

**Coalition for Citizens with Disabilities Presents the
Sixth Annual Special Education Law Conference &
CLE**

**FREE APPROPRIATE
PUBLIC EDUCATION IN
THE COVID
ENVIRONMENT**

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Introduction

- As a result of the Coronavirus 2019 (COVID-19) outbreak, services to children with disabilities will be impacted.
- As part of the Education Law and Policy Clinic, it is important to learn about the services to which students with disabilities are entitled.
- The IDEA, Section 504, and Title II of the ADA do not address the situation we are facing with the COVID-19 outbreak, where schools are closed for more than 10 consecutive days due to unexpected and exceptional situations, such as a disease outbreak.

Implementing Part B of the IDEA & Section 504 during the COVID-19 Outbreak

School Closures

- If a local education agency (LEA) closes in response to the spread of disease 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 time.
- However, once classes resume or if the LEA provides educational services to the general student population during the time the school is closed, then the LEA **must** provide special education and related services to students with disabilities in compliance with the student's individualized education program (IEP) and FAPE under Section 504.

Student Infection

- If schools remain open but a child with a disability is unable to attend due to infection of COVID-19 the LEA must still provide homebound services to that child.
- The child's IEP should be reviewed for any necessary changes to the goals. If the goals remain the same and only the time in special education will change, then the IEP Team may amend the IEP.
- The IEP Team must also evaluate if the child affected by COVID-19 is available and would benefit from online or virtual instruction, telephonic instruction and other instructional activities. The school personnel assessing should always follow appropriate health guidelines to address risk of transmission while providing services.
- If the child does not receive services for an extended period of time, the school must make an individualized assessments to compensator services to make up for lost skills.

Selective Closures

- If a public school for children with disabilities is closed solely because the children are at high risk for illness and death, the LEA must determine whether each dismissed child could benefit from online or virtual instruction, instructional telephone calls, and/or other curriculum based instructional activities, to the extent they are available.
- If a child does not receive services during a close, the IEP Team (or appropriate personnel under Section 504) must make individualized determination whether and to what extent compensatory services may be needed.

Changes in Placement

- If a child with a disability is excluded from school due to risk of severe medical complication for 10 consecutive school days or less, the provision of remote learning services is not considered a change in placement. During the exclusion period, a parent or IEP team member may request an IEP meeting to discuss services needed if the exclusion is likely to continue for a duration longer than 10 consecutive school days.
- If the child is excluded for more than 10 consecutive school days, this is a change in placement and the LEA must consider placement decisions under the IDEA's procedural safeguards:
 - a) The IEP Team (including parents) must make the change in placement decision.
 - b) If the IEP Team decides the child is high-risk (due to health and safety concerns), the child's need may be met through homebound services.
 - c) If homebound services are determined to be required, the LEA must issue prior written notice.
 - d) A parent who disagrees with the placement retains all the due process rights contained in the IDEA.
 - e) Students protected under Section 504 likewise retain all evaluation, placement, and procedural rights protected by Section 504.
 - f) Any decision to dismiss a child based on his/her high risk for medical complication must be based on individualized need and not on perceptions of the child's needs based on stereotypes or generalizations regarding his/her disability.

Contingency Plans

- IEP Teams may, but are not required to, create contingency plans in the child's IEP that could be triggered and implemented during selective closures.
- Trigger events can be decided in advance and included in the child's IEP.
- Contingent provisions may include the provision of special education and related services at an alternative location or the provision of online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities.
- Contingency plans may also identify which special education and related services, if any, can be provided at home.

The Use of IDEA Part B Funds

- IDEA Part B funds may be used for activities that directly relate to providing, and ensuring the continuity of, special education and related services to children with disabilities.
- Example of such expenditures on which LEAs may spend IDEA Part B funds include the following:
 - a) Disseminating health and COVID-19 information specifically related to children with disabilities
 - b) Developing emergency plans for children with disabilities
 - c) Providing other information (for example, guidance on how to coordinate the provision provided in this document) to parties who may need such information, including school staff responsible for implementing IEPs, parents of eligible children, and staff in alternative locations where special education and related services may be provided.
- LEAs may not use IDEA Part B funds to develop, distribute, or carry out general COVID-19 guidance activities that are not specific to children with disabilities.
- LEAs may not use IDEA Part B funds to administer future COVID-19 vaccinations to any children, including children with disabilities.

IDEA Part C and COVID-19

IDEA Part C Child Find Provision and COVID-19

- IDEA Part C lays out the legal requirement, known as “Child Find,” of schools to identify children who have disabilities and may be in need of services. A primary provision of this requirement is for schools to consider the request of parents for an evaluation for disability services. In the event a school is closed because of the COVID-19 outbreak, schools may not use the school closures as a basis to deny evaluation.
- If the school does deny the parents’ request for evaluation, any COVID-19 school closures also do not waive the school’s responsibility to provide the parents with a due process hearing if they so request.
- Pursuant to Section 303.117, the central directory of early intervention services must be made available to the general public. This directory must include accurate, up to date information about early childhood intervention services and other services relevant to children and toddlers with disabilities. In light of the current circumstances, this directory should include information about which services are still available during any state shutdowns or shelter in place orders and the status of the availability of those services throughout the COVID-19 pandemic.

Transition Conferences During the COVID-19 Pandemic

- Pursuant to Section 303.209(c), requires a transition conference be held for a child exiting the Part C program at least 90 days before that child's third birthday.
- For those children requiring a transition service during state-wide closures, the State should institute a plan to hold these conferences on a video or telephonic platform to ensure those children are properly evaluated for Part B services.

The Use of IDEA Part C Funds

- IDEA Part B funds may be used for activities that directly relate to providing, and ensuring the continuity of, Part C services to eligible children and their families.
- Example of such expenditures on which the State may spend IDEA Part C funds include the following:
 - a) Disseminating health and COVID-19 information to parties receiving services under Part C
 - b) Developing emergency plans to support the provision and continuity of Part C services
 - c) Providing other information (for example, how the lead agency staff or EIS programs or providers may provide alternate services or services in alternate locations as described in Question B2) to relevant parties who need this information.
- IDEA Part B funds may also be used for other activities that relate to service provision, including the provision of service coordination, evaluations, and assessments, may also be funded.

COVID-19 Vaccinations

- IDEA Part C funds may not be used by the State to administer future COVID-19 vaccinations as a medical service under 34 CFR §303.13(c)(3).

RECOMMENDATIONS FOR PROTECTING IDEA RIGHTS DURING COVID-19

- Extended School Year (ESY)
- Compensatory Educational Services
- In-person Services following CDC Guidelines
- Data for Independent Educational Evaluation (IEE)
- IEP Committee Decisions Including Parents
- Instruction in the Home vs. Homebound Services
- Disciplinary Actions Under IDEA in Light of COVID
- Other Issues

Questions?

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