

*Exceptional Teachers Teaching Exceptional Children*

# **NASET SPECIAL EDUCATOR E-JOURNAL**

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**June 2022**

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## **Special Education Legal Alert**

**Perry A. Zirkel**

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This month's update identifies two recent court decisions that address various FAPE issues and remedies for students with dyslexia or behavioral disorders. For related articles, special supplements, and earlier monthly updates, see [perryzirkel.com](http://perryzirkel.com).

**In *G.D. v. Swampscott Public Schools*, an officially published decision on February 7, 2022, the First Circuit Court of Appeals addressed the tuition reimbursement request of the parents of an eleven-year-old with dyslexia. In 2016–17 (grade 1), the school district conducted an initial evaluation, determining that she was eligible for special education under the classification of specific learning disabilities (SLD). Rejecting the parents' request for a “substantially-separate school” that provided scientifically-based instruction for children with dyslexia, the IEP team proposed for 2017–18 (grade 2) specialized instruction in a language-based classroom for a limited part of each day and inclusion support in the general education classroom for science, social studies, and nonacademic subjects. The parents arranged for a private evaluation during the intervening summer, resulting in diagnoses of double-deficit dyslexia and dysgraphia and a recommendation of a substantially-separate school for students with SLD. In November, in response to the private evaluator's further testing that reportedly did not show statistically significant improvement and his repeated recommendation for placement in a specialized school, the IEP team revised the IEP so that the bulk of the time was in the separate language-based classroom. In March, based on formal and informal assessments, the district reported positive progress. However, disagreeing**

with this information, the parents provided timely notice of unilateral placement of the child for grade 3 in a private school specializing in students with SLD and soon thereafter filed for a hearing. Characterizing it as a “close case,” the hearing officer denied reimbursement. Upon appeal, the federal district court in Massachusetts affirmed. The parents proceeded to the First Circuit.

<p>The parents argued that the child’s “slow gains” did not meet the <i>Endrew F.</i> standard for FAPE (a) under her individual circumstances, and (b) based on informal assessments rather than standardized testing.</p>	<p>The First Circuit rejected both claims, concluding that (a) the hearing officer implicitly tied the slow gains to the child’s particular circumstances, and (b) parents failed to show how the state’s standardized proficiency assessments sufficiently assessed her individual progress.</p>
<p>The parents also claimed that the child’s reportedly “swift, significant, and quantifiable” progress at the specialized private school proved that the district’s proposed IEP did not meet the <i>Endrew F.</i> standard.</p>	<p>Again disagreeing, the First Circuit concluded that the comparison was inappropriate in light of the more mainstreamed context of the district program and the “snapshot approach,” which holds the IEP team responsible for what it knew or had reason to know of at the time of its meeting.</p>
<p>This case is another illustration of the latitude in the <i>Endrew F.</i> decision, which often but not always causes a severe discrepancy between the parents’ interpretation and the court’s ultimate ruling (if not resolved at an earlier stage, including via effective collaboration and resolved expectations at the IEP meeting).</p>	

**In *Kayla W. v. Chichester School District*, an unofficially published decision on February 18, 2022, a federal district court in Pennsylvania addressed the FAPE issues for an elementary school student who started in the district in grade 5 (2016-17). Having attended a private religious school from kindergarten through grade 4, the student found the transition to public school difficult, as evident in academic and behavioral problems during that school year. In February 2017, her school struggles intensified when her brother contracted leukemia, causing her to live with relatives while her parent stayed with her brother in intensive hospital care. In March 2017, after report cards with failing grades and upon receiving a telephone-call notice of another in a series of out-of-school suspensions, the parent requested an evaluation for special education. Although knowing about her family situation, the school provided the consent form to the student to take home to the parent. The parent did not receive it, and, contrary to the district's protocol for prompt multiple attempts, the school psychologist followed up only with an email two months later without checking its receipt or any further efforts to obtain a reply. In August, the district met with the parent and obtained consent for the special education evaluation. For grade 6 (2017-18), the district arranged for the student's placement in a small alternative class at a regional intermediate unit (IU), which conducted the evaluation. The IU evaluation report in mid-October 2018 concluded that the student was not eligible under either the IDEA or Section 504. The district adopted the report without a multi-disciplinary team meeting or any written notice to the parent. Next, in mid-November, the district disenrolled the student based on non-residency. Forced to move out of the rental property due to infestation and lack of heat, the family members were temporarily homeless; they were living with relatives outside the district while the parent sought housing. The district did not provide the parent with the evaluation report until December. Early the next year, the parent found housing in a neighboring district, which promptly conducted an evaluation, determined**

<p><b>the child to be eligible under the IDEA, and provided her with an IEP. After the parent's belated filing, the hearing officer denied the parent's various claims, concluding that the procedural deficiencies did not result in substantive harm due to ineligibility and disenrollment.</b></p>	
<p>The parent's first challenge was to the district's conduct in obtaining the permission for the requested evaluation.</p>	<p>The court ruled that sending the form "home" with the child when she was not living with the parent and the district's failure to follow its own protocol for follow-up amounted, in light of the parent's care for the child's terminally ill sibling, to procedural errors that substantively impaired the parent's opportunity for meaningful participation.</p>
<p>The parent's next challenge was to the evaluation process that determined the child's ineligibility, including the automatic acceptance of the IU report.</p>	<p>The court ruled that the various procedural violations for the evaluation, including the lack of the required notices and meeting, not only substantively harmed the parents' right to participation but also the child's potential eligibility if the district had not accepted pro forma the IU's evaluation report.</p>
<p>The parent's third challenge was to the denial of the request relief of compensatory education.</p>	<p>Finding that the harmful violations were from the school psychologist's belated direct contact in mid-May until the disenrollment in mid-December, the court awarded the student 84 days of compensatory education after a deduction for the</p>

	estimated time for reasonable rectification.
The district argued that the first 2 months of this award were beyond the IDEA's 2-year statute of limitations.	The court relied on a Third Circuit Court of Appeals decision that for a violation within the statute of limitations the remedy may extend to the entire duration of the violations, thus not limited to the starting date of the two-year period.
This case illustrates the risks of procedural errors that, with an effective attorney and affirmative court, may be costly for the district.	

## Buzz from the Hub

All articles below can be accessed through the following links:

<https://www.parentcenterhub.org/buzz-april2022-issue1/>

<https://www.parentcenterhub.org/buzz-march2022-issue1/>

<https://www.parentcenterhub.org/buzz-feb2022-issue2/>

<https://www.parentcenterhub.org/buzz-feb2022-issue1/>

<https://www.parentcenterhub.org/buzz-jan2022-issue2/>

### Advancing Equity and Support for Underserved Communities

In keeping with President Biden's Executive Order, signed on his first day in office, federal agencies have now issued Equity Action Plans for addressing equity issues in their individual agency scope and mission. These plans are quite relevant to family-led and family-serving organizations, especially plans from the Departments of [Education](#), [Justice](#), and [Health and Human Services](#).

### **Fast Facts: Students with disabilities who are English learners (ELs) served under IDEA Part B**

OSEP's *Fast Facts* series summarizes key facts related to specific aspects of the data collection authorized by IDEA. This newest *Fast Facts* gives you data details about students with disabilities who are also English learners. (Want to see what [other](#) ***Fast Facts*** are available?)

### **Asian Americans with Disabilities Resource Guide**

The *Asian Americans With Disabilities Resource Guide* was designed for Asian



American youth with disabilities, allies, and the disability community in mind, in response to the significant information gap about Asian Americans with disabilities. Chapters include Advocacy 101, Accessibility, Culture, Allyship, and Resources.

### **Strategies for Partnering on Culturally Safe Research with Native American Communities**

To identify strategies for promoting cultural safety, accountability, and sustainability in research with Native American communities, Child Trends assessed peer-reviewed and grey literature (e.g., policy documents and guidelines). Findings? To rebuild trust and improve health outcomes, research collaborations with Native American communities must be community-based or community-engaged, culturally appropriate, and recognize tribal sovereignty in the collection and use of data.

#### [Understanding Screening](#)

This toolkit helps educators and parents learn about screening and how screening can help determine which students may be at risk for reading difficulties, including dyslexia. From the National Center on Improving Literacy.

### **Inside an Evaluation for Learning Disorders**

(Also available in Spanish: [Un vistazo a una evaluación para los trastornos del aprendizaje](#))

If a child is struggling in school, the first step to getting help is an evaluation. A learning evaluation can give parents and the child's teachers valuable information about the child's strengths and weaknesses. It can also reveal what kind of support would be helpful. A full evaluation is necessary for a child to be diagnosed with a learning disorder. To help parents understand the process, the Child Mind Institute and Understood.org teamed up to create this 20-minute video that walks us through the evaluation process.

#### [Education Data 101](#)

(Also available in Spanish: [Datos educacionales: Nociones básicas](#))

This FAQ on data shares resources you need to understand why education data is a

critical tool for supporting individuals, families, educators, and communities. From the Data Quality Campaign.

### [Parents Are Getting Access to Student Data, But How Can We Support Them to Use It?](#)

With the right supports, parents can be savvy data consumers who actively engage with their students' data. In many places around the country, school leaders are already taking creative measures to bridge this gap between simple communication and engagement. This article highlights examples.

### [Sharing Info about State Assessments with Families of Children with Disabilities](#)

*(Also available in Spanish)*

In February, CPIR teamed with NCEO to spotlight NCEO's amazing new resource, the *Participation Communications Toolkit*. The highly customizable toolkit is designed for stakeholders to use in discussing and making decisions about how children with disabilities will participate in state assessments.

### [Q&A on Serving Children with Disabilities Placed by Their Parents in Private Schools](#)

*(Also available in Spanish)*

This OSEP webinar for Parent Centers answers questions about states' obligations to provide equitable services (versus FAPE) to children with disabilities who are placed in private schools by their parents. Simultaneous Spanish interpretation was also provided. Find the 2 YouTube videos, a PDF of the presentation slides, the guidance document, and more at the link above.

### [The Importance of Community in Indigenous Peoples' Healing](#)

In this March 2022 blog post, the National Alliance for Mental Illness (NAMI) reflects on the power of community in Native American life, saying "Being an active part of a community that allows us to feel seen is truly an invaluable feeling. When we feel seen and connected as humans, our healing expands."

### [The Incredible Power of Purpose](#)

*(Also available in Spanish: [Cómo ayudar a un niño a encontrar su propósito](#))*

Having a clear sense of purpose in life has unlimited benefits for a child. This Great Schools resource includes a worksheet/activity designed to help teens explore and define their unique purpose in life.

#### [Mental Wellness in the Black Community](#)

From the National Alliance on Mental Illness (NAMI), *Sharing Hope* is a 3-part video series that explores the journey of mental wellness in Black communities through dialogue, storytelling, and guided discussions.

#### [Compartiendo Esperanza: Mental Wellness in the Latinx Community](#)

Also from NAMI comes *Compartiendo Esperanza*. It, too, is a 3-part video series, this one focusing on mental wellness in Hispanic/Latino communities, through dialogue, storytelling, and guided discussions

#### [Native Hope: Reflecting on Our Foundations](#)

Understanding Native American culture is critical when conducting outreach to tribes, communities, and Native families with children who have disabilities. [Native Hope](#) is a resource that helps Native communities meet their needs. It also offers candid and poignant articles on its website that can enrich Parent Center understanding of Native American history, culture, and values, both historically and in the present.

#### [Sharing Info about State Assessments with Families](#)

*(Also available in Spanish)* Riches, indeed, are shared in this February 11th CPIR webinar, which focuses on NCEO's new (and quite amazing!) resource, the *Participation Communications Toolkit*. You'll love the toolkit; it's designed for stakeholders of all stripes to use in discussing and making decisions about how children with disabilities will participate in state assessments. The webinar highlights the role that Parent Centers in particular can play in supporting the family's role as one of the primary decision makers about their child's participation.

#### **Return to School | Child Find and Early Intervention Services**

*(Also available in Spanish)* This February 2nd webinar features presenters from OSEP as they elaborate on two of OSEP's recent *Return to School Roadmaps*, both focused

on Part C: (1) Child Find, Referral, and Eligibility; and (2) Provision of Early Intervention Services. Both roadmaps are also available in Spanish, as is this webinar.

### **Introduction to the Vocational Rehabilitation Program**

*(Also available in Spanish)* Want to learn more about the services available from the vocational rehabilitation system for people with disabilities? Check out this January 24th webinar from the RAISE Center. It covers eligibility, developing the Individualized Plan for Employment, available services, and financial factors to consider. Links to the captioned English and Spanish versions are given at the bottom of the page linked above.

### **Honoring Black History Month: Unsung Heroes of the Disability Rights Movement**

The month of February is dedicated to honoring the long history of Black Americans and their many contributions to society. In this article, NCLD (National Center for Learning Disabilities) highlights the stories of Black heroes whose vision, commitment, and activism helped advance progress for people with disabilities.

### **Plain Language Made It Easy**

*(Also available in Spanish)* | The RAISE Center and PEATC (Virginia's PTI) collaborated to develop this resource guide and video in English and Spanish to assist people in making their documents accessible to everyone.

### **Federal Funding Support Specifics**

In March 2021, the American Rescue Plan (ARP) Act was signed into law. It included \$122 billion for states and school districts to help safely reopen and operate schools and address the impact of the pandemic on students. Want to know more about ARP funding for your state? How about what your state proposed to do with those funds? Find out at the link above, posted by the Office of Elementary and Secondary Education at the U.S. Department of Education.

[The Department's January 2022 press release](#) on the approval of all state plans and the distribution of funds to states highlights what SEAs and school districts are doing to address the urgent needs of their schools with ventilation improvements, staff hiring and

retention, mental health services, high-dosage tutoring programs, after-school and summer learning partnerships, and more.

### [Support for COVID-19 Screening Testing in Schools](#)

Heard of the [ELC](#) at the CDC? In April 2021, it awarded \$10 billion from the ARP on behalf of CDC to 62 recipients to support COVID-19 screening testing and other mitigation activities in K–12 schools for teachers, staff, and students. Use the USA map to find out about the screening programs and plans in your state. Funding is available through July 31, 2022.

### **Competitive Integrated Employment (CIE) Toolkit**

This toolkit is a resource for educational and vocational rehabilitation agencies in improving post-school employment outcomes for students with disabilities. It's meant to facilitate the collaboration necessary to implement secondary transition services across agencies at the state, community, and student levels and increase the use of evidence-based practices (EBPs). From NTACT, the National Technical Assistance Center on Transition.

### [Pros and Cons of Disclosing a Disability to Employers](#)

(Also available in Spanish: [Ventajas y desventajas de revelar a los empleadores que tiene una discapacidad](#))

Starting a new job can make teens and young adults feel excited, independent, and maybe nervous. They're expected to learn new skills and routines, interact with new people, and make decisions. One of the biggest decisions is whether to tell their employer about any learning and thinking differences.

## Parental Right to Participate in Meetings

*The right to participate in meetings related to their child is one of the most important and powerful of parent rights.*

### Responsibilities of the School System

It's interesting to note the direct connection between the parents' right to participate in specific meetings and groups and the responsibilities that the school system has as a result. For example, IDEA states:

(b) **Parent participation in meetings.** (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child. [§300.501(b)(1)]

Immediately after this statement, IDEA focuses on the corresponding responsibility of the school system:

(2) Each public agency must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section. [§300.501(b)(2)]

### When must the school notify parents?

The school must notify parents about upcoming meetings early enough to ensure they have the opportunity to attend. It must also schedule the meeting at a mutually agreed on time and place.

### What information must the notice to parents include?

When the school notifies parents of an upcoming meeting with respect to their child with a disability, it must:

- indicate the purpose, time, and place of the meeting;
- indicate who will be attending the meeting; and
- inform parents of IDEA's provisions regarding the participation of others on the IEP team who have knowledge or special expertise about the child. (6)

What is this last point referring to? "...IDEA's provisions regarding the participation of others..." It's referring to IDEA's provisions (7) that, at the discretion of either the school or the parents, other individuals ***who have knowledge or special expertise*** regarding the child may be invited to participate in the IEP meeting as *members* of the IEP team. For example, related services personnel (e.g., a speech language therapist or physical therapist) may be invited (if appropriate) if they have knowledge or special expertise about the child—the same as a teacher, specialist, friend, or family member with special expertise or knowledge of the child might be.

- Who determines if the person to be invited has knowledge or special expertise about the child? According to IDEA, the party (parents or the school) that invites the person to be a member of the IEP team. Thus, it's not necessary to demonstrate or prove the person's knowledge or special expertise regarding the child.

### ***Additional Information in Certain Circumstances***

There are two occasions when the notice to parents from the school must include additional information:

- when their child is moving from an early intervention program to school-aged special education services; and
- when one of the purposes of the IEP meeting will be to consider postsecondary goals and transition services for the child.

***When the child is moving from early intervention to special education services.*** Is your child currently receiving early intervention services under Part C of IDEA? Is he or she moving now to receiving special education services under Part B? This usually happens sometime around the third birthday. If so, the school must call an IEP meeting in order to develop an individualized education program for your child. If this notice from the school is for the initial meeting of the IEP team for a child under Part B, then the school must also inform you, as parents, that, if you so choose, the Part C coordinator from the early intervention program (or other representatives of the Part C system) can be invited to the first meeting of the IEP team for the child. The purpose? To ensure the child's smooth transition from one system of services to another.

Inviting the Part C coordinator to the meeting is not automatic. It's at the discretion of the parents. If you, as parents, would like the Part C coordinator (or other representative of the Part C system) to attend the meeting, share your wishes with the school, who will then issue the invitation.

***When a purpose of the meeting is to consider postsecondary goals and transition services for your child.*** IDEA requires that each child with a disability begin to plan for transition to adult life beginning no later than the first IEP to be in effect when the child turns 16 years old (or younger, if the IEP team determines that starting sooner would be appropriate).

Is this the case with your child? Is one of the purposes of the upcoming meeting to consider postsecondary goals and transition services for your child? If so, then the notice provided to parents by the school must:

- indicate that planning for transition will be one of the purposes of the meeting;
- indicate that the school will invite the students; and
- identify any other agency that will be invited to send a representative (the school will need your permission before it may invite that representative).

### **What happens if neither of the parents can attend the meeting?**

If neither parent can attend the IEP team meeting, the school must use other methods to ensure their participation, including individual telephone calls or conference calls.



**May the school hold the meeting without the parent(s) in attendance?**

Yes, the school may hold the meeting without the parent(s) attending, if neither of the child's parents is able to attend. In this case, the school just document its attempts to arrange a mutually agreed upon time and place for the meeting, such as:

- a detailed record of all phone calls made or attempted, and the results of each;
- copies of correspondence sent to parents and whatever reply was received; and
- a detailed record of visits made to the parents' house or place of employment, and the results of these visits.

**What is *not* considered a “meeting”?**

IDEA stipulates the limits of the term “meeting” and what we can consider a “meeting” that's subject to IDEA's requirements with respect to parent notification and participation. A “meeting” does not include:

- informal or unscheduled conversations that involve school personnel;
- conversations on topics such as teaching methodology, lesson plans, or the coordination of service provision; or
- preparatory activities that school personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

## **Right to Receive a Complete Explanation of IDEA's Procedural Safeguards**

### **What is the purpose of the procedural safeguards notice?**

The purpose of the procedural safeguards notice is simple: to inform parents completely about the procedural safeguards available under IDEA. These represent their rights as parents and the protections they have—and their child as well—under the law and its implementing regulations.

### **When can you expect to receive the procedural safeguards notice?**

IDEA states that schools must send the procedural safeguards notice to the parents only one time a school year, except that schools must also give a copy to parents:

- in their child's initial referral for evaluation under IDEA, or when the parents ask for such an evaluation of their child;
- the first time in the school year that a State complaint is filed and when the first due process complaint is received in a school year;
- in accordance with the discipline procedures in §300.530(h); and
- when a parent requests a copy of the procedural safeguards notice.
- Your local school district may also post a current copy of the procedural safeguards notice on its website, if it has a website.

### **What does the procedural safeguards notice contain?**

The procedural safeguards notice must include a complete explanation of all the safeguards available under IDEA related to:

Independent educational evaluations

Prior written notice

Parental consent

Access to student education records

The opportunity to present and resolve complaints through procedures for due process complaint and for State complaints, including—

–the timeline for filing a complaint;

–the opportunity for the school system to resolve the complaint; and

–the differences between the scope of the two procedures such as their jurisdiction or authority, issues covered, filing and decisional timelines, and relevant procedures;

The availability of mediation;

The child’s placement during the pendency of any due process complaint;

Procedures for students who are subject to placement in an interim alternative educational setting;

Requirements for unilateral placement by parents of children in private schools at public expense;

Due process hearings, including requirements for disclosure of evaluation results and recommendations;

Appeals at the State level (if applicable in the State);

Civil actions, including the period of time in which to file such actions; and  
Attorneys’ fees. [§300.504]

In addition to providing this explicit information, the procedural safeguards notice must be written in understandable language.

### **What qualifies as “understandable language”?**

Under IDEA, the procedural safeguards notice (and, for that matter, the prior written notice) must be:

- written in a language understandable to the general public; and
  - provided in the native language of the parent or in another mode of communication that’s used by the parent, unless it is clearly not feasible to do so. [§300.503(c)]
  - If the native language or other mode of communication used by the parent is not a written language, then the school must take steps to ensure:
    - that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
    - that the parent understands the content of the notice; and
    - that there is written evidence that these requirements have been met.
- [§300.503(c)]

### **May the school send the procedural safeguards notice via email?**

Yes, at the discretion of the parents. IDEA says that the parent of a child with a disability may elect to receive the notice by email, if the school makes that option available.

### **Is there an example of one of these procedural safeguards notices?**

Yes. The U.S. Department of Education makes a Model Form available online, at:

[https://sites.ed.gov/idea/files/modelform\\_Procedural\\_Safeguards\\_June\\_2009.pdf](https://sites.ed.gov/idea/files/modelform_Procedural_Safeguards_June_2009.pdf)

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**What should a parent do, if he or she doesn't understand the notice provided by the school?**

Parents can get in touch with the Parent Training and Information Center (the PTI) for their state. PTIs typically can provide parents with explanations of key IDEA-related rights and responsibilities, as well as informative materials and training. Each state has at least one PTI.

To identify the PTI serving your area, visit our Find Your Parent Center page, at:

<https://www.parentcenterhub.org/find-your-center>

## **Confidentiality and Access to Student Records**

### **Personally Identifiable Information**

***Personally identifiable information*** refers to information that includes:

- the name of the child, parent, or other family member;
- the child's address;
- a personal number (such as the social security number or a student number); or
- a list of personal characteristics or other information that would permit the child's identification with reasonable certainty.

With some exceptions, you (as a parent) must give your consent before the school system may disclose your child's personally identifiable information. These exceptions are specified by policies in your state in keeping with the regulations at §99.31 of FERPA, the Family Educational Rights and Privacy Act. IDEA's confidentiality regulations refer directly to FERPA. You have the right to know the policies used in your state regarding the collection, storage, disclosure to third parties, and destruction of your child's personally identifiable information. You should be able to obtain this information (on your state's policies) from the director of special education in your school district or from the State Department of Education.

### **Access to Your Child's Records**

Access to the educational records of their children is often a concern of parents. In keeping with the requirements of FERPA, only certain individuals, in addition to yourself as the parent, may have access to your child's records. These individuals may include, for example, teachers or administrators of the school or state who have a legitimate interest in the records. The school or other participating agency is obligated to keep a record of all interested parties who have accessed your child's educational records that are collected, maintained, or used under Part B of IDEA (with the exception of parents and authorized employees of the agency). This record must include the name of the

person who had access to the child's records, the date, and the purpose for which the person was authorized to use the records.

### **Parents' Right to Inspect Their Child's Records**

IDEA guarantees you, as parents, the right to inspect and review any educational record of your child that the school system (or other participating agency) collects, maintains, or uses with respect to the identification, evaluation, and educational placement of your child, and the provision of FAPE (a free appropriate public education) to your child. Here are the specifics of IDEA's regulations.

#### ***Parent Rights***

Parents can inspect and review educational records with respect to their child's evaluation, identification, and placement; and the provision of FAPE. [§300.501(a)]

Parents can request explanations and interpretations of the records. [§300.613(b)(1)]

Parents can request copies of the records if not receiving copies would effectively prevent the parents from exercising their right to inspect and review those records. [§300.613(b)(2)]

Parents can request that their representative be given access to inspect and review the records. [§300.613(b)(3)]

#### ***Schools' Rights and Responsibilities***

Schools must comply with a parent's request to inspect and review records without unnecessary delay before any meeting—regarding an IEP, a hearing or resolution session, and in no case more than 45 days after the request has been made. [§300.613(a)]

Schools must respond to reasonable requests for explanations and interpretations of the records. [§300.613(b)(1)]

Schools can charge a fee for copies of records made for parents, if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. [§300.617(a)]

Schools may not charge a fee for searching for, or retrieving, a child's records for parents. [§300.617(b)]

### **Parents' Right to Ask that the Records Be Amended**

If parents believe that the information contained in their child's records is inaccurate or misleading or that the information there violates the privacy or other rights of their child, they may ask the school system that maintains the information to amend it. The agency must decide, within a reasonable amount of time, if it is going to comply with the parents' request or not. If the agency decides to refuse the request, it must inform the parents of that decision and indicate their right to ask for a [due process hearing](#) on the matter. If you, as a parent, decide to dispute the school system's decision in a due process hearing, you have the right to present evidence that demonstrates why you think the information in your child's records should be amended. You also have the right (at your own expense) to be assisted or represented by one or more individuals selected by you, including an attorney.

The hearing must be conducted by an individual who has no direct interest in its result. After the hearing, the educational agency must issue its determination in writing within a reasonable amount of time. That determination must be based solely on the evidence presented in the hearing and must include a summary of the evidence and the reasons for the determination. If the result of the hearing is favorable to you, the school system must amend your child's records and inform you in writing that it has done so. On the other hand, if the result of the hearing is that the information about your child is **not** inaccurate or misleading, or does **not** violate your child's privacy or other rights, then the school system must inform you, as parents, that you have the right to add a statement to your child's records commenting on the information that has been under dispute and presenting the reasons you do not agree with it.

The district must attach your statement to the records and maintain it there as long as the agency maintains the records. If your child's records (or the part that's under dispute) is disclosed by the agency to any other person, your statement must also be disclosed to that person.



IDEA adds another provision regarding educational records and the inclusion of discipline information in them. The state can require the school system to include in a child's records a statement of any disciplinary action (current or past) taken against the child. This statement must be transmitted to the same extent that disciplinary information would be included in, and transmitted with, the school records of children **without** disabilities. [§300.576(a)] The statement may include:

- a description of the child's conduct that gave rise to the disciplinary action;
- a description of the disciplinary action that was taken; and
- any other information that is pertinent to the safety of the child and others involved with the child.

If the state adopts such a policy, and the child moves from one school to another, the transmission of any of the child's records must include the current IEP of the child and any statement of current or past disciplinary action taken against the child.

## **Requesting an Initial Evaluation for Special Education Services**

### **When would I request an evaluation for special education services?**

If your child has been consistently struggling in school, his or her problems may be due to a disability. If the school thinks your child may have a disability, they will contact you to request your written permission to evaluate your child. Under the IDEA (the nation's special education law), you also have the right to ask the school to evaluate your child. The purpose of the evaluation is to see if he or she has a disability and needs special education services. **This evaluation is free of charge.**

For more information on evaluation, visit our evaluation pages online, at: <https://www.parentcenterhub.org/evaluation/>

If your child has been identified by your doctor or other professionals as having a disability, you will want to include this information in your letter to the school. You should also provide copies of any reports you have received that explain your child's condition.

If you decide to write the school and ask that your child be evaluated, the [model letter](#) below provides an example of what you may want to say.

### **General letter-writing tips**

When writing any business letter, it is important to keep it short and to the point. First, start by asking yourself the following questions and state the answers in your letter:

- Why am I writing?
- What are my specific concerns?
- What are my questions?
- What would I like the person to do about this situation?

- What sort of response do I want: a letter, a meeting, a phone call, or something else?
- Each letter you write should include the following basic information:
- Put the date on your letter.
- Give your child's full name and the name of your child's main teacher or current class placement.
- Say what you want, rather than what you don't want. Keep it simple.
- Give your address and a daytime phone number where you can be reached.
- Always end your letter with a "thank you."

### **What are some other tips to keep in mind?**

You want to make a good impression so that the person reading your letter will understand your request and say "yes." Remember, this person may not know you, your child, or your child's situation. Keep the tone of your letter pleasant and businesslike. Give the facts without letting anger, frustration, blame, or other negative emotions creep in. Some letter-writing tips include:

- After you write your first draft, put the letter aside for a day or two. Then look at it again and revise it with fresh eyes.
- Read your letter as though you are the person receiving it. Is your request clear? Have you included the important facts? Does your letter ramble on and on? Is it likely to offend, or is the tone businesslike?
- Have someone else read your letter for you. Is your reason for writing clear? Can the reader tell what you are asking for? Would the reader say "yes" if he or she received this letter? Can your letter be improved?
- Use spell check and grammar check on the computer. Or ask someone reliable to edit your letter before you send it.
- Keep a copy for your records.

**Model Letter**

Today's Date (include month, day, and year)

Your Name

Street Address

City, State, Zip Code

Daytime telephone number

Name of Principal or Special Education Administrator

Name of School

Street Address

City, State, Zip Code

Dear (person's name),

I am writing to request that my son/daughter, (child's name), be evaluated for special education services. I am worried that (child's name) is not doing well in school and believe he/she may need special services in order to learn. (Child's name) is in the ( \_ ) grade at (name of school). (Teacher's name) is his/her teacher.

Specifically, I am worried, because (child's name) does/does not (give a few direct examples of your child's problems at school).

We have tried the following to help (child's name): (If you or the school have done anything extra to help your child, briefly state it here).

I understand that I have to give written permission in order for (child's name) to be evaluated. Before the evaluation begins, I have some questions about the process that I need to have answered (list any questions you may have). I would be happy to talk with you about (child's name). You can send me information or call me during the day at (daytime telephone number). Thank you for your prompt attention to my request.

Sincerely,

Your name

cc: your child's principal (if letter is addressed to an administrator)

your child's teacher(s)

**Note:** If your child has been identified as having a disability by professionals outside the school system, add the following sentence to the end of the first paragraph: "(Child's name) has been identified as having (name of disability) by (name of professional)."

Enclosed is a copy of the report(s) I have received that explains (child's name) condition."

**Note:** The "cc:" at the bottom of the letter means you are sending a copy of your letter to the people listed after the cc.

## **Education Department Urges Colleges to Use American Rescue Plan Funds to Provide Mental Health Supports to Students**

The U.S. Department of Education published new guidance to assist institutions in providing mental health supports for students, faculty, and staff. The guidance will help colleges support students as they navigate mental health challenges exacerbated by the pandemic. It also includes specific examples of how colleges can use Higher Education Emergency Relief Funds (HEERF) to invest in evidence-based mental health supports for students and connect the campus community to providers and care. The guidance highlights leading colleges already using HEERF funds for these efforts. The Department's efforts build on President Biden's Unity Agenda goal of transforming how Americans understand, access, and treat mental health and is being released during Mental Health Awareness Month.

"If there is one thing I've heard while speaking with college students throughout the nation, it's been the need for greater mental health supports on campus," said U.S. Secretary of Education Miguel Cardona. "We must make sure our colleges and universities have the tools and resources to help students, faculty, and staff heal from the grief, trauma, and anxiety they endured amid the pandemic. Today's guidance will equip higher education leaders with promising strategies for how they can use American Rescue Plan dollars to connect students to the services they need and to better support mental health and wellness throughout their campus communities."

Later today, Secretary Cardona will highlight the guidance and discuss how federal funds, including support from the American Rescue Plan, can play a critical role in addressing mental health during a virtual roundtable with students at the University of California, Riverside. The university used federal pandemic relief funds to provide immediate crisis support and teletherapy to students and expanded wellness resources for staff.

College students, faculty, and staff have been particularly impacted as losses from COVID-19 and disruptions in the learning environment have led to increased anxiety and depression. According to a [Fall 2021 survey of college presidents](#) conducted by the American Council on Education, nearly 75 percent rated student mental health as a pressing issue. [Data from the Centers for Disease Control and Prevention \(CDC\)](#) indicates that 63 percent of 18-24-year-olds have reported anxiety or depression due to the COVID-19 pandemic, while 25 percent have had suicidal thoughts.

The American Rescue Plan provided nearly \$40 billion for colleges and universities through HEERF, in addition to \$36 billion provided under previous relief packages. This funding has helped colleges – particularly community colleges and institutions enrolling students from underserved groups – meet urgent public health needs related to the pandemic.

Examples of how colleges can use HEERF to offer mental health supports include:

- Strengthening mental health resources:
  - Telehealth: Lac Courte Oreilles Ojibwe College in Wisconsin – a tribal college – partners with a mental health platform to allow all students and faculty on-demand, 24/7 access to counselors.
  - In-person professionals: Sinclair Community College in Ohio hired a social worker to provide case management to students.
- Connecting students to care:
  - Gatekeeper training/suicide prevention training: Davidson-Davie Community College in North Carolina provided gatekeeper trainings and materials to over 30 faculty and staff.
  - Call/Text hotline: State University of New York at Albany runs a student peer phone hotline to allow students to call with mental health concerns or to talk.
- Creating long-lasting support:
  - Suicide Prevention Coordinating Committee: North Carolina Central University – a historically black university – created a suicide prevention

coordinating committee to develop on-campus resources and a suicide response plan.

Today's guidance provides examples of how institutions can continue offering mental health supports to students, faculty, and staff through existing HEERF funds. Initial investments in high-impact mental health projects can be made now, with ongoing support of successful programs from philanthropic efforts, local partnerships, or other funding sources.



## **U.S. Department of Education Announces Intent to Strengthen and Protect Rights for Students with Disabilities by Amending Regulations Implementing Section 504**

Forty-five years after publication of the regulations implementing Section 504 of the Rehabilitation Act of 1973, the landmark disability civil rights law, the U.S. Department of Education announced plans to gather public input on possible amendments to those regulations in order to strengthen and protect the rights of students with disabilities. Section 504 prohibits discrimination on the basis of disability in public and private programs and activities that receive federal financial assistance, including schools and postsecondary institutions.

The Department's Office for Civil Rights will solicit public comments to help decide how best to improve current regulations to assist America's students with disabilities. May is Mental Health Awareness Month and, as part of the President's Unity Agenda, President Biden [announced a strategy](#) to address our nation's mental health crisis. The work that OCR will do this month to listen to and solicit public input regarding improvements to the Department's disability rights regulations will include input from those people with disabilities who also have mental health needs and their advocates.

"While the world has undergone enormous changes since 1977, the Department's Section 504 regulations have remained, with few exceptions, unaltered," said Assistant Secretary for Civil Rights Catherine E. Lhamon. "As we observe the 45th anniversary of these important regulations this month, it is time to start the process of updating them. Just as in 1977, the voices of people with disabilities must be heard and incorporated as we engage in that work."

In April 1977, [hundreds of people with disabilities](#) and their supporters [held protests at several of the regional offices](#) of the Department of Education's predecessor agency demanding that the agency approve the long-delayed non-discrimination regulations implementing Section 504 to protect the civil rights of people with disabilities.

The [protest in the Department's San Francisco office](#) lasted nearly a month, until the Secretary signed the regulations without change on April 28, 1977. They were formally published on May 9, 1977.

The Department's Section 504 regulations were the first issued by the federal government that addressed the treatment of people with disabilities through a civil rights framework, rather than through solely a medical or vocational framework. In the years that followed, these regulations served as a model for the regulations of other federal agencies and were the foundation for many of the provisions of the Americans with Disabilities Act of 1990.

For more than four decades, OCR has worked to eliminate disability discrimination in schools—including public pre-K through high schools, as well as postsecondary schools—by investigating complaints alleging violations of the regulations, conducting proactive investigations, issuing policy guidance, and providing technical assistance. On April 28, the Department announced a [resolution agreement](#) with the second-largest school district in the country, Los Angeles Unified School District, requiring it to take steps necessary to ensure that students with disabilities receive educational services, including compensatory services, during and resulting from the COVID-19 pandemic.

As part of the development of the proposed amendments to the Section 504 regulations, the Department is soliciting public input. Interested parties may go to [www2.ed.gov/policy/rights/reg/ocr/](http://www2.ed.gov/policy/rights/reg/ocr/) to submit comments. The Department will also hold listening sessions in the coming months.

Any comments received may be made available to the public, so commenters should avoid including any personal information that they want to keep confidential. In addition, the Department intends to rely on prior feedback received in response to an earlier Request for Information regarding the nondiscriminatory administration of school discipline, and other information, to decide what changes would be most appropriate to include in a notice of proposed rulemaking.

The Department and OCR are committed to fulfilling Congress' promises in Section 504 and to advancing progress in partnership with people with disabilities and the full educational community.

## **Office for Civil Rights Reaches Resolution Agreement with Nation's Second Largest School District, Los Angeles Unified, to Meet Needs of Students with Disabilities during COVID-19 Pandemic**

The U.S. Department of Education's Office for Civil Rights (OCR) resolved an investigation of the Los Angeles Unified School District in California with an agreement requiring it to take steps necessary to ensure that students with disabilities receive educational services, including compensatory services, during and resulting from the COVID-19 pandemic.

OCR investigated the district's provision during the pandemic of the free appropriate public education (FAPE) to which federal civil rights law entitles students with disabilities. OCR's investigation found that the district failed to provide services identified in students' Individualized Education Programs (IEPs) and Section 504 plans during remote learning. For example, OCR found that during remote learning, the district:

- Limited the services provided to students with disabilities based on considerations other than the students' individual educational needs.
- Failed to accurately or sufficiently track services provided to students with disabilities.
- Directed district service providers to include attempts to communicate with students and parents—including emails and phone calls—as the provision of services, documenting such on students' service records.
- Informed staff that the district was not responsible for providing compensatory education to students with disabilities who did not receive FAPE during the COVID-19 school closure period because the district was not at fault for the closure. And,

- Failed to develop and implement a plan adequate to remedy the instances in which students with disabilities were not provided a FAPE during remote learning.

The district agreed to resolve these violations by creating and implementing a comprehensive plan to address the compensatory education needs of students with disabilities due to the COVID-19 pandemic.

“Today’s resolution will ensure that the more than 66,000 Los Angeles Unified students with disabilities will receive the equal access to education to which federal civil rights law entitles them, including compensatory education for any services the district did not provide during the COVID-19 pandemic,” said Assistant Secretary for Civil Rights Catherine E. Lhamon. “I am deeply grateful for the district’s commitment now to meet the needs of its students with disabilities.”

Through implementation of the resolution agreement the district will:

- Develop and implement a plan to appropriately assess and provide compensatory education to students with disabilities who did not receive a FAPE during the COVID-19 pandemic.
- Designate a plan administrator to implement the plan for assessment of compensatory education.
- Convene IEP and Section 504 teams to determine whether students were not provided the regular or special education and related aids and services designed to meet their individual needs during remote learning and determine compensatory education.
- Track and report to OCR the implementation of the plan for compensatory education. And,
- Conduct outreach to parents, guardians, students, and other stakeholders to publicize the plan for compensatory education and the role of the plan administrator

The Department of Education made it a top priority since the beginning of the Biden Administration to reopen schools quickly and safely, and ensure all students, including students with disabilities, had equal access to high-quality education during the COVID pandemic. While the Department made clear that students learn best in-person and that states and districts should be using the \$130 billion in American Rescue Plan Elementary and Secondary School Emergency Relief (ESSER) funds to bring students back to in-person learning, it also underscored the importance of supporting students with disabilities and other communities disproportionately impacted during the shift to remote learning.

As part of these efforts, OCR earlier this year released a [fact sheet on the obligation to provide compensatory services](#) to remedy educational or other deficits that result from students with disabilities not receiving evaluations or services to which they were entitled during the COVID-19 pandemic. Likewise, the Department's Office of Special Education and Rehabilitative Services released [guidance that addresses the requirement to provide compensatory services](#) under the Individuals with Disabilities Education Act (IDEA).

In addition, the Department's Office of Elementary and Secondary Education in December published [a resource focused on allowable uses of funding](#) under ESSER and GEER (the Governor's Emergency Education Relief fund) to prevent, prepare for, and respond to the COVID-19 pandemic. The FAQ specifically highlights: (1) providing educational and related services under Section 504, including, but not limited to, providing additional instruction and services to students with disabilities, often referred to as compensatory services, to make up for any skills that might have been lost if it is individually determined that the student was unable to receive a FAPE as a result of school closure or other COVID disruption; and (2) supporting students with disabilities under the IDEA, including by eliminating evaluation backlogs and providing support and direct services, such as technical assistance, personnel preparation, and professional development and training.

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