



Statewide School Closures and Funding Quid Pro Quo Mark a Turning Point for Special Education

On March 19, 2020, Governor Greg Abbott announced a statewide order in response to new federal guidance from the Center for Disease Control (“CDC”) and a dramatic increase to the number of Texan’s infected and diseased from the COVID-19 Coronavirus. The order includes four limitations or prohibitions, including an executive order for the temporary closure of all Texas schools until, at the earliest, April 3, 2020. Notably, despite the statement made by Governor Abbott during the announcement, and suggestions from the media, the Executive Order is void of any requirement that school districts provide education during the closure.

Many superintendents agreed in the past weeks to provide distance learning in exchange for funding. However, some school districts had opted to remain open, and others were planning short term temporary closures such as extending their spring break and thereby not providing instruction during the brief shutdown. The Governor’s order has drastically changed affairs for some school districts as the option for a brief closure or remaining open no longer exists.

Though the order states that the schools are closed, Governor Abbott stated in his announcement that the closure “...does not mean that education stops” and asks that superintendents work with TEA to continue online or additional education options. The one sentence in the order which pertains to the school closure, coupled with Governor Abbott’s verbal statements, mischaracterizations in the media, and TEA’s other published guidance has led to confusion.

Confusion first arose with media reports stating that Governor Abbott's order mandated that schools provide distance learning. The order does not. However, Texas superintendents have been advised that in order to receive the funding they must provide distance learning. TEA has advised superintendents who opted to remain open or not provide distance learning that it is time to pivot. A lack of funding and the uncertainty of when schools will resume is anticipated to force all Texas public schools into providing distance learning, which must include the provision of FAPE for all students with disabilities who receive special education on an IEP or Section 504 plan.

Further confusion arose with the use of the term "closed" in the order, while Governor Abbott stated during his press conference that the closure does not mean that education stops. A position that in and of itself is contradictory. The lack of clarity was exemplified by TEA March 17, 2020 guidance, which states a school is closed when no educational services are offered to anyone and a school remains open when it provides education on a virtual or face-to-face basis.ⁱ

The confusion over the term closed and the order, which does not mention or require distance learning during, left many school districts to ponder whether the schools are closed such that they should not provide educational services under TEA's definition of closed. This may impact funding or should they provide educational services in a distance learning model which means the schools violate the Governor's order.

Following the Governor's announcement, TEA Commissioner Michael Morath clarified in a teleconference with superintendents that the statewide closure does not mean that schools will stop providing instruction. It is TEA's position that education should continue despite the order to close schools.

Now that it is highly likely that all Texas public schools will find themselves with the same obligation to provide FAPE through distance learning to special education students. It is imperative that school districts discuss their plans to provide distance to special education students so that they do not unintentionally deny a student FAPE or take action that could be considered discrimination.

ⁱ TEA March 17, 2020 COVID 19 and Special Education Q&A.