Individuals with Disabilities Education Act and Rehabilitation Act of 1973

Background
Recognizing that implementation of the IDEA and the Rehabilitation Act can present difficult challenges during the COVID-19 pandemic, the Department has consistently emphasized (and will continue to do so) that schools and other recipients can and should find solutions for their students. Indeed, the Department is heartened to see many positive examples across the nation of teachers, schools, LEAs, States, as well as Vocational Rehabilitation (VR) agencies, rising to meet the needs of those who rely on them.

The Department is not requesting waiver authority for any of the core tenets of the IDEA or Section 504 of the Rehabilitation Act of 1973, most notably a free appropriate public education (FAPE) in the least restrictive environment (LRE). The Department’s position is based on the principles that:

• Schools can, and must, provide education to all students, including children with disabilities;
• The health and safety of children, students, educators, and service providers must be the first consideration;
• The needs and best interests of the individual student, not any system, should guide decisions and expenditures;
• Parents or recipients of services must be informed of, and involved in, decisions relating to the provision of services; and
• Services typically provided in person may now need to be provided through alternative methods, requiring creative and innovative approaches.

In general, the following recommendations regarding the IDEA and the Rehabilitation Act acknowledge that students, individuals, families, and States are having to adapt to novel circumstances due to the pandemic national emergency. These recommended flexibilities are rooted in the need to minimize barriers to learning and issues arising from the use of funds in an extraordinary time. To that end, this report includes recommendations concerning the IDEA (Part C (Infants and Toddlers with Disabilities) to Part B (Assistance for Education of all Children with Disabilities) Transition, and Personnel Development Scholarships), as well as several provisions of the Rehabilitation Act relating to VR programs and funds.

IDEA Waiver Authority Recommendations
1. Waiver Authority Recommendation (IDEA Part C to Part B Transition)
Section 612(a)(9) of the IDEA (20 U.S.C. § 1412(a)(9))
Summary of Waiver
This waiver authority would provide the Secretary with the authority to extend the IDEA Part B transition evaluation timelines (Part B initial evaluation), such that calculation of a timeline obligation shall resume no later than the day on which health and safety factors allow for face-to-face meetings to resume and the toddler is able to be evaluated. This waiver authority would also include explicit authorization for Part C services to continue during the delayed Part B transition evaluation timeline so that a toddler may continue to receive Part C services after his or her third birthday and until a Part B evaluation is completed and an eligibility determination made. This flexibility should allow for CARES Act funds or other Federal education funds (e.g., IDEA Part B funds) to be used to provide these services.

Rationale
Without this flexibility, a toddler with a disability will lose access to services once he or she turns 3 years old. With this flexibility, the parent and the SEA or other lead agency may agree to continue providing early intervention services (Part C services) to toddlers with a disability until a Part B evaluation has been completed and an eligibility determination has been made. The funding mechanisms must be addressed, as Part B funds cannot be used for a child not yet eligible for Part B services, and Part C funds cannot be used for a child who has aged out of Part C.

2. Waiver Authority Recommendation (Personnel Development Scholarships)
Section 662(h)(1) of the IDEA (20 U.S.C. § 1462(h)(1))

Summary of Waiver
This waiver authority would allow the Secretary to grant a deferral of the work or repayment requirements or allow credit to be given for the service obligation if employment was interrupted by the COVID-19 national emergency.

Rationale
Section 3519 of Division A of the CARES Act provides relief from the service obligation for those scholars receiving TEACH grants but does not address the IDEA personnel preparation grants. The IDEA personnel preparation grants, similar to TEACH grants, addressed in Division A of the CARES Act, have service obligation requirements that recipients may not be able to meet during the COVID-19 pandemic. However, unlike TEACH grants, the IDEA personnel preparation grants were not included in the CARES Act. If scholars in the program do not, within a specified period, fulfill the employment obligations required by the scholarship, the scholars face repayment penalties for part or all of their scholarships with interest.
Rehabilitation Act Recommendations Concerning Vocational Rehabilitation (VR) Programs

Authorized by Title I of the Rehabilitation Act, as amended by Title IV of WIOA (29 U.S.C. § 720 et seq.), VR programs provide support to States in the operation of State VR programs in order to provide services to individuals with disabilities so that those individuals may prepare for and engage in competitive integrated employment. Sections 110(d)(1) and 113(a) of the Rehabilitation Act require States to reserve at least 15 percent of their Federal allotment to provide pre-employment transition services to students with disabilities who are eligible or potentially eligible for VR services. The waiver authority recommendations below seek flexibility for the use of VR funds to support students, youth, and adults with disabilities to prepare for, find, and retain employment.

1. Waiver Authority Recommendation (Obligation and Expenditure of FY 2019 Vocational Rehabilitation Carryover Funds)

Section 19 of the Rehabilitation Act (29 U.S.C. § 716)

Summary of Waiver
This waiver would provide the Secretary the authority to extend the period of availability for VR program funds allotted in fiscal year (FY) 2019 and available for carryover in FY 2020 for an additional fiscal year. This would provide VR program grantees the ability to obligate and expend VR funds matched in FY 2019 for two succeeding fiscal years.

Rationale
These actions would allow the Department to extend the period of performance for FY 2019 VR program funds and permit grantees additional time to expend Federal funds that could not be expended due to the reduction in program services resulting from COVID-19. VR programs used $3.2 billion of Title I and Title VI funds in program year 2018 (including funding from more than one fiscal year) to purchase services from vendors. As a result of COVID-19, these providers have been unable to provide VR services, thereby, limiting the agency’s ability to expend Federal VR funds.

This flexibility would make all FY 2019 funds for grantees meeting the carryover requirements available until September 30, 2021. Because section 19 of the Rehabilitation Act governs the period of performance for the VR program and other formula grant programs, GEPA and the “Tydings Amendment” do not apply to these grants.

2. Waiver Authority Recommendation (Reservation of Vocational Rehabilitation and Supported Employment Program Funds)

Section 110(d)(1) of the Rehabilitation Act (29 U.S.C. § 730(d)(1))
Section 603(d) of the Rehabilitation Act (29 U.S.C. § 795h(d))
Section 606(b)(7)(I) of the Rehabilitation Act (29 U.S.C. § 795k(b)(7)(I))
**Summary of Waiver**

This recommendation seeks, for FY 2020, authority for the Secretary to waive requirements that States reserve not less than 15 percent of the allocated funds for providing pre-employment transition services to students with disabilities. This recommendation, for FY 2020, further asks that the Secretary be granted authority to waive the requirement that a State reserve and expend half of its allotment for providing supported employment services, including extended services, to youth with the most significant disabilities. The Department recommends that the Secretary be granted authority to waive the accompanying requirement that the State provide a 10 percent non-Federal match on the half of the allotment reserved for these services to youth with the most significant disabilities.

**Rationale**

VR grantees are concerned that, due to the unavailability of students and vendors and a resulting drop in demand for services, they will be unable to expend the funds they are required to reserve. The waiver would not remove the obligation for VR agencies to provide pre-employment transition services or supported employment services. The waiver is necessary as services move to less expensive online methods of delivery and as it becomes increasingly difficult for VR agencies to meet the 15% minimum expenditure required by the statute. Limited access to businesses due to closures will reduce work-based learning opportunities, further reducing expenditures of pre-employment transition funds. For FY 2020, VR agencies are required to reserve and expend $502.7 million in Federal VR funds for the provision of pre-employment transition services. For FY 2020, the amount of $11,161,260 must be reserved for supported employment services. Carrying over the reserved funds will compound the difficulty VR agencies have experienced in meeting the 15% minimum and result in a loss of program funds that could be used to help individuals find or retain employment. For FFY 2018, there were 24 States of 56 State grantees (including territories) that did not meet the 15% pre-employment transition services’ requirement. This waiver will prevent States from being penalized for not being able to meet these requirements during the COVID-19 pandemic.

3. **Waiver Authority Recommendation (Allowable Use of Vocational Rehabilitation Funds in Reopening Randolph-Sheppard Facilities)**

Section 103(b)(1) of the Rehabilitation Act (29 U.S.C. § 723(b)(1))

**Summary of Waiver**

This waiver authority would allow the Secretary to permit FY 2020 VR funds to be used to replace expired or spoiled food products at Randolph-Sheppard vending sites required to close due to COVID-19, thus allowing facilities to reopen more efficiently following the COVID-19 pandemic.
Rationale
Typically, funds supporting the Randolph-Sheppard Act’s Business Enterprise Program participants may be used only to purchase initial stocks and supplies for vending facilities when establishing a new business enterprise; however, due to the unexpected nature of COVID-19 and the rapid manner in which Federal, State, and other facilities closed, vendors may need to purchase new supplies to replace expired or spoiled food products in order to reopen. Allowing flexibility in the use of VR funds for FY 2020 will allow needed support for vendors to address this difficulty and retain their business enterprise.

4. Waiver Authority Recommendation (Internship and Service Obligations for Rehabilitation Services Administration Scholars)
Section 302(b) of the Rehabilitation Act (29 U.S.C. § 772(b))
Summary of Waiver
This waiver authority would provide the Secretary to waive the requirement that scholars in the Rehabilitation Long-Term Training (RLTT) program complete an internship in a State VR agency and that the scholars, instead, be given full credit for satisfying this requirement if an internship is interrupted by the COVID-19 pandemic and cannot be completed.

In addition, this recommendation seeks to provide the Secretary with the authority to waive the requirement that scholars in the RLTT program must, within a specified period, maintain employment in a State VR agency or related agency for two years for each year of scholarship assistance they received under the program. Instead, the Department recommends that scholars receive credit for fulfilling their service obligation for the period during which employment is interrupted by the COVID-19 pandemic.

Rationale
If scholars in the RLTT program do not, within a specified period, fulfill the employment obligations required by the scholarship, the scholars face repayment penalties for part or all of their scholarships with interest. Based on the most recent data available, the Department estimates that approximately 4,000 scholars have graduated and need to complete their service obligations. Giving scholars this flexibility protects the health and safety of scholars while acknowledging the unavoidable barriers to employment that have been presented by the COVID-19 pandemic.