

# INTRODUCTION

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- Attorney/Shareholder
- Public education advocate
- School board member
- Parent of two students with IEPs

# SPECIAL EDUCATION IN THE TIME OF COVID

**I Miss  
Precedented  
Times.**

# SPECIAL EDUCATION IN THE TIME OF COVID

- Agenda:
  - Meeting IDEA Obligations During COVID:
    - Child Find
    - Evaluations
    - IEP Meetings
    - FAPE
    - LRE
    - Related Services
  - OSEP and DESE Guidance
  - Practical Advice

# CHILD FIND

- School districts have an ongoing child find obligation to locate, identify and evaluate students suspected of having disabilities.
  - School being closed for COVID-19 is not a reason to reject a special education referral.
  - If a parent or district makes a special education referral during a time the school is closed for COVID-19, the district should take steps to proceed with the referral process, to include an initial evaluation if a disability is suspected.

# EVALUATIONS

- Timelines
  - An initial evaluation must be conducted within 60 days of receiving parental consent under IDEA.
  - The Missouri State Plan for Special Education allows that evaluation timelines may be extended for “just cause.”
    - Maintain documentation as to why the timeline was extended and all good faith efforts made toward completing the necessary steps.
    - Communicate with parents why the evaluation cannot be completed within the 60 days.

# EVALUATIONS

- Assessments
  - Necessary to determine if child meets eligibility criteria for one or more of the disability categories.
  - Determine what assessments are needed to identify a disability and those that are not necessary and can be omitted.
  - What can be done virtually?
  - Document parental consent to or rejection of testing.

# EVALUATIONS

- Reevaluations
  - A reevaluation of each child with a disability must be conducted at least every three years, unless the parents and the district agree that a reevaluation is unnecessary.
  - If a reevaluation is warranted, document the good faith efforts to complete it within the required timelines.
  - Completing a reevaluation doesn't always mean conducting assessments and writing a report to document the decision about continued eligibility.

# ELIGIBILITY

- Pitfalls Related to School Closures
  - Overidentification
  - Underidentification

# IEP MEETINGS

- Timelines
  - Annual review timelines are not waived or extended during COVID.
  - Explore all alternative methods for convening the IEP team and document the good faith efforts to do so within the appropriate timeline.

# IEP MEETINGS

- Virtual Meetings
  - Attendees
    - All required IEP team members should participate unless appropriately excused.
  - Notifications
    - Meeting notification requirements still apply.
  - Amendments

# FAPE

- The cornerstone of the IDEA is the entitlement of each eligible child with a disability to a free appropriate public education (FAPE).
- What is FAPE during COVID-19 school closures?
  - “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas County School District Re-1* (2017)

# FAPE

- The “child’s circumstances” include those created by COVID-19 that impact the ability of school personnel to provide FAPE, such as:
  - All students are participating in distance learning;
  - No (or limited) reliable internet services or assistive technology;
  - Parent refusal to make student available for evaluation or services.

# FAPE

- Form G
  - DESE created this form to support individualized student planning for the delivery of special education and related services on days when school facilities are closed.

# FAPE

- Form G
  - Addresses the following issues:
    - Student access to technology, instructional materials, instructional supports in the home, training for parents;
    - Communication plan between school and parents;
    - Methods of providing services during closures;
    - Accommodations needed to access instructional materials; and
    - Progress monitoring.

# FAPE

- Form G
  - Due to the uncertainty of when schools may close, DESE recommends adding Form G to IEPs prior to the start of the school year.
    - This can be done by holding an IEP meeting or by following the amendment process.
    - Prior Written Notice is required since Form G impacts the provision of FAPE.

# LRE

- Least Restrictive Environment (LRE)
  - To the maximum extent appropriate, children with disabilities must be educated with children who are not disabled.
  - Continuum of placements

# LRE

- COVID-Related Change in Placement
  - When schools are closed due to COVID, does this result in a change in placement for special education students?
  - No. DESE has stated that if school is closed, no change in placement has occurred for any student with a disability, as the instruction has changed for all students.

# LRE

- COVID-Related Change in Placement
  - If a parent chooses a virtual option for their special education student, is this considered a change in placement?
    - No. However the IEP Team will need to determine whether the student can be provided FAPE through distance learning.
    - If so, the Team would need to document the accommodations/modifications and other supports the student will need and the services the student will be provided in order to receive FAPE.

# LRE

- COVID-Related Change in Placement
  - If there are no distance learning options for any students and the student is unable to attend school due to health concerns, then the IEP Team must consider providing services in the least restrictive environment for the student, which would include homebound.
  - If homebound is the student's least restrictive environment, then review and revise the IEP to reflect provision of FAPE in a homebound placement.

# LRE

- Commitment to Virtual Option
  - Q: Our district's reentry plan requires students who pick a virtual school option to remain in the virtual program for the semester. Does this rule apply to students with disabilities?
  - A: No. School districts should not enforce this for students with IEPs because each student's IEP team makes decisions about placement.

# RELATED SERVICES

- Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.
- Schools must provide related services to the greatest extent possible during COVID-related closures.

# RELATED SERVICES

- DESE does note that it may not be feasible or safe for some institutions to provide some related services in a direct and hands-on manner.
  - Teletherapy and telepractice services are encouraged.

# RELATED SERVICES

- Transportation as a related service is an IEP team decision.
- Even if a district makes a general rule that transportation will not be provided, the IEP team has the responsibility to determine whether or not individual students will require that related service in order to access their special education services.
- If the team determines it is a needed related service, it must be provided in some way.

# COMPENSATORY EDUCATION

- What is Compensatory Education?
  - Compensatory education is defined as an appropriate equitable remedy designed to deliver services to a student that should have been received to provide FAPE.
  - Court-created phenomenon; not in IDEA.

# COMPENSATORY EDUCATION

- Compensatory services are only required to remedy a denial of FAPE.
- If a school made good faith reasonable efforts to provide FAPE to the greatest extent possible during the closure, then compensatory services are not appropriate.

# COMPENSATORY EDUCATION

- Consider terminology such as COVID Impact Services and Supports (CISS) rather than compensatory education or compensatory services to address the impact COVID closures had on all students.
- “IEP teams should make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.” Q & A COVID-19 Guidance (OSEP 3/20)

# PRACTICAL ADVICE

- Use good “customer service” skills with parents and students and continue to engage with them as much as possible.
- Do not refer to distance learning services as a proposed “change of placement.”
- Include related services in distance learning, where feasible and appropriate for the student.

# PRACTICAL ADVICE

- Document!
  - Parent agreements/disagreements on timelines, meetings, services etc.
  - Parent contacts/attempts to contact;
  - Services provided, when, and by whom.

# PRACTICAL ADVICE

- Provide distance learning services to each student that are, as feasible:
  - Individualized to the student's and parent's/family's support needs
  - Aligned with critical skill areas and IEP goals/objectives when school was closed
  - Determined with the opportunity for parent input and collaboration
  - Documented
  - Progress monitored

# PRACTICAL ADVICE

- Within a reasonable period of time in light of the circumstances, consider the impact, if any, the school closure had on critical needs/skills and determine whether changes are needed to the IEP.
- When in doubt, check with your school attorney.

# QUESTIONS?