COVID-19 and Students with Disabilities

March 27, 2020
The National Center for Special Education in Charter Schools (the Center) is an independent non-profit organization created to proactively engage stakeholders in ensuring that students with disabilities are able to access and thrive in charter schools.
National Center for Special Education in Charter Schools

Our Mission

To ensure that students with disabilities are able to fully access and thrive in charter schools.

Document and Communicate Facts
The Center is committed to proactively disseminating information about the status of students with disabilities in the charter sector.

Inform Policy
As a part of our efforts to engage in the national discussion, the Center works to track and inform federal, state, and local policy.

Develop Coalitions
The Center is committed to bringing together stakeholders to change the status quo for children with disabilities.

Build Capacity
The Center works to actively engage key stakeholders to fully leverage the innovative opportunities created by charter school laws.
Agenda

The Evolving Crisis

Legal Parameters

Planning for Ongoing Learning - “Must Dos”

Opportunities

Key Takeaways
Participation Disclosure and Expectations

● This webinar was developed for a wide audience to catalyze distribution of key information to diverse stakeholders during a time of crisis

● The conversation is being recorded and will subsequently be shared on our website

● Aside from direct messages to organizers via the chat box, all communication should be considered public (i.e., not confidential)
As of March 26 at 6:30pm:

- **47 states** have closed all public schools
- Combined with district closures in other states, at least **124,000 public and private schools** are closed or are scheduled to close
- At least **55.1 million school students** are affected
- The CDC has indicated that closures of **8 weeks or more** may be necessary
“This time of crisis is not the time to roll back civil rights. It’s the time to roll up your sleeves and figure out how to make things work!”

- Wendy Tucker, NCSECS
Disclaimer: Nothing in this document or in these conversations should be construed as legal advice. If you have specific legal questions, you should consult your lawyer.
Current U.S. Department of Education guidance states that:

- The IDEA, Section 504, and Title II of the ADA do not specifically address emergency situations where schools are closed.

- If an LEA suspends instruction to all students in an attempt to slow the spread of COVID-19, the LEA is not required to provide services to students with disabilities during that same period of time.

- If an LEA reopens or continues to provide educational opportunities to the general student population through an alternative means, the school must ensure equal access for students with disabilities, including the provision of FAPE.
Requirements: Closure/Transition to Alternative Models

- If an LEA reopens or continues to provide educational opportunities to the general student population through an alternative means, change of placement and any IEP amendments should be addressed through IEP team meetings or through written agreements with parents in lieu of meetings. *Inability to convene a meeting due to the pandemic should not be a barrier to providing services.*

- Recent [OCR guidance](#) indicates that IEP teams and 504 personnel may meet via teleconference if needed.
Where evaluations require face-to-face interaction, they will need to be postponed until school reopens.

- However, other evaluations that can be done remotely may take place during the closure with parental consent.

The Department of Health and Human Services announced last week that privacy restrictions on platforms for telehealth have been waived. Otherwise HIPAA and FERPA rules could have gotten in the way of online delivery of therapy and other health services.
● A student’s IEP team, or appropriate personnel under Section 504, may determine that compensatory services are appropriate, based on each student’s specific situation and needs, including in situations where skills are lost during the disruption.

● Schools should carefully document communication with parents, provision of services, and all decisions related to provision of services under these extraordinary circumstances.
Supplemental guidance released last weekend clarifies the following:

- Ensuring compliance with IDEA and Section 504 should not prevent any school from offering educational programs through distance instruction.
- Federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities.
- The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency.
- Federal law does not mandate specific methodologies.
NOTE: DOE guidance does not replace applicable federal, state and local law and regulations but is, instead, the Department’s interpretation of those authorities in the context of the specific current situation.
Planning for Ongoing Learning - “Must Dos”
1. Ensure continued **access to IEPs**

2. Develop a working group/task force to troubleshoot how to provide FAPE and ongoing access to supports/services

3. Contact all students with disabilities and their families
   - **Connect** - Discuss current situation and commitment to ongoing supports and services
   - **Assess** - what technology and/or virtual learning access needs exist (family/home needs assessments)
   - **Collaborate** - Determine who will be supporting the student in the home (e.g., younger students and students who require 1:1 supports)
4. Determine how students with disabilities will receive supports and services given the current learning environment
   ○ Identify where elements of the IEP need to be modified (e.g., special education services, related services, accommodations & modifications, supplementary aids & services, transition services, etc.)
   ○ Determine which services cannot be delivered at distance and consider temporary conversion to consult services for adult responsible for the student
   ○ Develop guidelines on how IEP goals and progress will be measured
5. Determine which IEPs need to be revised and develop virtual IEP Team protocols to ensure IEPs remain in compliance as related to changes in the educational environment

6. Determine how compensatory services will be provided if services are disrupted due to illness or other pending issue (e.g., staffing shortage or lack of access to technology)

7. Assess educators skills and knowledge with virtual learning and instruction, and develop capacity building plan for staff
Planning for Ongoing Learning - “Must Dos”

8. Ensure collaboration between instructional teams and special education teams to determine how students will access content
   ○ If virtual - access to computers, wifi, hotspots
   ○ If independent study or packets - accessibility for each student, given unique needs

9. Ensure collaboration between instructional teams and special education teams to determine what content students will access

10. Determine how evaluations will be completed within legal timelines and develop protocols for conducting virtual evaluations and IEP meetings
11. Determine how to navigate HIPAA/FERPA privacy issues for meetings, instruction, and provision of related services

**CASE COVID-19 - Considerations for Special Education**

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**9. Are there FERPA and HIPAA privacy issues that school officials should consider when working with health departments and other agencies?**

The Privacy Technical Assistance Center and the Student Privacy Policy Office developed a guidance document specific to COVID-19 which is worth reviewing for the answer to this question. However, schools should note the following from the guidance document:

- **FERPA** prohibits educational agencies (e.g., school districts) and institutions (i.e., schools) from disclosing PII (personally identifiable information) from students’ education record without the prior written consent of a parent or “eligible student,” unless an exception to FERPA’s general consent rule applies. 20 U.S.C. §§ 1232g(b)(1) and (b)(2); 34 C.F.R. §§ 99.30 and 99.31.

- **For instance,** pursuant to one such exception, the “health or safety emergency” exception, educational agencies and institutions may disclose to a public health agency PII from student education records, without prior written consent in connection with an emergency if the public health agency’s knowledge of the information is necessary to protect the health or safety of students or other individuals. 20 U.S.C. §§ 1232g(b)(1)(C); 34 C.F.R. §§ 99.31(a)(10) and 99.35. For all other situations where an exception to FERPA’s general consent requirement does not apply, educational agencies and institutions must obtain prior written consent of a parent or eligible student to disclose PII from student education records. 20 U.S.C. §§ 1232g(b)(1) and (b)(2); 34 C.F.R. §§ 99.30 and 99.31.

- This “health or safety emergency” exception to FERPA’s general consent requirement is limited in time to the period of the emergency and generally does not allow for a blanket release of PII from student education records. Typically, law enforcement officials, public health officials, trained medical personnel, and parents (including parents of an eligible student) are the types of appropriate parties to whom PII from educational records may be disclosed under this FERPA exception.

- **Worrying what an emergency is?** For purposes of FERPA’s health or safety emergency exception, the determination by an educational agency or institution that there is a specific emergency is not based on a generalized or distant threat of a possible or eventual emergency for which the likelihood of occurrence is unknown, such as would be addressed in general emergency preparedness activities. If local public health authorities determine that a public health emergency, such as COVID-19, is a significant threat to students or other individuals in the community, an educational agency or institution in that community may determine that an emergency exists as well.”

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**Zoom and FERPA Compliance**

At Zoom, we are committed to protecting the security and privacy of our customers’ data. This includes ensuring that our customers in the education sector are compliant with the Federal Education Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), Information Security and Privacy when and where they are both key components central to FERPA compliance.

**How does Zoom protect its customers data?**

Zoom’s commitment to protecting the security and privacy of our customers’ data includes:

- Submitting our privacy practices to independent assessment and certification
- Undergoing an annual SSAE 16 SOC 2 audit by a qualified independent third party
- Performing regular vulnerability scans and penetration tests to evaluate our security posture and identify new threats

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**Health Insurance Portability and Accountability Act (HIPAA)**

**Family Educational Rights and Privacy Act (FERPA)**
Opportunities
Schools Are Rolling Up Their Sleeves

- Developing COVID-19 multidisciplinary working groups that include members of the special education team, with subcommittees focusing on compliance and instruction/academics. Teams and subcommittees meet daily.

- Developing visions/goals of their specific alternative models (e.g., development of expectations/routines, collaboration, review + introduction of new material, social emotional considerations).

- Providing ongoing family contact and support. Breaking down access barriers through tech drop offs or pick-ups.
Schools Are Rolling Up Their Sleeves

- Determining which supports and services from students' IEPs can be provided in an alternative model (e.g., general education, co-teaching, push-in, pull-out, special class, related services)

- Determining instructional practices:
  - Recording live lessons and archiving (Zoom, Google Hangout, Google Classroom)
  - Synchronous small group instruction, co-teaching w/ breakout rooms, etc.
  - Asynchronous learning (because family contexts are very unique) - providing meaningful and individualized feedback, individualized schedules, and 1:1 check-ins
  - Teachers have weekly office hours for co-planning and co-assessing
Opportunities Exists

Universal Design for Learning Guidelines

- Provide multiple means of **Engagement**
  - Affective Networks
  - The "WHY" of learning
- Provide options for **Recruiting Interest** (7)

- Provide multiple means of **Representation**
  - Recognition Networks
  - The "WHAT" of learning
- Provide options for **Perception** (1)

- Provide multiple means of **Action & Expression**
  - Strategic Networks
  - The "HOW" of learning
- Provide options for **Physical Action** (4)

- Provide options for **Sustaining Effort & Persistence** (8)
- Provide options for **Language & Symbols** (2)
- Provide options for **Comprehension** (3)

- Provide options for **Expression & Communication** (5)
- Provide options for **Executive Functions** (6)

udlguidelines.cast.org

Opportunities Exists

Use of Technology
- Assistive technology - screen enlargement, text to speech, dictation
- Multiple means of engagement, representation, and expression
  - audio, video, images
  - shared documents for modeling or virtual coaching
  - use of apps

Family Partnerships
- Direct lense into how their child’s IEP is implemented throughout the day
- Generalization of skills
- Co-constructing the learning environment
Key Takeaways
IDEA rights apply even in times of crisis

To implement needed IEP changes, including placement, schools/districts should convene IEP teams (remotely, if needed) or develop written agreements with parents in lieu of meetings.

Schools/districts that close and/or move to remote instruction must ensure that all students have the resources needed to access the new model.
Accommodations, modifications, or other supports guaranteed under Section 504 must also be provided.

Schools must work closely with families to think and plan how to meet students’ needs in this chaotic time.

_Do not let the perfect be the enemy of the good_
Questions?
Resources

We are continuing to create, curate, and share resources: ncsecs.org/covid-19/

Additional Resources:

- Council for Exceptional Children
- Diverse Learners Cooperative
- Eye to Eye
- National Center for Accessible Educational Materials
- National Center for Learning Disabilities
- National Center for Special Education in Charter Schools
- National Center for Systemic Improvement - Resources
- Understood.org

If you have questions, ideas, or items to share, please reach out to Megan (mohlssen@ncsecs.org)
Connect with us!

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Find additional COVID-19 resources and sign up for our newsletter on our website:

[www.NCSECS.org](http://www.NCSECS.org)  
[www.NCSECS.org/covid-19](http://www.NCSECS.org/covid-19)