

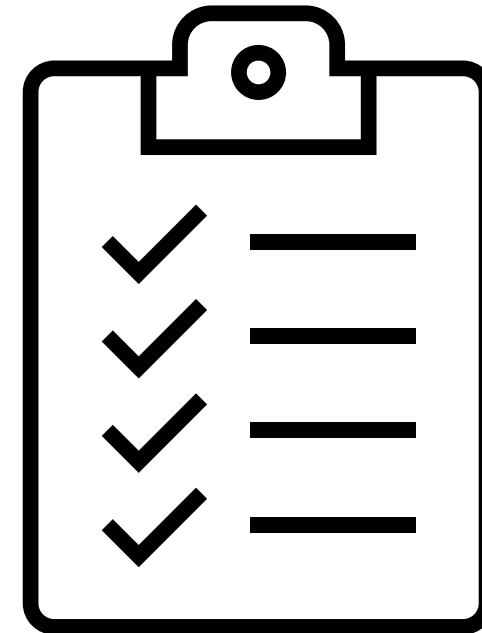
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IDEA WORKSHOP

MARCH 2023

AGENDA

- Guidance and Updates
- Equitable Services for Parentally Placed Private School Students
- CEIS / Significant Disproportionality
- Allowable Use of Funds
- IDEA Personnel Costs (time and effort; stipends)
- Due Process Complaint – Case Study
 - Documentation



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>

U.S. DEPARTMENT OF EDUCATION UPDATES - 2023

- Continued increases for Title I, IDEA necessary to raise bar, Cardona says
- The Department will focus on "substance, not sensationalism."
- The Department's Raise the Bar: Change the World initiative will address "academic excellence, boldly improving learning conditions, and preparing our students for a world of global competitiveness."
- "'Raise the Bar: Lead the World' is the U.S. Department of Education's call to action to transform P-12 education and unite around what truly works—based on decades of experience and research—to advance educational equity and excellence."

DISTRIBUTION OF IDEA FUNDS

SEA's Award
\$300.700 / \$
300.800

**State
Administration**
\$ 300.704(a) / \$
300.800

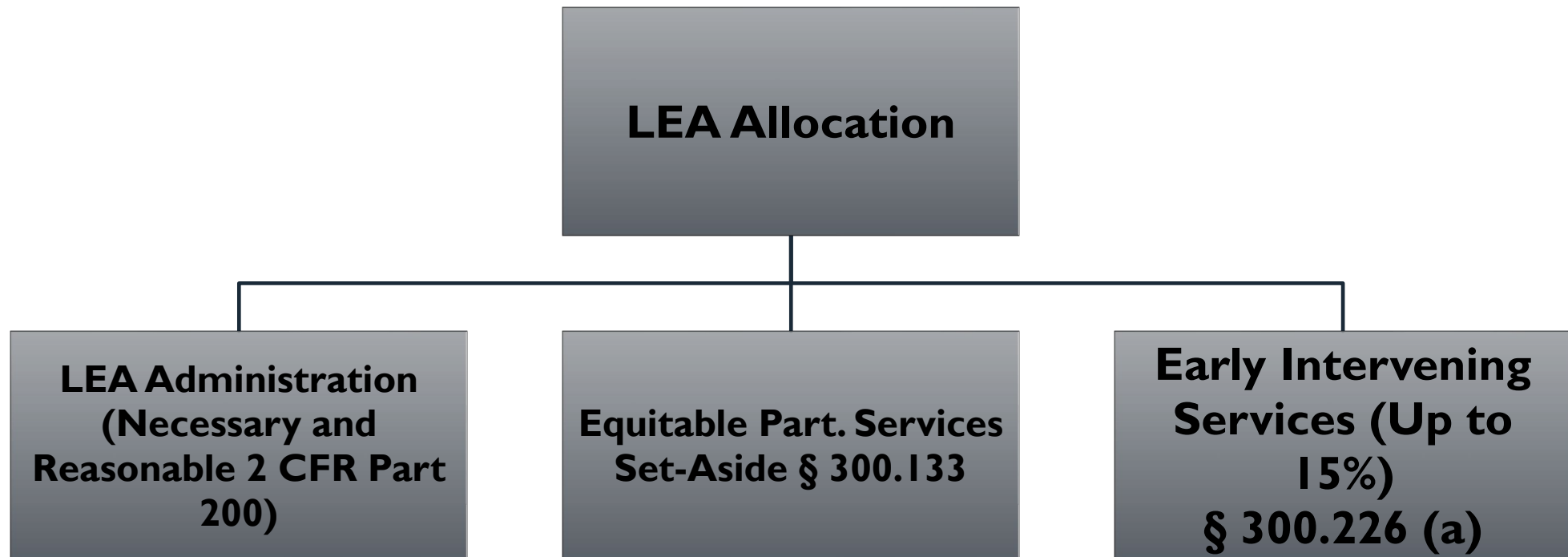
**Other State-level
Activities**
\$ 300.704(b) / \$
300.804

**LEA Flow-
Through
Funds**
\$ 300.705 / \$
300.815

- 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
 - a) How calculated (Appendix B)
 - b) *Crucial to have accurate count of eligible children*
3. Consultation Process
 - a) 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

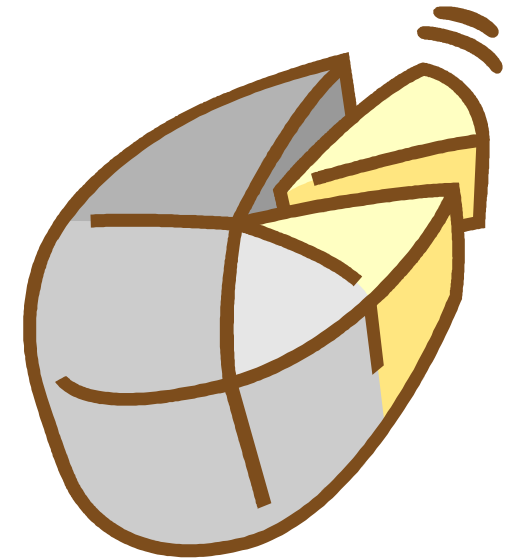
PROOF OF CONSULTATION

- 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



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
private
school CWDs
Total number of
eligible CWDs in the
LEA (public and
private)**

=

**% 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 private
school CWDs**
2,000

**Total number of eligible
CWDs in the LEA (public
and private)**
20,000



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

0.1 = 10%

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.

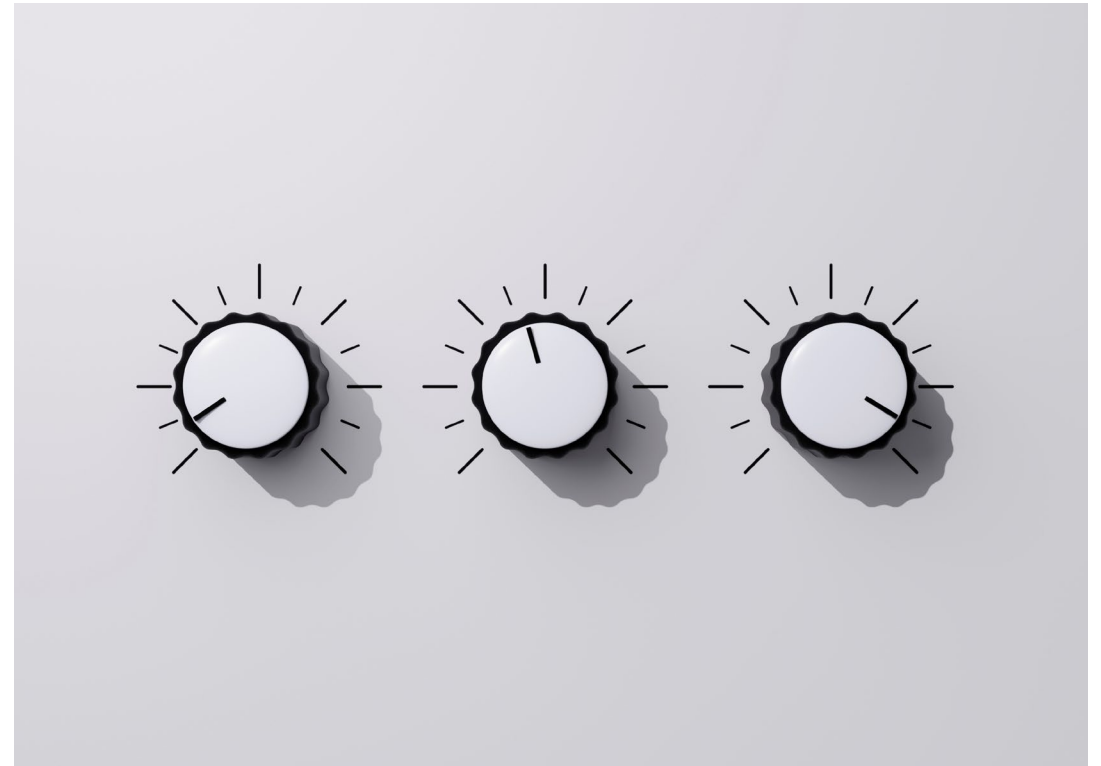
SERVICES PLAN

- 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



FEBRUARY 2022 - REVISED GUIDANCE

- This Q&A document is intended to provide guidance regarding the IDEA requirements applicable to the first category of students—children with disabilities placed by their parents in private schools, who are not enrolled in the LEA, and for whom the **provision of FAPE is not at issue**.
- New topics
 - Equitable Service Providers
 - Preschool Children with Disabilities
 - Children Who Reside Out-of-State
 - State-funded School Voucher and Scholarship Programs
 - Extended Public School Closures
- Available at: https://sites.ed.gov/idea/files/QA_on_Private_Schools_02-28-2022.pdf

FEBRUARY 2022 - REVISED GUIDANCE

- Additional topics to revise
 - Religious & faith-based institutions
 - Consultation as an on ongoing process rather than an annual meeting
 - Transportation
 - Equipment management

EQUITABLE SERVICE PROVIDERS

- Do the IDEA personnel qualification requirements apply to private school teachers providing equitable services?
 - No. SPED teacher qualifications don't apply to private elementary school and secondary school teachers who are providing equitable services (See 34 C.F.R. § 300.138(a)(1)).
- Must public school teachers providing equitable services meet IDEA Part B personnel qualification requirements?
 - Yes. Any person employed as a public school teacher in the State who teaches in an elementary school, middle school, or secondary school providing special education and related services must meet the IDEA personnel qualification requirements in 34 C.F.R. § 300.156(c)

EQUITABLE SERVICE PROVIDERS FAITH-BASED INSTITUTIONS

- May an LEA contract with a faith-based organization to provide equitable services under IDEA?
 - Yes. Under 34 C.F.R. § 300.138(c)(1), services in a child's services plan and those under 34 C.F.R. §§ 300.139 through 300.143 must be provided: (i) by employees of a public agency; or (ii) through contract by the public agency with an individual, association, agency, organization, or other entity. [...] Therefore, there is nothing in IDEA that would prohibit an LEA from contracting with a faith based organization to provide such services.

PRESCHOOL CHILDREN WITH DISABILITIES

- Must an LEA use any of the Section 619 funds it receives under IDEA's Preschool Grants for Children with Disabilities program to provide equitable services to parentally-placed private school children with disabilities aged three through five?
 - Yes. Section 619 of IDEA provides formula grants to States to make available special education and related services for children with disabilities aged three through five.
- Are there any situations in which an LEA may make *FAPE* available to a preschool aged child with a disability by placement in a private preschool program?
 - The public agency that is responsible for providing FAPE to a preschool child with a disability must ensure that FAPE is provided in the LRE [...] If the group of persons making the placement decision, as specified in 34 C.F.R. § 300.116(a)(1), places the child in a public or a private preschool program other than the one selected by the parents and the parents decline the public agency's offer of FAPE because they want their child to remain in the private preschool program they have selected, the LEA is not required to provide FAPE to that child.

PRESCHOOL CHILDREN WITH DISABILITIES

- What obligation, if any, does the LEA where private preschools are located have to serve three- through five-year-old children with disabilities who are parentally-placed in private preschools?
 - An LEA's obligation to serve children aged three through five under the equitable services provisions depends on whether a child is enrolled in a private school or facility that meets the definition of "elementary school" in the IDEA and its implementing regulations.
- What if the child with a disability (age 3-5) is enrolled by his or her parents in a private preschool that does not meet the State's definition of "elementary school"?
 - This child is not considered eligible for equitable services because the private preschool or facility that does not meet the State's definition of "elementary school."

CHILDREN WHO RESIDE OUT-OF-STATE

- Must the LEA where private elementary and secondary schools are located conduct child find activities for parentally-placed private school children who reside outside the State?
 - Yes
- Who is responsible for determining and paying for services provided to parentally-placed private school children with disabilities who reside out-of-State?
 - The LEA where the private school is located, is responsible for paying for the services to be provided to out-of-State parentally-placed private school children with disabilities attending private elementary and secondary schools located in that LEA. For this, the LEAs are required to consult with appropriate private school officials.
- Could an LEA decide to provide services only to students from their LEA or their State?
 - No. LEAs have discretion on how to spend the funds. But, LEAs cannot unilaterally determine, prior to or in the absence of the timely and meaningful consultation process, that the proportionate share of Part B funds for equitable services can only be expended to meet the needs of children who are residents of that LEA or State.

STATE-FUNDED SCHOOL VOUCHER AND SCHOLARSHIP PROGRAMS

- Children with disabilities who attend private schools through a State-funded school choice voucher or scholarship program ARE considered parentally-placed private school children with disabilities under IDEA. Thus, they must be considered for equitable services in the same manner. Thus, the needs of these children must be considered through the consultation process.
- Are there any children participating in a State-funded voucher or scholarship program that an LEA is not required to evaluate or consider for equitable services?
 - Yes. If an LEA proposes to evaluate or reevaluate a child attending a private school through a State-funded voucher or scholarship program, and the child's parents refuse consent or fail to respond to the request to provide consent for their child's initial evaluation or reevaluation, the LEA proposing to evaluate or reevaluate the child may not seek to override the parent's refusal to consent by using IDEA's mediation or due process procedures. 34 C.F.R. § 300.300(d)(4)(ii). The child would not be included in the proportionate share calculation.

EXTENDED PUBLIC SCHOOL CLOSURES

- Is an LEA required to provide equitable services to private school children with disabilities under IDEA Part B during extended closures of public and private schools?
 - If an LEA where private elementary schools and secondary schools are located closes its physical buildings as a result of social distancing measures and other limitations that occur as a result of a pandemic or health emergency, **but is providing virtual instruction or other remote learning opportunities for the general student population, then the LEA would be required to provide equitable services to private school children with disabilities under IDEA Part B, as determined through the consultation process under 34 C.F.R. § 300.134.** Under such circumstances, the LEA may consider other services or alternate means of service delivery, if feasible, such as through the use of telecommunications, including telephone or videoconferencing, virtual platforms, or consultative services.
- Thus, include in the consultation process: the provision of services, school closures, and how to best communicate at times like this.

CONSULTATION – ONGOING PROCESS

- **Consultation must be an ongoing process**, not solely an annual meeting. See 34 C.F.R. § 300.134(c). Timeliness is critical to effective consultation and requires collaboration between the LEA and private school officials in developing a timeline and selecting dates for consultation.
- IDEA does not specify what constitutes “meaningful consultation,” but in order for consultation to be meaningful, it must be timely and ongoing throughout the school year. See 34 C.F.R. §§ 300.134 and 300.134(c).
- When timely and meaningful consultation has occurred, the LEA where private elementary schools and secondary schools are located must maintain documentation that the consultation has occurred, including a written affirmation signed by the representatives of the participating private schools, as required by 34 C.F.R. § 300.135.

TRANSPORTATION

- Must an LEA provide transportation in order for a child to benefit from or receive equitable services?
 - The IDEA regulations under 34 C.F.R. § 300.139(b) require that, if necessary for the child to benefit from or receive equitable services, an LEA must provide a parentally-placed private school child with a disability transportation.
 - This cost can be included in the proportionate share of IDEA Part B funds for equitable services. [...] Generally, unless there is a compelling rationale for these services to be provided off-site, LEAs should provide services on-site, at the child's private school, to not unduly disrupt the child's educational experience.
- However, nothing in IDEA requires LEAs to provide transportation from the home of a parentally-placed private school child with a disability to the private school, if that transportation is provided solely to enable the parentally-placed private school child with a disability to attend the private school. 34 C.F.R. § 300.139(b)(1)(ii)

EQUIPMENT MANAGEMENT

- The LEA can place equipment and supplies for equitable services in a private school.
 - [...] but only for the period of time needed to meet the equitable participation requirements for the IDEA Part B program. The public agency must ensure that equipment and supplies placed in a private school are used only for IDEA Part B purposes and can be removed from the private school without remodeling the private school facility.
- Remember, IDEA Part B funds for equitable services **CANNOT** be used for repairs, minor remodeling, or construction of private school facilities!



COORDINATED EARLY INTERVENING SERVICES (CEIS)



WHAT IS CEIS/CCEIS?

Coordinated Early Intervening Services

- Set-asides designed to address the needs of students not identified for special education.
- To address significant disproportionality
- To assist students that needed additional supports
- Originally term used for optional and mandatory set-aside – now used solely for optional set-aside purposes

Comprehensive Coordinated Early Intervening Services

- Term created to identify when this set-aside was mandatory because a district was identified for significant disproportionality

CEIS VS. CCEIS

Element	Coordinated Early Intervening Services	Comprehensive Coordinated Early Intervening Services
Abbreviation	CEIS	CCEIS
Regulation	34 CFR §300.226	34 CFR §300.646
Type	Voluntary – LEAs can choose to use a portion of their IDEA Part B funds for services to a defined group of at-risk students.	Mandatory – LEAs identified as having significant disproportionality in identification, placement, and/or disciplinary removals must use IDEA Part B funds for CCEIS.
Grade level/ages served	Kindergarten through grade 12	Age 3 through grade 12
Groups served	Only children who are not currently identified as needing special education or related services.	Children who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment. Children currently identified as needing special education or related services (funds can be used primarily, but not exclusively, for this group).
Funds	Up to 15 percent of IDEA Part B funds (611 and 619)	Exactly 15 percent of IDEA Part B funds (611 and 619)

Element	Coordinated Early Intervening Services	Comprehensive Coordinated Early Intervening Services
Abbreviation	CEIS	CCEIS
Regulation	34 CFR §300.226	34 CFR §300.646
Permitted activities	Professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction and, where appropriate, instruction on the use of adaptive and instructional software. Educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.	Professional development and educational and behavioral evaluations, services, and supports. The activities must address factors and policy, practice, or procedure contributing to significant disproportionality.
Reporting requirements	An LEA is required to report to the state and the state is required to report to the U.S. Department of Education the following: the number of children served under this section who received early intervening services; and the number of children served under this section who received early intervening services and subsequently received special education and related services under Part B of IDEA during the preceding 2-year period.	An LEA is required to publicly report on the revision of policies, practices, and procedures. An LEA is required to report to the state and the state is required to report to the U.S. Department of Education the following: the number of children served under this section who received early intervening services; and the number of children served under this section who received early intervening services and subsequently received special education and related services under Part B of IDEA during the preceding 2-year period.

Resource:

https://ideadata.org/sites/default/files/media/documents/2018-01/51322_IDC_CEIS_vs_CCEIS_Chart_0.pdf

COORDINATED EARLY INTERVENING SERVICES (CEIS)

- VOLUNTARY
- K – 12 (emphasis K – 3)
 - who **are NOT currently identified** as needing special education or related services, but who need additional academic and behavioral supports to succeed in a general education environment.
- Pre-K not eligible!
- 34 CFR 300.226

CEIS, WHO IS ELIGIBLE?

Eligibility Requirements

- Student who need additional academic and behavioral supports to succeed in the general education environment.
- NOT STUDENTS WITH DISABILITIES!
- An LEA determines which students need additional support.
 - Considerations: performance on reading or math assessments, disciplinary referrals, suspension and expulsions, etc.
 - Can you limit services to a particular racial or ethnic group?
 - No! (Discussed further in CCEIS section)
 - Section 613(f)(5) of IDEA; 34 CFR 300.226(a)

CEIS OPTIONAL SET-ASIDE

- ***Coordination with ESEA.*** Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.
- **Up to 15 percent** of IDEA Part B funds (611 and 619)
 - 34 CFR 300.226(e)

CEIS REPORTING

- LEAs must annually report to the SEA on:
 - ✓ The number of children served under this section who received early intervening services; and
 - ✓ The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two-year period.

- 34 CFR 300.226(d)



COMPREHENSIVE COORDINATED EARLY INTERVENING SERVICES (CCEIS)



COORDINATED EARLY INTERVENING SERVICES (CCEIS) ELIGIBILITY

- MANDATORY if Significant Disproportionality
- Age 3 – Grade 12
 - Children who **are NOT currently identified** as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.
 - Children **currently identified** as needing special education or related services (funds can be used primarily, but not exclusively, for this group).
 - NO percentages provided!
- 34 CFR 300.646

May an LEA limit comprehensive CCEIS solely to members of the racial or ethnic group for which significant disproportionality was identified?

- No.
- For example, there's significant disproportionality of African-American students as children with disabilities in 4th and 5th grades. The LEA can direct CCEIS funds **to ALL nondisabled 3rd and 4th grade children** in need of additional academic or behavioral support. **However**, it would **NOT** be appropriate for the LEA to limit eligibility only to **nondisabled 3rd and 4th grade African-American students** in need of additional academic or behavioral support.

ED CEIS Guidance

REMIND ME: WHAT IS THE SIGNIFICANT DISPROPORTIONALITY RULE?

- Intended to address disparities in the treatment of minority students with disabilities, including overidentification for special ed
 - Establishes a standard methodology to determine disproportionality
 - 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

CCEIS AND SIGNIFICANT DISPROPORTIONALITY

- **Under IDEA Part B:** SEAs must collect and analyze data to determine if **significant disproportionality** based on race and ethnicity occurs in:
 1. The **identification** of children as children with disabilities,
 2. The **placement** in particular educational settings of these children; and
 3. The incidence, duration, and type of disciplinary removals from placement, **including suspensions and expulsions.**

34 CFR 300.646(a)

CCEIS MANDATORY SET-ASIDE

- If Significant Disproportionality:
 - LEA must reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to address factors contributing to the significant disproportionality. (34 CFR 300.646(d))
 - Exactly 15 percent of IDEA Part B funds (611 and 619)

CCEIS SEA REPORTING

- SEAs: report to the U.S. Department of Education the number of children served under this section who received early intervening services; and the number of children served under this section who received early intervening services and subsequently received special education and related services under Part B of IDEA during the preceding 2-year period.
- “[E]ach State should develop a method for its LEAs to count and track students who are served by personnel who participated in professional development activities supported with CEIS funds. It would be appropriate for an LEA to count, and subsequently track for two years, the number of students in need of additional support who received instruction from personnel who participated in the professional development program.”

IDEA Part B Section 618 (20 USC 1418); ED CEIS Guidance

CCEIS LEA REPORTING

- LEAs
 - publicly report on the revision of policies, practices, and procedures.

“An LEA should only count the students and the personnel who participated in the professional development program in the year(s) of or the year(s) immediately after the training, rather than counting the students and those personnel each year after the training.”

IDEA Part B Section 618 (20 USC 1418); [ED CEIS Guidance](#)



CEIS/CCEIS ALLOWABLE ACTIVITIES (EXAMPLES)



GENERAL CEIS ACTIVITIES EXAMPLES

- Professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions.
- Salaries for staff providing CEIS services
 - Don't forget time and effort documentation!
- Educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.
 - Can include instruction on use of adaptive and instructional software.
 - General IDEA costs are not allowable (like child find), also universal screenings, etc.
- Services may also align and supplement activities funded by and carried out under ESEA.

GENERAL CEIS ACTIVITIES EXAMPLES (CONT.)

- Positive Behavioral Interventions and Support (PBIS) initiative
 - Providing behavioral interventions to nondisabled students who receive a certain number of disciplinary office referrals.
- Reading/Math Initiatives
 - Fund reading or math specialists to work with nondisabled students who have not reached grade-level proficiency in those subjects.
- Tutoring Services
 - After-school tutoring for nondisabled students who score below “basic” on Statewide assessments.
- Section 613(f)(5) of IDEA; 34 CFR 300.226(b)

GENERAL UNALLOWABLE USE OF FUNDS

- General services provided to all students
 - E.g.: Universal screenings
- IDEA required services
 - E.g.: Child find, evaluations that are intended for use in determining eligibility for special education and related services, etc., special education and related services.
- Costs that are not directly attributed to CEIS activities such as:
 - construction, debt service, legal fees or fines, costs to provide core curriculum, etc.

PROFESSIONAL DEVELOPMENT

- **May** hold professional development and educational and behavioral evaluations, services, and supports.
- **CCEIS Must** identify and address the factors contributing to the significant disproportionality
 - (e.g.: lack of access to scientifically based instruction; economic, cultural, or linguistic barriers to appropriate identification or placement in particular educational settings; etc.)
- **CCEIS Must** address a policy, practice, or procedure it identifies as contributing to the significant disproportionality, including a policy, practice or procedure that results in a failure to identify, or the inappropriate identification of, a racial or ethnic group (or groups).

MAY ALL SPECIAL EDUCATION TEACHERS PARTICIPATE IN CEIS TRAINING?

- Generally NO.
- PD may be provided to all teachers, aids, etc. who provide CEIS/CCEIS (i.e., personnel responsible for students who need additional academic and behavioral supports to succeed in a general education environment).
- **If** the cost of the professional development does not increase and the quality of the professional development does not decrease, it **MAY BE OK** to include personnel who are solely responsible for students receiving special education services or students who do not need additional support.
 - Incidental benefit exception!
 - ED CEIS Guidance

BEHAVIORAL AND EDUCATIONAL EVALUATIONS

- LEAs may use CEIS/CCEIS funds to provide behavioral and educational evaluations to determine the supports that are needed by students to succeed in a general education environment.
- **Funds may not be used for evaluations that are intended for use in determining eligibility for special education and related services.**
 - Students who are evaluated to determine the supports necessary for success in a general education environment should be counted as receiving CEIS/CCEIS in the year of or the year immediately following the evaluation and tracked for the following two years.
- ED CEIS Guidance

MAY CEIS PAY FOR RTI?

Maybe!

Response to Intervention (RTI):

- “CEIS funds may be used to support RTI as long as the CEIS funds are used for services to nondisabled students in need of additional academic or behavioral support, and supplemental, but do not supplant, other funds used to implement RTI. LEAs must ensure that CEIS funds are used to provide services only to students who need additional academic and behavioral support, and not to students who currently receive special education and related services. 34 CFR 300.226(a).”

Letter to Dale – Nov 2012

<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/12-008431r-me-dale-rti-11-14-12.pdf>

DOCUMENTING CEIS/CCEIS

- Must document that eligible students were served.
 - How determine students who “need additional academic and behavioral supports to succeed in the general education environment”
- If an LEA chooses to use CEIS funds to support school-wide interventions:
 - “It must be able to provide documentation that CEIS funds were used to provide services only to students in **need of additional support and that other funds were used to fund the school-wide intervention for special education** students and students who do not need additional support.”
 - [ED CEIS Guidance \(OSEP Memo 08-09 \(July 2008\)\)](#)

DOCUMENTING CEIS/CCEIS (CONT.)

- Must document that services were received by the LEA.
 - POs, procurement rules, general policies and procedures must be followed to demonstrate costs are reasonable, necessary, and demonstrate services are for CEIS/CCEIS (allocable).
- Teachers salaries must be supported by time and effort documentation.
 - CEIS/CCEIS is a separate cost-objective!

DOCUMENTING TIME AND EFFORT

Funding:

- “If a teacher is providing special education, general education, and RTI interventions and is supported by funds from several resources, an **LEA must document separately, consistent with [the UGG], the amount of time the teachers spends providing** services to students with disabilities, services to students who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment, [...], to ensure that IDEA Part B funds are properly expended”

Letter to Dale – Nov 2012

<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/12-008431r-me-dale-rti-11-14-12.pdf>

TIMELY SPENDING



PERIOD OF PERFORMANCE

- Funds must be *obligated* within the period of performance. 2 CFR 200.1
- What does it mean to *obligate* funds?
 - “Financial obligations, when referencing a recipient’s or subrecipient’s use of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions that require payment.” 2 CFR 200.1
 - When funds obligate depends on the type of cost.
 - Obligate \neq liquidate

WHEN OBLIGATIONS ARE MADE

Type of Obligation	When Obligation Occurs
<i>Acquisition of Property</i>	Date of binding written commitment
<i>Personal Services by Employee</i>	When services are performed
<i>Personal Services by Contractor</i>	Date of binding written commitment
<i>Travel</i>	When travel is taken
<i>Approved Pre-Agreement Cost</i>	On the first day of the grant or subgrant performance period.

34 CFR 76.707

CARRYOVER FUNDS



LEAs and SEAs must obligate funds during the 27 months, extending from July 1 of the fiscal year for which the funds were appropriated through September 30 of the second following fiscal year. This maximum period includes a 15-month period of initial availability, plus a 12-month period for carryover.



An obligation is not necessarily a liability in accordance with generally accepted accounting principles. When an obligation occurs (is made) depends on the type of property or services that the obligation is for (34 CFR 76.707).



See *also*, Obligations made during a carryover period (23 CFR 76.710 / GEPA Sec. 421(b))

CEIS

LETTER TO ANDRE JACK – JUNE 2010

- *“If there is an LEA that does not expend the full 15% during the 2 years of availability, would those unexpended funds be able to be reallocated and under what conditions? [...]”*
- OSEP’s response
 - Reiterates that OSEP’s Memorandum 07-09 (April 2007) OSEP stated that the phrase ‘reserve the maximum amount of funds’ means to use the funds for early intervening services and not for any other purpose.
 - “Therefore, any funds not expended by the LEA for comprehensive CEIS, when required to expend them due to significant disproportionality, **would revert to the Department of Education at the end of the obligation/expenditure period for those funds**”

<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2010-2/andrejack060110useoffunds2q2010.pdf>

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)



WHY? 200.403(A); 200.430(I) AND WHO MUST KEEP T&E? 200.430(I)(I) & (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.



IDEA ALLOWABILITY

HINT: THE ANSWER IS MOST LIKELY “IT DEPENDS”



QUESTION:

CAN IDEA FUNDS BE
USED TO COVER ALL
COSTS ASSOCIATED
WITH THE PROVISION
OF SPECIAL
EDUCATION?

- Yes
- No
- It Depends

QUESTION:

CAN IDEA FUNDS BE USED
TO PROVIDE
COORDINATED EARLY
INTERVENING SERVICES TO
STUDENTS NOT YET
IDENTIFIED AS ELIGIBLE
FOR IDEA SERVICES?

- Yes
- No
- It Depends

QUESTION

CAN IDEA FUNDS BE USED TO
EVALUATE HOMELESS AND
MIGRANT CHILDREN?



- Yes
- No
- It depends

QUESTION:

IN IMPLEMENTING CEIS,
STAFF AT THE MIRAMAR
LEA WANT TO PROVIDE
EDUCATIONAL AND
BEHAVIORAL
EVALUATIONS.
IS THIS ALLOWABLE?

- Yes
- No
- It Depends

QUESTION:

CAN A SPECIAL
EDUCATION TEACHER
PROVIDE INTERVENTIONS
TO A SMALL GROUP OF
STUDENTS WITH AND
WITHOUT DISABILITIES?

- Yes
- No
- It Depends



QUESTION:

CAN PART B FUNDS BE
USED TO PAY FOR
RELATED SERVICES
ASSOCIATED WITH A
STUDENT'S 504 PLAN?

- Yes
- No
- It Depends



QUESTION:

IS THE SALARY OF A BUS DRIVER THAT TRANSPORTS STUDENTS, INCLUDING STUDENTS WITH DISABILITIES ALLOWABLE?



- Yes
- No
- It Depends

QUESTION:



CAN IDEA FUNDS BE
USED TO PAY FOR
SALARIES OF CLERICAL
SUPPORT STAFF?

- Yes
- No
- It Depends

QUESTION:

CAN IDEA FUNDS BE USED FOR SPECIAL EDUCATION CASE MANAGEMENT, SUCH AS RECORD-KEEPING OR DATA COLLECTION?



- Yes
- No
- It Depends

QUESTION:

CAN IDEA FUNDS BE USED TO
PAY FOR TRAINING OR
PROFESSIONAL DEVELOPMENT
OF PARENTS AND/OR PRIVATE
SCHOOL OFFICIALS?



- Yes
- No
- It Depends

QUESTION:

A SCHOOL WANTS TO PURCHASE CAMERAS AND OTHER RELATED SECURITY DEVICES TO PROTECT ASSISTIVE TECHNOLOGY AND OTHER EQUIPMENT PURCHASED WITH IDEA FUNDS. IS THIS ALLOWABLE?

- Yes
- No
- It Depends



QUESTION:

CAN AN LEA USE PART B FUNDS TO MAKE A BUILDING ACCESSIBLE TO CHILDREN WITH DISABILITIES?



- Yes
- No
- It Depends

QUESTION:

CAN IDEA FUNDS BE USED TO PAY FOR PERSONNEL, SUPPLIES, TRANSPORTATION, AND OTHER NECESSARY COSTS RELATED TO STUDENTS WITH DISABILITIES ATTENDING EXTENDED SCHOOL YEAR?

- Yes
- No
- It Depends



QUESTION:

MAY IDEA FUNDS BE
USED TO PAY FOR A
STUDENT'S PRIVATE
SCHOOL TUITION?



- Yes
- No
- It Depends

QUESTION:

ARE COSTS ASSOCIATED WITH
REGISTRATION FEES, TRAVEL,
CONFERENCE EXPENSES, AND
OTHER RELATED FEES FOR
PROFESSIONAL DEVELOPMENT
CONFERENCES ALLOWABLE
UNDER IDEA?



- Yes
- No
- It Depends

QUESTION:

CAN AN LEA CONTRACT
WITH A PRIVATE VENDOR
FOR TRANSLATION
SERVICES FOR IEP
DOCUMENTS?

- Yes
- No
- It Depends



QUESTION:

CAN PART B FUNDS BE
USED FOR
NONACADEMIC SERVICES
FOR STUDENTS WITH
DISABILITIES?



- Yes
- No
- It Depends

QUESTION:

CAN IDEA FUNDS BE USED TO PAY ATTORNEY FEES FOR IDEA RELATED MATTERS (I.E. DUE PROCESS HEARINGS, IEP TEAM MEETINGS, AND MEDIATION SESSIONS)?

- Yes
- No
- It Depends



QUESTION:

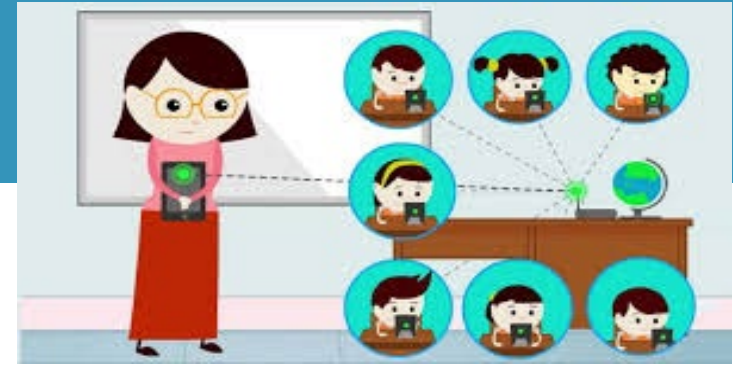
ARE COSTS ASSOCIATED
WITH ADVERTISING IN MEDIA
SUCH AS NEWSPAPERS,
RADIO, AND TELEVISION,
DIRECT MAIL, OR EMAIL
ALLOWABLE?

- Yes
- No



QUESTION:

MIRAMAR HIGH IS ONE OF THE DISTRICT'S TECH SMART SCHOOLS. AT MIRAMAR, CLASSROOMS ARE EQUIPPED WITH SMART BOARDS, COMPUTERS, AND TABLETS. CAN IDEA FUNDS BE USED TO PAY FOR THE SMART TECHNOLOGY NEEDED FOR THE INDEPENDENT LIVING CLASSROOM?



- Yes
- No
- It Depends

QUESTION:

MAY IDEA FUNDS BE USED
TO PAY FOR A SCHOOL
NURSE THAT PROVIDES
RELATED SERVICES TO
STUDENTS WITH
DISABILITIES?

- Yes
- No
- It Depends



QUESTION:

CAN IDEA PART B FUNDS BE
USED TO SUPPORT A
GENERAL EDUCATION
TEACHER'S SALARY?



- Yes
- No
- It Depends

QUESTION:

CAN GENERAL EDUCATION
TEACHERS PARTICIPATE IN
IDEA PART B PROFESSIONAL
DEVELOPMENT?

- Yes
- No
- It Depends



QUESTION:

JOHNNY IS A STUDENT WITH A NOTICEABLE SPEECH IMPEDIMENT. HIS SCHOOL (AFTER GOING THROUGH THE EVALUATION PROCESS) DECIDES THEY WANT TO FIND HIM ELIGIBLE FOR S/L SERVICES AND PROVIDE HIM WITH THESE SERVICES. HOWEVER, JOHNNY'S PARENTS WILL NOT CONSENT TO SERVICES. THE SCHOOL PROVIDES THE SERVICES ANYWAY. IS THIS AN ALLOWABLE COST?

- Yes
- No
- It Depends

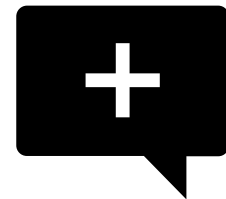
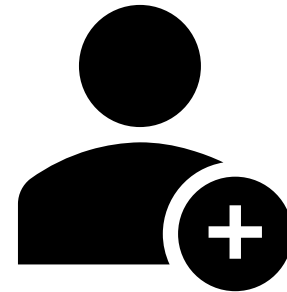
IDEA SUPPLEMENT NOT SUPPLANT



LEA SUPPLEMENT NOT SUPPLANT

300.202

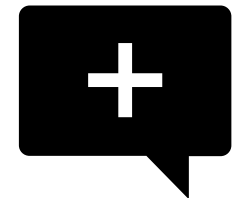
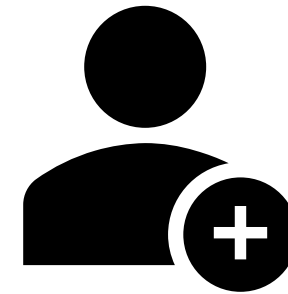
- Amounts provided to LEAs under Part B must be used to supplement State, local and other federal funds, and not to supplant those funds.



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





SPECIAL EDUCATION



CHILD FIND

■ Who is Covered by Child Find?

- Schools are required to locate, identify, and evaluate **all children** with disabilities from **birth through age 21**. The Child Find mandate applies to residing in the State, including children with disabilities attending private, including religious, elementary and secondary schools. It ensures that all children with disabilities residing in the State are identified, located, and evaluated. 34 CFR 300.111, which applies to States, is much broader in scope than 34 CFR 300.131.
- This includes all children who are suspected of having a disability, including children who receive passing grades and are "**advancing from grade to grade.**" (34 CFR 300.111(c))

CHILD FIND ED GUIDANCE – AUGUST 2021

- **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?**
 - 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.
- <https://sites.ed.gov/idea/files/rts-qa-child-find-part-b-08-24-2021.pdf>

CHILD FIND

TRANSFER STUDENTS - 20 USC 1414

- Transfer within the same State
 - In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

CHILD FIND

TRANSFER STUDENTS - 20 USC 1414

- Transfer outside State
 - In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.



DUE PROCESS COMPLAINTS



DUE PROCESS COMPLAINTS

- Allow parents/students to enforce the rights guaranteed under the IDEA.
- Relate to refusal or denial to initiate or change the identification, evaluation, educational placement of the provision of a free appropriate public education (FAPE).
- Each SEA must establish and maintain due process procedures.
- 34 CFR 300.507



STANDARD DUE PROCESS COMPLAINT TIMELINE

Day	Event
Day 1	Parent files complaint
Day 10	School files answer
Day 15	School files allegations of insufficiency of complaint – if any Resolution Meeting
Day 20	Hearing Officer will make determination on allegations of insufficiency – if any
Day 30 *	End of resolution period – if complaint has not been resolved hearing goes forward
5 days prior to hearing date	5-day disclosures due
Day 45	Hearing Officer Decision issued

EXPEDITED TIMELINE

- When a parent files an expedited due process complaint, the hearing must occur within *20 school days* of the date that the due process complaint is filed.
- The resolution meeting must occur within 7 days of receiving the complaint.
- The response is due within 10 days of receiving the complaint.
- The hearing officer's decision is due 10 school days after the hearing.
- 34 CFR 30.532(c)

RESOLUTION MEETINGS

- Must occur within 15 days of notice of complaint.
 - Attorney for the LEA cannot attend unless parent's attorney is also present
 - If the LEA is unable to obtain the participation of the Parent, the LEA may request that the hearing officer dismiss the parent's due process complaint!
- Meeting notes are not confidential
 - 34 CFR 300.510(a)

MEDIATION

- Not limited to issues raised in due process hearing; may mediate any point in the dispute
- Mediation is **CONFIDENTIAL!**
- LEA **cannot require** mediation
 - [ED does] not believe that a hearing officer can order that the parties to a due process complaint engage in mediation.” (71 *Fed. Reg.* 46694 (Aug. 14, 2006)).

HEARING OFFICER DETERMINATIONS

- Courts have broad discretion in fashioning relief for violations of the IDEA. *Burlington Sch. Comm. v. Dept. of Educ.*, 471 U.S. 359 (1985)
 - Hold meetings
 - Evaluations
 - Placement
 - Private Schools
 - Residential
 - Compensatory Education

ATTORNEY'S FEES SHIFTING PROVISION

- In any action brought under the IDEA, a court may award reasonable attorney's fees to a prevailing party who is the parent of a child with a disability. 34 CFR 300.517 (a)(1)(i).
- Prevailing parents cannot recover legal fees from a district unless their child has been found eligible for IDEA services -- even if the underlying dispute turns on the student's need for special education. *Meridian Joint Sch. Dist. No. 2 v. D.A.*, 65 IDELR 253 (9th Cir. 2015).

COMPENSABLE ACTIVITIES

- LEAs are not responsible for parents' attorneys' fees for:
 - Attending Resolution Meetings
 - Attending IEP Meetings (unless ordered by Hearing Officer)
 - Educational Advocates (Lay Witness) (*Fed Regs comments*)
 - Expert Fees (*Arlington Central School District v. Murphy*)

DOCUMENTATION OF IEP SERVICES



THE BASICS

- IEPs
 - Current data
 - 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?



DOCUMENTATION BASICS

- *Individualized Education Plans (IEPs)*
- Every IEP must have the following:
 - Statement of present levels and functional performance
 - Statement of measurable annual goals (34 CFR 300.320(a)(2)(i))
 - A description of how the child's progress toward meeting the annual goals will be measured
 - A statement of special education and related services

DOCUMENTATION BASICS

- *Individualized Education Plans (IEPs) (continued)*
- Every IEP must have:
 - An explanation of the extent to which the child will not participate with nondisabled children in the regular class
 - A statement of appropriate accommodations
 - A projected date for beginning of services, and anticipated frequency, location, and duration of services
 - Transition services (if appropriate)

DOCUMENTATION BASICS

- *Individualized Education Plans (IEPs) (continued)*
- ***Endrew F v. Douglas County Sch. Dist., 69 IDELR 174 (U.S. 2017)***
 - The United States Supreme Court held that a student offered an IEP must be provided more than *de minimus* progress from year to year.
 - An IEP must be “appropriately ambitious in light of a child’s circumstances.”

Tip: RENEW YOUR EMPHASIS ON BASELINE DATA!!!

DOCUMENTATION BASICS

IEP Progress Reports

- Every IEP must have the following:
 - A description of when periodic reports on the progress the child is making toward meeting the annual goals will be provided (34 CFR 300.320(a)(3))
- *Does your school clearly communicate when progress reports can be expected? Do parents know what information they can expect to see in that report? Do your teachers understand how to measure, document, and report progress?*

DOCUMENTATION BASICS

- *Behavior Intervention Plans*
- IEP teams must consider behavioral interventions if behavior impedes learning. 34 CFR 300.324(a)(2)(i)
- Development of a BIP is mandatory when disciplinary action is a change of placement and conduct is manifestation of student's disability.
- LEA must then either:
 - Conduct FBA and develop BIP; or
 - Review the BIP and modify as necessary. 34 CFR 300.530(f)

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



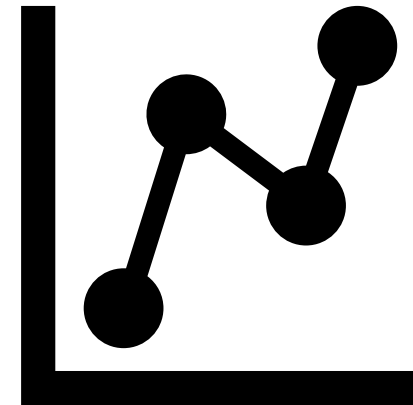
PROGRESS DATA

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



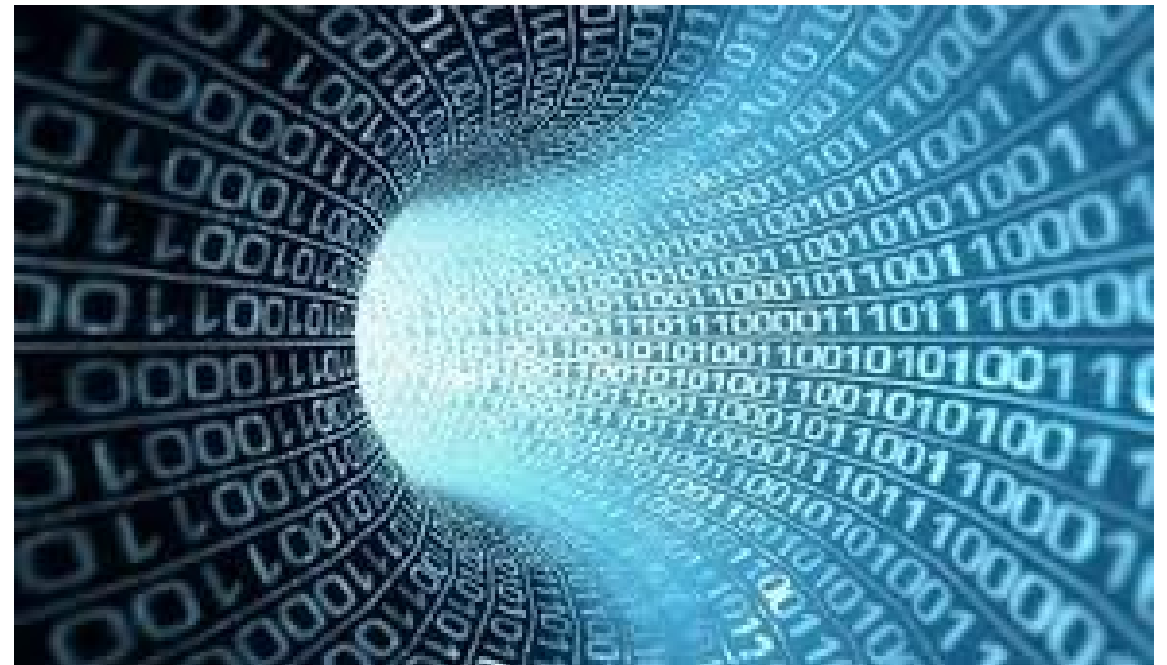
BEHAVIOR DATA

- 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



HOW DOES YOUR TEAM DOCUMENT, ENSURE GOOD DATA...

- Academic Progress
- IEP Progress
- Provision of Services
- Attendance
- Disciplinary/Removal Data
- Other Data Lessons Your Team Has Learned?



DISCIPLINE



STUDENT DISCIPLINE CIVIL RIGHTS DATA COLLECTION

- The Civil Rights Data Collection found that students with disabilities, those served under Section 504 and the IDEA, made up a larger percentage of students referred to law enforcement than their overall student enrollment, according to a recent report.
- The CRDC said in its report that the 2017-18 data showed that overall national enrollment was 50,922,024, with 229,470 referrals to law enforcement. Of those referrals, 54,321 resulted in a school-related arrest.
- <https://www2.ed.gov/about/offices/list/ocr/docs/referrals-and-arrests-part-5.pdf>

ADDITIONAL DUE PROCESS DATA CONSIDERATIONS: DISCIPLINE

- The IDEA provides special protections to eligible children who are subject to discipline
- Eligible children may not be removed for more than 10 days from school or have their placement changed without a manifestation determination review

ADDITIONAL DATA CONSIDERATIONS: DISCIPLINE

A Removal is NOT a Change in Placement When: (34 CFR § 300.536)

- 10 consecutive school days or less
- Series of short-term removals that are not a pattern (even if greater than 10 days)
 - **Determined by the public agency, but subject to review through due process (34 CFR § 300.536 (a)(2))**
 - (a) Length of each removal; (b) Total time removed; (c) Proximity of removal; (d) Behavior not substantially similar; etc.

ADDITIONAL DATA CONSIDERATIONS: DISCIPLINE

- **A Removal is a Change in Placement when: (34 CFR § 300.536)**
 - Exceeds 10 consecutive school days
 - Series of short-term removals that are a pattern

ADDITIONAL DATA CONSIDERATIONS: DISCIPLINE

If you determine that the behavior was not a manifestation:

Done (document decision) (possible exception 34 CFR § 300.530(d)(4)) (Interim Services)

If you determine that the behavior was a manifestation:

Manifestation Determination (34 CFR § 300.530(e));

Functional Behavior Assessment; and

Behavior Intervention Plan (34 CFR § 300.530(d)(1)(ii), (f)(1)(i))

ADDITIONAL DATA CONSIDERATIONS: DISCIPLINE

- **Who determines whether behavior is a manifestation of the child's disability? 34 CFR §§ 300.530 – 300.536**
- IEP Team
 - Not a manifestation – Stay Put does not apply (300 CFR § 300.530(c))
 - Yes, Manifestation – Manifestation Determination (300 CFR § 300.530(f))
 - Stay Put: Child Remains in School
 - Discipline cannot proceed
 - Exceptions 45-Day Removal

ADDITIONAL DATA CONSIDERATIONS: DISCIPLINE

- **Behavior Incidents**
 - How do you record them? How much detail do you include?
- **Suspensions:** How do you calculate a day/half day?
 - If you call a student's parent about a behavior incident and the parent comes and picks them up from school, how do you account for that when determining whether or not a change in placement has occurred?
 - What procedures do you have in place to ensure there is no confusion regarding when a child can/cannot come to school?

ADDITIONAL DATA CONSIDERATIONS: DISCIPLINE

- Protections for Children Not Determined Eligible for Special Education and Related Services 34 CFR 300.534 (a)-(b)
- WHERE:
 - Parent expressed in writing that child had need for special education
 - Parent requested an evaluation
 - School personnel expressed specific concerns to the director of special education or other supervisory personnel



ADDITIONAL DATA CONSIDERATIONS: DISCIPLINE

How do you record patterns of behavior or otherwise communicate with your staff about suspected additional disabilities?

Do you routinely meet with your staff to discuss developments in a child's behavior/progress?

How do you record that?

BEST PRACTICE: if you notice a child is exhibiting a new behavior but do not believe it is related to an additional disability, have an IEP meeting and discuss with his/her parent.

COMMUNICATION WITH PARENT

- Letters
- Phone Log
- Emails
- Best practice: keep communication notes.



DUE PROCESS CASE STUDIES



CHILD FIND

- Student with ADHD saw a decline in his math skills at the end of fifth grade. During this time, he was enrolled in virtual learning because of the COVID-19 pandemic.
- Did the LEA fail to follow child find procedures and evaluate the student when his grades lowered?
 - Look at the facts
 - Are there other reasons other than disability-related factors that led to the lower grades?
 - Does the child need special education and related services?
- SALINAS v. IDEA PUBLIC SCHOOLS CHARTER DISTRICT, 123 LRP 7330, (U.S. Dist. Ct., S.D.Tex., 2023).



CHILD FIND

The LEA showed that the student's drop in grades was temporary and caused by virtual instruction.

- His grades bounced back in 6th grade and his “math and reading teachers reported positive performance”
- The educational record revealed "no consistent pattern of struggles or failure that would have put [Defendant] on notice as to a need for an evaluation for special education services.”
- Also, the LEA showed that the student's difficulties concentrating during virtual learning “were no more than what his peers experienced.”

“Although Plaintiff disputes when the child find duty arose, she does not dispute -- and the record establishes -- that after completing an educational screening form and initiating the § 504 process, Defendant also sent to Plaintiff, by email attachment, a "Consent to Evaluate for Special Education Services" on September 16, 2021, which marks the date Defendant satisfied its child find duty.”

- SALINAS v. IDEA PUBLIC SCHOOLS CHARTER DISTRICT, 123 LRP 7330, (U.S. Dist. Ct., S.D.Tex., 2023).

TIMELY DEVELOPMENT OF IEPs AND FAPE

- The IEP team decided that the appropriate placement for a high school student with emotional disturbance was a therapeutic day-program for students with social emotional needs.
 - Should the LEA pay for the out-of-state residential program where the parents placed the student while the LEA developed the student's IEP?
 - Was the day-program an appropriate placement for the student? Why or why not?
- M.G., et al. v. Monifa B. McKNIGHT, et al., 82 IDELR 128 (U.S. District Court, Maryland, 2023)

CHILD FIND FOR HOMESCHOOLED CHILDREN

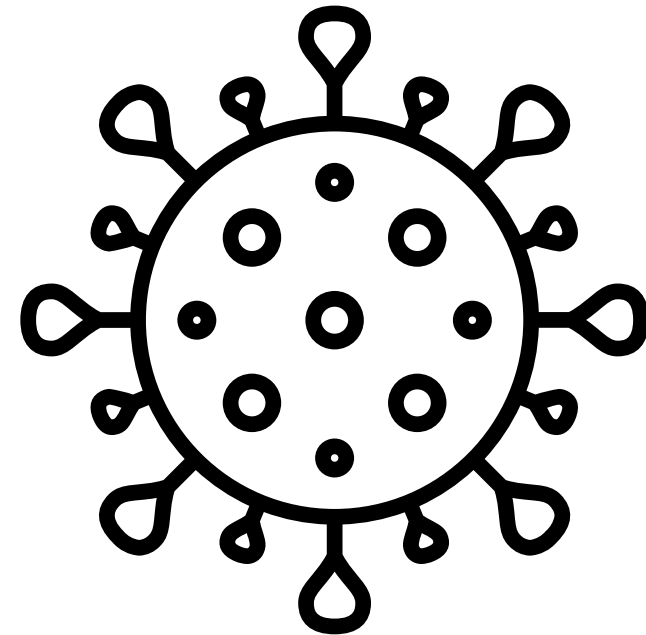
- **Are home-schooled children with disabilities considered parentally placed private school children with disabilities?**
- Whether home-schooled children with disabilities are considered parentally placed private school children **with disabilities is determined under State law.**
- (ED Guidance, Feb. 2022)
- Public school student who was evaluated in 2017 for dyslexia found eligible for section 504 services. In 2020, the parent withdrew the student for homeschooling. Two years later, the parent alleged child find violations.
 - Did the LEA violate child find by failing to identify the homeschooled student?
- Hooks Independent School District, 123 LRP 5397, (Texas SEA, 2022).

COVID-19 AND COMPENSATORY EDUCATION

- Elementary school student was offered state-level COVID compensatory services to remedy his lack of progress that resulted from the LEA's inability to provide FAPE due to remote learning during the COVID-19 pandemic.
- The district knew the student was "really struggling with getting online" and was not participating in virtual learning. "[The student's] plan conferred no meaningful educational benefit during this time because he could not work remotely without an in-person [assistant per his IEP]"
 - Can the LEA credit a portion of the statewide pandemic-related compensatory services toward the student's compensatory education award?
- CJ v. KENNETT CONSOLIDATED SCHOOL DISTRICT, 82 IDELR 159 (U.S. Dist. Ct., E.D. Pa 2023)

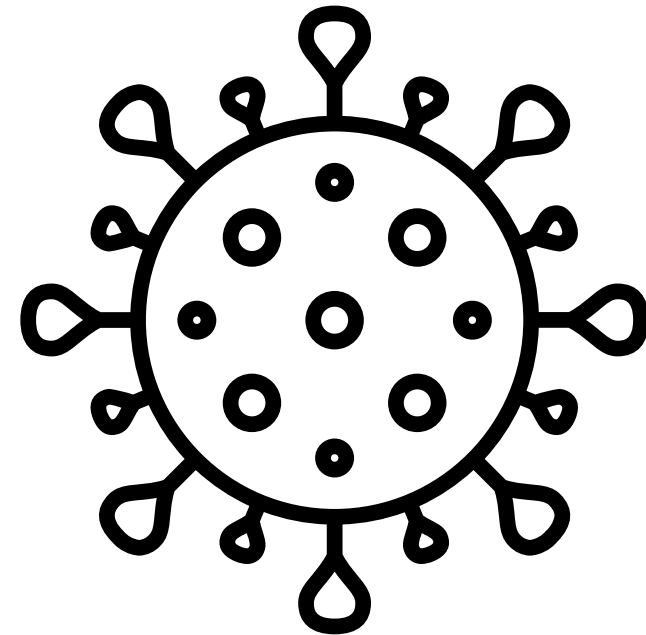
COVID-19 AND COMPENSATORY EDUCATION HOLDING

- “It was appropriate for the Hearing Officer to allow the District to subtract any COVID-19 Compensatory Services that have been or will be provided to Connor for the denial of a FAPE during the school closures. These Compensatory Services have been or will be provided to recoup any skills lost during the remote period.”



LEARNING PLANS AND EFFORTS

- Parents of three siblings with disabilities denied various service delivery models during the COVID-19 pandemic?
 - Was the LEA still responsible of providing FAPE during that time?
 - Should the LEA deliver services over the parent's objections?
 - Is “offering” the services sufficient?
- In re: Special Education Complaint 22-027C on behalf of V.S., L.S., and G.S., 82 IDELR 11, (Minn. Ct.App., 2022).



APPROPRIATE IEPS

- Sixth grader with an IEP sometimes shows impulsive behaviors and difficulties with transitions
 - Does the school need to include goals to work on the student's difficulties with transitions?
 - Did this behavior interfere with the student's learning and education?
 - Should the team include behavior issues in the student's IEP?
 - Was the student denied FAPE?
- G.G., v. CONEJO VALLEY UNIFIED SCHOOL DISTRICT, 82 IDELR 27 (U.S. Dist. Ct., C.D. Cal. 2022).

APPROPRIATE IEPS



“the IEP team only had to consider a behavioral support plan for behaviors that interfered with learning.”



"There is no evidence that these behaviors impede [his] learning." Additional evidence showed that the student had no need for ESY services because he did not regress over school breaks.



The parents had an opportunity to meaningfully participate in the IEP process and received adequate notice of the district's service offer.

ENDREW F. STANDARD & COVID-19

ENDREW F.V. DOUGLAS COUNTY SCH. DIST. RE-1, 69 IDELR 174 (U.S. 2017)

“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.

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)



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



CASES TO WATCH OUT WILL THE SUPREME COURT HEAR THE CASE?

- Petition for certiorari: *Heather B. v. Houston Independent School District*, 81 IDELR 241 (5th Cir. 2022)
- The question presented:
 - Whether **parents** of a previously IDEA eligible blind student attending a private school bear any responsibility to **give notice of their child's needs to a state or school district as a precondition for a state** or school district's compliance with its affirmative Child Find obligation under the IDEA?

DUE PROCESS CASE STUDY



Consider what data you would want to defend your LEA in the following scenario...



DUE PROCESS CASE STUDY: COMPLAINT FILED!

Specifically, the complaint alleges:

- 1) LEA had enough information to locate and evaluate Luis in May 2021
- 2) LEA violated child find when routinely asking the parent to pick up the student at school
- 3) LEA failed to hold a timely MDR upon Luis's 10th day of suspension during the school year
- 4) LEA failed to timely evaluate the student and implement an IEP
- 5) LEA denied Luis FAPE and should provide compensatory services

DUE PROCESS CASE STUDY

- Based upon the allegations in the complaint, what data would you gather? Why?
- What documentation do you have/would you provide that reflects this data?

DUE PROCESS CASE STUDY

Time to take a look at the Data the LEA has collected!

Discuss!



DUE PROCESS CASE STUDY

- Positives?
- Negatives?
- How could this data have been improved to be more helpful?
- Takeaways?

QUESTIONS?



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