

Education Alert
May 4, 2020

**US DEPARTMENT OF EDUCATION SUBMITS IDEA AND 504
WAIVER RECOMMENDATIONS TO CONGRESS**

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On April 27, 2020, the United States Department of Education (“DOE”) submitted recommendations to Congress regarding provisions of the law that it believes that states should have the authority to waive.

Laws addressed in the report include the Carl D. Perkins Career and Technical Education Act of 2006, the Adult Education and Family Literacy Act, the Elementary and Secondary Education Act of 1965, the IDEA, and Section 504 of the Rehabilitation Act. This client advisory only addresses the DOE’s discussion of waiver authority pursuant to the IDEA and Section 504; however, the entire text of the report can be found here:
<https://www2.ed.gov/documents/coronavirus/cares-waiver-report.pdf>.

IDEA Part C to Part B Transition

In this section of the report, Secretary DeVos proposes a waiver which would allow for a delay in IDEA Part B transition evaluations, which typically occur when a child receiving early intervention services pursuant to IDEA Part C turns three years old. This delay would allow children to continue receiving Part C services until such a time as it becomes safe for the children to be evaluated in-person by the LEA otherwise responsible for their educational services and for eligibility determinations to be made. The report notes that the funding mechanisms would need to be addressed, as Part C funding currently cannot be used to support educational services for children once they turn three years old.

DESE has suggested that, should this be approved by Congress, school districts may want to consider contracting with Early Intervention providers who have preexisting relationships with children who have recently turned three years old.

IDEA Personnel Development Scholarships

Noting that IDEA personnel preparation grants have service requirements that may not be met at present due to school closures, the report recommends allowing for a deferral of these work requirements, or, in the alternative, allowing for credit to be given in full for work that was interrupted due to a school closure. The report notes that the CARES Act explicitly granted similar relief to grant recipients under the TEACH Act, but had not proposed any solution for the

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IDEA personnel preparation grant recipients. This proposal is designed to prevent these grant recipients from receiving repayment penalties due to circumstances beyond their control.

Section 504 Obligation and Expenditure of FY 2019 Vocational Rehabilitation Carryover Funds

This proposal would allow grant recipients an opportunity to expend funds received in FY 2019 during FY 2020, so that grantees could obligate and expend funds spent during that time over the two succeeding fiscal years. Specifically, the report proposes making all FY 2019 funds for grantees meeting the carryover requirements available until September 30, 2021.

Section 504 Reservation of Vocational Rehabilitation and Supported Employment Program Funds

For FY 2020, the report further recommends allowing for waiver of the requirements that States reserve not less than 15 percent of the allocated funds for providing pre-employment transition services to students with disabilities. Because grantees facing unavailability of both students and programming have become increasingly concerned that they will be unable to expend the allocated funds on any students, regardless of disability status, this proposal would aim to prevent states from being penalized due to their inability to do so. Further, the proposal notes that, given that in FY 2018, 24 States out of 56 State grantees (including territories) did not meet the 15% pre-employment transition services' requirement, it seems unfair to expect schools to meet these standards under these difficult circumstances.

Section 504 Allowable Use of Vocational Rehabilitation Funds in Reopening Randolph-Sheppard Facilities

This proposal would allow FY 2020 vocational rehabilitations funds to be used to replace expired or spoiled food products at Randolph-Sheppard vending sites required to close due to COVID-19, so that these facilities can reopen more efficiently following the COVID-19 pandemic.

Section 504 Internship and Service Obligations for Rehabilitation Services Administration Scholars

Much like the second IDEA proposal, this proposal would allow for scholars to be credited for the entirety of an internship or service obligation that began prior to the crisis, but was ultimately interrupted by COVID-19 closures.

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Conclusion

While many important challenges faced by school districts are confronted in this report, several topics that districts had hoped to see explicitly addressed are conspicuously absent. There is no way to know if the DOE will address these issues in the future; however, Secretary DeVos explained that further waivers are not being sought at this time because “[w]hile the Department has provided extensive flexibility to help schools transition, there is no reason for Congress to waive any provision designed to keep students learning. With ingenuity, innovation, and grit, I know this nation's educators and schools can continue to faithfully educate every one of its students.” Therefore, it appears that there is some concern that allowing too much flexibility will impede online learning.

On the other hand, there is some acknowledgement here that more flexibility will be needed to relieve districts of some duties that realistically need to be conducted in-person. Specifically, implicit in the Part B to Part C transition recommendation is an acknowledgement that many evaluations must be done in-person. In the case of initial evaluations, there is an acknowledgement that this process will inevitably delay eligibility findings. A separate client advisory regarding timeline issues will be forthcoming.

No action need be taken on these recommendations at this time. Now it is up to Congress to implement some or all of these recommendations, and then it will fall to the states to determine how to implement them on a local level. We will continue to keep you informed as these events unfold; however, if you have any specific questions, please contact the attorney assigned to your account.

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This Client Alert was prepared by Elizabeth Sherwood, Esq. and was reviewed by Felicia Vasudevan, Mary Ellen Sowyrda, and Sarah Spatafore. If you have any questions about this issue, please contact Elizabeth Sherwood or the attorney responsible for your account, or call (617) 479-5000.

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