

November 15, 2021

Katherine Neas
Acting Assistant Secretary
Office of Special Education and Rehabilitative Services
U.S. Department of Education
550 12th Street, SW
Washington, DC 20202

Dear Acting Assistant Secretary Neas:

The U.S. Department of Education (ED) has shown great commitment to the success of students with disabilities as the COVID-19 pandemic has raged across the United States and directly impacted the education of all students. We write today regarding guidance issued through the Office of Special Education and Rehabilitative Services' (OSERS) entitled [Return to School Roadmap: Development and Implementation of Individualized Education Programs \(IEPs\)](#) and released on September 30, 2021. We commend ED and OSERS for this guidance's focus on family engagement, quality of implementation, and a collaborative approach to addressing the disproportionate impact of COVID-19 on students with disabilities served under the Individuals with Disabilities Education Act (IDEA). Our comments seek to reinforce and lend support to key elements of the guidance which are particularly helpful to students and their families as they endeavor to participate fully in the IEP process with schools and districts at this critical time.

Focus on Family Engagement

Despite IDEA's clear message that families are critical members of the IEP team and that they play a key role in education decisions for their children with disabilities, too often parents and guardians are not viewed in that way by schools and districts. The COVID-19 pandemic only raised the stakes on the importance of strong collaboration between families and schools as education shifted to virtual and hybrid models. ED's recognition that parents are balancing health and safety concerns with their desire to ensure their children receive a free appropriate public education (FAPE) is much appreciated, as is the emphasis on the importance of parent empowerment, family participation in IEP team meetings, and parental input in the decision-making processes that are necessary for students to safely return to school.

Focus on Quality Implementation

We appreciate the guidance reminding stakeholders about the requirements of the IDEA and the education of students with disabilities. We especially applaud ED's repeated focus on high quality implementation of the IEP, in addition to the traditional reminders about IDEA's legal mandates. This emphasis on quality implementation, alongside concrete examples of what implementation could look like, is a great benefit to districts, schools, and IEP teams. This focus exceeded our expectations and is much appreciated.

Focus on Collaboration and Determining Need for Compensatory Services

The most welcomed portion of the guidance is the emphasis on IEP team decision making, especially as it relates to the determination related to compensatory services. Parents, advocates, and other stakeholders have grown increasingly concerned about the instructional losses suffered by students with disabilities and about how those students, particularly those who come from under-resourced communities and schools, do not have equal access to legal advice or the dispute resolution process to obtain individualized orders of relief. Without this prompt from ED, these children would never recoup their losses. Specifically, ED's emphasis - that IEP teams should use the same student-focused, individualized process they use for developing IEPs to make determinations related to compensatory services - creates equity in addressing learning loss in a collaborative and meaningful way. This approach minimizes or removes the adversarial relationship that has historically been associated with the process for determining the need for and extent of compensatory services. It supports IEP teams, which includes parents who best know their children, in expeditiously making individualized decisions without resorting to dispute resolution processes to obtain the services students need. While some organizations have claimed that this responsibility does not lie within the IEP team's purview and that such a proactive process will result in increased litigation, it is our view that clarifying that IEP teams have the authority to make these determinations, without waiting for adversarial action, will reduce the need for families to seek administrative relief to address the instructional loss, will encourage continued relationship building between families and schools, and will result in more students receiving the services they need to ensure FAPE. We wholeheartedly support ED's position that IEP teams determine students' needs for compensatory services.

We appreciate the ongoing commitment ED has and continues to make regarding the success of students with disabilities and urge you to provide technical assistance to states to further support the implementation of the guidance. We look forward to supporting families and schools in robust IEP implementation across our nation's schools. If we can support your efforts or provide additional information, please contact Wendy Tucker, Senior Policy Advisor, Center for Learner Equity at wtucker@centerforlearnerequity.org.

Sincerely,

Association of University Centers on Disabilities
Autism Society of America
Center for Learner Equity
Children and Adults with Attention-Deficit/Hyperactivity Disorder
Council of Parent Attorneys and Advocates
Disability Rights Education & Defense Fund
National Association of Councils on Developmental Disabilities
National Center for Learning Disabilities
National Center for Parent Leadership, Advocacy, & Community Empowerment
National Disability Rights Network
National Down Syndrome Congress
The Advocacy Institute
The Arc of the United States

cc: Kim Knackstedt, Disability Policy Advisor, The White House
Secretary of Education, Miguel Cardona