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Special Education: Before and After COVID-19

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Do School Districts have to provide FAPE and do they have to have IEP meetings and complete evaluations?



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- ▶ The U.S. Department of Education's initial guidance provided on March 12 advised that if a school district was closed and not providing any direct instruction to any student, those school districts were also not obligated to provide FAPE to special education students during the period of closure.
- ▶ However, if a school district did provide direct instruction to students during the school closure, then they need to provide instruction to all students, including the provision of FAPE to eligible students.
- ▶ The Department further clarified its guidance on March 22nd, warning school districts against deciding not to provide services to all students because they believed providing FAPE to eligible students was an impediment or would create possible liability.



Do School Districts have to provide FAPE and do they have to have IEP meetings and complete evaluations?

- ▶ Timelines for the completion of evaluation, reevaluations, and IEPs at this time have not been waived. Therefore, evaluation, reevaluations and IEPs must be completed consistent with timelines contained in state and federal regulations.
- ▶ Although certain testing may not be able to be administered virtually/remotely, and classroom observations cannot be completed during the period of school closures, evaluators can review student records and available progress data, interview parents, teachers, and students, and administer rating scales and certain other assessments.



Do School Districts have to provide FAPE and do they have to have IEP meetings and complete evaluations?

- ▶ They can issue an interim evaluation or reevaluation based on the above types of information, with the commitment to complete other testing and observation once schools reopen and issues an amended report.
- ▶ As already provided for by federal regulations in regard to parent participation in meetings, IEP meetings can be held remotely, via telephone or video conference.



504 Services



504 Services

- ▶ Similar to students eligible under the IDEA who are receiving services under an IEP, to the extent instruction or materials are being provided to all students, students with 504 plans are entitled to have their accommodations and supports implemented.
- ▶ This would include related services (e.g., OT, PT, etc.) provided through a 504 plan, as well as accommodations (e.g., extended time, frequent breaks, enlarged print materials, etc.).



Vocation and Work-based Programming



Vocation and work-based Programming

- ▶ For students receiving vocational and work-based programming, remote learning may prove more challenging, particularly given certain aspects of a student's program may only be able to be implemented in the vocational or work-based setting which are closed during this time.
- ▶ However, to the extent there is direct classroom-based instruction on certain work or vocation skills it may be possible to continue to provide that instruction remotely via video conference similar to other classes.



Parent Training



Parent Training

- ▶ Parent training is related service under the IDEA that is often underutilized. Parent training is essentially training provided by or through the school district to parents to assist them in meeting their child's educational needs.
- ▶ The training could be provided by a teacher, or some other educator and could include instruction on a variety of academic, functional or behavioral techniques that may benefit your child.
- ▶ Parent training could also include direct consultation with you regarding your specific child. Requests for parent training should be made to your child's IEP team.



Homeschooling



Homeschooling

- ▶ As of this time, no guidance has been provided regarding the impact of school closures on homeschooling in PA, particularly as it relates to requirements to submit portfolios or have the program evaluated.
- ▶ If you as the parent have been providing the home education program and serving as the supervisor, then I would continue to submit portfolios.
- ▶ If you rely on someone else or an organization to provide services/instruction, or need someone to evaluate the program, we would recommend reaching out to your School District concerning extensions of any timelines given the current pandemic.



Counseling Services



Counseling Services

- ▶ For students receiving counseling services as part of 504 or IEP, those services can continue during this period of school closures via tele-therapy either by telephone or video conferencing.
- ▶ The amount of therapy would in many cases remain consistent, but under the circumstances there could be reason why an increase or decrease in services should be made.
 - ▶ For example, a student who receives counsel for anxiety may experience a higher level of anxiety in light of the current pandemic and/or school closures, which could necessitate an increase in services.
 - ▶ Any increase or decrease in services should be made by the student's IEP team.



Incarcerated Youth



Incarcerated Youth

- ▶ In general, the IDEA has fairly narrow modifications of student rights for incarcerated youth, most notably the ability to make programmatic decisions based on a bona fide security or compelling penological interest for students incarcerated in adult prisons.
- ▶ Specifically with regard to COVID-19, because of the increased danger of infectious diseases within an institutional environment, many jails and prisons are likely to seek and receive permission or forgiveness for exceeding timelines on any procedure that would require in-person appearance by outside personnel within the correctional facility.



Incarcerated Youth

- ▶ Furthermore, due to safety concerns, internet video technology that might be reasonable for school districts to use may not be as easily integrated into the prison system.
- ▶ However, as with school districts, prison education systems are expected to be creative and flexible in utilizing technology and the resources at its disposal to complete IEPs and evaluations in a timely fashion.
- ▶ Though the correctional institute may not have the same technology that districts are using to provide distance learning, there is video conferencing software that prisons use and are currently using for criminal proceedings where defendants do not appear in person and for attorney-client meetings.
- ▶ This already vetted software could be leveraged for educational purposes too.



NOREP vs. PWN



NOREP vs. PWN

- ▶ **A Prior Written Notice (PWN) and a Notice of Recommended Educational Placement (NOREP)** are different names for the same thing.
- ▶ School Districts and Charter Schools are required to give prior written notice of the educational program they propose for a student with special needs under the Individuals with Disabilities Education Act.
- ▶ Pennsylvania calls these written documents NOREPs; Delaware and some other states call them PWNs. The difference is primarily in title.



Validity of Evaluations conducted without face- to-face assessment



Validity of Evaluations conducted without face-to-face assessment

- ▶ The impact of school shutdowns and social distancing on assessment falls into four rough categories:
 - ▶ 1. Data review. This can be conducted remotely. All assessments under IDEA are to start with data review and therefore all evaluations during shut downs can and should still include this component.



Validity of Evaluations conducted without face-to-face assessment

- ▶ The impact of school shutdowns and social distancing on assessment falls into four rough categories:
 - ▶ 2. Rating scales. Many assessments include rating scales by teachers and parents and sometimes students themselves. Rating scales can typically be completed remotely, with the caveat that some scales are based on the rater's knowledge of the child from the past month. If that is the case and a teacher completes a rater more than one month after schools closed, and especially if the teacher does not have remote contact with the student, the report should indicate this possible deviation from standard administration.



Validity of Evaluations conducted without face-to-face assessment

- ▶ The impact of school shutdowns and social distancing on assessment falls into four rough categories:
 - ▶ 3. Assessments that can be completed over video conferencing software. Publishers and school psychology groups have begun promulgating guidance for practitioners administering assessments over video. The appropriateness of the assessment depends on the student, the measure, testing conditions both for the evaluator and the student, and whether rapport can be suitably established. In any case, assessments administered in this manner must be noted in reports.



Validity of Evaluations conducted without face-to-face assessment

- ▶ The impact of school shutdowns and social distancing on assessment falls into four rough categories:
 - ▶ 4. Assessments that cannot be administered in any way other than face-to-face testing arrangements. If such an assessment is needed, parents, schools, and evaluators should discuss the relative merits of either (a) issuing a partial report followed later by an addendum once schools reopen vs. (b) postponing any report. We encourage leaning toward the former as it gives the team as much information as possible, as soon as possible, which could be particularly useful in programming for a student during these very new circumstances. There are situations, though, when an evaluator simply may not have sufficient information to make recommendations and findings and needs to wait until face-to-face testing can be completed.



Validity of Evaluations conducted without face-to-face assessment

- ▶ Any of the assessments administered appropriately in categories 1-3 above will be valid, the question is whether or not they will give sufficient information to program for the child.
- ▶ If not, additional testing should be completed when schools reopen.



**What services/programming
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What services/programming can be demanded and what do I do if the District says no?

- ▶ Districts should be working to provide as close to comparable services as possible via remote means. If a service can be provided via video chat, teletherapy, or phone calls, Districts should strive to provide it. If the District says no to such a request, we recommend
 - ▶ (1) asking questions (What if we tried a phone call check in? I know other districts are providing video chat speech therapy; can we try that?);
 - ▶ (2) respectfully noting your disagreement (we may have to agree to disagree, but I would appreciate it if you could note my disagreement in the meeting notes); and
 - ▶ (3) working your way up the “food chain”: contact the special ed coordinator (or similar position) at your school, then the special ed director, etc.



What services/programming can be demanded and what do I do if the District says no?

- ▶ Be respectful and flexible, but also make clear what you feel your child's needs are.
- ▶ If the District continues to refuse even services that you feel are possible, make a note to discuss them with regard to compensatory services when schools reopen.



Compensatory education: How will it work and when should it be requested?



Compensatory education: How will it work and when should it be requested?

- ▶ The US Department of Education has said that when schools reopen, districts 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.”
- ▶ The US DOE has not provided much more guidance about what these determinations should look like.



Compensatory education: How will it work and when should it be requested?

- ▶ Likely, Districts will be expected to hold IEP meetings when students return to school and at those meetings, offer additional educational services to make up for services not provided during the shut down and/or skills lost as a result of services not provided or services not provided as completely as would be under normal circumstances.
- ▶ These compensatory services could be offered as an increase in services provided by the District, or (less likely) as compensatory education funds that students could use to access additional services outside of the school day.



ESY



ESY

- ▶ The impact of school closures on ESY will largely depend on when schools can reopen. If schools reopen by summer, students may see more “standard” ESY services (which are still supposed to be individualized), or schools may seek to use those dates to make up instructional time for the full student body. We could see schools try to use this time to begin to deliver some of the compensatory services noted above.



- ▶ If school closures last through the summer, ESY summer services will be less relevant, but for students who experience significant regressions during closures, they may need to talk to their Districts about extended school year services over shorter breaks (e.g. fall and winter breaks) to help the student begin to regain lost ground.



NOREPs/FAPE Waivers - How Should Parents Respond?



NOREPs/FAPE Waivers - How Should Parents Respond?

- ▶ Make sure any Prior Written Notice (PWN) and a Notice of Recommended Educational Placement (NOREP) you receive indicates that the plan for distance learning is a temporary, interim plan, and that your students program will revert back to the last IEP when schools reopen.
- ▶ Be on the lookout for any indication that the District regards your agreement to the PWN/NOREP as a waiver of your child's right to a free, appropriate public education during this time.
- ▶ If you see anything concerning along these lines but you want to move forward with implementing the distance learning plan or receiving some distance learning services, sign the document, then write near your signature, "I agree to the implementation of this distance learning plan but not to its appropriateness."



Examples of accommodations for students with epilepsy



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- ▶ Students with epilepsy may miss a lot of school due to seizure activity and medical appointments. They may need a plan to reduce or delay assignments or tests.
- ▶ A student may need to be seated in proximity to the teacher, so the teacher can observe seizure activity.
- ▶ Absence from seizures that occur during instruction can cause students to miss important information. Students may require re-teaching, tutoring, or other extra assistance.



Examples of accommodations for students with epilepsy

- ▶ Some students have specific stimuli that can trigger seizures. Triggers might include stress, flashing lights, loud noises, or excessive screen time. Students might require accommodations that allow them to opt out of situations that could trigger seizures, such as a quiet place to test or study.
- ▶ Consistent home-school communication and frequent progress monitoring can help to identify and address the effects epilepsy is having on the student's learning.



Examples of accommodations for students with epilepsy

- ▶ The ability to go to the nurse at student request.
- ▶ Training for staff on how to spot a seizure and what to do in response.
- ▶ A seizure response plan.



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Thank You!

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