



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Ms. Pat Geary  
Mr. James P. DeLorenzo  
New York State Education Department  
89 Washington St., 301 M-EB  
Albany, New York 12234

NOV 20 2012

Dear Ms. Geary and Mr. DeLorenzo:

This is in response to your emails and telephone discussion on November 1, 2012, to Alma McPherson, Associate Division Director within the Monitoring and State Improvement Division, Office of Special Education Programs (OSEP), in which you sought flexibility in light of the damage caused to some New York school districts by Hurricane Sandy. OSEP supports the efforts that you and your staff are making during these difficult times as you work to ensure the provision of special education and related services to children and youth with disabilities under Part B of the Individuals with Disabilities Education Act (IDEA).

In your emails you indicate that some local educational agencies (LEAs) in your State are having difficulty meeting timelines for evaluations, placements, annual review meetings, due process hearings and resolution sessions because of the emergency situation caused by Hurricane Sandy. You ask if these timeline requirements can be extended. In addition, you ask how OSEP would consider New York's data in its Annual Performance Report (APR) for making a determination.

In general, the Department does not have the authority to waive the requirements in Part B of the IDEA. Therefore, the Department cannot extend timelines for the above requirements. However, the following information may be helpful.

**Evaluations** The IDEA provides that initial evaluations must be conducted within 60 calendar days of receiving parental consent, or within a State-established timeframe. 34 CFR §300.301(c)(1)(i). The only exception to the 60-day timeframe is when the parent of a child repeatedly fails, or refuses to, produce the child for an evaluation, or the child enrolls in a school of another public agency (under certain limited circumstances). 34 CFR §300.301(c)(1)(ii). The IDEA does not provide the Department with the flexibility to waive this requirement. However, as noted above, the IDEA permits States to establish their own timeframes for the completion of evaluations. 34 CFR §300.301(c)(1)(ii). Therefore, New York may address this issue by establishing a State timeframe. Under normal circumstances, the Department would expect that a State-established timeframe would be the same throughout the State. However, under these unusual circumstances, it would be reasonable for New York to establish a different timeframe for completing evaluations of all children suspected of having a disability in those LEAs whose operations have been significantly affected by Hurricane Sandy.

**Individualized Education Programs** Under 34 CFR §300.323(c), a meeting to develop an individualized education program (IEP) for a child is conducted within 30 days of a determination that the child needs special education and related services; and as soon as possible following development of the IEP, special education and related services are made available to

the child in accordance with the child's IEP. This language provides some flexibility to LEAs that were affected by Hurricane Sandy – "as soon as possible" recognizes that there may be some isolated circumstances where, because of damage caused by the storm, power outages, etc., an LEA may need to delay the start of special education and related services to a particular child. In addition, if an LEA closes its schools because of an emergency such as Hurricane Sandy, and does not provide any educational services to the general student population, then that LEA is not required to provide services to students with disabilities during that same period of time. However, once a school is open, the LEA must make every effort to make available special education and related services to the child in accordance with the child's IEP.

**IEP Reviews** The IDEA requires that the child's IEP be reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revise the IEP, as appropriate. 34 CFR §300.324(b). There is some flexibility in this provision. For example, 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 purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. 34 CFR §300.324(a)(4). In addition, when conducting IEP Team meetings and placement meetings, the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation requirements, such as video conferences and conference calls. See 34 CFR §300.328.

**Resolution Process** The LEA must convene a resolution meeting within 15 days of receiving notice of the parent's due process complaint. 34 CFR §300.510(a)(t). The exceptions to this requirement are in 34 CFR §300.510(a)(3). If the LEA notifies the parent of its intent to schedule a resolution meeting within the 15-day timeline and the parent informs the LEA in advance of the meeting that circumstances prevent the parent from attending the meeting in person, it would be appropriate for an LEA to offer to use alternative means to ensure parent participation, such as video conferences or conference telephone calls, subject to the parent's agreement.

If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur. 34 CFR §300.510(b). The Part B regulations allow adjustments to the 30-day resolution period. These adjustments may result in a shorter or longer period to resolve the due process complaint and affect when the timeline for a due process hearing decision begins. 34 CFR §300.510(c).

**Due Process Hearings** The public agency must ensure that, not later than 45 days after the expiration of the 30-day resolution period in 34 CFR §300.510(b) described above (or any adjustments permitted by 34 CFR §300.510(c)), a final decision on the due process complaint is reached. 34 CFR §300.515(a). A hearing officer may grant specific extensions of time beyond the timelines in 34 CFR §300.515(a) at the request of either party. 34 CFR §300.515(c).

**Annual Performance Plan (APR) Determination** As an initial matter, in recognition of the time and resources that your office is spending on matters related to the hurricane, OSEP has extended the due date for New York's FFY 2011 APR, due February 1, 2013, to March 1, 2013.

With respect to the State's FFY 2012 APR, due February 1, 2014, the Secretary makes a determination on the information provided by New York in its APR and State Performance Plan, obtained through monitoring visits, and "any other public information made available." 34 CFR §300.603(b)(1). Recognizing the damaging effects of Hurricane Sandy on some LEAs in New York, we recommend that New York, in developing its APR covering the 2012-2013 school year, include, for each indicator for which it is relevant, information relating to the extent to which any LEAs affected by Hurricane Sandy were not able to meet applicable timelines, or were not able to collect valid and reliable data. Please include any other information that the State believes is relevant. OSEP will take all of this information into account when making its determination in 2014.

We appreciate the work you are doing to support families disrupted by Hurricane Sandy. Be assured that we will continue to work with you and your staff in the days ahead as you adjust to meet the needs of children with disabilities. Please feel free to contact Alma McPherson at 202-245-7443 or Angela Tanner Dean at 202-245-6320 for any additional follow-up or assistance.

Sincerely,

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Melody Musgrove, Ed.D.

Director

Office of Special Education Programs