

G-CASE Comments: Special Edition

Georgia Council of Administrators of Special Education



March 2020

An Affiliate of the Georgia Association of Educational Leaders

www.gcase.schoolinsites.com

President's Corner



Zabrina Cannady

We are certainly in unprecedented times. I hope that this special edition newsletter finds you all well. That expression of hope is stated with much more gravity than that with which we are accustomed. None of us are taking "well" for granted as we face the crisis that has besieged our country and life as we know it.

I encourage you all to rely upon your support systems. As Special Education Administrators, we are facing uncharted territory. While you may be the Captain of the ship... remember that you aren't alone. Captains need their first mates, engineers, and cooks! Some of you have large crews, consisting of assistant directors, coordinators, and program specialists, while some of you have much smaller crews. No matter the size of your crew, G-CASE is here to help you navigate the unknown.

It is our hope that this newsletter filled with information and resources will be utilized by all of you during the upcoming weeks. A big thank you goes to our Communications Co-Chair, Jenny Carpenter, for putting this special edition together. Jenny has included a link to a document where you can add any tips/resources that are not already included. Thank you in advance for any contribution you make, we have no idea how many people it might help.

In conclusion, please remember what we learned from Debra Ross at our Spring Legal Forum. We cannot take care of others if we do not take care of ourselves. During this time when so much is out of our control, remember to focus on what we can control. We can accentuate the positive and take advantage of time at home. Finally, you can read that book, organize your kitchen, walk your dog, and bake that cake you have been wanting to try! Keep in mind, this is not going to last forever, but to hasten the end we all need to do our part by following the recommendations of the CDC and WHO.

Notes from the Executive Director

Dear G-CASE Members,

I am so proud that our Executive Board, under the leadership of President Zabrina Cannady and Communication Chair, Jenny Carpenter, has created this important, timely, and continuously updated *Special Edition* newsletter to go out to all of our members in record time.

Over my 34 (!) years as a G-CASE member, I have come to know first-hand that G-CASE is a family. We care about each other professionally and personally. We want all of us to succeed because when we do well for our systems, our students and teachers do well. We share these [COVID-19](#) resources now in one space for you to access whenever you have a question, and we will continue to update you as new details about providing FAPE, ESY, Compensatory Education, Progress Monitoring, Evaluation, Timelines, Distance Learning, Related Services... emerge.



Sarah Burbach

Stay healthy and happy. You are a vital member of our family!





QUESTIONS AND ANSWERS ON PROVIDING SERVICES TO CHILDREN WITH DISABILITIES DURING THE CORONA- VIRUS DISEASE 2019 OUTBREAK

MARCH 2020

The Centers for Disease Control and Prevention (CDC) is responding to an outbreak of respiratory disease caused by a new coronavirus named coronavirus disease 2019 (COVID-19). The CDC has issued interim guidance to help administrators of public and private childcare programs and K–12 schools plan for and prevent the spread of COVID-19 among students and staff. See Interim Guidance for Administrators of US Childcare Programs and K–12 Schools to Plan, Prepare, and Respond to Coronavirus Disease 2019 available at: <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-for-schools.html>

This Questions and Answers document outlines states' responsibilities to infants, toddlers, and children with disabilities and their families, and to the staff serving these children. During an outbreak of COVID-19, local educational agencies (LEAs) and early intervention service (EIS) programs will need to collaborate with their state educational agency (SEA), Bureau of Indian Education (BIE), or local public health department, as appropriate, to address questions about how, what, and when services should be provided to children with disabilities. <http://sites.ed.gov/idea>. For more information on the requirements of Section 504 and Title II, and their implementing regulations, please consult <https://www2.ed.gov/policy/rights/guid/ocr/disabilityoverview.html>. 1 It does not create or confer any rights for or on any person. This Q & A document does not impose any additional requirements beyond those included in applicable law and regulations. The responses presented in this document generally constitute informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented here and are not legally binding. The Q & As in this document are not intended to be a replacement for careful study of the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), and their implementing regulations. The *IDEA*, its implementing regulations, and other important documents related to the *IDEA* can be found at <http://sites.ed.gov/idea>. For more information on the requirements of Section 504 and Title II, and their implementing regulations,

please consult <https://www2.ed.gov/policy/rights/guid/ocr/disabilityoverview.html>.

A. Implementing Part B of the *IDEA* and Section 504 during a COVID-19 outbreak

Question A-1: Is an LEA required to continue to provide a free appropriate public education (FAPE) to students with disabilities during a school closure caused by a COVID-19 outbreak?

Answer: The IDEA, Section 504, and Title II of the ADA do not specifically address a situation in which elementary and secondary schools are closed for an extended period of time (generally more than 10 consecutive days) because of exceptional circumstances, such as an outbreak of a particular disease.

If an LEA closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's individualized education program (IEP) or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504. The Department understands there may be exceptional circumstances that could affect how a particular service is provided. In addition, an IEP Team and, as appropriate to an individual student with a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.

If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504)).

Question A-2: Must an LEA provide special education and related services to a child with a disability who is absent for an extended period of time because the child is infected with COVID-19, while the schools remain open?

Answer: Yes. It has long been the Department's position that when a child with a disability is classified as needing homebound instruction because of a medical problem, as ordered by a physician, and is home for an extended period of time (generally more than 10 consecutive school days), an individualized education program (IEP) meeting is necessary to change the child's placement and the contents of the child's IEP, if warranted. Further, if the IEP goals will remain the same and only the time in special education will change, then the IEP Team may add an amendment to the

IEP stating specifically the amount of time to be spent in special education. If a child with a disability is absent for an extended period of time because of a COVID-19 infection and the school remains open, then the IEP Team must determine whether the child is available for instruction and could benefit from homebound services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. In so doing, school personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services. The Department understands there may be exceptional circumstances that could affect how a particular service is provided.

If a child does not receive services after an extended period of time, a school must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

Question A-3: What services must an LEA provide if a public school for children with disabilities is selectively closed due to the possibility of severe complications from a COVID-19 outbreak?

Answer: If a public school for children with disabilities is closed solely because the children are at high risk of severe illness and death, the LEA must determine whether each dismissed child could benefit from online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. In so doing, school personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services. The Department understands there may be exceptional circumstances that could affect how a particular service is provided.

If a child does not receive services during a closure, a child's IEP team (or appropriate personnel under Section 504) must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

Question A-4: If a child with a disability at high risk of severe medical complications is excluded from school during an outbreak of COVID-19 and the child's school remains open, is the exclusion considered a change in educational placement subject to the protections of 34 CFR §§ 300.115 and 300.116 and 34 CFR §§ 104.35 and 104.36.

Answer: If the exclusion is a temporary emergency measure (generally 10 consecutive school days or less), the provision of services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available, is not considered a change in placement. During this time period, a child's parent or other IEP team member may request an IEP meeting to discuss the potential need for services if the exclusion is likely to be of long duration (generally more than 10 consecutive school days). For long-term exclusions, an LEA must consider placement decisions under the *IDEA*'s procedural protections of 34 CFR §§ 300.115 – 300.116, regarding the continuum of alternative placements and the determination of placements.

Under 34 CFR § 300.116, a change in placement decision must

be made by a group of persons, including the parents and other persons knowledgeable about the child and the placement options. If the placement group determines that the child meets established high-risk criteria and, due to safety and health concerns, the child's needs could be met through homebound instruction, then under 34 CFR §300.503(a)(1), the public agency must issue a prior written notice proposing the change in placement. A parent who disagrees with this prior written notice retains all of the due process rights included in 34 CFR §§ 300.500-300.520.

For children with disabilities protected by Section 504 who are dismissed from school during an outbreak of COVID-19 because they are at high risk for health complications, compliance with the procedures described above and completion of any necessary evaluations of the child satisfy the evaluation, placement and procedural requirements of 34 CFR §§ 104.35 and 104.36. The decision to dismiss a child based on his or her high risk for medical complications must be based on the individual needs of the child and not on perceptions of the child's needs based merely on stereotypes or generalizations regarding his or her disability.

Question A-5: May an IEP Team consider a distance learning plan in a child's IEP as a contingency plan in the event of a COVID-19 outbreak that requires the school's closure?

Answer: Yes. IEP teams may, but are not required to, include distance learning plans in a child's IEP that could be triggered and implemented during a selective closure due to a COVID-19 outbreak. Such contingent provisions may include the provision of special education and related services at an alternate location or the provision of online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, and may identify which special education and related services, if any, could be provided at the child's home.

Creating a contingency plan before a COVID-19 outbreak occurs gives the child's service providers and the child's parents an opportunity to reach agreement as to what circumstances would trigger the use of the child's distance learning plan and the services that would be provided during the dismissal.

Question A-6: What activities other than special education and related services may and may not be provided with *IDEA* Part B funds both prior to and during a COVID-19 outbreak?

Answer: *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. For example, an LEA may use *IDEA* Part B funds to disseminate health and COVID-19 information that is specifically related to children with disabilities, to develop emergency plans for children with disabilities or to provide other information (e.g., guidance on coordination of the provision of services in alternate locations as described in Question A-5) to parties who may need such information, including school staff responsible for implementing IEPs, parents of eligible children, and staff in alternate locations where special education and related services may be provided. LEAs, however, may not use *IDEA* Part B funds to develop or distribute general COVID-19 guidance or to carry out activities that are not specific to children with disabilities (e.g., general COVID-19 activities for all children and staff). Additionally, LEAs may not use *IDEA* Part B funds to administer future COVID-19 vaccinations to any children, including

children with disabilities.

B. IDEA Part C and COVID-19

Question B-1: Must a state lead agency continue to provide early intervention services to infants and toddlers with disabilities during a COVID-19 outbreak if the offices are closed?

Answer: If the offices of the state lead agency or the EIS program or provider are closed, then Part C services would not need to be provided to infants and toddlers with disabilities and their families during that period of time. If the lead agency's offices are open but the offices of the EIS program or provider in a specific geographical area are closed due to public health and safety concerns as a result of a COVID-19 outbreak in that area, the EIS program or provider would not be required to provide services during the closure. If the offices remain open, but Part C services cannot be provided in a particular location (such as in the child's home), by a particular EIS provider, or to a particular child who is infected with COVID-19, then the lead agency must ensure the continuity of services by, for example, providing services in an alternate location, by using a different EIS provider, or through alternate means, such as consultative services to the parent.

Additionally, once the offices re-open, the service coordinator and EIS providers for each child must determine if the child's service needs have changed and determine whether the individualized family service plan (IFSP) team needs to meet to review the child's IFSP to determine whether any changes are needed. If offices are closed for an extended period and services are not provided for an extended period, the IFSP team must meet under 34 CFR § 303.342(b)(1) to determine if changes are needed to the IFSP and to determine whether compensatory services are needed to address the infant or toddler's developmental delay.

Additionally, once the offices re-open, the service coordinator and EIS providers for each child must determine if the child's service needs have changed and determine whether the individualized family service plan (IFSP) team needs to meet to review the child's IFSP to determine whether any changes are needed. If offices are closed for an extended period and services are not provided for an extended period, the IFSP team must meet under 34 CFR § 303.342(b)(1) to determine if changes are needed to the IFSP and to determine whether compensatory services are needed to address the infant or toddler's developmental delay. the lead agency must ensure the continuity of services, on a case-by-case basis and consistent with protecting the health and safety of the student and those providing services to the student. As an example, the lead agency may consider providing services in an alternate location, by using a different EIS provider, or through alternate means, such as consultative service to the parent. Once services are fully resumed, the service coordinator and EIS providers for each child must assess the child to determine if the child's service needs have changed and to determine whether the IFSP Team needs to meet to review the child's IFSP to identify whether changes to the IFSP are needed. If the offices are closed and services are not provided for an extended period, the IFSP Team must meet under 34 CFR § 303.342(b)(1) to determine if changes are needed to the IFSP and to determine whether compensatory services are needed.

If an EIS provider cannot provide Part C services in the child's

home during a COVID-19 outbreak, but the EIS program or provider determines that it is safe to provide face-to-face Part C services in another environment such as a hospital or medical clinic, then the child could receive temporary services at the hospital or clinic. Additionally, if the lead agency or EIS provider determines that face-to-face Part C services should not be provided for a period of time, then the EIS provider or service coordinator may consult with the parent through a teleconference or other alternative method (such as e-mail or video conference), consistent with privacy interests, to provide consultative services, guidance, and advice as needed. However, determining how to provide Part C services in a manner that is consistent with the most updated public health and safety guidance is left to the discretion of the lead agency and the EIS program and provider serving a particular child and family.

Question B-3: What activities other than service provision may and may not be provided with IDEA Part C funds both prior to and during a potential COVID-19 outbreak?

Answer:

IDEA Part C 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. The state may use IDEA Part C funds to disseminate health and COVID-19 information to relevant parties, develop emergency plans to support the provision and continuity of Part C services, or provide other information (e.g., how the lead agency staff or EIS programs or providers may provide alternate services or services in alternate locations as described in Question B-2) to relevant parties who need this information. Relevant parties may include parents of eligible children, childcare centers, staff in other locations where early intervention services are provided, EIS programs and providers, and primary referral sources. Other activities that relate to service provision, including the provision of service coordination, evaluations, and assessments, may also be funded. The state may not, however, use IDEA Part C funds to administer future COVID-19 vaccinations as it is a medical service under 34 CFR §303.13(c)(3).

1 This document does not address when to dismiss a child or close a school or Part C state lead agency because school officials should work with their local health departments to make those decisions. School personnel and Part C EIS programs and providers, however, may consult the Centers for Disease Control and Prevention's (CDC's) guidance for recommendations regarding social distancing and school closure. The CDC's Web site contains information addressing both state and local public health officials and school administrators for school (K-12) responses to COVID-19 and resources for child care and early childhood programs. These documents, along with other recommendations, may be accessed at <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>.



March 16, 2020

Fact Sheet:

Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students

The U.S. Department of Education (Department) has established a working group to provide information and resources to parents, students, teachers, schools, and school personnel related to the possible outbreak of COVID-19 (“coronavirus”) in school districts and postsecondary schools. Schools play an important role in disseminating information about and limiting the spread of the coronavirus. In addressing the possible risk of an outbreak of coronavirus in school districts and postsecondary schools, school officials must keep students safe and secure. In doing so, school officials should keep in mind federal civil rights requirements and respond appropriately to allegations of discrimination on the basis of race, color, national origin, sex, or disability. Additional information is available at: www.ed.gov/coronavirus.

Schools and school administrators should use guidance from the Centers for Disease Control and Prevention (CDC) to determine, in close consultation with public health authorities, what actions to take to further reduce the potential risk of coronavirus transmission in schools, and should check the CDC website at “Coronavirus Disease 2019 (COVID-19)” (<https://www.cdc.gov/coronavirus/2019-nCoV/index.html>) periodically for any updated guidance.

Compliance with CDC’s recommendations should not create civil rights concerns. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits disability discrimination by schools receiving federal financial assistance. Title II of the Americans with Disabilities Act of 1990 (Title II) prohibits disability discrimination by public entities, including schools. Title VI of the Civil Rights Act of 1964 (Title VI) prohibits race, color, and national origin discrimination by schools receiving federal funds.

This document provides information representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented here and is not legally binding. The information in this document is not intended to be a replacement for the careful study of Section 504, Title II, or Title VI and their implementing regulations. Information regarding these federal civil rights laws and regulations and other important documents can be found at <https://www2.ed.gov/about/offices/list/ocr/index.html>.

School districts and postsecondary schools have significant latitude and authority to take necessary actions to protect the health, safety, and welfare of students and school staff. School officials have discretion to make educational decisions based on local health needs and concerns, and OCR recognizes this decision-making authority. As school leaders respond to evolving conditions related to coronavirus, they should be mindful of the require-

ments of Section 504, Title II, and Title VI, to ensure that all students are able to study and learn in an environment that is safe and free from discrimination.

Responding to Discrimination in Schools

Bullying or Harassment

Both Section 504 and Title VI require that every postsecondary, secondary, or elementary school that receives federal funds take appropriate action to investigate or otherwise determine what occurred when responding to reports of bullying and harassment of students based on actual or perceived disability, race, color, or national origin. If a school’s investigation reveals that bullying or harassment based on actual or perceived disability, race, color, or national origin limited or denied a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school, then the school must take prompt and effective steps reasonably calculated to end the bullying or harassment, and restore access to the educational program. The failure to do so could be a violation of Section 504 or Title VI.

Denial of Access on the Basis of Race, Color, or National Origin

In addressing the possible risk of an outbreak of coronavirus in school districts and postsecondary schools, school officials must keep students safe and secure. At that same time, school officials have an obligation to avoid discrimination on the basis of race, color, or national origin while cooperating with public health authorities to ensure that individuals are assessed and treated appropriately based on their actual risk status. School officials may not rely on assumptions or stereotypes related to race, color, or national origin in identifying students who may have recently traveled to a country with widespread transmission of coronavirus or who may otherwise be at risk of coronavirus infection. For example, a practice of only inquiring about the recent travel of students or family members of a particular race or national origin, rather than screening students based on recent travel, could raise civil rights concerns. For information that schools can share to protect against any misinformation that might lead to discriminatory behavior, please see the CDC’s “Share Facts About COVID-19,” at <https://www.cdc.gov/coronavirus/2019-ncov/about/share-facts.html>.

Students with Disabilities at Elementary and Secondary Schools

School officials have an obligation to avoid discrimination on the basis of disability under Title II and Section 504, while cooperating with public health authorities to ensure that students with disabilities have access to the school’s education program. School

officials should acknowledge the expertise and role of public health authorities, as well as parental concerns, to determine whether students should stay home.

If a student who has an individualized education program (IEP) through the Individuals with Disabilities Education Act, or is receiving services under Section 504, is required or advised to stay home by public health authorities or school officials for an extended period of time because of COVID-19, provision should be made to maintain education services. This also applies if the student is absent from school as advised by the student's treating physician, consistent with school policy and documentation requirements. During such absences, if the school is open and serving other students, the school must ensure that the student continues to receive a free appropriate public education (FAPE), consistent with protecting the health and safety of the student and those providing that education to the student. If feasible, the student's IEP Team, or the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, can be utilized to assist with the effort to determine if some, or all, of the identified services can be provided through alternate or additional methods. Accessible technology may afford students, including students with disabilities, an opportunity to have access to high-quality educational instruction during an extended school closure, especially when continuing education must be provided through distance learning.

If a school district closes its schools and does not provide any educational services to the general student population, then a school would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the school must return to providing special education and related services to students with disabilities in accordance with the student's IEP or, for students entitled to FAPE under Section 504, consistent with any plan developed to meet the requirements of Section 504.

The Department understands that there may be exceptional circumstances that could affect how a particular service is provided. If a student does not receive services after an extended period of time, the student's IEP Team, or appropriate personnel under Section 504, must make an individualized determination whether and to what extent compensatory services are needed consistent with the respective applicable requirements, including to make up for any skills that may have been lost.

Additionally, IEP Teams are not required to meet in person while schools are closed. If an evaluation of a student with a disability requires a face-to-face assessment or observation, the evaluation would need to be delayed until school reopens. Evaluations and re-evaluations that do not require face-to-face assessments or observations may take place while schools are closed, so long as a student's parent or legal guardian consents. These same principles apply to similar activities conducted by appropriate personnel for a student with a disability who has a plan developed under Section 504, or who is being evaluated under Section 504.

For more information on providing services to students with disabilities during the coronavirus outbreak, see: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>

Students with Disabilities at Postsecondary Schools

Officials at postsecondary schools should consult with public health officials in determining how to respond when there are cases of coronavirus in the community. Whatever decisions are made by the school (such as decisions to temporarily suspend classes), schools must continue to comply with their non-discrimination obligations under federal civil rights laws, including Section 504 and Title II.

Resources for Communicating about Coronavirus

Accurate information is an important tool in protecting the civil rights of students while addressing the risk of coronavirus.

- Assistant Secretary Kenneth L. Marcus' letter concerning reports of stereotyping, harassment, and bullying specifically related to coronavirus is available at <https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/20200304-covid-19-outbreak-statement.pdf>.
- The Department of Education's Readiness and Emergency Management for Schools (REMS) Technical Assistance Center offers a variety of resources related to infectious disease planning, available at rem.ed.gov/Resources_Hazards_Threats_Biological_Hazards.aspx.
- The CDC's coronavirus general information page can be found at https://www.cdc.gov/coronavirus/2019-ncov/community/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fpreparing-individuals-communities.html.

Effective Communication and Language Assistance: When school officials provide information to students, parents, and the community about any aspect of coronavirus or actions the schools are taking in response to coronavirus, they generally need to provide meaningful access to such information to English learner students and adults with limited English proficiency. School officials also must ensure equally effective communications with persons with disabilities (such as persons who are deaf, deaf-blind, or blind). Thus, the information and materials must be provided, as appropriate, in alternate formats to facilitate effective communication for individuals with disabilities.

Privacy Concerns: For information about the federal law that protects the confidentiality of students' records maintained by public elementary and secondary schools and institutions of higher education, you may visit the website of the Department of Education's Student Privacy Policy Office (SPPO) which administers the Family Educational Rights and Privacy Act (FERPA), at www.ed.gov/policy/gen/guid/fpc/index.html, contact SPPO at 1-855-249-3072, or submit questions at <https://studentprivacy.ed.gov/contact>.

If you have questions, need additional information or technical assistance, or believe that a school is violating federal civil rights law, you may visit the website of the Department of Education's OCR at www.ed.gov/ocr, contact OCR at (800) 421-3481 (TDD: 800-877-8339) or at ocr@ed.gov, or contact OCR's Outreach, Prevention, Education and Non-discrimination (OPEN) Center at OPEN@ed.gov. You may also fill out a complaint form online at www.ed.gov/ocr/complaintintro.html.

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Legal Update:

COVID-19 AND SPECIAL

EDUCATION: WHAT DO YOU NEED TO THINK ABOUT?

By: Beth Morris

Harben, Hartley & Hawkins, LLP

Remember when you thought all you had to worry about this week was the time change, the full moon and Friday the 13th? Well, here comes coronavirus COVID-19 to make sure you don't get too comfortable. We all know that almost every issue is more complicated when its applied to the needs of students with disabilities, and COVID-19 is no exception. Where we might otherwise be able to make school-wide or district-wide decisions, a unique and individualized analysis is needed for students with disabilities instead.

The spread of COVID-19 presents a quickly evolving and complicated issue for school districts. While children, generally, do not appear to be significantly at risk, your special education population includes students who may be significantly immunocompromised, placing them at high risk if they contract the virus and to face difficulty in battling it. In fact, many school districts already have students who struggle with concerns about attending school during flu season, allergy season, or just exposure to the petri dish that is inevitably every school in the country.

As an initial matter, please be aware that the U.S. Department of Education (U.S. DOE) is updating information on their website on various topics and has announced that additional updates are forthcoming. According to a White House Briefing on COVID-19 held on March 11, 2020, the U.S. Department of Education will provide guidance at ed.gov/coronavirus about (1) flexibility under ESSA, (2) services for special ed students, (3) managing the risk of coronavirus while also protecting civil rights, and (4) FERPA. On March 12, 2020, the U.S. DOE released the updates specifically relating to FERPA. Those can be found here:

<https://studentprivacy.ed.gov/resources/ferpa-and-coronavirus-disease-2019-covid-19>

The Secretary of Education also testified to Congress on March 5, 2020 that the U.S. Department of Education is in the process of updating its previous guidance and FAQs regarding the needs of special education students that were developed in 2009 in response to H1N1. That previous guidance is currently available and is a useful tool to reference as a starting point. It can be found here: www2.ed.gov/policy/speced/guid/idea/h1n1-idea-ga.pdf

Of course, you also want to make sure that your school district is coordinating with your local health department. While the health department and Center for Disease Control (CDC) only provide guidance, they provide very useful guidance especially when considering large scale changes in response to COVID-19. Ultimately, most decisions about how to respond remain local decisions. The Georgia Department of Education has been quickly updating resources, as well, and recently released an Information for Pandemic Planning which is an extensive guide including resources, draft forms and FAQs on many topics including special education.

As always, we want to be as proactive as possible, while remain-

ing reasonable and thoughtful about any decisions being made. Many questions remain unanswered. New questions seem to arise daily as it becomes clear that the impact of potential changes to protect students and teachers could have other ramifications. As is often the case in education – it is mostly about a balancing act. There is no one single answer (and sometimes no answer) for any of these questions, but areas that you might want to be thinking about as you go forward.

Virtual Learning – If your district closes schools or otherwise suspends direct services in favor of virtual learning, you need to consider how this impacts special education students. To a large extent, these considerations will have to be individual-



ized. Some of your special education students can access virtual learning opportunities with additional supports. For students with more significant needs, however, accommodations and virtual instruction from a special education teacher might not suffice. Some districts already utilize services like teletherapy for services students may use. You are encouraged to continue to use these services or consider implementing them. You might need to consider compensatory services for students if the closure impacts the student's ability to access FAPE.

Evaluations and Timelines – At this point in time, there is no clear guidance that suggests that timelines would be suspended as a result of the pandemic. Certainly, if you have imposed social distancing restrictions or school closures in conjunction with recommendations from the health department, evaluations that must be conducted in person will need to be delayed while you work with parents on any aspects of the evaluation that can still be completed. If an assessment does not need to be completed in person, you can consider allowing that assessment to take place.

Contracts – If you close schools or if a service provider suspends services, you need to be aware of how this impacts obligations to pay for or receive the services. You will also want to make sure that you are not relying on services that may not be there. It would be reasonable to review service agreements in case they are instructive about how to respond to a disruption in services. This could help you hold service providers accountable and mitigate future contract claims.

Continued on next page

Hospital Homebound – You will need to consider requests for hospital homebound and balance those requests with safety concerns from staff members who may be going into students’ homes at this time. To be eligible for hospital homebound, a student must be able to “receive instruction without endangering the health and safety of the instructor.” State Board Rule 160-4-2-.31(4)(i)(IV). Guidance from the Georgia DOE clarifies that students who are infectious cannot receive services until a physician confirms the student is no longer infectious. However, the guidance does not predict a situation like the current one, where a student may be under quarantine – and not confirmed to be infectious – or the student may be living with family members who are infectious or under quarantine.

Change in Placement – An extended closure could trigger a change in placement. If students will be out of school for more than ten days, the procedural protections of IDEA will apply. You should plan to hold IEP meetings to review each student’s placement. Prior written notice will need to be provided about the change in placement.

Students in Placements Outside the District – Make sure you know which of your students are in placements that are outside your district. You should contact these placements so that you are aware of their plan to continue student services should there be an extended closure of their school or facility. You will also want to make sure that you will be notified if they close. Keep in mind that the decisions of these placements could lead to a change in placement.

Finally, please understand that this article was submitted on March 12, 2020. As information is changing hourly, we expect available information and guidance to change after this date. You should continue to follow resources and announcements from the Georgia Department of Education, U.S. Department of Education, the Georgia Department of Public Health, and the CDC. Contact your district’s legal counsel to ensure that you are accessing the most up to date information as you look to make decisions for your district.



Novel Coronavirus 2019 (COVID-19)

Considerations for Special Education Administrators

Current as of March 16, 2020

About the Novel Coronavirus (COVID-19)

According to the [Centers for Disease Control](#) (CDC), the Novel CoronaVirus (COVID-19) is a respiratory illness caused by a new virus, with symptoms that include fever, cough, and shortness of breath which may appear between two and 14 days after exposure. While there is currently no vaccine to protect against COVID-19, the best way to protect yourself against the virus is to:

- Avoid close contact with people who are sick.
- Avoid touching your eyes, nose, and mouth.
- Stay home when you are sick.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- Clean and disinfect frequently touched objects and surfaces using a regular household cleaning spray or wipe.

Information for Schools

The Centers for Disease Control has suggested that schools do the following:

- Review, update, and implement emergency operations plans including developing information-sharing systems with partners (including parents, families, local health systems, etc.). Use resources from the [REMS TA Center](#).
- Monitor and plan for absenteeism. Encourage students and staff who are sick to stay home.
- Establish procedures for students and staff who are sick at school. Encourage students and staff to stay home when sick. Use flexibility, when possible, to allow staff to stay home to care for sick family members.
- Review attendance and sick leave policies with employees, students, and families.

- Monitor and plan for addressing fear and bullying related to COVID-19.
- Perform routine environmental cleaning. | [Recommended practices from CDC](#)
- Review CDC's guidance for [businesses and employers](#).
- Use the [resources from CDC's website](#) to help people to understand good handwashing techniques.
- Post the [signs and symptoms of COVID-19](#) in public places.
- Use [guidance from the CDC](#) to plan for school closures.

For more information and guidance from the CDC, please [click here](#) for K-12 schools or [click here](#) for higher education. (**NOTE:** CDC updates its sites and recommendations often so checking back is important)

Considerations for Special Education Administrators

As administrators of special education programs, you may also wish to consider the following questions:

- 1) How will students be provided with special education and related services if school attendance is virtual? Check out [these resources](#) from the [Center on Online Learning and Students with Disabilities](#).
- 2) How will you provide special education services if the virus causes a shortage of special education teachers or education providers (i.e. if your special education teachers or providers have COVID-19 and are unable to provide services)?
- 3) Will students who miss school due to these absences (whether they have been identified with the virus or not) require additional services or extended school year services?
- 4) How will IEP goals be measured if a student is out of school for an extended period of time?
- 5) How will evaluations be closed within legal timelines if schools were to be cancelled or closed?
- 6) For students with disabilities who already have compromised immune systems, are there additional precautions that should be taken in the school setting?
- 7) Are there students who are not vaccinated who may need to be excluded from school even if the rest of the school remains open and, if so, have you prepared communication to these families?
- 8) Is there a consideration for Section 504 services that a school district should be making for students who are diagnosed with COVID-19?
- 9) [Are there FERPA and HIPAA privacy issues that school officials should consider when working with health departments and other agencies?](#)
- 10) Will home or hospital instruction for a student with COVID-19 look different than it does for other students who receive home or hospital instruction and how will you coordinate these services?
- 11) How will your school system work with the local health department to address provisions for psychological support services for staff, students, and their families during and after a pandemic?
- 12) For students who may be diagnosed with COVID-19 who also have a disability, are there FAPE related considerations with bullying that the student may have experienced or may experience after the pandemic is over, and if so, how will these be addressed?

Special rules may apply in some states when schools are closed for [pandemic diseases](#) or when health emergencies are declared (i.e. waiving the need to have school for the required number of days, etc.). However, there is uncertainty about whether these state rules will be applicable to federal laws (IDEA and Section 504) and school administrators will need to follow guidance from the federal government carefully regarding this issue. Secretary DeVos noted during a hearing on Capitol Hill on March 5, 2020 that the Office for Special Education and Rehabilitative Services (OSERS) would be updating its [guidance document](#) related to H1N1 (2009) in the near future.

Update: March 12, 2020 - The following documents were provided by the Department of Education on March 12, 2020:

[Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak](#)
[Fact Sheet: Impact of COVID-19 on Assessments and Accountability Under the Elementary and Secondary Education Act](#)
[FAQ: FERPA and COVID-19](#)

Update: March 16, 2020 - The following documents were provided by the Department of Education on March 16, 2020.

[Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#)
[OCR Short Webinar on Online Education and Physical Accessibility](#)

Since your role as special education administrators is not one dimensional, it may be helpful to review [this guidance](#) from the Equal Employment Opportunity Commission (EEOC) about pandemic related flu outbreaks as they relate to employment questions and [the Americans with Disabilities Act](#). Additionally, you may wish to check out [this bulletin](#) from OCR sent on March 4, 2020. There is also [this guidance document](#) from the Occupational Safety and Health Administration (OSHA) about preparing for COVID-19 in the workplace and [this document](#) from USDA about food distribution (including school lunches).

Considerations for State CASE Units

Several state units are planning on holding conferences in the coming weeks and months. Absent federal travel restrictions and/or local, state, or regional decisions to close venues, *state units are encouraged to continue holding events* as you had planned.

Chad Rummel, Executive Director of the Council for Exceptional Children (CEC), shared resources from the [American Society of Association Executives](#) which has recommended keeping members and attendees as up to date as possible on your association's plans regarding the Coronavirus. Even if you don't think that people are concerned about it, communicate about your plans so that people are aware. In your messaging, make clear that health and welfare of attendees is the most important factor and that your organization will continue to monitor the situation and provide updates as necessary. On your meeting website, provide links to related resources for attendees to review (such as safe travel tips and any relevant health alerts or travel advisories), and stay current on any [information from the CDC](#) and the [World Health Organization](#) (WHO) that may affect attendees' ability to attend an event. A message on the National School Board Association's site read:

The National School Boards Association (NSBA) is closely monitoring the coronavirus (COVID-19) situation as it relates to the upcoming NSBA Annual Conference in Chicago on April 4-6.

We want to assure conference participants and attendees that your health and safety are of utmost concern and our top priority. We are in close communication with Choose Chicago (the Chicago Convention and Visitor Bureau) and McCormick Place authorities. In addition, we are seeking guidance from the local health, public safety, and transportation authorities to make sure that appropriate disease prevention, monitoring, and response protocols are in place for the conference. Based on the information currently available, NSBA's current plan is to proceed with the conference as scheduled. We look forward to seeing you in Chicago.

If you consider cancellation, seek guidance from your insurance company and/or an attorney from your association to understand any specific provisions that may apply to hotel and convention center costs, speaker costs, and other costs that you may have incurred. Additionally, you should discuss your relevant plans related to refunds for conference attendees who decide to cancel preemptively and how you would communicate with attendees if needed about last minute changes.

Other Resources for Members

The resources in the table below have been compiled from various other national organizations:

<i>National School Public Relations Associ-</i>	<i>National Association of School Psycholo-</i>	<i>American Association of School Adminis-</i>
NSPRA	NASP	AASA
<i>National School Boards Association</i>	<i>National Association of School Nurses</i>	<i>American Speech/Language Hearing</i>
NSBA	NASN	ASHA
<i>American School Counselor Association</i>	<i>International Society for Technology in</i>	
ASCA	ISTE	

Daily Updates

March 10, 2020 - Document released

March 11, 2020 - Added OSHA guidance document for workplace safety, Added link from USDA about food distribution in schools, Removed language pertaining to epidemic (following WHO declaration of pandemic status), added resource documents from Center for Online Learning for Students with Disabilities.

March 12, 2020 - Added links to OSERS Q&A on Covid-19, FERPA and Covid-19 FAQ, and Fact Sheet on Assessment and Accountability.

March 13, 2020 - Added guidance from CDC with links about posting symptoms in public schools about COVID-19 and guidance for administrators on closing schools.

March 16, 2020 - Added guidance from OCR

What Resources Are Available?

Below are a list of links and resources that have been made available to educators during this unprecedented time. In addition to this list, a virtual list has been established. Please visit [HERE](#) to access a Google Folder of gathered resources. As you find resources that may be beneficial to other GCASE members, please add to the folder! You can also use the QR Code at the bottom to access the resource folder.

OSERS ([@ED Sped Rehab](#))

[3/17/20, 9:46 AM](#). [@usedgov](#) [@EDcivilrights](#) released a video on ensuring web accessibility for students with disabilities for schools using online learning during the [#Coronavirus](#) ([#COVID19](#)) outbreak.
[youtu.be/DCMLk4cES6A](#)

Carter Fellows ([@CarterFellows](#))

[3/12/20, 3:38 PM](#). [@CarterFellows](#) have been reporting on the mental health impact of [#COVID19](#).

We'd like to share some resources with you, starting with [@CDCgov](#)'s tips for coping: [cdc.gov/coronavirus/20...](#) (Thread)

CASE Webinar:

COVID-19 Considerations for Special Education Administrators Webinar #2

Description: Join leaders in special education for current information about COVID-19 *and how special education administrators are navigating*. *Presenters will discuss what we know to date and provide some options for meeting the needs of families and students in your communities. This webinar will provide follow-up discussion from the first webinar conducted on Friday March 13. Time for questions and answers will be provided.* In addition, CASE will be conducting Webinars on Friday March 27 and Friday April 3 as we all continue to address the changing needs during this pandemic. Registrations for these webinars will be separate. **Issues with number of individuals that can join/attend has been addressed but registration is required to assist us in planning for this [Go To Webinar](#). [REGISTER HERE](#)**

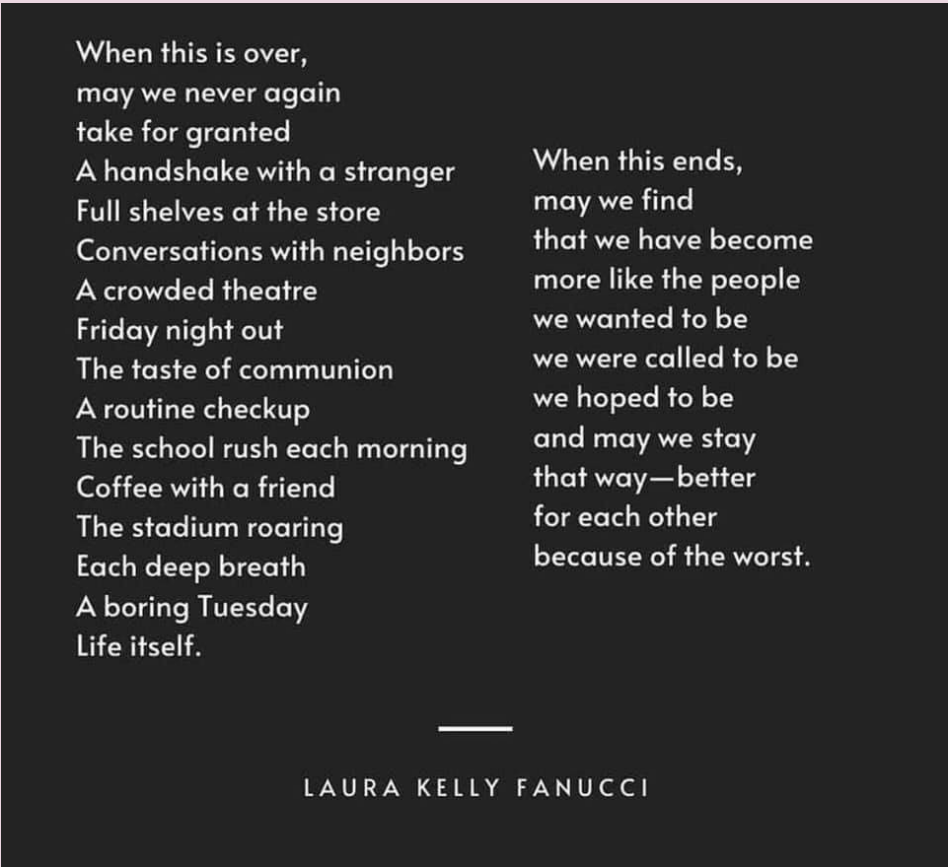


Website	Targeted Grade Levels	Features
www.do2learn.com	K - 5	Free online support with thousands of free resources to address behavior, social-emotional and academic learning goals for students k - 5th grade. Website says they provide resources for middle and high school as well, however, resources for those grade bands are minimal.
www.teachervision.com	All grade levels	Typically requires a paid subscription but is currently offering all of their resources to all teachers for free due to COVID-19 and school closures. Website offers over 20k resources addressing the academic areas as well as behavior and social-emotional learning goals as well as resources specially designed for the autistic student. Although supports are typically intended for teacher use, the materials are well-designed with clear instruction making them more“parent friendly”. Website is well-organized making it easy to navigate and select the appropriate planned support quickly and easily.
www.funbrain.com	PreK - 8	Website is a free online resource for supporting reading and math skills for grades PreK - 8th grade. Most math skills are reinforced through game play or problem solving which appeal to most learners. An advantage of this website in terms of reading is that there are many books available to read directly from their website for free without any cost or purchase of the book.
Glencoe Manipulatives http://www.glencoe.com/sites/common_assets/mathematics/ebook_assets/vmf/VMF-Interface.html	PreK - 12	Math Manipulatives: algebra tiles, attributes, base ten blocks, geobands, pattern blocks, two color counters, etc
https://mathsbot.com/#Manipulatives	K-12	Tools for math teachers, including bell-ringers and drills, math tools and manipulatives, question generators, printables, and puzzles.
Basic (allowable on 6th & 7th grade EOG, Phys Sci and Econ EOC) Desmos: Basic/4 function https://www.kidsolr.com/math/mycalculator.html https://www.online-calculator.com/	K-12	Basic 4 Function Calculator
Scientific (allowable on 7th & 8th grade EOG, Alg, Geom, Phys Sci and Econ EOC) Desmos: Scientific https://www.online-calculator.com/scientific-calculator/	K-12	Scientific Calculator
Graphing (allowable on Alg, Geom EOC) Desmos: Graphing - keyboard hides	K-12	Graphing Calculator
www.tumblebooks.com	K - 12	Website that offers a variety of reading material (fiction, non-fiction, informational text arranged by subject) in a variety of formats which include printed book only, audio recording of book only, or enhanced books which display the print and play the audio recording simultaneously. Includes all grade levels with books aligned with common core standards. One unique feature is that it also includes Advanced Placement (AP) reading content. Access to the website requires a fee, however, you can sign up for a “ free 30-day trial ” without inputting any credit card or payment information. All that is required is a school-related email address. Once you sign up and create a username, a password is sent to the email you provided. You simply go back to the website and login with the email and the password assigned to you and the content is accessible for 30 days. However, you would most likely need to mention that participants would need to check their email for the password since that important detail isn't specifically highlighted on the website's interface.

Website	Targeted Grade Levels	Features
International Children's Digital Library www.en.childrenslibrary.org	K - 8	Website does not offer audible books, however, this website does offer books from around the world and in many different languages for free . Would be very helpful for students whose parents may wish to read to their child but speak a native language other than English.
www.abcya.com	K - 5	Website provides many interactive games to improve skills in reading and grammar. Also has short stories available that can be read aloud to students as they follow along with the highlighted text. Website also provides many options for improving site words which is very beneficial for the struggling reader. Resources and materials are available for free .
www.storynory.com	K - 5	Free website featuring a collection of original, fairy tale, and classic children's audio stories. The printed story is available so that the student can follow along as it is read to them. Other features include the option of downloading the audio to the computer, listening to "catch phrase" explanations and translating text into different languages which is especially helpful for your ELL students.
www.freckle.com	K - 12	Website that allows teachers to create and assign work for students at their level in reading or math. Also provides a word study option and practice with skills and standards. Has a reporting/progress monitoring feature included. The service is free , however, the free version has limitations to the number of rostered students and the amount of work that can be assigned. This might be a good option for teachers when assigning specific work for special needs students since it does have some reporting features and allows for assigning work towards a specific learning goal.

Resources for Sped Pre-K/SDDK students to support online learning: submitted by Houston County

- <https://pbskids.org/>
- <https://www.starfall.com/h/>
- <https://classroommagazines.scholastic.com/support/learnathome.html>
- <https://www.storylineonline.net/>





<http://www.facebook.com/GeorgiaGCASE>



[@gcase2](https://twitter.com/gcase2)



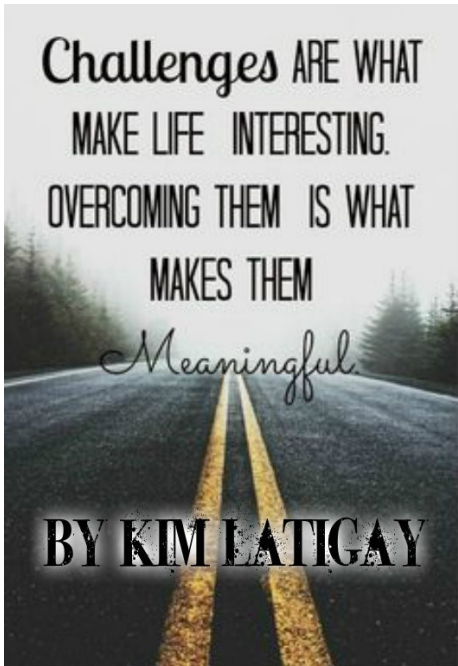
<http://gcase.schoolinsites.com>

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G-CASE serves the members of CASE who live and work in Georgia! Our major goal is to improve services to children with special needs. We strive to provide leadership and support to members by providing input into the policies and practices in Georgia which impact the quality of education and by providing support to the professionals who serve the students of Georgia.