How is the COVID-19 pandemic changing way we provide special education and related services?

The scale and scope of the response to the COVID-19 pandemic is clearly unprecedented. Parents are wondering how will shutdowns impact required timeline evaluations and meetings? At this early date, a great deal of confusion about what federal education and disability laws require remains, amplified by practical concerns about 1. what schools can actually provide, and 2. what families can actually access while students and staff stay at home.

Further complicating matters are reports that different school districts and even schools within the same district are answering these questions and responding to the challenges in delivering services differently. Concerns vary greatly – from the availability of quality internet connections, to needed equipment, training, translation and essential support remain unresolved as educators

Tip: Keep everyone safe – and educated – by working together!

Acronyms/Glossary:

COMPENSATORY EDUCATION — Educational services above and beyond that normally due a student under their state's education law. May be an appropriate remedy when a student has been denied FAPE in the past.

FAPE — Free Appropriate
navigate this crisis.

One thing is clear: IF schools are operating and offering or requiring education, all students should be able to access it. How that gets done is a work in progress, and one that may take some time to sort out. What is important is the needs of ALL students, including students with disabilities who represent 14% of all students in our public schools, are part of the conversation and help devise workable solutions from the start.

What We Know (So Far)...

On March 12th, the U.S. Department of Education (DOE) published "Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease Outbreak." Additional information is being released almost daily at federal, state and local levels. The DOE guidance includes a frequently asked questions or FAQs document that details the State's responsibilities to children with disabilities and the staff who serve them during this challenging time. It advises that if schools are closed and not providing instruction, then IEP services should stop too. During such a closure, IDEA timelines related to initial eligibility evaluations, additional and revaluations and IEP meetings may pause—although we are hearing that some schools continue to honor them in alternative ways. Schools that remain open but move to online or virtual education must include students with disabilities and continue to follow timelines although there may need to be telephone or online meetings and other alternatives to in person contact. Equity in terms of access to education is a key and quite clear here —students with disabilities cannot be excluded from education available to their nondisabled peers. This also applies to students protected under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA).

"To The Extent Possible"

The federal guidance repeatedly uses the phrase "to the
“extent possible” which likely and understandably adds to the confusion. During this uncertain time, many teachers, evaluators and related service providers are not working because of illness or caregiving needs of their own family members, a practical reality which further complicates the situation. Others do not have the equipment, materials, or training necessary to provide remote learning. For this reason, the question of whether and how compensatory education will be provided once this crisis is over remains unclear. That being so, it is very important that families understand this phrase does NOT mean that schools can simply "opt out" of their legal obligation to provide a Free Appropriate Public Education (FAPE) to students with disabilities.

The DOE attempted to clarify further in a fact sheet issued March 21 because of concerns that some districts were choosing to limit or not even offer online learning for any student if these were not equally accessible to students with disabilities. This new guidance makes it clear that schools must provide a free and appropriate public education, or FAPE, to students with disabilities, but the methods used to do so during a coronavirus-related closure will likely be different. It stressed that educators and parents should work together to find ways to meet students' needs through digital platforms, over the phone, as well as through low-tech options like instructional packets and projects. If online learning materials are not accessible, schools can provide "equally effective alternate access to the curriculum or services" to students with disabilities.

The DOE guidance acknowledges that since schools continue to receive funding during school site closures in order to continue to provide services to all students, they should include disabled students. Should services be discontinued for a period of time, LEAs and IEP teams would be required to make an individualized determination as to whether compensatory services are needed once services resume.
What Is Unclear

One rapidly emerging remaining gray area is some individual schools or teachers are offering to provide educational enrichment to help students continue learning during a "physical closure" while others are not. Any such enrichment opportunities, even when not required, cannot exclude children with disabilities. And when teachers are requiring class or homework, it appears the term "closure" may not apply at all.

The Department of Education's Office for Civil Rights hosted a webinar and issued a fact sheet for education leaders aimed at ensuring that student civil rights are upheld while schools are closed due to COVID19. The guidance is consistent with the DOE guidance. While the webinar clarified some issues, it could have done a better job with others.

To summarize, the webinar reminded school officials that distance learning must be accessible unless "equally effective alternate access is provided" without specifying what the specific methods might be. While we're pleased that the DOE acknowledges that students with disabilities must have access to educational technology and should not excluded from these important tools the ambiguity runs the risk of adding to any existing confusion rather than addressing advocates concerns.

Education advocates have long warned that distance learning is NOT the only solution or even an appropriate one for some students for many reasons--access to technology, language barriers or disability related behavioral or emotional challenges may make it difficult for a student to access online learning at all. Options like limited home visits, training for parents, telemedicine by phone for therapy or counseling and other solutions may be needed in order for a student to receive online instruction on par with their non-disabled peers.

In The Meantime ...
If you face a situation where suspending IEP services even temporarily creates significant educational or health risk to a student, or if you need clarification related to your child's individual situation, you should reach out to your Special Education Director and/or State Department of Education and your local Parent Training and Information Center for guidance. Many of these are working on reduced schedules or from home while caring for their own families, so there may be delays. Know that DREDF remains dedicated to assisting families not only during this temporary crisis but moving forward, as we work together to resolve current issues.

The Takeaway?

On the national, state and local levels we need to address how to best build contingency plans for emergencies into our laws, policy and individual education plans to meet the needs of students with disabilities.

Resources:

- **CA Department is Education: COVID-19 School Closures and Services to Students with Disabilities**

- **CDC Guidance for Administrators of K-12 Schools and Childcare Programs: Plan, Prepare, and Respond to COVID-19** (updated March 12, 2020)

- **CDC Checklist for Teachers, Parents, and Administrators**

- **CDC Guidance on Considerations for School Closure**

- **Fact Sheet: Impact of COVID-19 on Assessments and Accountability under the Elementary and Secondary Education Act (ESEA)** (see also agency's press release)
• Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities

• Providing Services to Children with Disabilities During the COVID-19 Outbreak

• Protecting Student Privacy: The *Family Educational Rights and Privacy Act* (FERPA) and the Coronavirus

• Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students (see also agency's press release)

• Office for Civil Rights (OCR) Webinar on Online Education and Website Accessibility

• Department of Agriculture's Flexibilities to Feed Children When Schools Close

• Department of Health and Human Services' (HHS) FAQs for State Medicaid and Children's Health Insurance

• **Talking to Children About COVID-19 (Coronavirus): A Parent Resource:**

  The Parent Center Hub has gathered resources to help families during this difficult time. They include:

  • Guidance from OSEP, the U.S. Department of Education, and Others

  • More multilingual resources

  • Telecommuting Technology and Tips
Schooling at Home

Coping Tips and Other Useful Information

And more

UPCOMING FREE DREDF WORKSHOPS:

Due to the Shelter in Place order, all in person training is suspended. We are working to convert trainings into an accessible online format—please check our website for more information.

The PTI is available to answer calls and emails although there may be delays due to the needs of staff working from home. Thank you for your patience!

To contact the Parent Training and Information Center at DREDF, call (510) 644-2555 ext 5227 or email us at iephelp@dredf.org.

Special Note: We frequently hold specialized trainings at the request of other community organizations. Check our website for these upcoming trainings in your area that are open to the public. Some of these are held in Spanish. If you want to request training for your organization, please contact DREDF at (510) 644-2555 ext 5227 or iephelp@dredf.org.

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