEA is identified as having significant disproportionality?

- LEA must set aside 15% of the IDEA funds for comprehensive coordinated early intervening services (CCEIS) to address factors contributing to significant disproportionality.
- Public reporting on the review, and if appropriate, revision of policies and procedures in the area LEA is identified, for each year identified.

Changes to CEIS/CCEIS under the New Regulations

- Coordinated Early Intervening Services (CEIS)- 34 CFR Sec. 300.226
 - Voluntary
 - K-12
 - May only be used to provide services for children not currently identified as needing special education or related services but who need additional academic & behavioral support to succeed in a general education environment
 - Up to 15% of IDEA Part B funds
- Comprehensive Coordinated Early Intervening Services (CCEIS)- 34 CFR Sec. 300.646
 - Mandatory
 - Age 3- grade 12
 - May be used to provide allowable services for children who either have or have not been found eligible for special education services (may not *exclusively* be used for CWDs)
 - Exactly 15% of IDEA Part B funds

Allowability & Significant Disproportionality

- Can CEIS be used to pay for services identified in a child's IEP, if related to the factors contributing to significant disproportionality?
 - Arguably yes, but proceed with caution.



Pop Quiz!

- In implementing CCEIS, staff at your LEA want to provide educational and behavioral evaluations to a student who has an IEP. Is this allowable?
- Yes
- No
- It Depends



If LEA is significantly disproportionate, can the set-aside for CCEIS be consolidated?

- Yes, but must document an amount equal to the amount consolidated was used to pay for allowable activities under CEIS, regardless of whether IDEA funds paid for the activity.



IDEA Local Maintenance of Effort (MOE)

LEA Maintenance of Effort

The general rule:

- An LEA may not reduce the amount of local, or state and local, funds that it spent for the education of CWDs below the amount it spent for the preceding fiscal year.
- Subsequent years rule

Two components:

- Eligibility standard
- Compliance standard

LEA MOE – Eligibility Standard 300.203(a)

- For purposes of eligibility, the SEA must determine that the LEA has budgeted for the education of CWDs at least the same total or per capita amount from either local funds only or state and local funds as the LEA spent for that purpose from the same source for the most recent prior year for which information is available

LEA MOE – Compliance Standard 300.203(b)

- An LEA must not reduce the level of expenditures for the education of CWDs made by the LEA below the level of those expenditures from the same source for the preceding fiscal year.
- Consequence of Failure → SEA liable to pay back ED with nonfederal funds lesser of the amount of the failure, or the LEA's entire Part B subgrant for that fiscal year

LEA-MOE: Four Ways to Calculate 34 CFR 300.203(b)

1. Comparison of total expenditures using local funds only,
2. Comparison of total expenditures using State and local funds,
3. Comparison of the per pupil amount using local funds only, or
4. Comparison of the per pupil amount using State and local funds.

Allowable Exceptions to LEA MOE

34 CFR 300.204

1. The voluntary departure or departure for just cause, of special education or related services personnel
2. A decrease in the enrollment of CWDs
3. A CWD with an exceptionally costly program (as determined by SEA) left the LEA, aged out, or no longer needs the program
4. The termination of costly expenditures for long-term purchases (equipment, construction, etc.)
5. The assumption of cost by the high cost fund operated by the SEA

LEA MOE Exceptions

300.205(d) & 300.226(a)

- If the LEA receives an increase in its IDEA grant, it may reduce its MOE by half of the IDEA increase
 - Must use the reduction on ESSA allowable activities
- However, the amount of LEA MOE reduction that an LEA can take is affected by an LEA's use of Part B funds for CEIS
- Therefore, if this reduction is used, the LEA must subtract any CEIS set-aside from the LEA MOE reduction amount!

LEA MOE Subsequent Years Rule 300.203(c)

- If LEA fails to meet MOE requirements, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA's reduced level of expenditures.

Applying the Subsequent Years Rule

Which is the Comparison Year?

Fiscal Year	Actual level of effort	Required level of effort	Met/Failed
12-13	\$100	\$100	Met
13-14	\$90	\$100	Failed
14-15	\$90	\$100	Failed
15-16	\$110	\$100	Met
16-17	\$100	\$110	Failed

OSEP FAQs

- Must the LEA use the same method to meet the eligibility standard and compliance standard?
 - No, the LEA may use any of the 4 methods available to meet either standard.
- Can the LEA switch methods from year to year to meet MOE standards?
 - Yes, as long as it uses the correct comparison year and has auditable data to document that it met the standard under the relied-on method in that year.

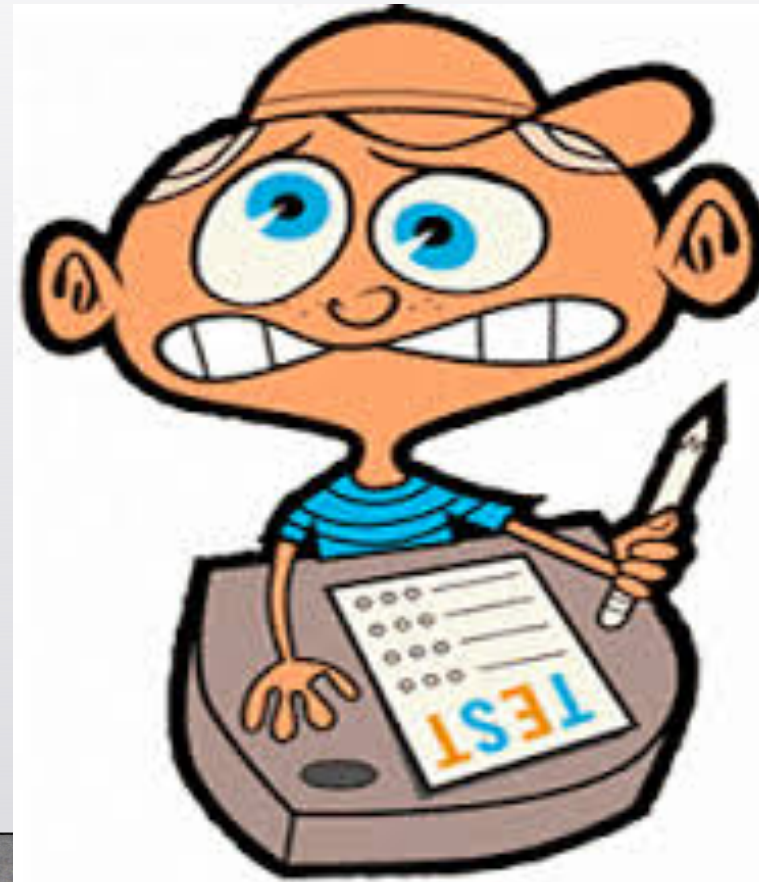
Consequence of the Moving Comparison Year...

- LEAs may need to keep “auditable data” on MOE indefinitely
 - E.g. Must use the last year in which the LEA met the standard under a particular method as the comparison year – even if that was 10 + years ago!



Now It's Your Turn...

LEA MOE Worksheet



Failing the Eligibility Standard

- If the SEA determines an LEA fails to meet MOE eligibility standard using any of the 4 methods, the SEA must provide notice and opportunity for a hearing.
- If, after the hearing, the LEA is not eligible, the SEA retains the Part B subgrant and is required to provide SPED and related services directly to CWDs in the LEA.

Failing the Compliance Standard

- SEA payback to ED with nonfederal funds:
 - Lesser of the amount of the failure, or the LEA's entire Part B subgrant for that fiscal year
 - Can use most favorable method
- SEA can use State procedures to recover funds from LEA

OSEP FAQs

- May LEAs use their local, or State and local, funds to meet both LEA MOE requirements and a matching or MOE requirement for a separate federal program (e.g., Medicaid or Voc Rehab)?
 - Yes!
 - In fact, LEAs must include these funds when calculating the IDEA MOE eligibility and compliance standards.

OSEP FAQs

- May an LEA reduce its required level of expenditures by taking more than one exception in the same fiscal year?
 - Yes

OSEP FAQs

- How does taking an exception in 300.204 affect the required amount of expenditures that an LEA must make in a subsequent year?
 - LEA can use the reduced level to meet MOE in subsequent years!
 - Assumes LEA spent the minimum required.

LEA Flexibility Adjustment to MOE

300.205

- For any fiscal year in which the LEA's allocation exceeds the amount the LEA received in the previous year, the LEA may reduce the level of expenditures required by MOE by not more than 50% of the amount of that excess.
 - LEA must use the amount of local funds equal to the reduction for allowable ESEA activities
 - The amount of funds spent on CEIS counts toward the maximum amount of expenditures the LEA may reduce under this flexibility

LEA Flexibility Adjustment to MOE

300.205

For example:

- LEA's 2015-2016 Part B allocation is \$100,000 *greater* than its 2014-2015 allocation. LEA spent \$0 on CEIS.
- LEA may reduce its required level of MOE by up to \$50,000.

LEA Flexibility Adjustment to MOE 300.205

BUT....

- If the LEA had spent \$15,000 of its Part B allocation on CEIS, then the maximum the LEA could reduce its effort would be \$35,000
- If the LEA had spent more than \$50,000 of its Part B allocation on CEIS, then it could not reduce its level of effort

OSEP FAQs

- May an LEA use both allowable exceptions (300.204) and the local flexibility (300.205) to reduce its level of effort in the same fiscal year?
 - Yes.

Ability to Use CARES \$\$\$ for MOE?



- CARES Act Silent; Looking to ARRA...
 - IDEA ARRA Funds → a large one-time increment in IDEA, Part B funding
 - “Generally...in any FY an LEA's IDEA allocation exceeds the amount the LEA received in the previous year...the LEA may reduce the level of state and local expenditures by up to 50 percent of the amount of the increase as long as the LEA uses those freed-up local funds for activities that could be supported under the ESEA, such as services for children at risk of school failure without additional support.”
 - SFSF Funds → To help stabilize state and local government budgets in order to minimize and avoid reductions in education and other essential public services
 - “With prior approval from the Secretary of Education, a state or LEA may count SFSF (but not IDEA ARRA funds) under the ARRA that are used for special education and related services as non-federal funds for purposes of determining whether the state or LEA has met the IDEA, Part B MOE requirements.”

Supplement not Supplant





LEA Supplement not Supplant 300.202

- Amounts provided to LEAs under Part B must be used to supplement State, local and other federal funds, and not to supplant those funds.



LEA Supplement not Supplant 300.202

- OSEP issued guidance in 2009 stating that if LEA meets its MOE requirement, then the LEA also meets the supplement not supplant requirement; there is no specific cost test.
- Incorporated into Compliance Supplement



Documentation of IEP Services

The Basics

- IEPs
 - Current PLOPS
 - Appropriate annual goals
- Evaluations
- Meeting Notes
- Service Tracking Logs
 - See EDGAR § 76.731 (grantees and subgrantees must maintain records to demonstrate compliance with all program requirements)
- Where and how are these documents maintained?

Prior Written Notice

34 C.F.R. § 300.503

- Must be given to parents if the LEA proposes or refuses to initiate or change the following:
 - Evaluation of a child,
 - Identification of a child,
 - Educational placement of a child, or
 - Provision of FAPE to a child.
- Notice must include: reasons for action or refusal and available procedural safeguards

Progress Data

- Progress Reports
 - Detailed information on progress (or lack of progress) on each goal
 - How often?
- Testing Data
 - State Tests
 - Academic Achievement

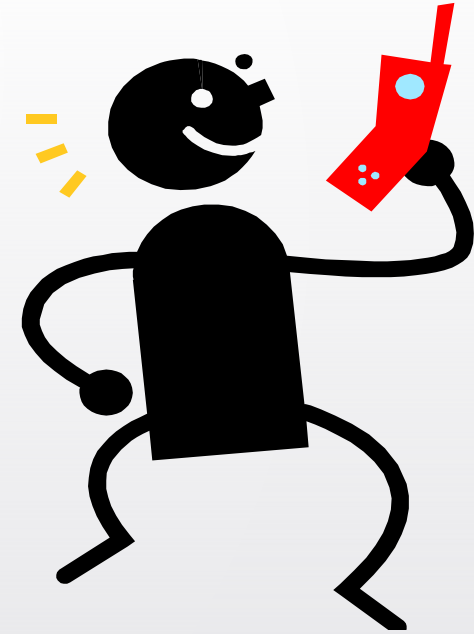
Behavior Data

- Behavior tracking logs
- Behavior Intervention Plan
- Incident Reports
- Suspension/Expulsion records
- Letters re: Discipline
 - Align general disciplinary communications with IDEA requirements
 - Clearly indicate what the process is for students with disabilities



Communication with Parent

- Letters
- Phone Log
- Emails



The single biggest problem in communication is the illusion that it has taken place.

- George Bernard Shaw

Due Process Case Studies



Parental Consent

- Ninth grade student had a private diagnosis of autism and anxiety
 - Received good grades and exhibited appropriate peer interaction until late 2015 when she made terroristic threats against the school and was expelled

District began to evaluate student but terminated evaluation after parents prohibited district from observing student in her parochial school classroom

Dougall v. Copley-Fairlawn City Sch. Dist. Bd. Of Educ., 75 IDELR 271 (N.D. Ohio 2020)



Parental Consent

- HOLDING: Parent attempt to control evaluation process amounted to revocation of consent to evaluate. District had no reason to evaluate until 2015.
- *Dougall v. Copley-Fairlawn City Sch. Dist. Bd. Of Educ.*, 75 IDELR 271 (N.D. Ohio 2020)



Parental Consent Take Away

- District may be justified in calling off initial evaluation if parent restrictions would result in incomplete picture of student's needs
- Must show parent prevented district from performing appropriate evaluation
- Courts and admin officers are willing to consider that parents attempting to impose condition can be considered not to have consented



Parent Communications

- District established communication plan with parent (abusive communications)
 - Limited discussion of 504 plan to biweekly in-person meetings with administrators
 - **Plan did not prohibit parent from contacting school employees**
 - **Plan was limited to district response to parent communication**
 - *L.F. v. Lake Washington Sch. Dist. #414, 75 IDELR 239 (9th Cir. 2020)*



Parent Communications

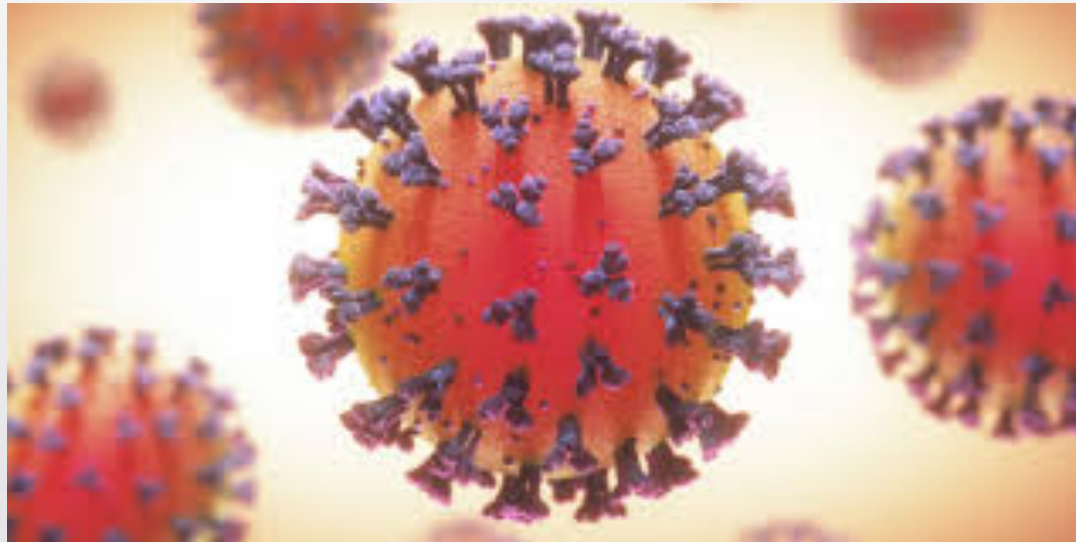
- Parent sued, claimed 1st amendment rights were violated.
- HELD: Communication plan did not restrict parent's right to advocate on child's behalf.
 - Reasonable plan given parents repeated emails to staff
 - KEY: Plan focused on *how the district would respond* NOT on what parent would be allowed to do
 - *L.F. v. Lake Washington Sch. Dist. #414, 75 IDELR 239 (9th Cir. 2020)*

Parent Communications Take Away

- District may set reasonable limit on parent communication with staff when communications are excessive, derogatory, hostile, or intimidating
 - Plan **must** ensure parents have opportunity to raise concerns about student special education program



COVID-19 Litigation



COVID-19 Litigation: Injunctions & TROs

- Parents of several students sought temporary restraining order and temporary preliminary injunction that would require district to provide school-based services immediately.
- November 20, 2020
- *C.M. v. Jara*, 77 IDELR 212 (D. Nev. 2020)



COVID-19 Litigation: Injunctions & TROs

- Held: Court denied Temporary Restraining Order
 - Parents did not demonstrate immediate need for reversal of district ban on in-person learning
 - Court noted issuing TRO would place immense hardship on district
 - Scheduled hearing for prelim injunction (parents must demonstrate virtual learning caused irreparable harm to children)
- *C.M. v. Jara*, 77 IDELR 212 (D. Nev. 2020)



COVID-19 Litigation: Injunctions & TROs Take Away

- Courts are unlikely to require immediate return to in person instruction during pandemic
- BEWARE: Districts must be prepared to show how distance learning is meeting the needs of SWDs if asked to defend against a preliminary injunction



Complaint Timelines During COVID

- California School closed its doors due to COVID-19
- Voicemail full
- Parent requested additional time to serve district with a due process complaint
- HELD: For the parent, who was granted an additional 60 days (90 day timeline normally) due to the COVID19 pandemic
- *I.H. v. Golden Plains Unif. Sch. Dist.*, 76 IDELR 184 (E.D. Cal. 2020)
- May 6, 2020



COVID & Evaluation Timelines

- Grandparents of a kindergartner with autism, ADHD, and a sensory processing disorder may have to wait until brick & mortar operations resume after the COVID19 pandemic for an evaluation to be completed
- Court noted the grandparents did not provide consent until district had shut down brick and mortar operations
 - Evaluation not as urgent as claimed.
 - *Jacksonville North Pulaski Sch. Dist. V. DM*, 76 IDELR 238 (E.D. Ark. 2020)
 - June 12, 2020



Revising IEPs During Distance Learning

- NM District COVID19 re-entry guidance allowed for in-person instruction to certain students
- District court held student w/SLD was entitled to an IEP that reflected her need for in-person instruction
- *Hernandez v. Lujan Grisham*, 77 IDELR 185 (D.N.M. 2020)
- October & December 2020



Revising IEPs During Distance Learning

- HELD: Parent request for a temporary restraining order was granted (to the extent it required district to provide student FAPE)
- District had argued the distance learning IEP was developed in accordance with State Health guidelines
- Court said the IEP did not address the student's educational needs and parent was likely to succeed on the merits of underlying IDEA claims. Evidence showed student was not making progress in remote setting.
- *Hernandez v. Lujan Grisham*, 77 IDELR 185 (D.N.M. 2020)
- October & December 2020

Stay-Put During Covid19

- NY District *did not* have to alter the stay put placement of a student with down syndrome during the Covid19 pandemic to accommodate parent work schedules.
- In the stay-put agreement, parent agreed student would receive instruction in the home if public library was closed. School had called parents to begin instruction in the home pursuant to library closure.
- *Killoran v. Westhampton Beach Sch. Dist.*, 77 IDELR 96 (E.D. N.Y. 2020)

Stay-Put During Covid19

- HELD: Court denied court request for a school based program when library closed due to COVID19 pandemic.
- “Substantially complied with stay-put agreement”
- *Killoran v. Westhampton Beach Sch. Dist.*, 77 IDELR 96 (E.D. N.Y. 2020)

Endrew F. Standard & COVID-19

- “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress in light of the child’s circumstances.”
- A focus on the particular child is at the core of the IDEA. The instruction offered must be specially designed to meet a child’s unique needs through an individualized education program.
- Endrew F. v. Douglas County Sch. Dist. RE-1, 69 IDELR 174 (U.S. 2017)

Consider?

- How are you measuring progress during the COVID-19 pandemic?
- How are you measuring attendance?
- What options is your district offering to students?
 - Is in person instruction available?
 - Remote only?
 - How are you addressing students who are not performing at optimal levels remotely?

Compensatory Education Case Studies

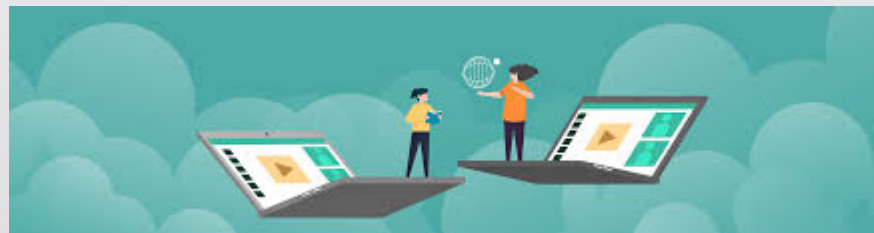


Compensatory Education 34 CFR 300.151 (b)

- **(b) Remedies for denial of appropriate services.** In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address -
 - **(1)** The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
 - **(2)** Appropriate future provision of services for all children with disabilities.

Remember

- If an LEA continues to provide learning opportunities to general student population then they must ensure that students with disabilities also have **equal access** to the same opportunities, **including the provision of FAPE**.
- 34 CFR §§ 104.4, 104.33 (Section 504) & 28 CFR § 35.130 (Title II of the ADA)



Implementing Distance Learning Plans

- Due to COVID closures, school district unable to provide in-person IEP services
 - District developed distance learning plan that maintain all the accommodations and medications from the most recent IEP
 - THOROUGHLY documented provision of services and student progress
 - SEA found the district had provided FAPE despite disruptions and change in modality
 - *Intermediate Sch. Dist 77 IDELR 205 (SEA MN 2020)*
 - *August 20, 2020*

Implementing Distance Learning Plans

- District developed contingency plans for remote learning for all special education students structured as PWN.
 - Intended as temporary measure
 - Staff instructed to prepare draft; if parents agreed with the plan, the district would implement
 - If parent disagreed, an IEP meeting would be called
 - *Denver Pub. Sch. Dist. 1, 120 LRP 29273 (SEA CO 09/11/20)*
 - *September 11, 2020*

Implementing Distance Learning Plans

- Third grade student with SLD and OHI
- Parents alleged they were denied meaningful participation in contingency plans for remote learning
- Parent alleged district failed to provide IEP services during final weeks of year when in-person learning was suspended
 - IEP provided for 100 min/week of specialized instruction
 - *Denver Pub. Sch. Dist. 1, 120 LRP 29273 (SEA CO 09/11/20)*
 - *September 11, 2020*

Implementing Distance Learning Plans

- District staff communicated with parents regarding contingency plan and goals but nothing was finalized with clarity
- Plan was not provided to parents until they requested it
- Contingency plan provided for fewer service minutes than previous IEP and the difference was not discussed
- Virtual services not provided on multiple occasions
- *Denver Pub. Sch. Dist. 1, 120 LRP 29273 (SEA CO 09/11/20)*
- *September 11, 2020*

Implementing Distance Learning Plans

SEA: Failure to implement IEP as written led to a failure to provide 260 minutes of specialized instruction

HOWEVER: Student was making significant growth

Failure to implement was “only a short gap in services, during the weight of the COVID19 pandemic, which did not impact the student’s ability to benefit from his special education program.”

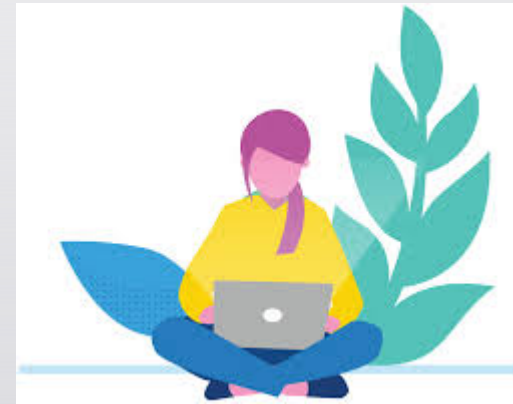
No compensatory education award

Denver Pub. Sch. Dist. 1, 120 LRP 29273 (SEA CO 09/11/20)

September 11, 2020

COVID 19 & Comp-ed

- Compensatory Education
 - Does a contingency plan require a comp-ed determination?
 - What if your IEP team executed an amendment?
 - How will you make the determination?
 - Data
 - Document Discussion & Decision
 - How would OCR/HO react?
 - Document Provision of comp-ed/remedial services



More Resources

- OSEP's IDEA Website
<http://idea.ed.gov>
- The Right IDEA
OSEP's New Technical Assistance and Guidance Website
<http://therightidea.tadnet.org/>
- ONPE's IDEA Booklet:
<http://www.ed.gov/admins/lead/speced/privateschools/index.html>
- <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep-letter-to-zacchini-2-27-17.pdf>.



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