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COVID-19 Advisory



Report to Congress Regarding Additional Waivers of Numerous Education Statutes

May 4, 2020

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) directed the U.S. Department of Education (DOE) to provide recommendations concerning whether waivers should be granted for various education-related statutes by Congress. On Thursday, April 27, 2020, the U.S. Secretary of Education, Betsy DeVos, submitted her Report to Congress (Report) regarding additional waivers of certain provisions in numerous education statutes, including the Individuals with Disabilities Education Act (IDEA).

Elementary and Secondary Education Act

The DOE previously waived the testing and accountability provisions of the Elementary and Secondary Education Act of 1965 (ESEA). DeVos did not recommend any further waivers of this statute.

Individuals with Disabilities Education Act

Regarding the IDEA, the Report stated that the DOE was not recommending waivers on “the core tenets” of the IDEA, specifically the Free Appropriate Public Education (FAPE) and Least Restrictive Environment (LRE) requirements. However, the DOE did recommend two limited waivers of the IDEA and supporting regulations.

First, the IDEA requires that an evaluation for transition from Part C (infant/toddler) to Part B (ages 3-22) must be completed prior to a child’s third birthday. The DOE recommended a waiver to allow for the suspension of this requirement until “the day on which health and safety factors allow for face-to-face meetings to resume and the toddler is able to be evaluated.” The waiver would include authorization for Part C services to continue until such time the child’s evaluation is completed and an eligibility determination made.

The Report also recommended a waiver related to the IDEA Personnel Development scholarship program. While earlier waiver authority was given for the work/repayment obligations under the TEACH grant, none was previously provided for the similar program under IDEA. DeVos’ recommendation covers those who receive benefits under the IDEA grant program but who cannot fulfill the requirements during the COVID-19 school closures. DeVos made no other waiver recommendations for IDEA provisions.

Recommendations

At this point, all federal IDEA procedural requirements remain intact, although DOE guidance recognizes that some flexibility is necessary in light of the pandemic. But, based on DeVos’ recommendations, it seems likely that Congress will eventually authorize a waiver regarding the Part B to C evaluation timeline. In the meantime, all federal timelines, including the timelines to conduct annual and triennial IEPs, have not changed, and districts should maintain these timelines even though meetings will need to be held virtually, to the extent feasible. In addition, any face-to-face testing that is in process at the time of the triennial IEP will likely need to be postponed until the schools reopen, though districts can explore other options for completing assessments virtually. If it is not feasible to complete the assessments during school closure, or to hold an IEP meeting virtually, we recommend communicating this to parents and providing prior written notice detailing the reasons why testing cannot be completed or the IEP meeting cannot be held.

The above information is provided for general guidance, and it is important to remember that student and family situations are unique. Should you have any questions regarding how to resolve issues regarding IEPs and special education assessments and timelines, please contact a DWK attorney. For more information regarding the impact of COVID-19 on your district’s operations, please visit our COVID-19 Resources page at <https://www.dwkesq.com/covid-19-resources-page/>.

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