



**U.S. DEPARTMENT OF EDUCATION**

**NON-REGULATORY GUIDANCE ON**

**FLEXIBILITY AND WAIVERS FOR GRANTEES**

**AND PROGRAM PARTICIPANTS IMPACTED BY**

**FEDERALLY DECLARED DISASTERS**

U.S. Department of Education

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## INTRODUCTION

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The U.S. Department of Education (Department) is issuing this guidance to help Department grantees and program participants restore teaching and learning environments and resume services following Federally declared disasters, including weather-related disasters such as hurricanes, floods, and wildfires, as well as the COVID-19 pandemic.<sup>1</sup> We recognize your challenges and want to express our concern and extend our support during this process of recovery and resumption of normal business operations.

This document generally discusses waivers and other forms of relief from Federal requirements in order to provide schools, State educational agencies (SEAs), State lead agencies (State LAs), local educational agencies (LEAs), local early intervention service (EIS) programs and providers, State Vocational Rehabilitation (VR) agencies, the Department of the Interior's Bureau of Indian Education (BIE)-funded schools,<sup>2</sup> Tribes, and postsecondary institutions with the operational flexibility necessary to continue operations as they recover from extended school or program closures due to a Federally declared disaster. The guidance addresses flexibility on reporting deadlines, timelines for grant-funded activities, and maintenance of fiscal effort or matching requirements, where applicable; proposes potential alternatives and strategies for providing program services after disruption; and suggests methods for ensuring continuity of services and communication with program participants. In addition, the document covers a variety of topics specific to various program areas. Each section addresses the implications of a prolonged school or program closure or other disruption to services to students and other program participants, legal questions that may arise for school or program administrators when faced with extended closures due to the disaster's impact, and the possibility of waiving requirements or finding other flexibility in Federal laws and regulations.

We strongly encourage all interested parties to contact the Department with any requests for assistance, including those beyond the scope of this document. We also welcome learning about innovative practices and effective strategies for restoring the learning environment. We are committed to collaborating with impacted parties, as well as other Federal, State, and local agencies, to remove barriers and expedite the work necessary to respond to and recover from

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<sup>1</sup> The phrase "Federally declared disaster" or "Presidentially declared disaster" means a disaster declared by the President to be a major disaster or emergency under section 401 or section 501, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§ 5170, 5191). Throughout this guidance, we use the term "disaster" to refer to "Federally declared disaster." Note that the COVID-19 pandemic is a Federally declared disaster.

<sup>2</sup> The BIE has assumed the duties of an SEA under the Elementary and Secondary Education Act of 1965, as amended (ESEA), with regard to the BIE-funded schools, and may request waivers under section 8401 of the ESEA. BIE-funded schools may submit waiver requests to the BIE as LEAs do to SEAs under section 8401. Under section 611(h)(2)(A) of Part B of the Individuals with Disabilities Education Act (IDEA) and its implementing regulation in [34 C.F.R. § 300.708](#), the BIE and BIE-funded schools assume the responsibilities of an SEA and LEA, respectively. Thus, references in this document to SEAs and LEAs include the BIE and BIE-funded schools as they relate to programs under the ESEA and Part B of the IDEA.

recent Federally declared disasters. As necessary, we will update this guidance with answers to additional questions.

It is important to emphasize that this guidance addresses only Federal requirements and flexibilities, and that only State and local officials can address State and local requirements and flexibilities. Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. The key sections of the statute discussed below include the following: sections 401 and 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§ 5170 and 5191), and section 111(a)(2)(C) of the Rehabilitation Act of 1973 (Rehabilitation Act) (29 U.S.C. § 731(a)(2)(C)).

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## **A. GENERAL DISCRETIONARY AND FORMULA GRANT ISSUES**

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This section discusses the waivers and other forms of relief that the Department may provide to grantees and grant applicants regarding Federal grant requirements following a disaster.

### **A-1. How will the Department provide flexibility to entities applying for discretionary grants?**

The Department has a number of ways it can provide flexibility to entities applying for discretionary grants that have been impacted by a disaster. The Department may, for example, extend application and other filing deadlines for eligible applicants affected by a disaster when appropriate and permissible under the law. Appropriations Acts generally provide funds for specific programs, purposes, and activities. The Department has very limited authority to redirect funds appropriated for one program or purpose to another program or purpose. The Department will ensure that any funds that have been statutorily authorized for relief efforts are awarded to eligible recipients.

### **A-2. How will delays in Federal obligations caused by a disaster affect a grantee's receipt of funds?**

Until a Department official has obligated Federal program funds to a grantee, no binding commitment exists with regard to these funds. If delays in Federal obligations are caused by a disaster, the Department staff will work with grantees on the obligations to the extent permitted by law and warranted by the conditions and effects of the disaster, and consider using the "pre-award period" to negotiate a delay of the grant start-up date. Pre-award costs within 90 days prior to the date of award are allowed without prior approval from the Department, consistent with [2 C.F.R. § 200.308\(e\)\(1\)](#). To the extent a disaster delays a grant award beyond 90 days, the Department will consider authorizing pre-award costs incurred for allowable activities.

### **A-3. Will a grantee be able to draw grant funds to pay for grant activities during the recovery period following a disaster?**

The Department is committed to making every effort to have its existing electronic infrastructure available so that grantees can continue to draw funds for allowable grant expenditures that are consistent with their progress on the project. Grantees are cautioned that they should draw down grant funds only at the rate that they are able to carry out grant activities. Grantees should refer to [2 C.F.R. § 200.305](#) for further information.

**A-4. What if a grantee has difficulty fulfilling grant activities because it is affected by a disaster?**

During the recovery period from a disaster, grantees are expected to notify the relevant Department program office as soon as they are aware that they may have difficulty fulfilling grant activities. The Department is committed to working with its grantees to provide them with the maximum flexibility in making changes to project activities and timelines that might become necessary as a result of a disaster. For example, discretionary grantees that have partners or participants in areas affected by a disaster should alert the program offices as quickly as possible to make changes to the project activities and timelines. Additionally, with regard to formula grant programs, State VR agencies and grantees should contact their Office of Special Education and Rehabilitative Services (OSERS)/Rehabilitation Services Administration (RSA) State liaisons to address issues resulting from the disaster to renegotiate and/or redirect the scope of their work plans, as needed. (See: <https://www2.ed.gov/policy/speced/guid/idea/monitor/state-contact-list.html>.) LEAs should work through their SEAs to renegotiate and/or redirect the scope of their work plans, as needed. Grantees should refer to [2 C.F.R. § 200.308](#) for further guidance.

**A-5. Generally, is another entity allowed to perform activities related to a grantee's project, if the grantee is unable to do so?**

The Department may allow another entity to perform activities for a grantee in some situations. As a part of their response and recovery efforts, grantees are encouraged to develop a backup plan for the operation of their grants that includes sharing project responsibilities and activities with other entities in the event that the grantee is not able to perform them. Please note that certain programs have a statutory prohibition of subgranting, e.g., the vocational rehabilitation program discussed in Section H, below. When the backup plan needs to be invoked, the grantee should seek approval from the Department to revise the grant in accordance with 2 C.F.R. § 200.308. Grant backup plans might include, for example:

- Entering into arrangements and agreements with other organizations in the region to ensure the continuity of grant operations during recovery, including sharing or loaning of staff, facilities, space, materials, and supplies (contracting work to a third party has to comply with the procurement requirements set out in [2 C.F.R. §§ 200.317 through 200.327](#));
- Shifting various activities and responsibilities to other members of an already approved partnership or consortium; or
- Transferring an entire grant to another entity (such a transfer has to be approved by the Department and implemented according to Department policies).

For more specific information regarding the transfer of State-administered grants and discretionary grants, see questions A-6 and A-7 below.

**A-6. For State-administered grants, is another entity allowed to perform activities related to a grantee's project, if the grantee is unable to do so?**

Yes, but States and their subgrantees, when applicable, will continue to be legally responsible for the administration of the grants and subgrants, as well as the monitoring of contracts. States have some discretion to make changes to their grants without prior approval by the Department under 2 C.F.R. § 200.308. If a change requires prior approval, however, 2 C.F.R. § 200.308 sets forth the procedures States follow to request prior approval from the Department. The Department will consider these requests on an expedited basis and will generally approve those that are consistent with the State plan or application that was filed and approved by the Department and reasonable in light of the specific circumstances of a disaster.

**A-7. May a discretionary grant be transferred to another eligible entity if the grantee is unable to perform project activities due to a disaster?**

Yes, in limited circumstances a discretionary grant may be transferred from one entity to another. The transfer, however, requires formal approval by the Department, and the grantee must follow procedures to ensure that the grant continues to serve the same or a very similar population, and is of the same scope and meets the objectives as approved by the Department.

The entity to which a grant is transferred must be an eligible recipient. To ensure that proposed changes are within the scope and objectives of the grant as approved, amendments to grant awards require formal approval by the Department under 2 C.F.R. § 200.308.

**A-8. Must a grantee follow the various administrative requirements related to a grant (e.g., meeting reporting deadlines and obtaining administrative approvals) if it is affected by a disaster?**

Generally, yes, but the Department understands that grantees may need to make administrative changes to grant projects if they are affected by a disaster. Grantees have flexibility under 2 C.F.R. § 200.308 to make certain changes with Department approval and under [34 C.F.R. § 75.261](#) to make some changes without Department approval. Any relief from regulatory requirements provided to all grantees during the recovery period will be posted on the Department's website. (See individual program websites for more information.)

**A-9. In the event that grant-related activities are not being implemented because schools or program offices have been closed or staffing resources are not available, will the Department provide relief from meeting evaluation requirements?**

Yes, in such cases, the Department will consider modifying the project evaluation requirements, if appropriate; however, once grant activities resume, a proper evaluation of the project will need to be completed.

**A-10. If a grantee is required to provide services to partners, how can these partners receive grant management and grant administrative information needed to maintain their grant-related activities?**

Grantees are encouraged to establish communication systems with partner organizations, such as contractors and consortium members, and develop strategies based on the impact and estimated recovery period. Such planning may require establishing a backup strategy that will be operational throughout the recovery period. Grantees should coordinate such planning with their partners to make sure all affected entities have access to grant-related information. Grantees may choose to review the Readiness and Emergency Management for Schools (REMS) Technical Assistance Center Emergency Management tools at <https://rems.ed.gov/EOPinteractivetools.aspx>.

**A-11. If a grantee is required to provide equitable services to private school students and teachers, how will private schools be notified of the availability and delivery of such services during the recovery period?**

Grantees should, during the required consultation process with private school officials under sections 1117(b) and 8501(c) of the ESEA and under section 612(a)(10)(A)(iii) of the IDEA (also [34 C.F.R. § 300.134](#)), establish procedures and strategies, including a communication process, that the entity will implement in the event of an extended school closure. Planning for this effort may require establishing a backup strategy that will be operational throughout the recovery period. Grantees should coordinate such planning with private school officials to make sure that all appropriate private schools have access to information related to Federal education equitable services provided to their private school students and teachers. Grantees and private school officials may also consider enlisting the assistance of the designated ESEA State ombudsman regarding ESEA equitable services. See: <https://www2.ed.gov/about/inits/ed/non-public-education/ombudsman-directory.html>. In addition, in most States there are State-level private school organizations that can be a resource for communication and collaboration and, thus, grantees may consider contacting such associations. See questions B-4 and C-7 in this guidance for additional program-specific guidance on the provision of equitable services.



**A-12. Discretionary grantees have specific performance targets that are approved in their applications. Will the Department renegotiate performance targets due to delays in project implementation, school closings, or reduced staff capacity?**

Yes. In general, the Department expects grantees to strive to achieve performance targets as stated in their approved grant applications; however, the Department understands that grantees may experience delays in achieving performance targets as the result of a disaster. If necessary, grantees may request approval from the program office at the Department administering the grant to adjust project timelines so that approved performance targets can be met, but at a later date than originally planned. In addition, grantees may exercise the administrative flexibility in [34 C.F.R. § 75.261](#) and initiate a one-time extension of up to one year from the end of the initial project period without prior approval to complete unfinished project activities, and thereby meet approved performance targets in accordance with revised project timelines.

**A-13. What does the Department expect with regard to the treatment of institutional employees who are supported by Federal higher education grants or other employees paid with Federal education program funds?**

Institutional employees who are supported with Federal grants awarded by the Department, including grants authorized by the Higher Education Act of 1965, as amended (HEA), and the other programs discussed in this guidance such as the IDEA, and Title I of the ESEA, should generally be treated the same as similarly situated employees of the institution. In the case of programs serving K–12, Federally funded employees should be treated the same as similarly situated State and locally funded employees. This means that if the institution’s policy or State and local law and policies provide for similarly situated employees to be paid during an extended closure due to a disaster, those supported with Federal grants would also be paid.

These employees should return to the duties for which the grant funds were provided as soon as possible and, to the extent practicable, should work on project activities during the time the school is closed. Employees supported with Federal grant funds who are intended to provide direct services to students may maintain contact with students during the recovery period, through appropriate methods such as telephone, video conferencing, and email. Where necessary, Federally funded employees could continue work even if other employees at their institution are not able to work due to a lack of available State or local funds.

## **B. ELEMENTARY AND SECONDARY EDUCATION ISSUES — THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 (ESEA)**

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This section discusses potential legal issues that school administrators may face when responding to and recovering from extended school closures and otherwise addresses disruption in elementary and secondary educational services funded under the ESEA. Specifically, this section discusses waivers and other forms of relief from elementary and secondary (K–12) Federal education requirements and other flexibilities the Department may provide.

### **B-1. May the Department provide flexibility to SEAs, LEAs, and Indian Tribes with regard to Federal K–12 requirements governed by the ESEA in response to a disaster?**

Yes, to the extent permissible under law, the Department may provide SEAs (as well as LEAs and schools through their SEA) and Indian Tribes with flexibility as necessary to appropriately address the impact a disaster has had upon the normal functioning or delivery of educational services. Section 8401 of the ESEA (20 U.S.C. § 7861) permits the Secretary to grant waivers of most ESEA requirements to SEAs (as well as LEAs and schools through their SEA) and Indian Tribes that receive ESEA funds and that request such waivers. Specifically, if warranted due to the impact of a disaster that impedes functioning or delivery of educational services in a State, LEA, or school, the Department may, upon request by SEAs or Indian Tribes, grant waivers as it determines appropriate of most ESEA statutory and regulatory requirements.

### **B-2. Which entities are responsible for requesting a waiver related to Federal K–12 requirements or deadlines?**

Only SEAs and Indian Tribes that receive funds under a program authorized by the ESEA may request a waiver, consistent with the provisions in section 8401. If an LEA would like to request a waiver, section 8401 requires that the LEA submit a waiver request to its SEA, which may then submit it to the Department if the SEA determines the waiver to be appropriate.

Similarly, an elementary or secondary school may submit a waiver request to its LEA, which may then submit it to the SEA if the LEA determines the waiver to be appropriate. The SEA may then submit the request to the Department, if the SEA determines the waiver to be appropriate.

To clarify this process, SEAs may choose to provide guidance and a process for LEAs and schools to submit a waiver request to the SEA.

If an SEA or Indian Tribe believes a waiver may be needed, the Department requests that, if possible, the entity contact the Department to receive technical assistance before requesting the waiver. The Department will then assist the SEA or Indian Tribe in requesting a waiver.

### **B-3. What is the general process for applying for a waiver of ESEA requirements?**

To obtain a waiver, the ESEA requires that an SEA, LEA (through its SEA), Indian Tribe, or school (through its LEA and SEA or Indian Tribe) submit a request to the Secretary. Section 8401(b) of the ESEA requires an SEA (on behalf of the SEA or on behalf of, and based on the requests of, LEAs in the State) or Indian Tribe (on behalf of schools operated by the Tribe) to include in its waiver request a plan that:

- Identifies the Federal program(s) affected by the requested waiver;
- Describes which Federal statutory or regulatory requirements are to be waived;
- Describes how the waiving of such requirements will advance student academic achievement;
- Describes the methods the SEA, LEA, school, or Indian Tribe will use to monitor and regularly evaluate the effectiveness of the implementation of the waiver;
- Includes only information directly related to the waiver request; and
- Describes how schools will continue to assist the same populations served by the program for which the waiver is requested.
- If the waiver relates to section 1111(b) or (h) of the ESEA, describes how the SEA, LEA, school, or Indian tribe will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of student subgroups.

Before submitting the waiver request to the Department, an SEA must:

- Provide the public and any interested LEA in the State, to the extent the request impacts an LEA, with notice and a reasonable opportunity to comment and provide input on the request in the manner in which the SEA customarily provides similar notice and opportunity to comment; and
- Submit the comments and input to the Department with a description of how the SEA addressed any comments and input. (Section 8401(b)(3)(A) of the ESEA).

An SEA may also describe what may occur if it does not receive a waiver.

In the case of a waiver request submitted by an LEA, the request must be reviewed and approved by the SEA in accordance with section 8401(a)(2) before being submitted to the Secretary. The LEA must also provide notice and a reasonable opportunity to comment on the waiver request to the SEA and the public in the manner in which the LEA customarily provides similar notice and opportunity to comment to the public. (Section 8401(b)(3)(B) of the ESEA). Any comments received from the SEA and public must accompany the request when submitted to the Department.

The Department encourages any SEA, LEA, school, or Indian Tribe that intends to seek a waiver to review section 8401 of the ESEA, which may be accessed at the following web address: <https://www2.ed.gov/documents/essa-act-of-1965.pdf>.

Affected agencies or schools may also contact the Department's Office of Elementary and Secondary Education with questions about ESEA waivers by calling (202) 401-0113.

**B-4. If an LEA is required to provide equitable services to private school students under an ESEA program, how should the LEA communicate with officials of these private schools during an extended school closure due to a disaster?**

The Department suggests that an LEA, during the required consultation process with private school representatives or officials under sections 1117(b) and 8501(c) of the ESEA, establish a communication process for use throughout a closure necessitated by a disaster. For example, the LEA may establish an emergency call tree to ensure any needed information can be shared within the LEA and from the LEA to private schools, as needed. The LEA in consultation with private school representatives or officials may also establish procedures for how equitable services will be implemented in the case of closure due to a disaster and share those procedures with the private school representatives or officials. It will be helpful for LEAs to coordinate such planning with appropriate private school officials to make sure that they have access to information related to equitable services for their eligible students and, as applicable, their teachers and families. Grantees and private school officials may also consider enlisting the assistance of the designated State ombudsman regarding ESEA equitable services matters. As noted under the answer to B-7, the equitable participation of private school students and teachers may not be waived under section 8401 of the ESEA.

**B-5. Does the ESEA allow for any flexibility with respect to meeting maintenance of effort (MOE) without waiver approval?**

Yes. There is some flexibility in the MOE provisions in the ESEA. Under section 8521(b)(2) of the ESEA, an LEA that does not maintain effort with respect to a given fiscal year would not be penalized with a reduction in its allocation under a covered ESEA program unless the LEA also failed to maintain effort in one or more of the five immediately preceding fiscal years.

If an LEA fails to maintain effort, the LEA (or the SEA on the LEA's behalf) may request an MOE waiver under section 8521(c)(1), which gives the Department the authority to waive the MOE requirements if equitable due to exceptional or uncontrollable circumstances, such as a natural disaster, a change in the organizational structure of the LEA, or a precipitous decline in the financial resources of the LEA. If an LEA receives an MOE waiver from the Department for a given fiscal year, the LEA has effectively maintained effort for that fiscal year. Accordingly, in determining whether the LEA had failed to maintain effort for one or more of the five

immediately preceding fiscal years, the SEA would count the year in which the LEA received a waiver as a year of maintaining effort.

It is important to understand the timing for MOE determinations. The ESEA requires an LEA’s expenditures of State and local funds for free public education for the “preceding fiscal year” to be not less than 90 percent of the LEA’s expenditures for the “second preceding fiscal year.” For purposes of determining maintenance of effort under the ESEA, [34 C.F.R. § 299.5\(c\)](#) defines the “preceding fiscal year” as the Federal fiscal year, or the 12-month fiscal period most commonly used in a State for official reporting purposes, prior to the beginning of the Federal fiscal year in which funds are available. For funds first made available on July 1, 2020, if a State is using the Federal fiscal year, the current fiscal year is Federal fiscal year 2020 (which began on October 1, 2019), the “preceding fiscal year” is Federal fiscal year 2019 (which began on October 1, 2018), and the “second preceding fiscal year” is Federal fiscal year 2018 (which began on October 1, 2017).

If a State is using a fiscal year that begins on July 1 and fiscal year 2020 Federal funds are first made available on July 1, 2020, the current State fiscal year is the 12-month period that begins on July 1, 2019 and ends on June 30, 2020. The “preceding fiscal year” is the 12-month period that begins on July 1, 2018 and ends on June 30, 2019. The “second preceding fiscal year” is the period that begins on July 1, 2017 and ends on June 30, 2018. The following table illustrates this concept for a State that uses a July 1 – June 30 fiscal year.

<b>Federal Funds First Available</b>	<b>Current State Fiscal Year</b>	<b>Preceding State Fiscal Year</b>	<b>Second Preceding State Fiscal Year</b>
July 1, 2020 (Federal fiscal year 2020 that begins on October 1, 2019)	2020 (begins on July 1, 2019)	2019 (begins on July 1, 2018)	2018 (begins on July 1, 2017)
July 1, 2021 (Federal fiscal year 2021 that begins on October 1, 2020)	2021 (begins on July 1, 2020)	2020 (begins on July 1, 2019)	2019 (begins on July 1, 2018)
July 1, 2022 (Federal fiscal year 2022 that begins on October 1, 2021)	2022 (begins on July 1, 2021)	2021 (begins on July 1, 2020)	2020 (begins on July 1, 2019)
July 1, 2023 (Federal fiscal year 2023 that begins on October 1, 2022)	2023 (begins on July 1, 2022)	2022 (begins on July 1, 2021)	2021 (begins on July 1, 2020)

<b>Federal Funds First Available</b>	<b>Current State Fiscal Year</b>	<b>Preceding State Fiscal Year</b>	<b>Second Preceding State Fiscal Year</b>
July 1, 2024 (Federal fiscal year 2024 that begins on October 1, 2023)	2024 (begins on July 1, 2023)	2023 (begins on July 1, 2022)	2022 (begins on July 1, 2021)
July 1, 2025 (Federal fiscal year 2025 that begins on October 1, 2024)	2025 (begins on July 1, 2024)	2024 (begins on July 1, 2023)	2023 (begins on July 1, 2022)

As this table illustrates, fiscal years, whether Federal or State, roughly correspond to school years. Thus, State fiscal year 2020 corresponds to school year 2019–2020. For MOE purposes, if an LEA’s expenditures in State fiscal year 2020 decline, that decline would affect the LEA’s allocation under a covered ESEA program when an SEA allocates Federal fiscal year 2021 funds (for school year 2021–2022), when the “preceding fiscal year” for MOE purposes is State fiscal year 2020 (generally covering expenditures for school year 2019–2020).

Finally, we note that, under [34 C.F.R. § 299.5\(d\)\(2\)\(i\)](#), an SEA excludes from an ESEA MOE determination supplemental expenditures of State and local funds made as a result of a Presidentially declared disaster. Therefore, if an LEA’s expenditures increase significantly in, for example, State fiscal year 2020 (July 1, 2019–June 30, 2020) due to increased spending in response to such a disaster, the SEA will exclude these expenditures from MOE calculations, which will decrease the possibility that a one-time increase in fiscal year 2020 expenditures will cause an LEA to fail to maintain effort.

**B-6. How should SEAs and LEAs identify and serve students who may be residing in homeless situations as a result of a disaster?**

The Education for Homeless Children and Youth (EHCY) program is authorized under Title VII-B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) (McKinney-Vento Act). The purpose of the EHCY program is to ensure that homeless children and youth have equal access to the same free, appropriate public education as provided to other children and youth. (See section 721 of the McKinney-Vento Act). Under section 725(2)(A) of the McKinney-Vento Act, a child or youth is considered homeless if he or she lacks “a fixed, regular, and adequate nighttime residence.” This includes children and youth who are sharing the housing of others due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters, cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or have a primary nighttime

residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings. (Section 725(2)(B) of the McKinney- Vento Act).

Under the McKinney-Vento Act, each SEA has a State Coordinator for the Education of Homeless Children and Youths. (Section 722(f) of the McKinney-Vento Act). In addition, each LEA also has a staff person who is designated to serve as the local liaison for homeless education. (Section 722(g)(1)(J)(ii) of the McKinney-Vento Act). In the event of a disaster, State Coordinators and local liaisons will want to work together to coordinate and facilitate services to children and families made homeless by the disaster.

To facilitate identification of homeless students, local liaisons may choose to display posters or distribute brochures on McKinney-Vento rights in places where people affected by the disaster are likely to assemble. Local liaisons should also notify social services, housing, and other types of agencies working with individuals and families affected by the disaster to assist with identification.

Local liaisons can be proactive in preparing schools to enroll displaced students and arranging for additional staff to assist with the identification and enrollment process. The McKinney-Vento Act requires homeless students to be immediately enrolled in school, even if the student is lacking documentation normally required for enrollment or has missed enrollment deadlines during any period of homelessness. (Section 722(g)(3)(C)(i) of the McKinney-Vento Act). The LEA and school must also allow a student to remain in his or her school of origin (i.e., the school in which he or she was last enrolled or that he or she attended when permanently housed, defined in section 722(g)(3)(I) of the McKinney-Vento Act) if it is in the student's best interest to remain in that school and ensure that the student is provided transportation to and from that school if requested (sections 722(g)(3)(A) and 722(g)(1)(J)(iii) of the McKinney-Vento Act).

For more information on the EHCY program, please see the Department's non-regulatory guidance, which is available at:

<https://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716updated0317.pdf>. In

addition, the National Center for Homeless Education has technical assistance products on Disaster Preparation and Response, which are available at: <https://nche.ed.gov/disaster-preparation-and-response>.

**B-7. Are there certain Federal K–12 requirements under the ESEA that may not be waived in response to a disaster?**

Yes. Section 8401(c) of the ESEA restricts the requirements for which the Department may consider waivers under section 8401. The requirements for which the Department *may not* grant waivers under this section include:

- (1) The allocation or distribution of funds to States, LEAs, Indian Tribes, or other recipients of funds under the ESEA;
- (2) Maintenance of effort (as noted in B-5, section 8521 of the ESEA gives the Department the authority to waive this requirement under certain circumstances);
- (3) Comparability of services;
- (4) Use of Federal funds to supplement, not supplant, non-Federal funds;
- (5) Equitable participation of private school students and teachers;
- (6) Parental participation and involvement;
- (7) Applicable civil rights requirements;
- (8) The requirement for a charter school under Part C of Title IV of the ESEA;
- (9) The prohibitions—
  - (A) In Subpart 2 of Part F of Title VIII of the ESEA;
  - (B) Regarding use of funds for religious worship or instruction in section 8505 of the ESEA; and
  - (C) Regarding activities in section 8526 of the ESEA (prohibited uses of funds); and
- (10) The selection of a school attendance area or schools under subsections (a) and (b) of section 1113 of the ESEA, except that the Department may grant a waiver to allow a school attendance area or school to participate in activities under Part A of Title I if the percentage of children from low-income families in the school attendance area or who attend the school is not more than 10 percentage points below the lowest percentage of those children for any school attendance area or school of the LEA that meets the requirements of subsections (a) and (b) of section 1113.

In addition, the section 8401 waiver authority does not apply to the Impact Aid Program (Title VII of the ESEA).



## **C. ISSUES RELATED TO SERVICES FOR CHILDREN AND YOUTH WITH DISABILITIES UNDER PART B OF THE IDEA AND SECTION 504 OF THE REHABILITATION ACT**

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Following a disaster public elementary and secondary schools must ensure equal access to educational opportunities for students with disabilities. As public agencies and officials grapple with challenging decisions, around reopening, and providing service, they may need to consider multiple options for delivering instruction, including special education and related services to children with disabilities. Those options could include remote/distance instruction, in-person attendance, or a combination of both remote/distance instruction and in-person attendance (hybrid model). However, no matter what primary instructional delivery approach is chosen, SEAs, LEAs, and individualized education program (IEP) Teams remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities. If State and local decisions require schools to limit or not provide in-person instruction due to health and safety concerns, SEAs, LEAs, and IEP Teams are not relieved of their obligation to provide FAPE to each child with a disability under IDEA. [34 C.F.R. §§ 300.101](#) and [300.201](#) (IDEA) and [34 C.F.R. § 104.4](#) and [104.33](#) (Section 504).

OSERS has issued [Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak](#) (March 12, 2020), and a [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities](#) (March 21, 2020). OSERS also released a series of [Questions and Answers documents](#) from June 2020 through October 2020. In the [Questions and Answers on IDEA Part B Service Provision](#) (September 28, 2020), OSERS made clear that no IDEA requirements were waived. Finally, the Department has issued a number of [Return to School Roadmap documents](#), which focus on the reopening of schools, and support the full implementation of IDEA. Specifically, the [Return to School Roadmap — Child Find Under Part B of the IDEA](#) (August 24, 2021), and the [Return to School Roadmap: Development and Implementation of IDEA](#) (September 30, 2021) further clarify that, regardless of the disaster, or the mode of intervention or instruction, children and youth with disabilities and their families are entitled to appropriate IDEA Part B services.

Under Part B of the IDEA, LEAs where private elementary schools and secondary schools are located must also ensure the provision of equitable services to eligible students with disabilities enrolled by their parents in those private schools. [34 C.F.R. §§ 300.130–300.144](#). With few exceptions,<sup>3</sup> IDEA does not provide waiver authority to the Department; thus, OSERS is unable to grant waivers under IDEA Parts B to SEAs as a result of a disaster to otherwise create safe harbors from potential or existing litigation by parents or others. The following questions

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<sup>3</sup> A notable exception is the authority to grant a waiver of the IDEA's maintenance of State financial support requirement under [34 C.F.R. § 300.163](#) and is further addressed in C-10.

primarily address best practices for SEAs, LEAs, and schools when addressing extended school closures as a result of a disaster.

**C-1. Is an LEA required to continue to provide FAPE to students with disabilities during a school closure caused by a disaster?**

If an LEA closes its schools because the functioning or delivery of educational services is disrupted and does not provide any educational services to the general student population, then the LEA would not be required to provide services to students with disabilities during that same period of time. However, the cornerstone of IDEA is the entitlement of each eligible child with a disability to FAPE that emphasizes special education and related services designed to meet the child's unique needs and that prepares the child for further education, employment, and independent living. Under IDEA, the vehicle for providing FAPE is through an appropriately developed IEP based on the individual needs of the child. An IEP must include a child's present levels of academic achievement and functional performance, and the impact of a child's disability on their involvement and progress in the general education curriculum. IEP goals must be aligned with grade-level content standards for all children with disabilities<sup>4</sup>. The child's IEP must be developed, reviewed, and revised in accordance with the requirements outlined in IDEA in [34 C.F.R. §§ 300.320 through 300.328](#).

No matter what primary instructional delivery approach<sup>5</sup> is used, SEAs and LEAs remain responsible for ensuring that FAPE is available to all children with disabilities. Therefore, before, during, and after the disaster, the LEA must ensure that each child with a disability has access to educational opportunities, including all special education and related services, necessary to receive FAPE.

For students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504, the Department understands there may be exceptional circumstances that could affect how a particular service is provided. In addition, an IEP Team and, as appropriate to an individual student with a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to make an individualized determination as to whether, and to what extent, compensatory services are needed in accordance with applicable requirements, including to make up for any skills that may have been lost because of an extended school closure. (*See Q&A C-6*).

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<sup>4</sup> States are permitted to define alternate academic achievement standards for children with the most significant cognitive disabilities, provided those standards are aligned with the State's academic content standards, promote access to the general curriculum, and reflect professional judgment of the highest achievement standards possible, in accordance with 34 C.F.R. § 200.1(d). 34 C.F.R. § 300.160(c)(2)(i).

<sup>5</sup> As used in this document, "service delivery approach," "instructional delivery approach," and "instructional methodology" include the provision of services to a child with a disability in-person, virtually, or a hybrid of in-person and virtual instruction.

Additionally, see the [Questions and Answers on IDEA Part B Service Provision](#) (September 28, 2020), and the [Return to School Roadmap: Development and Implementation of IDEA](#) (September 30, 2021) for more information related to this topic.

**C-2. In the event of a school closure due to a disaster, how might educational services be provided to students with disabilities?**

The Department understands circumstances are always subject to change after a disaster and recognize that ultimately the health and safety of children, families, and the school community is most important. SEAs and their public agencies must make every effort to continue to provide children with disabilities with the special education and related services appropriate to their needs. As conditions continue to change after the disaster, some of the special education and related services included in a child’s IEP may need to be provided in a different manner while still ensuring that all children with disabilities continue to receive FAPE and have “the chance to meet challenging objectives.”<sup>6</sup> Therefore, IEP Teams should identify how the special education and related services included in a child’s IEP will be provided and should consider a variety of instructional methods and settings.

For example, IEP Teams can discuss how a child’s IEP will be implemented with traditional in-person instruction and how services also could be provided through remote/distance instruction if circumstances require a change to distance learning or a hybrid model. In making these determinations, IEP Teams should consider alternate available instructional methodologies or delivery, such as online instruction, teleconference, direct instruction via telephone or videoconferencing, or consultative services to the parent (if feasible).

Technology may afford students, including students with disabilities, an opportunity to have access to high-quality educational instruction during an extended school closure, especially when continuing education must be provided through distance learning. If schools are providing educational opportunities to the general student population, SEAs and LEAs are required to provide the services and accommodations needed for students with disabilities to have an equal opportunity to participate in a distance-learning program.

See the [Questions and Answers on IDEA Part B Service Provision](#) (September 28, 2020), and the [Return to School Roadmap: Development and Implementation of IDEA](#) (September 30, 2021) for more questions and answers related to this topic.

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<sup>6</sup> [Endrew F. v Douglas County School District Re-1, 137 S.Ct. 988, 1000 \(2017\).](#)

**C-3. What must a school do if it cannot provide services in accordance with a student's IEP or Section 504 plan due to a school closure?**

If an LEA continues to provide instruction to the general school population during an extended closure due to a disaster, but is not able to provide services to a student with a disability in accordance with the student's IEP, the student's IEP Team described in [34 C.F.R. § 300.321](#) determines which services can be provided to appropriately meet the student's needs. The IEP Team may meet by teleconference or other means, consistent with [34 C.F.R. § 300.328](#), to determine if some, or all, of the identified services can be provided through alternate or additional methods. The IDEA Part B regulations provide in [34 C.F.R. § 300.324\(a\)\(4\)\(i\)](#), that in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purpose of making those changes, and instead, may develop a written document to amend or modify the child's current IEP. It is important to note that an amendment to an IEP cannot take the place of an annual IEP Team meeting.

The IEP Team members referenced in [34 C.F.R. § 300.321\(a\)](#) are generally required to participate in meetings to develop, review, and revise a child's IEP. This list includes, among other participants, the parents of the child; not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); and not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child. Under [34 C.F.R. § 300.321\(e\)](#), it is permissible for certain members to be excused from attending the IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. If the IEP Team meeting involves a modification to or discussion of the member's area of the curriculum or related services, the member may be excused from attending an IEP Team meeting, in whole or in part, if the parent, in writing, and the public agency consent to the excusal; and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

If changes are made to the child's IEP through a written document, the public agency must ensure that the child's IEP Team is informed of those changes. Upon request, a parent must be provided with a revised copy of the IEP with the changes incorporated. [34 C.F.R. § 300.324\(a\)\(6\)](#). In addition, under [34 C.F.R. § 300.503\(a\)](#), the public agency must provide the parent with prior written notice that meets the requirements of [34 C.F.R. § 300.503\(b\)](#) a reasonable time before the public agency (1) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. This provision applies,

even if the IEP is amended without convening an IEP Team meeting, pursuant to [34 C.F.R. § 300.324\(a\)\(4\)](#).

See the [Questions and Answers on IDEA Part B Service Provision](#) (September 28, 2020), and the [Return to School Roadmap: Development and Implementation of IDEA](#) (September 30, 2021) for more information related to this topic.

Appropriate personnel responsible under Section 504 must take similar actions regarding a student who has a Section 504 plan. Additionally, under IDEA, eligible students with disabilities enrolled by their parents in private schools who have services plans would need similar consideration and actions. If there has been an extended school closure, once school resumes, a student's IEP Team, or appropriate personnel under Section 504, must make a subsequent individualized determination whether, and to what extent, compensatory services are needed consistent with the respective applicable requirements, including to make up for any skills that may have been lost. (See Q&A C-6). [34 C.F.R. §§ 104.33–104.35\(c\)](#) (Section 504).

**C-4. In the event that a school is closed for an extended period of time due to a disaster, would an IEP Team be required to meet?**

It will depend on the child-specific circumstances and whether the parent and LEA agree to make changes to an IEP without convening the IEP Team. Under [34 C.F.R. § 300.324\(a\)\(5\)](#), to the extent possible, the LEA must encourage the consolidation of reevaluation meetings and other IEP Team meetings for the child. However, this should not be read to discourage an IEP Team from reconvening, if appropriate. An LEA must initiate and conduct meetings periodically, but at least once every twelve months, to review a child's IEP, in order to determine whether the annual goals for the child are being achieved, and to revise the IEP, as appropriate.

IDEA allows the parent of a child with a disability and the LEA to agree not to convene an IEP Team meeting for the purpose of making changes to the IEP after the annual IEP Team meeting for a school year, and instead develop a written document to amend or modify the child's current IEP. [34 C.F.R. § 300.324\(a\)\(4\)](#). It is important to note that an amendment to an IEP cannot take the place of an annual IEP Team meeting.

For a child who has been evaluated and determined to need special education and related services under IDEA, an IEP must be developed within 30 days of the eligibility determination. [34 C.F.R. 300.323\(c\)\(1\)](#).

The Department recognizes that some States, due to operational constraints that may occur because of a disaster may be unable to conduct face-to-face IEP Team meetings. Under [34 C.F.R. § 300.322\(a\)](#), LEAs must take steps to ensure that one or both parents attend or are afforded the opportunity to participate in an IEP Team meeting by notifying them of the meeting early enough to ensure that they can attend and by scheduling the meeting at a mutually agreed

upon time and place. If face-to-face meetings are not feasible or practicable, the Department encourages the use of the flexibility included in [34 C.F.R. § 300.328](#) which allows LEAs to conduct initial and annual IEP Team meetings through alternate means. Such alternate means could include a telephone or video conference call (if feasible and consistent with privacy standards) if acceptable to the parents and other IEP Team meeting participants.

See the [Questions and Answers on IDEA Part B Service Provision](#) (September 28, 2020), and the [Return to School Roadmap: Development and Implementation of IDEA](#) (September 30, 2021) for more information related to this topic.

These same principles apply to similar activities conducted by appropriate personnel for a student with a disability who has a plan developed under Section 504 or who is being evaluated under Section 504.

**C-5. Would an LEA be required to conduct an evaluation or reevaluation of a student with a disability during a school closure or disaster?**

Yes. Under [34 C.F.R. § 300.301\(c\)\(1\)](#), an initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation, or if the State has established a timeframe within which the evaluation must be conducted, within that timeframe. The exceptions to the initial evaluation timeframe are set forth in [34 C.F.R. § 300.301\(d\)](#). Those exceptions permit extension of the timeframe if a parent repeatedly fails or refuses to produce the child for the assessment; or if the child enrolls in a new school in a new public agency after the relevant timeframe has begun. States may specifically adopt a timeframe within which the initial evaluation must be conducted, including adopting the IDEA 60-day timeframe. States that specifically adopt a timeframe within which the initial evaluation must be conducted, including adopting the IDEA 60-day timeframe, also have the flexibility to establish additional exceptions through State regulation or policy.

Under Part B of IDEA, a reevaluation must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. [34 C.F.R. § 300.303\(b\)\(2\)](#). The Department acknowledges that, during a disaster, school closures and each child's individual disability-related needs may make administering some in-person evaluations impracticable and may place limitations on how evaluations and reevaluations are conducted under IDEA Part B.

LEAs should investigate all appropriate assessment instruments and tools to determine if some can be administered or completed remotely during the disaster, provided that evaluation of the child is based on personal observation (whether in person or through videoconferencing).

LEAs should also work with the developers of their current assessment instruments to determine if the instruments can be administered or completed remotely, without significantly impacting the validity and reliability of the results. However, under [34 C.F.R. § 300.304\(c\)\(1\)\(iii\)-\(v\)](#), tests

and other evaluation materials must be used for the purposes for which the assessments or measures are valid and reliable and must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.

Note that when conducting reevaluations under Part B, the IEP Team and other qualified professionals must conduct a review of existing evaluation data on the child. A reevaluation based solely on a review of existing evaluation data must be sufficiently comprehensive to determine whether the child continues to have a disability and the educational needs of the child. [34 C.F.R. § 300.305\(a\)](#). The review of existing evaluation data on the child may occur without a meeting and without obtaining parental consent. [34 C.F.R. §§ 300.300\(d\)\(1\)](#) and [300.305\(a\) and \(b\)](#)

**C-6. How should an IEP Team address the adverse impact of educational disruptions caused by an extended school closure, when developing, reviewing, or revising a child’s IEP during or after a disaster?**

The student’s IEP Team (or appropriate personnel under Section 504) must make an individualized determination as to whether, and to what extent, it may be necessary to provide compensatory education, including to make up for any skills that may have been lost as a result of an extended closure of school buildings or other disruptions in service. See also Section D, [Return to School Roadmap: Development and Implementation of IEPs under the IDEA](#) (Sept. 30, 2021).

After a disaster, it is critically important that the IEP Team consider any adverse impacts of the school closure or changes to the IEP, on each child with a disability. This includes a discussion of whether the child may have new or different needs than had been determined prior to the disaster or extended school closure. Other considerations could include, but are not limited to, revising the IEP to address (1) lost skills or a lack of expected progress toward attaining the child’s annual IEP goals and in the general curriculum; (2) updated data (e.g., information gathered from formal and informal assessments, parent input) that reflect the child’s present levels of academic achievement and functional performance following the extended time without face- to-face, in-person special education and related services; and (3) all areas of need, whether or not commonly related to the child’s disability category, or if the child may require different or other services to address new areas of need (e.g., behavioral, social, emotional, and mental health needs, needs that arose during or after the disaster).

A child’s IEP Team may determine that compensatory services are necessary to mitigate the impact of disruptions and delays in providing appropriate services to the child. Some examples of situations that might require consideration of whether, and what, compensatory services are necessary include: (1) if the initial evaluation, eligibility determination, and identification, development and implementation of the IEP for an eligible child were delayed; (2) if the special

education and related services that were provided during the pandemic through virtual, hybrid, or in-person instruction were not appropriate to meet the child's needs; (3) if some or all of the child's IEP could not be implemented using the methods of service delivery available during the pandemic (for example, if the physical therapy and behavioral intervention strategies included in the child's IEP could not be provided through virtual means); and (4) if meaningful services to facilitate the transition from secondary school to activities such as postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation were not provided due to the pandemic. These examples are not meant to be exhaustive and are provided to illustrate various situations that could require consideration of whether, and to what extent, compensatory services are needed to address the child's needs and mitigate the adverse impact of the disaster.

An IEP Team may revise the measurable annual IEP goals to reflect a decline in the child's knowledge and skills resulting from the disruption in instruction as a result of the disaster. When developing, reviewing, and revising the child's IEP, the IEP Team, which includes the child's parents, must give "careful consideration of the child's present levels of achievement, disability, and potential for growth." *Endrew F. v. Douglas County School District Re-1*, 137 S. Ct. 988, 999 (2017) (citing 20 U.S.C. 1414(d)(1)(A)(i)(I)–(IV) and (d)(3)(A)(i)–(iv)). See also [Questions and Answers on U. S. Supreme Court Case Decision \*Endrew F. v. Douglas County School District Re-1\*](#) (Dec. 7, 2017). The essential function of an IEP is to provide meaningful opportunities for appropriate academic and functional progress, and to enable the child to make progress appropriate in light of the child's circumstances. Each child's IEP must include, among other information, an accurate statement of the child's present levels of academic achievement and functional performance and measurable annual goals, including academic and functional goals. The IEP Team's effectiveness in gathering and interpreting this information will ensure that, in establishing IEP goals, the IEP Team has appropriately determined the individualized needs of the child and that it can develop measurable IEP goals that provide the child with the opportunity to meet challenging objectives.

Similarly, the appropriate personnel under Section 504 must also review the student's plan developed under Section 504 to determine whether any other changes are needed as a result of a prolonged absence from school or other disruptions in service.

**C-7. What steps must an LEA unaffected by a disaster take in order to serve a student with a disability who relocates to that LEA? What if the child's family does not have a copy of the child's current IEP in this situation?**

During such a difficult time, as schools attempt to locate or preserve records and work to rebuild school facilities, the Department recognizes the challenges associated with serving students who are displaced from their current school as a result of a disaster.



If a child with a disability who had an IEP in effect transfers to a new LEA in the same State and enrolls in a new school within the new LEA in the same school year, the new LEA, in consultation with the parents, must provide FAPE to the child. This includes providing services comparable to those described in the child's IEP from the previous LEA, until the new LEA either: (1) adopts the child's IEP from the previous LEA; or (2) develops, adopts, and implements a new IEP that meets the applicable requirements in [34 C.F.R. §§ 300.320 through 300.324](#). Thus, the new LEA must provide FAPE to the child with a disability when the child enrolls in the new LEA's school within the same school year and may not deny special education and related services to the child. The new LEA in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous LEA in which the child was enrolled, pursuant to [34 C.F.R. § 99.31\(a\)\(2\)](#); and the previous LEA in which the child was enrolled must take reasonable steps to promptly respond to the request from the new LEA. [34 C.F.R. § 300.323\(g\)](#).

In the case of an out-of-State transfer, the new LEA (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous LEA) until the new LEA: (1) conducts an evaluation pursuant to [34 C.F.R. §§ 300.304 through 300.306](#) (if determined to be necessary by the new LEA); and (2) develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in [34 C.F.R. §§ 300.320 through 300.324](#). Thus, the new LEA must provide FAPE to the child with a disability when the child enrolls in the new LEA's school in the new State within the same school year and may not deny special education and related services to the child pending the development of a new IEP. The new LEA in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous LEA in which the child was enrolled, pursuant to [34 C.F.R. § 99.31\(a\)\(2\)](#); and the previous LEA in which the child was enrolled must take reasonable steps to promptly respond to the request from the LEA. [34 C.F.R. § 300.323\(g\)](#). See also Question A-2, [Questions and Answers on Individualized Education Programs \(IEPs\), Evaluations, and Reevaluations](#) (Sept. 30, 2011).

If the disaster occurs over the summer or between school years, under [34 C.F.R. § 300.323](#), LEAs must ensure that an IEP is in effect at the beginning of the school year for children with disabilities who move into, and enroll in, a new LEA during the summer. How an LEA meets this requirement is a matter to be decided by each individual new LEA. The new LEA could decide to adopt and implement the IEP developed for the child by the previous LEA, unless the new LEA decides that an evaluation is needed. Otherwise, the newly designated IEP Team for the child in the new LEA could develop, adopt, and implement a new IEP for the child that meets the applicable requirements in [34 C.F.R. §§ 300.320 through 300.324](#). Analysis of Comments and

Changes accompanying the final 2006 IDEA Part B regulations, [71 Fed. Reg. 46540, 46682](#) (Aug. 14, 2006).

If the parent requests that the new LEA convene the IEP Team prior to the start of the school year and the LEA refuses to do so, the LEA must provide written notice to the parent of the refusal. The prior written notice must include, among other content, an explanation of why the LEA determined that conducting the meeting prior to the beginning of the school year is not necessary to ensure the provision of appropriate services to the child. [34 C.F.R. § 300.503](#). See also Analysis of Comments and Changes accompanying the final 1999 IDEA Part B regulations. [64 Fed. Reg. 12406, 12476-12477](#) (Mar. 12, 1999).

The new LEAs are also responsible for providing FAPE consistent with the requirements of Section 504 to students with disabilities who are in the jurisdiction of the LEA.

**C-8. Is an LEA where private elementary or secondary schools are located required to provide equitable services to parentally placed private school students with disabilities during an extended school closure due to a disaster? How should the LEA communicate with these private schools?**

Yes. As stated in [34 C.F.R. § 300.133\(a\)](#), each LEA is required to spend a proportionate share of IDEA Part B funds on providing special education and related services to children with disabilities who are enrolled by their parents in private elementary schools and secondary schools located in the LEA in order for the LEA to meet its responsibility for providing equitable services to eligible parentally placed private school students with disabilities. The Department suggests that LEAs include the provision of equitable services during an extended school closure due to a disaster as a topic of discussion during the required consultation process with private school representatives and representatives of parents of parentally placed private school children with disabilities under [20 U.S.C 1412\(a\)\(10\)\(A\)\(iii\)](#) of the IDEA. During timely and meaningful consultation, stakeholders might consider establishing a communication process for use throughout an extended brick-and-mortar closure of public and private schools. For example, the LEA may establish an emergency text message system or email distribution lists, to ensure any needed information is shared with key stakeholders. The LEA should consult with private school officials and representatives of parents of parentally placed private school children with disabilities to establish procedures for how equitable services can be provided in the case of extended school closures, including remote service delivery. The LEA should share those procedures with the private school representatives or officials and representatives of the parents. Additionally, LEAs should coordinate such planning with appropriate private school officials to make sure that they have access to information related to equitable services for their eligible children with disabilities and, as applicable, their teachers and parents.

**C-9. How should a State impacted by a disaster report its IDEA Part B data in its IDEA Part B State Performance Plan/Annual Performance Report (SPP/APR) under IDEA section 616?**

The Department recognizes the damaging effects of disasters on impacted LEAs and their impact on LEAs' ability to report data under IDEA. In developing and reporting data in the State's IDEA Part B SPP/APR covering the year in which a disaster occurred and impacted the data States must include, for each indicator that data collection was impacted specifically by the disaster, an explanation of: (1) the impact on data completeness, validity, and reliability for the indicator; (2) how the disaster specifically impacted the State's ability to collect the data for the indicator; and (3) any steps the State took to mitigate the impact of the disaster on the data collection. Additionally, if States experience slippage in the data or have drops in the level of compliance, they should explain the reasons for this in the narrative under each affected SPP/APR indicator. States should also include any other relevant information for OSEP to take into account.

**C-10. How should a State impacted by a disaster report its IDEA section 618 data?**

OSEP requests that SEAs provide the Department notification of the impact of the disaster on reporting the IDEA section 618 data in the manner required by the reporting instructions. OSEP is particularly interested in understanding the impact on the timeliness, completeness, and accuracy of the data submissions. This notification should be provided to the Partner Support Center. Additionally, OSEP requests that the States update their ED Facts State Submission Plan to provide details regarding when complete and accurate data will be reported to the Department. Finally, OSEP requests that States provide a data note that explains the impact of the disaster on the data submission. OSEP will publish this data note with the relevant public release data files to convey the impact of the disaster on the individual State's IDEA section 618 data for external data users.

**C-11. Does the Department have the authority to waive the requirement to maintain State financial support for special education and related services due to a disaster?**

Yes. The Secretary may waive, for one fiscal year at a time, the requirement under Part B of the IDEA that States not reduce the amount of State financial support for special education and related services for children with disabilities if the Secretary determines that doing so would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.

[34 C.F.R. § 300.163\(c\)\(1\)](#). A State that wishes to seek such a waiver should contact its State Lead in OSEP for technical assistance.

**C-12. Does the IDEA allow for any flexibility with respect to meeting LEA maintenance of effort (LEA MOE) without waiver approval?**

Yes, although IDEA does not provide waiver authority with respect to LEA MOE, there are flexibilities in how LEAs can meet the requirements under [34 C.F.R. § 300.204](#).

LEAs may meet the MOE eligibility and compliance standards by using any of the following four methods: (1) total amount of State and local funds; (2) State and local funds on a per capita basis; (3) total amount of local funds only; or (4) local funds only on a per capita basis. See [34 C.F.R. § 300.203\(a\)\(1\)](#) and [\(b\)\(2\)](#). The local funds only method, based on either total funds or per capita, may be an option worth considering if State funds available for special education and related services are reduced.

Under 34 C.F.R. § 300.204, there are five allowable exceptions to the LEA MOE requirement. An LEA may reduce the level of expenditures for the education of children with disabilities below the level of those expenditures for the preceding fiscal year (for the compliance standard) and below the level of those expenditures for the most recent fiscal year for which information is available (for the eligibility standard), if the reduction is attributable to any of the following:

- (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- (b) A decrease in the enrollment of children with disabilities.
- (c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency (SEA), because the child (1) has left the jurisdiction of the agency; (2) has reached the age at which the agency's obligation to provide a free appropriate public education to the child has terminated; or (3) no longer needs the program of special education.
- (d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
- (e) The assumption of cost by the high cost fund operated by the SEA under [34 C.F.R. § 300.704\(c\)](#).

In addition, under [34 C.F.R. § 300.205](#), for any fiscal year for which an LEA's IDEA section 611 allocation exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures for the education of children with disabilities otherwise required by [34 C.F.R. § 300.203\(b\)](#) by not more than 50 percent of the amount of that excess. However, the maximum amount of expenditures the LEA may reduce under 34 C.F.R. § 300.205 is affected by the amount of funds expended by the LEA for coordinated early intervening services under [34 C.F.R. § 300.226](#). See [34 C.F.R. §§ 300.205\(d\)](#) and [300.226\(a\)](#); and Appendix D to 34 C.F.R. Part 300.

## **D. ISSUES RELATED TO SERVICES FOR INFANTS AND TODDLERS WITH DISABILITIES AND THEIR FAMILIES UNDER PART C OF THE IDEA**

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Part C of the IDEA provides funds to the State lead agency (State LA) to make early intervention services (EIS) available to all eligible infants and toddlers with disabilities and their families living within the State. These services are provided in conformity with the child's individualized family service plan (IFSP), [34 C.F.R. § 303.13\(a\)\(9\)](#). Under [34 C.F.R. § 303.340](#), for each infant or toddler with a disability, the State LA must ensure the development, review, and implementation of an IFSP developed by a multidisciplinary team, which includes the parents, that (a) Is consistent with the definition of that term in [34 C.F.R. § 303.20](#); and (b) Meets the requirements in [34 C.F.R. § 303.342](#) through [34 C.F.R. § 303.346](#). These services are provided in the natural environment, to the maximum extent appropriate, which includes a variety of settings, including the child's home, childcare, preschool, and community center.

OSERS has issued [Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak](#) (March 12, 2020), and a [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities](#) (March 21, 2020). OSERS also released a series of [Questions and Answers documents](#) from June 2020 through October 2020. In the [Evaluation and Assessment Timelines for IDEA Part C in the COVID-19 Environment Q&A Document](#) (July 6, 2020) [Questions and Answers on IDEA Part C Service Provision](#) (October 21, 2020), to clarify that IDEA Part C requirements remained in effect, notwithstanding a disaster.

State lead agencies (LAs) for Part C and early intervention service providers remain responsible for ensuring the provision of EIS to infants and toddlers with disabilities and their families and implementing Part C requirements. Finally, the Department has issued a number of [Return to School Roadmap](#) documents which focus on the reopening of schools and return to in-person services, and support the full implementation of IDEA. Specifically, the [Return to School Roadmap: Child Find, Referral, and Eligibility Under Part C of the IDEA](#) (October 29, 2021), and the [Return to School Roadmap: Provision of Early Intervention Services for Infants and Toddlers with Disabilities and their Families under Part C of the IDEA](#) (October 29, 2021) further clarify that, regardless of the disaster, or the mode of intervention or instruction, infants and toddlers with disabilities and their families are entitled to appropriate IDEA Part C services.

IDEA does not provide waiver authority to the Department for IDEA Part C; thus, OSERS is unable to grant waivers under IDEA Parts C to LAs as a result of a disaster to otherwise create safe harbors from potential or existing litigation by parents or others. The following questions and answers primarily address the best practices for the State LA and its local EIS providers when faced with unforeseen programmatic circumstances due to a disaster.

**D-1. Is the State LA or an EIS provider required to continue providing early intervention services to infants and toddlers with disabilities under Part C of the IDEA if its offices are closed due to the impacts of a disaster?**

If the offices of the State LA and the EIS provider are closed, then services under Part C of the IDEA would not need to be provided to infants and toddlers with disabilities and their families who are served by that EIS provider during that period of time. If the State LA's offices are open but the offices of the EIS provider in a specific geographical area are closed due to public health, flooding and/or safety concerns, the EIS provider would not be required to provide services during the closure.

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

[34 CFR 303.344\(d\)\(1\)\(ii\)](#). When the LA or EIS provider cannot provide IDEA Part C services in accordance with the IFSP, it must provide prior written notice to the parents as soon as possible. The child's IFSP Team, which includes the parents, must then determine which services can be provided to meet the child's needs during this time, and consider other services or alternate means of service delivery, if feasible and consistent with privacy interests, such as through the use of telecommunications, including telephone or videoconferencing, or consultative services to the parent. If the parent has previously agreed, or agrees during the pandemic, the prior written notice can be provided through electronic mail (email).<sup>7</sup>

The State LA and EIS providers must document the IFSP Team's determination and revise the child's IFSP to reflect the agreed-upon services that will be provided in light of the circumstances (e.g., program closures, social distancing, or other measures) so that the IFSP is clear to the parents and all who are responsible for providing IDEA Part C services to the child. OSEP notes that, where feasible, early intervention services identified in the IFSP should be based on peer reviewed research to the extent practicable, but the Department understands that the peer reviewed research related to providing services remotely is limited.

[34 C.F.R. § 303.344\(d\)\(1\)](#). See the [Questions and Answers on IDEA Part C Service Provision](#) (October 21, 2020) and the [Return to School Roadmap: Provision of Early Intervention Services for Infants and Toddlers with Disabilities and their Families under Part C of the IDEA](#) (October 29, 2021) for more information related to this topic.

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<sup>7</sup> See the previously issued [Q & A on Part C Procedural Safeguards](#) (June 30, 2020) for more information.

**D-2. What steps must be taken if early intervention services are not provided for an extended period of time to an infant or toddler with a disability under Part C of the IDEA?**

Once the offices re-open and/or EIS providers are able to provide services, the service coordinator and EIS providers for each child must resume providing the services on the child's IFSP. In addition, the State LA or EIS provider must review its data and other information, such as information provided by a child's family, to determine whether and which eligible children did not receive services identified on their IFSPs, and take appropriate actions based on the results of the review. If IFSP services have not been provided in conformity with the IFSP, the State LA or EIS provider may need to conduct a periodic review of the IFSP in order to determine the current needs of the child and family. [34 C.F.R. § 303.342\(b\)](#). As part of that periodic review by the IFSP Team, under [34 C.F.R. § 303.344\(c\)](#), the IFSP must include a statement of the child's progress toward achieving the results or outcomes identified in the IFSP and whether modifications to the IFSP are necessary.

Additionally, the IFSP Team may determine whether and to what extent compensatory services may be needed to address service disruptions due to the disaster.<sup>8</sup> The IFSP Team may determine that compensatory services are necessary to mitigate the impact of disruptions and delays in providing appropriate services to the child. IFSP Teams must ensure decisions about compensatory services are individualized based on updated assessment information for the child and family under [34 C.F.R. §§ 303.340](#) through [303.344](#).

See the [Questions and Answers on IDEA Part C Service Provision](#) (October 21, 2020) and the [Return to School Roadmap: Provision of Early Intervention Services for Infants and Toddlers with Disabilities and their Families under Part C of the IDEA](#) (October 29, 2021) for more information related to this topic.

**D-3. What steps can be taken to resume the provision of early intervention services after a family has been displaced and has relocated, and what can be done if early intervention records cannot be located or accessed?**

The Department recognizes the disruption to families and challenges to providers in continuing to provide early intervention services to families who are in a new location as a result of a disaster. Once early intervention services can be provided, if a family is in a new location, the first step is to contact the EIS provider where the child was receiving IDEA Part C services to

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<sup>8</sup> Under IDEA, courts have awarded compensatory services as an equitable remedy to address the needs of the infant or toddler with a disability and the family. Likewise, the State complaint procedures provide for compensatory services as an available remedy when there is a finding of a failure to provide appropriate services under IDEA in order to address the needs of the infant or toddler with a disability and his or her family. [34 C.F.R. § 303.432\(b\)\(1\)](#). It is the Department's position that, generally, many of the same types of individualized and child-centered deliberations that are appropriate for an IFSP Team meeting discussing the infant's or toddler's and family's IFSP, would be appropriate when considering the need for, and extent of, compensatory services.

obtain a copy of the child’s early intervention record and most recent IFSP (with parent consent, if needed under [34 C.F.R. § 303.414](#)). If the child’s records cannot be located or accessed due to circumstances relating to a disaster, a State may provide IDEA Part C services if parental consent is obtained by using an interim IFSP under [34 C.F.R. §§ 303.310\(c\)](#) and [303.345](#), until such time as the records establishing eligibility and the child’s IFSP are available or, in the case of no records being available or a new family initially referred to IDEA Part C, such time as an evaluation and assessment can be conducted to determine eligibility.

An interim IFSP may be helpful when an initial IFSP cannot be developed, or the previous IFSP cannot be located, and the parents and State LA or EIS providers agree on the IFSP services needed by the eligible child and family. The Department wants to highlight the use of “interim IFSPs” where documented exceptional family circumstances caused a delay in completing the initial evaluation and assessments during the 45-day timeline requirement. Any early intervention services that have been determined to be needed by, and that can be available immediately to, the child and the child’s family, particularly those which can be provided remotely (particularly during the pandemic when in-person meetings are limited), with parental consent, may begin before the completion of the evaluation or assessments.

See [Evaluation and Assessment Timelines for IDEA Part C in the COVID-19 Environment Q&A Document](#) (July 6, 2020), and the [Return to School Roadmap: Child Find, Referral, and Eligibility Under Part C of the IDEA](#) (October 29, 2021) for more information related to this topic.

**D-4. Does IDEA allow for flexibility in meeting the 45-day timeline for conducting a child’s initial evaluation, assessment, and IFSP meeting?**

The IDEA Part C 45-day timeline is in [34 C.F.R. §§ 303.310](#), [303.342\(a\)](#) and [303.345\(c\)](#). The 45-day timeline applies to: 1) any screening offered by the State, 2) the initial evaluation, 3) the initial child and family assessment, and 4) the initial IFSP meeting.

While the Department does not have the authority to waive the IDEA Part C 45-day timeline requirement, this timeline includes two allowable exceptions:

- 1) The child or parent is unavailable to complete the screening (if applicable), the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records; or
- 2) The parent has not provided consent for the screening (if applicable), the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the State LA or EIS provider to obtain parental consent.



OSEP has historically also applied this documented “exceptional family circumstances” exception when clear circumstances outside the State LA’s or EIS provider’s control, such as a hurricane, do not permit the underlying activity to occur and thus the child and family are unavailable as a practical matter.<sup>1</sup> In these very limited circumstances, under [34 C.F.R. § 303.310\(c\)](#), the State LA or EIS provider must:

- 1) document in the child’s early intervention record the exceptional family circumstances; and
- 2) complete the activities as soon as possible after the documented exceptional family circumstances no longer exist.

The Department acknowledges that it may not be possible to complete some or any of the activities required within the 45-day timeline remotely. For example, conducting an in-person observation may be critical to ensuring appropriate evaluation and assessment. Given that in-person meetings may not be feasible or advisable after a disaster, such restrictions can constitute a documented exceptional family circumstance that qualifies for an exception to the 45-day timeline. In these situations, the State LA or EIS provider must document application of the exception in the child’s early intervention record, complete the delayed evaluation, assessment, or initial IFSP as soon possible after the exceptional circumstances no longer exist.

Determinations regarding whether an exceptional family circumstance exists must be made on a case-by-case basis. The 45-day timeline cannot be extended for all children within a state or locality under the assumption that disaster is an exceptional family circumstance for all families.

In situations such as a disaster, when families and providers are displaced or when offices are closed, delays can be expected. As mentioned in Question D-3, if appropriate, an interim IFSP may be implemented with parent consent under [34 C.F.R. § 303.345](#) to provide IDEA Part C services before the evaluation or assessment is completed.

See [Evaluation and Assessment Timelines for IDEA Part C in the COVID-19 Environment Q&A Document](#) (July 6, 2020), and the [Return to School Roadmap: Child Find, Referral, and Eligibility Under Part C of the IDEA](#) (October 29, 2021) for more information related to this topic.

**D-5. How should the State impacted by a disaster report its SPP/APR under IDEA sections 616 and 642?**

The Department recognizes the damaging effects of disasters on State LAs, EIS programs and providers, and the infants and toddlers with disabilities and their families who are served by those programs and providers. In developing and reporting its IDEA Part C SPP/APR covering the year in which a disaster occurred and impacted the data, States must include for each indicator that the data collection was impacted specifically by the disaster, an explanation of: (1) the impact on data completeness, validity, and reliability for the indicator; (2) how the disaster

specifically impacted the State's ability to collect the data for the indicator; and (3) any steps the State took to mitigate the impact of the disaster on the data collection. Additionally, if States experience slippage in the data or have drops in the level of compliance, they should explain the reasons for this in the narrative under each indicator. Please include under Indicators 1, 7, and 8 the specific numbers of children for whom the State is reporting any documented exceptional family circumstances and for all SPP/APR indicators, any other relevant information for OSEP to take into account.

**D-6. How should a State impacted by a disaster report its IDEA section 618 data?**

OSEP requests that the State Lead Agency provide the Department notification of the impact of the disaster on reporting the IDEA section 618 data in the manner required by the reporting instructions. OSEP is particularly interested in understanding the impact on the timeliness, completeness, and accuracy of the data submissions. This notification should be provided to the Partner Support Center. Additionally, OSEP requests that States provide a data note that explains the impact of the disaster on the data submission. OSEP will publish this data note with the relevant public release data files to convey the impact of the disaster on the individual State's IDEA section 618 data for external data users.

## **E. ADULT EDUCATION AND CAREER AND TECHNICAL EDUCATION PROGRAM ISSUES**

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### **E-1. May States receive a one-year waiver of their maintenance of effort (MOE) requirements for adult education and career and technical education programs if a disaster causes a disruption in services?**

Yes. Section 241(b)(4) of the Adult Education and Family Literacy Act (AEFLA) authorizes the Secretary to waive a State's MOE requirement for not more than one fiscal year if "the Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster." Similarly, section 211(b)(3) of the Carl D. Perkins Career and Technical Education Act of 2006, as amended by the Strengthening Career and Technical Education for the 21st Century Act (Perkins V) allows the Secretary to waive a State's MOE requirement due to exceptional or uncontrollable circumstances (such as a disaster) that affect a State's ability to meet such requirements.

### **E-2. May States change their State-determined performance levels for career and technical education programs if there are extended closures due to a disaster?**

Yes, if unanticipated circumstances arise in a State, such as a disaster, section 113(b)(3)(A)(iii) of Perkins V authorizes the State eligible agency, at the end of a program year, to revise the State determined levels of performance. After public comment, as described in subparagraph (B) of section 113(b)(3), the eligible agency shall submit such revised levels of performance to the Secretary with evidence supporting the revision.

### **E-3. May local career and technical education recipients change their agreed-upon performance levels if there are extended closures due to a disaster?**

Yes, if unanticipated circumstances arise at the local level, such as a disaster, section 113(b)(4)(A)(v) of Perkins V permits an eligible recipient to request from the State eligible agency revisions in the local levels of performance agreed upon with the State eligible agency.

### **E-4. Will a State be subject to a financial sanction if it is not able to submit its performance report, as required under the Workforce Innovation and Opportunity Act (WIOA), by the report due date because of a disaster?**

No. In accordance with WIOA's implementing regulations at [34 C.F.R. § 463.185\(b\)](#), a State will not be subject to a financial sanction if it does not submit a complete performance report by the report due date as a result of exceptional circumstances outside of the State's control, including a disaster.

In the event that a State is not able to submit a complete performance report by the report due date, the State must notify, as appropriate, the Secretary of Labor or Secretary of Education as soon as possible, but no later than 30 days prior to the established deadline for submission, of a potential impact on the State's ability to submit its performance report in order to not be considered failing to report. In circumstances where unexpected events occur less than 30 days before the established deadline for submission of the performance report, the Secretaries of Labor and Education will review requests for extending the reporting deadline in accordance with their Departments' procedures. (See [34 C.F.R. § 463.185\(c\)](#)).

**E-5. If a disaster caused or contributed to a State's failure to achieve 90 percent of its State-determined level of performance in the career and technical education program, may the State receive a waiver of the financial sanctions that are required when a State does not meet at least 90 percent of its State-determined level of performance for a core indicator of performance for two consecutive years after being identified for program improvement?**

Yes. Section 123(a)(3)(B) of Perkins V permits the Secretary to waive the financial sanctions required by section 123(a)(3)(A)(ii) of Perkins V when a State fails to meet 90 percent of its State-determined levels of performance for a core indicator for two consecutive years after a State has been identified for improvement if it is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. The Department has [published guidance](#) confirming that the Secretary will use this waiver authority and not count the 2020–2021 year toward financial consequences due to the COVID-19 pandemic. States must still report their data and submit plans for improvement, as needed.

## **F. POSTSECONDARY EDUCATION ISSUES GENERALLY**

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This section discusses the waivers and other forms of relief the Department may provide to postsecondary institutions and other postsecondary program participants regarding Federal education requirements during an extended school closure as a result of a disaster that disrupts the functioning or delivery of educational services. For additional information, see the guidance posted at: <https://ifap.ed.gov/natural-disaster-information>.

### **F-1. What should institutions do if a disaster disrupts the delivery of educational services?**

Institutions should have alternatives for the delivery of educational programs for use during an extended closure due to a disaster. These alternatives could include creating or expanding distance learning opportunities, either through existing institutional capacity or through agreements with other eligible institutions. Any written agreements with other institutions should be put in place as soon as possible so that they are available to address the needs of students, including students with disabilities. The requirements for these types of agreements for purposes of Federal Student Aid (FSA) programs can be found in [34 C.F.R. § 668.5](#).

Because Section 504 prohibits discrimination on the basis of disability, institutions that receive Federal financial assistance must ensure that students with disabilities have equal access to educational opportunities. This includes equal access to distance learning. Institutions should prepare strategies to ensure that students with disabilities have equal access to these programs. These include strategies for providing reasonable accommodations such as auxiliary aids and services and modifications to academic requirements where necessary to enable these students to access distance learning programs. ([34 C.F.R. § 104.44](#)).

Institutions should have plans ready to serve all students residing on campus, or to perform other functions if the campus itself is used for other purposes by the State or local community. Emergency preparedness and emergency response programs must also be accessible to individuals with disabilities. For additional information on disability access in emergencies, *see* the Department of Justice's "An ADA Guide for Local Governments: Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities," available at: <http://www.ada.gov/emergencyprepguide.htm>.

### **F-2. What should an institution do if it is unable to properly administer its Federal student assistance programs under Title IV of the HEA due to a disaster?**

If an institution determines that it is, or will be, unable to properly administer its Title IV programs (including continuation of its educational programs) as a result of a disaster, it should immediately contact the FSA School Participation Division in the Department for further

guidance. The contact information can be found at: <https://fsapartners.ed.gov/help-center/fsa-customer-service-center/federal-student-aid-offices>.

**F-3. What steps should institutions take if incoming students are unable to complete high school graduation requirements due to extended closures caused by a disaster and its disruptions to the functioning or delivery of educational services?**

Under institutional eligibility requirements for the Department's Federal student financial aid programs ([34 C.F.R. §§ 600.4\(a\)\(2\), 600.5\(a\)\(3\), and 600.6\(a\)\(2\)](#)), institutions participating in those programs must admit as regular students only persons who have a high school diploma, have the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in the State in which the institution is physically located.

Accordingly, institutions are strongly encouraged to consult with the high school the student was attending to best address a plan for the student to receive the high school diploma or its equivalent. The Department recognizes this may be a difficult task, particularly for students attending high school in a different State from the State in which the institution is located; however, officials at the high school will be the most aware of any modifications or waivers provided by the SEA or LEA.

**F-4. What if an institution's accreditation is up for renewal during an extended closure due to a disaster and the accrediting agency cannot complete its work on time?**

The Secretary urges accrediting agencies to establish reasonable written policies (if they do not already have such policies) to extend accreditation or pre-accreditation if an institution is closed as a direct result of a disaster. Generally, the Department will consider policies granting extensions of accreditation or pre-accreditation due to expire within three months of a disaster or the deferral of already-pending accreditation actions as reasonable and consistent with good practice. For institutional eligibility purposes, the Department will accept reasonable extensions of existing accreditation or pre-accreditation even if granted by an agency that lacks a plan for extended closures.

## **G. ISSUES RELATED TO THE ADMINISTRATION OF THE FEDERAL STUDENT AID PROGRAMS**

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This section discusses the waivers and other forms of relief the Department may provide related to Federal Student Aid. For additional guidance for Title IV participants affected by a major disaster, see Dear Colleague letter GEN-17-08 published August 29, 2017 which can be found at: <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2017-08-29/gen-17-08-subject-guidance-helping-title-iv-participants-affected-major-disaster>. Beginning in March 2020, the Department published a series of electronic announcements, as well as a HEROES Federal Register Notice, outlining additional flexibilities and waivers specific to the COVID-19 pandemic. A matrix listing all COVID-19 pandemic related guidance, along with links to associated documents, may be found at: <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-01-15/publication-federal-register-updated-waivers-and-modifications-statutory-and-regulatory-provisions-under-heroes-act-ea-id-ope-announcements-21-05-updated-feb-26-2021>.

For questions or assistance, please contact the School Participation Division of FSA at [School Participation Division | Help Center \(ed.gov\)](#), except where another point of contact is provided below.

### **G-1. What if an institution closes for an extended period of time during an academic year and it is not possible to reschedule instructional time?**

If, as a result of a disaster, an institution is temporarily closed for an extended period of time that impacts the length of its academic year, the Department, through the FSA School Participation Division, will assist the institution to determine the continued eligibility of its programs and its students for HEA Title IV assistance. The Secretary may permit institutions with academic years of 30 weeks or longer to shorten their academic years to not less than 26 weeks, on a case-by-case basis, under section 481(a) of the HEA and [34 C.F.R. § 668.3](#).

### **G-2. What can an institution do to mitigate the impact that a disaster may have on the financial aid that students receive?**

To reduce the potential impact of a disaster on student financial aid, the Department suggests the following:

- **Professional Judgment:** Section 479A of the HEA specifically provides the financial aid administrator (FAA) the authority to use professional judgment to make adjustments to the cost of attendance or to the values of the items used in calculating the Expected Family Contribution (EFC) (such as adjusted gross income or income earned from work) to reflect a student's special circumstances. The Secretary encourages FAAs to use professional judgment to reflect more accurately the

financial need of students and families affected by a disaster. The use of professional judgment is discussed in the Application and Verification Guide of the FSA Handbook, which can be accessed at: <https://fsapartners.ed.gov/knowledge-center/library/handbooks-manuals-or-guides/2020-05-22/application-and-verification-guide>.

- **Refunds and Re-Enrollment:** The Department strongly encourages institutions to provide a full refund of tuition, fees, and other institutional charges. If an institution is not able to provide full refunds, another option is to provide credit in a comparable amount against future charges, for students who withdraw from school as a direct result of a disaster. The Department also urges institutions to consider providing easy and flexible re-enrollment options to such students.
- **Satisfactory Academic Progress:** When a student fails to meet the institution's satisfactory academic progress standards due to a disaster, the institution may apply the "other special circumstances" exception provision in [34 C.F.R. § 668.34\(a\)\(9\)\(ii\)](#).
- **Return of Title IV Funds:** If a student withdraws from school because of a disaster, the institution must perform the return of HEA Title IV funds calculations in accordance with [34 C.F.R. § 668.22](#), as it must for any student who withdraws. Institutions should not include the days the school was not offering classes due to the disaster in either the numerator or denominator of the calculation.
- **Late Disbursements:** The Department's disbursement regulations allow, under certain conditions and within certain time frames, for a late disbursement of Title IV funds when the late disbursement was not the fault of the student. These regulations would permit a disbursement of Title IV funds to accommodate students affected by a disaster (*see* [34 C.F.R. § 668.164\(j\)](#)).

Please note that Congress provided different treatment for these matters under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) for the COVID-19 pandemic. For more information, please see information about the CARES Act from the Department: [Program Information: FAQs and Responses](#).

**G-3. What relief from the requirements in the Student Assistance General Provisions regulations may the Department provide to institutions, and how may institutions request this relief?**

If appropriate, the Department may provide the following relief to institutions:

- **Cash Management:** The Secretary will work with institutions affected by a disaster to address specific problems arising from regulatory requirements regarding credit balances, notices and authorizations, excess cash, and the handling of Direct Loan Fund Proceeds (*see* [34 C.F.R. part 668, subpart K](#)).



- **Campus Security Report and Equity in Athletics Disclosure Report:** If an institution is unable to provide the Department with its crime and fire statistics or its Equity in Athletics Disclosure Report by the established deadlines because its administrative capability is directly impacted by a disaster, the Department will consider adjusting the reporting deadlines (*see* [34 C.F.R. §§ 668.41, 668.46, and 668.47](#)). This also includes the dissemination of an Annual Security Report to the school's community by October 1 of each year.
- **Enrollment Reporting:** If an institution is unable to report enrollment information to the National Student Loan Data System (NSLDS) according to the established schedule as a direct result of a disaster, it must contact NSLDS Customer Service at 1-800-999-8219 to modify its reporting schedule.

#### **G-4. What administrative relief can the Department provide to institutions regarding campus-based programs?**

Section 413D(d) of the HEA penalizes institutions for underutilization of their campus-based funding. Section 413D(d)(2) of the HEA, however, authorizes the Secretary to waive this penalty for an institution if enforcing the reduction would be contrary to the interest of the program. The Secretary will consider the failure of an institution to expend funds due to a disaster as an appropriate basis for granting a waiver (*see* [34 C.F.R. § 673.4\(d\)\(3\)](#)).

The HEA also requires an institution to use at least seven percent of the total amount of its Federal Work Study (FWS) allocation to compensate students employed in community service (42 U.S.C. 2753(b)(2)(B)). The Secretary may waive this requirement if the Secretary determines that enforcing it would cause a hardship for students at the institution. The Secretary will consider the failure of an institution to expend at least seven percent of its FWS allocation for community service due to a disaster that disrupts the functioning or delivery of educational services as an appropriate basis for a waiver (*see* [34 C.F.R. § 675.18\(g\)](#)).

In addition, the Secretary will consider extending the Fiscal Operations Report and Application to Participate reporting deadlines on a case-by-case basis if a disaster affects an institution's ability to meet these required reporting deadlines. To request a campus-based waiver, institutions should contact the School Participation Division of FSA.

Please note that the CARES Act provides for different waivers than those described above in the case of the COVID-19 Federally declared disaster. For more information, please see information about the CARES Act from the Department: [Program Information: FAQs and Responses](#).

**G-5. What if an institution’s application to be recertified to participate in the FSA program is not submitted timely because of a disaster?**

The Department will consider extending the institution’s Program Participation Agreement if the institution has been impacted by a disaster. To request an extension, institutions should contact the School Participation Division of FSA at <https://fsapartners.ed.gov/help-center/fsa-customer-service-center/federal-student-aid-offices>.

**G-6. What administrative relief will the Department provide to institutions regarding the Direct Loan program?**

Generally, institutions are required to submit the Direct Loan promissory note, loan origination record, and initial disbursement record for a loan to the Secretary no later than 15 days following the date of the initial disbursement of the loan. If an institution is affected by a disaster, however, the Secretary, through the appropriate FSA School Participation Division, will take steps to address an institution’s concerns about meeting these deadlines on a case-by- case basis (*see* [34 C.F.R. § 685.301\(c\)](#)).

**G-7. What administrative relief can the Department provide to institutions and borrowers regarding the Federal Perkins Loan program?**

In the event that services are disrupted for an extended period of time due to a disaster, the Secretary, through the appropriate FSA School Participation Division, will consider addressing, on a case-by-case basis, concerns about required billing and collection activities (*see* [34 C.F.R. Part 674, Subpart C](#)). The Secretary, through the appropriate FSA School Participation Division, will also consider addressing, on a case-by-case basis, concerns about borrowers in initial and post-deferment grace periods (*see* [34 C.F.R. § 674.42](#)).

The Secretary may authorize the institution to grant forbearance, for a period not to exceed three months, to a borrower who is in repayment, but who is unable to continue to repay the loan due to the disaster. A borrower may request this forbearance orally, or in writing, and is not required to submit documentation to be considered eligible for this forbearance. This period of forbearance will be counted toward the three-year maximum limit on the number of years of forbearance that may be granted to a borrower. In order to receive forbearance beyond the three-month period, the borrower must make a written request to the institution and provide supporting documentation (*see* [34 C.F.R. § 674.33](#)).

**G-8. What administrative relief can the Department provide to borrowers regarding enrollment status requirements for Federal Family Education Loan (FFEL)?**

In accordance with the Department's regulations, loan holders may grant an administrative forbearance to FFEL borrowers who have been adversely affected by a disaster. The holder may grant forbearance for up to three months and must document the reasons why it granted the forbearance, but does not need to obtain supporting documentation or a signed written agreement from the borrower (*see* [34 C.F.R. § 682.211\(f\)\(11\)](#)).

The Secretary will treat Direct Loan borrowers in accordance with the administrative forbearance guidance discussed above. However, in the case of the COVID-19 pandemic, all Department-held loans, as well as defaulted FFEL loans being collected by guaranty agencies, have suspended interest and paused payments and collections until at least January 31, 2022.

**G-9. What administrative relief can the Department provide institutions regarding the Federal Pell Grant and Iraq-Afghanistan Service Grant disbursement records?**

Normally, an institution must submit to the Department a Federal Pell Grant and Iraq-Afghanistan Service Grant disbursement record for a student not later than 15 calendar days after the institution makes a payment to the student. In addition, if the institution becomes aware that a previously reported payment or expected payment for a student is no longer accurate, the institution must submit an accurate disbursement record for that student to the Department not later than 15 calendar days after becoming aware of the need to make the change. The Secretary will consider revising these deadlines for institutions affected by a disaster (*see* [34 C.F.R. § 690.83](#)). To request an extension, institutions should contact the School Participation Division of FSA.

## **H. VOCATIONAL REHABILITATION (VR) PROGRAM ISSUES**

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This section discusses the forms of relief the Department may provide to State VR agencies, as well as recommendations to ensure the continuity of services to eligible individuals with disabilities during an extended agency/office closure as a result of a disaster that disrupts the program's functioning or delivery of VR services. OSERS may provide future guidance and interested parties are encouraged to refer to the OSERS URL where it would be posted: <https://www2.ed.gov/about/offices/list/osers/> .

### **H-1. What flexibility can the Department provide regarding program and fiscal reporting?**

Understanding that case management systems may be impacted, OSERS' RSA fiscal and data staff can assist grantees impacted by disasters by providing flexibility in the reporting of program and fiscal data. VR agencies should contact the OSERS/RSA Fiscal and Data units as issues arise.

### **H-2. Will a State be subject to a financial sanction if it is not able to submit its performance report, as required under WIOA, by the report due date because of a disaster?**

No. In accordance with WIOA's implementing regulations at [34 C.F.R. § 361.185\(b\)](#), a State will not be subject to a financial sanction if it does not submit a complete performance report by the report due date as a result of exceptional circumstances outside of the State's control, including a disaster.

In the event that a State is not able to submit a complete performance report by the report due date, the State must notify the Secretary of Labor or Secretary of Education as soon as possible, but no later than 30 days prior to the established deadline for submission, of a potential impact on the State's ability to submit its performance report. In circumstances where unexpected events occur less than 30 days before the established deadline for submission of the performance report, the Secretaries of Labor and Education will review requests for extending the reporting deadline in accordance with their Departments' procedures. (See [34 C.F.R. § 361.185\(c\)](#)).

### **H-3. What should VR agencies do if a disaster disrupts the delivery of VR services?**

The Department recognizes the challenges associated with serving individuals and youth with disabilities who are displaced or may have services interrupted as a result of a disaster. As VR agencies attempt to continue to serve individuals with disabilities, including youth with disabilities, who have been displaced, we recommend that VR agencies identify alternative means for delivering VR services during an extended closure due to a disaster. These alternatives

can include consolidating or expanding responsibilities of local VR offices in order to effectively serve program participants and communicating with community rehabilitation providers to ensure that the VR service needs of individuals with disabilities are not unduly or unnecessarily delayed.

**H-4. Does the Department have the authority to waive the maintenance of effort requirement under the State VR program due to a disaster?**

Yes. A State may request a waiver or modification of the maintenance of effort requirement if it fails to meet that requirement because of certain specific circumstances, such as disasters. The Secretary may grant a waiver or modification of the maintenance of effort shortfall when such a waiver or modification would be an equitable response to exceptional or uncontrollable circumstances affecting the State (section 111(a)(2)(C) of the Rehabilitation Act and [34 C.F.R. § 361.62\(d\)](#)). A State that wishes to seek such a waiver should contact its State liaison in OSERS/RSA for technical assistance.

**H-5. Does the Department have the authority to waive the match requirement under the VR State program?**

No. Under WIOA, the Department is unable to waive the VR match requirement.