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COVID-19 AND STUDENTS WITH DISABILITIES: FREQUENTLY ASKED QUESTIONS

As the COVID-19 pandemic continues to unfold, school districts and charter schools nationwide must make critical decisions in the face of largely unprecedented circumstances. Notably, while neither the Individuals with Disabilities Education Act (“IDEA”), Section 504 of the Rehabilitation Act of 1973 (“Section 504”), nor Title II of the Americans with Disabilities Act (“Title II”) specifically address extended school closures, their requirements and protections apply with equal force during these uncertain times. Although guidance has been issued from numerous entities, including the Centers for Disease Control and Prevention (“CDC”), the Department of Education, and various state and local agencies, significant questions and practical challenges remain for administrators tasked with providing a continuity of educational services while also protecting the safety of its students, staff, and the general public.

The following FAQ document has been developed to assist Texas educators and administrators fulfill their obligations to students with disabilities in the wake of the COVID-19 outbreak. **The new information based upon the most recent guidance is included in blue below.** As always, please do not hesitate to contact us with any specific questions that may arise.

SERVICES

Is the district required to provide services to students with disabilities during extended periods of closure?

The answer depends on whether services are provided to general education students during an extended period of closure, which the Department of Education generally considers to be 10 or more consecutive school days. If no educational opportunities are provided to the general education population, then the district is not required to provide services to its students with disabilities during the same period of time. **OCR/OSERS and TEA recently emphasized that it is improper to decline to provide general education distance instruction out of fear of the inability to comply with the IDEA and Section 504.**

On the other hand, if the district provides any educational services to general education students, including distance learning or virtual learning opportunities, then it must also ensure that students with disabilities have equal access to the same opportunities, including the provision of a free appropriate public education (“FAPE”). The failure to do so may amount to disability discrimination in violation of Section 504 and Title II of the ADA.

When schools re-open, the district must resume full implementation of the IEP or Section 504 Plan and consider the need for compensatory services.

Are services also required under Section 504?

Yes; eligible students with disabilities under both the IDEA and Section 504 are entitled to a FAPE if services are provided to general education students.

Who determines which services will be provided?

If services are provided to general education students, then special education services must also be made available, and decisions regarding whether, and to what extent, services will be provided must be made on an individualized basis by the student’s Admission Review & Dismissal (“ARD”) Committee or Section 504 Committee as applicable.

What factors must be considered and/or prioritized when determining service delivery for students with disabilities during the COVID-19 outbreak?

While the needs of the general public, school district staff, and *all* student populations are equally important, TEA has acknowledged a certain hierarchy in decision-making. In particular, when determining services and the possibility for remote learning for students with disabilities, TEA explained that districts “will want to prioritize decisions and actions based on health and safety first, communication with staff and families, and then consider requirements of IDEA and state law.”

Is the district required to provide all services in a student’s IEP during periods of school closure due to COVID-19?

It depends. As explained above, the district has an obligation to provide services to students with disabilities if services are provided to general education students. Although the district should attempt to fully implement a student’s IEP to the maximum extent possible, providing every aspect of an IEP may not be feasible for all students during extended school closures. In other words, the obligation to provide FAPE remains, but what FAPE will look like for any given student is likely to change.

Some aspects of an IEP, by their nature, will be more adaptable to continuity than others during extended closures in which distance learning or other alternative methods are provided. For example, accommodations such as extended time can easily be provided even if a student is off-campus, and certain related services like speech may be provided remotely in appropriate circumstances. OCR/OSERS has indicated its agreement with this sentiment in its recent guidance by stating that “[m]any disability-related modifications and services may be effectively provided online...[such as] extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing.”

Given the shift from classroom-based instruction, it is important to be flexible and make appropriate adjustments to ensure the provision of FAPE. It is critical for districts to document adjustments made to IEPs and 504 Plans as well as the type and amount of services provided, and it is equally important that districts are proactive when communicating with parents and students.

What are the district’s obligations with respect to its students receiving special education and related services in off-campus or out-of-district programs?

Ideally, services will not be interrupted for any student during the COVID-19 outbreak; practically speaking, however, it can be expected that at least some degree of change will necessarily occur for the majority of students, including those placed in off-campus or out-of-district programs. The resident school district remains responsible for ensuring FAPE is provided even during extended school closures. As such, it is important that districts make a concerted effort to determine the extent to which the IEP will be implemented at off-campus and out-of-district placements and respond accordingly with alternatives for service-delivery and/or other assistance when necessary.

TEA has reiterated this FAPE obligation in a recent guidance document focusing on residential and nonpublic day programs during COVID-19 closures. In particular, TEA explained that school services provided at a nonpublic day school or residential facility are subject to the Governor’s Executive Order issued on March 19, 2020 and must close until April 3, 2020; however, the residential portion of such programs may continue provided they follow guidance issued by Health and Human Services.

What if a nonpublic day program closes completely because of COVID-19?

According to TEA, it is imperative for districts to maintain communication with contracted facilities and families in the event of a full closure of a residential program and to make plans for instructional continuity.

What if a residential facility closes completely because of COVID-19?

It is the responsibility of the residential facility to: (1) communicate with the relevant licensing agency to determine the appropriate next steps; (2) follow guidance issued by the Department of Health and Human Services; and (3) plan for instructional continuity.

What if the ARD Committee determines that a student should receive home instruction?

Whether a student requires in-home instruction or “homebound” services must still be made on an individualized basis by the ARD Committee in accordance with the IDEA and state law requirements. If the ARD Committee determines that homebound services are necessary and appropriate for a student, be mindful of health and safety considerations impacting staff and students, which may affect service delivery, and implement any and all precautions.

Must an IEP include a distance learning plan in a student’s IEP as part of a contingency plan in the event of extended school closure?

Not necessarily. An ARD Committee may, but is not required, to include a distance learning plan as part of the student’s IEP. Remember, all decisions must be made on an individualized basis in accordance with each student’s unique needs. Please note, if online or “virtual” programming is provided, it must be made available in an accessible format to students with disabilities.

How can a district address the needs of life skills students or students that require social skills interventions as part of their educational program?

The modalities used for instruction for students with disabilities should vary and depend on the unique needs of individual students. Districts are considering a variety of resources including internet-based learning options, virtual instruction, instructional phone calls, curriculum-based instructional activities, paper assignments, and the potential for partial-openings for the most intensive modalities. It is critical that districts maintain an open line of communication with service providers and parents to ensure educational opportunities are made available. If services cannot be provided safely or professionally, then the ARD Committee should consider amending the IEP and clearly document the type and need for any changes it makes.

How should the district handle graduation decisions for special education students during the COVID-19 outbreak?

As always, the ARD Committee, and not an Individual Graduation Committee, is responsible for graduation decisions for eligible students with disabilities. In particular, the ARD Committee must determine whether the student is required to achieve certain qualifications and/or satisfactory performance on an EOC assessment to graduate.

ARD COMMITTEE MEETINGS

Are ARD Committee meetings still required?

The underlying reason for the school closure, COVID-19, should not weigh into a district's decision to conduct an ARD Committee meeting, and every effort must be made to ensure that ARD Committee meetings occur in a timely manner even during periods of extended closure. This does not necessarily mean, however, that an in-person meeting will be required in every situation; alternatives such as IEP amendments and telephonic ARDs may be appropriate in certain circumstances.

Can an IEP be amended without a formal ARD Committee meeting?

According to the IDEA, ARD Committee meetings must be held, whether in-person or remotely, for annual meetings, changes of placement, initial eligibility determinations, and manifestation determination reviews ("MDR"). In other circumstances, an amendment to the IEP may be a viable option to address changes that do not amount to a change of placement for the student.

Whether revisions to an IEP constitute a change of placement that requires an ARD Committee meeting depends on the totality of the circumstances, including a student's particular needs and the current state of emergency. If the sole change to the IEP is the location of services, an IEP amendment will likely suffice provided the parent agrees to the revision without the need for an ARD; on the other hand, if substantial changes are needed to the type, amount, or frequency of services, an ARD Committee meeting will likely need to take place. Remember, parents may continue to request an ARD for any number of reasons, and the district should make every effort to respond to such requests in a timely manner given the current circumstances.

TEA has emphasized that the ability to amend an ARD without a formal meeting will depend on local district policy. Thus, if Board Policy EHBAB (Local) is stricter than federal and state law regarding IEP amendments, consider revising the policy to provide greater flexibility to make such modifications on a temporary basis during the COVID-19 outbreak. Of course, districts cannot modify the policy to allow IEP amendments for initial eligibility decisions, annual ARDs, MDRs, or changes of placement. If a district chooses to modify its policy in this regard, it is imperative to timely communicate that change to parents.

Must ARD Committee meetings be held in-person given the current public health and safety concerns surrounding the COVID-19 outbreak?

No; although preferred, the IDEA does not require in-person ARD Committee meetings. Given the current health and safety concerns surrounding the COVID-19 outbreak, districts should consider alternate methods of conducting such meetings such as teleconferencing and video conferencing. Should the district opt for one of these alternatives, remember:

- Compliance with procedural requirements related to parent participation, notice, and required committee membership is still required unless waived.
- Do not neglect to provide interpreters when necessary and to the extent possible.
- Specify whether the ARD will occur via video or teleconferencing on the meeting invitation and include any necessary instructions for parents.
- Record all meetings.
- After assurances, obtain agreement or disagreement verbally in lieu of physical signatures from consensus members. Explain this process to the parent, document the discussion in the deliberations, and indicate whether verbal agreement was provided on the signature page.

TIMELINES

Do the IDEA's timelines apply during periods of closure?

Yes. The IDEA's timelines apply with equal force during periods of extended school closures; however, whether services are provided by a district will impact deadlines measured by school days as explained in greater detail below. As such, continue to be mindful of any and all applicable timelines and note whether it is measured in calendar or school days. For example:

- *Response to a request for an initial full and individual evaluation ("FIE")*: 15 school days;
- *Completion of initial FIE report*: 45 school days from parental consent;
- *Conducting an initial ARD Committee meeting*: 30 calendar days from completion of the FIE; and
- *Prior Written Notice ("PWN")*: at least 5 school days before the district proposes or refuses an action (unless a shorter period is agreed-upon).

While OSERS cannot *modify* existing timelines, it recently indicated that it will provide flexibility where possible. In particular, OSERS pointed to timelines related to the following events as having room for flexibility during COVID-19:

- *TEA complaint resolution*: OSERS has stated that extended school closures may constitute “exceptional circumstances” warranting an extension of the 60-day timeline for complaint resolution.
- *30-day resolution period for due process hearings*: In addition to the reasons listed in 34 CFR § 300.510(c), OSERS explained that the parties to a due process hearing may agree to extend the 30-day resolution period in light of unavoidable delays stemming from COVID-19 closures.
- *Due process hearing decisions*: A hearing officer also has the authority to extend the decision timeframe. Typically, a decision must be issued 45 days after the resolution period ends; however, either party may request a specific extension of that time period, which could provide more time to prepare for hearing.
- *Triennial reevaluations*: While the IDEA typically requires triennial reevaluations, OSERS has reminded districts that the parties may: (1) agree that reevaluation is not necessary; or (2) conduct a review of existing data in lieu of a formal reevaluation.

What constitutes a “school day” for purposes of the IDEA timelines?

A day counts as a “school day” for purposes of the IDEA’s timelines if services of any nature, face-to-face, virtual, or otherwise, are provided. Days on which the district is closed and no instruction occurs do not count as school days. This nuance impacts the deadlines associated with responding to a request for an initial FIE, completing the initial FIE report, and providing PWN to parents.

What if the district cannot meet an applicable deadline because of the COVID-19 outbreak?

Every effort should be made to comply with all applicable deadlines; however, circumstances may arise that make doing so difficult or unattainable. If the district is unable to meet a particular deadline, this should be documented in the PWN and communicated to the parent.

EVALUATIONS

Do evaluation timelines still apply?

Yes. Although the Director of the Office of Special Education Programs (“OSEP”) recently acknowledged the need to provide some degree of flexibility for districts regarding the IDEA’s evaluation timelines, there is no “grace period” at this time. In addition to OSEP,

the Office of Special Education and Rehabilitative Services (“OSERS”) also recently acknowledged an inevitable delay in some evaluations given the unprecedented circumstances surrounding COVID-19; however, no extensions of time have been offered from the Department of Education to date.

Is the district still bound to the 45-school day deadline for initial evaluations?

Yes. Texas law requires completion of an initial FIE within 45 school days of written parental consent; however, remember that only days when services are provided count towards this deadline. Therefore, the timeline stops on days when the district closes and no services are offered, but if *any* services are provided, face-to-face, virtual, or otherwise, the clock continues to run.

What if an evaluation requires face-to-face assessment or in-person observation?

Not all evaluations require face-to-face assessments or observations, and every effort should be made to be flexible and innovative to ensure evaluations are completed to the extent possible. That being said, according to the Office for Civil Rights, if a student requires face-to-face assessment or in-person observation, the evaluation should be delayed until the district re-opens. Again, provide the parent with PWN documenting the need for in-person assessment/observation as the reason for the delay.

How should a district handle initial eligibility determinations when the FIE has been delayed?

According to TEA, the IDEA provides that eligibility determinations and initial IEPs should not be made without consideration of all relevant data. As a result, districts should not proceed to eligibility determinations or the development of an initial IEP until all aspects of an FIE are complete. In the meantime, the district should continue to provide general education interventions and supports to these students and document the reason for the delayed completion of the FIE.

What if a parent requests an evaluation while the district is closed due to COVID-19?

Because the IDEA’s Child Find obligations do not halt during extended school closures, handle requests for initial evaluations in accordance with the district’s regular policies and procedures to the greatest extent possible. Remember, Texas law requires a response to the parent’s request for an initial evaluation within 15-school days and completion of the report within 45-school days of parental consent. [Communication and documentation should be maintained regarding any inability to comply with the IDEA’s evaluation timelines.](#)

COMPENSATORY SERVICES

Can districts deliver compensatory education services to student with disabilities once the district resumes normal operations?

Yes, districts can and should consider the need for compensatory services following an extended period of closure or significant modifications to a student's services. In fact, according to guidance from the Department of Education, the ARD Committee must consider whether a student needs compensatory services once normal operations resume. Although these decisions are not required until schools re-open, the potential long-term implications of extended school closures necessitate that districts begin considering and planning for the provision of compensatory services. Remember, not every student will require compensatory service, but it must be considered in every situation. According to the Department of Education, compensatory services may be required if such services are necessary for a student to make up for any skills lost during an extended period of time without services. Again, this must be an individualized determination, and districts should avoid making across-the-board decisions regarding compensatory services.

DOCUMENTATION & COMMUNICATION

What type of documentation should be maintained during the COVID-19 outbreak in addition to regularly kept records?

In its most recent guidance, TEA has made the following suggestions with regards to COVID-19-specific documentation for students served under the IDEA and Section 504:

- **Deviations from statutory timelines.** If unable to fulfill a legally established timeline with regards to an evaluation or an annual ARD, the district should document the reasonable efforts made to satisfy that timeline for each student;
- **Services provided and not provided.** TEA and OSEP both emphasize that reasonable efforts must be made to provide FAPE to students served under the IDEA and Section 504 "even in extreme circumstances." If the district is unable to provide the necessary level of services, it must maintain detailed, individualized documentation reflecting the services provided as well as the services not provided in order to make informed decisions regarding compensatory education when campuses re-open. Information regarding IEP implementation will also be required with regards to SHARS billing as explained in greater detail below; and
- **Consider developing a template document for services and timelines.** To assist staff during the COVID-19 outbreak, TEA suggests creating a form to document:

(1) decisions made and underlying rationale; (2) reasons why any timeline was exceeded; and (3) “participation and consent through temporary alternate methods, such as email or notes.” While such a form is helpful, and encouraged, it is vital that staff complete the form on a case-by-case basis so that the information is individualized for each particular student.

What should communication look like during the COVID-19 pandemic?

Remember, the district’s communication and collaboration with staff, parents, and service providers is one of the factors indicating whether FAPE has been provided for a student. TEA recently emphasized the importance of communication during extended closures from COVID-19 by strongly suggesting that districts ensure: (1) real-time opportunities to address questions and concerns; and (2) effective communication regarding any services that cannot be provided during campus closures caused by COVID-19.

FUNDING & REPORTING

Will districts be given flexibility concerning reporting data for State Performance Plan (“SPP”) indicators?

No, in its most recent guidance, TEA has made clear that SPP reporting and submission requirements will not be modified.

Are districts still required to support access to IDEA B non-ed funds during closures caused by COVID-19?

Yes, TEA has indicated that districts must continue to support access to IDEA B non-ed funds for students when appropriate. Additional information regarding non-ed funds is available through [TEA](#).

Are there any changes to SHARS billing?

Yes, according to TEA, “HHSC will require the following information to support payments for 2019-2020:

- Start and end dates for school closures;
- Start and end dates of instructional services provided during school closure (if appropriate); and
- Evidence of the implementation of the IEP for students with disabilities if instructional services were provided during closure.

ADDITIONAL RESOURCES

Centers for Disease Control and Prevention

[Considerations for School Closure](#)

[Interim Guidance for Administrators of US K-12 Schools and Childcare Programs](#)

United States Department of Education

[Q&A on Providing Services to Children with Disabilities During the Coronavirus Outbreak](#)

[Supplemental Fact Sheet Addressing the Risk of COVID-19 While Serving Children with Disabilities](#)

[FERPA & Coronavirus Disease 2019 FAQs](#)

[Fact Sheet: Impact of COVID-19 on Assessments and Accountability under the ESEA](#)

[Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#)

[OCR Short Webinar on Online Education and Website Accessibility](#)

Texas Education Agency

[COVID-19 and Special Education FAQ](#)

[COVID-19 and Special Education March 20, 2020 Update](#)

[COVID-19 and Special Education March 26, 2020 Update](#)

[Residential School Program Guidance](#)

[COVID-19 Resources](#)

NASDSE/CASE/CCSSO

[Joint Webinar on COVID-19 and Students with Disabilities](#)