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SUPPORTING DIRECTORS OF SPECIAL SERVICES DURING COVID-19: A DISCUSSION ON THE  
IMPORTANT ISSUES AROUND TELEPRACTICE & COMPENSATORY LEARNING

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# AGENDA

- Current guidance on telepractice
- Do's and Don'ts
- Document, Document, Document: Good Faith practices, Goals/Progress
- Mandated reporting, crisis protocols, impact on pre-existing home instruction
- Preparation for and Consideration of possible Compensatory Issues



# COVID-19

- Districts are facing an unprecedented and fluid situation regarding the provision of school services due to the Covid-19 pandemic.
- Guidance is being issued on both the Federal and State level. However, this guidance is constantly evolving to adapt to changing situations.



# HOW ARE SERVICES PROVIDED:

- On April 13,2020, the New Jersey Department of Education issued guidance regarding services because of school closures due to Covid-19:
- For students with disabilities, students in special classes, medically fragile students, students with one to one paraprofessional services, students receiving related services:
- To the most appropriate extent possible, home instruction/ services shall be consistent with student's Individualized Education Plan (IEP).



# PARENTS

- Key members of the IEP team are parents.
- In order to provide services to children at this time, districts should speak to and engage the parents in the process
  - Determine how they can best provide support, including medical supports
  - Work with parents to find creative ways to provide students with disabilities equitable access to home instruction



# COMPENSATORY SERVICES

- Students will eventually return to school
- However, during the pandemic, the New Jersey DOE advises that districts must offer special education services to the most appropriate extent possible.
- IEP teams may need to consider compensatory services to students when school resumes
- IEPs may need to be adjusted
- IEP teams should determine the amount of compensatory services, if necessary, that students with IEPs may need on a case by case basis when school resumes



# CONTINUED...

- Look at progress and present levels prior to school closure
- Upon return to school, current progress and present levels should be recorded immediately
- The information will be used to determine when and if any compensatory education is necessary when schools reopen
- Districts could see a significant increase in compensatory education costs for at least next year, as well as increase in litigation
- Recent legislation A3904 notes that virtual days count towards 180 requirement, which does not negate the potential need for compensatory education



# OUT-OF-DISTRICT PLACEMENTS

As recently as April 13, 2020, the New Jersey DOE advises that Districts:

- Maintain communication with ALL out of district placements during school closures
- It is the sending district's responsibility to ensure instruction consistent with their IEP to the greatest extent possible.
- Collaboration with the school of attendance is encouraged to achieve these goals





# PRIVATE SCHOOLS/ RESIDENTIAL PLACEMENTS

- Some residential placements have sent their students home due to the pandemic
- If you have students who have returned home, it is recommended that you immediately contact the placement and obtain copies of :
  - Present levels of IEP goals
  - Current IEP progress reporting
  - Behavioral plans and data books (if applicable)



# PRIVATE SCHOOLS/ RESIDENTIAL PLACEMENTS

- Curriculum used, including program books
- Contact residential placement and confirm in writing that District will not be billed while student is home
- Child Study Team should then determine if and what type of in-person services are required during closure
- Contact the County office first before committing to in-person services. County must give the district consent, in writing, to perform the services.



# EXTENSION OF EVALUATION TIMELINES

March 21, 2020 guidance from the U.S. Department of Education encouraged Local Education Agencies (LEAs) during this time to work with parents to reach mutually agreeable extensions to established timelines of evaluations and reevaluations as appropriate.

*Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elem. and Secondary Schs. While Serving Children with Disabilities , 120 LRP 10623 (OSERS/OCR 03/21/20)*



# TEMPORARY RULE MODIFICATION

- Executive Order 103 modifies rules governing the provision of special education and related services to students with disabilities.
- Emergency adoption of a temporary rule modification of rules governing the provision of special education and related services to students with disabilities pursuant to N.J.A.C. 6A:14-1.1 and N.J.A.C. 6A:14-3.9
- Allows for the services to be provided through electronic communications, remote, virtual, or other online platforms



# RELATED SERVICES – A3904 LEGISLATION

- Provides to the extent remote instruction is provided for general education students, the district will be required to provide special education services the same educational opportunities.
- In the event of a school closure, district may remotely provide speech language services, counseling services, physical therapy, occupational therapy and behavioral services.
- Related services in the IEP can and should be delivered remotely to the greatest extent practicable.
- Waiver and consent
  - No waiver of FAPE or compensatory education



# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (“CARES ACT”)

- Signed by President Trump on March 27, 2020, the CARES Act creates an Education Stabilization Fund to be distributed to States for allocation to local school districts
- Under Section 18006 of the Cares Act, any district that wants to access the funds from the Fund is required, to the greatest extent possible, to continue to pay their **employees and contractors** during the period of closures caused by Covid-19.
- Additional guidance on the Fund should be forthcoming.



# SECRETARY OF EDUCATION RECOMMENDATIONS

- On April 27, 2020, Education Secretary Betsey DeVos issued a recommendation to Congress regarding the IDEA.
- The Department is **not** requesting waiver authority for any of the core tenets of the IDEA or Section 504 of the Rehabilitation Act of 1973, most notably a free appropriate public education (FAPE) in the least restrictive environment (LRE).



# THE U.S. DEPARTMENT OF EDUCATION'S POSITION:

The recommendation is based on the following reasoning:

- Schools can, and must, provide education to all students, including children with disabilities;
- Health and safety of children, students, educators, and service providers must be the first consideration;
- The needs and best interests of the **individual student**, not any system, should guide decisions and expenditures;
- Parents or recipients of services must be informed of, and involved in, decisions relating to the provision of services; and
- Services typically provided in person may now need to be provided through alternative methods, requiring creative and innovative approaches.





# STUDENTS RIGHTS

- Students continue to have the same rights under the Individuals with Disabilities Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA) which Districts must continue to follow.
- IEPs and 504 plans must be followed to the greatest extent possible



# DOCUMENTATION

- Any change from IEPs or 504s must be documented
- Districts should work with parents regarding mutually agreeable extensions of time when appropriate
- Document in writing every communication, offer of services, cancellation, or reschedule, consent for services, and extensions.
- Document everything !



# SPECIAL EDUCATION MEETINGS

- Currently no waiver for mandatory participants due to Covid-19
- Same requirement to obtain parental waivers applies



# EVALUATIONS

- Pursuant to Executive Order 104, all scheduled evaluations, except social histories, are necessarily suspended until school is back in session
- Parents should be notified by email ( and regular mail if possible) advising of the scheduled evaluations, the postponement, and the fact that the evaluations will be rescheduled when school opens
- Parents' attorneys offering up private evaluators to conduct evaluations remotely ????



# ANNUAL REVIEW MEETINGS

- Case managers should try to have annual review meetings via teleconference and /or conference calls with the IEP team
- Parents should be contacted in writing via email for their consent to meet remotely.
- If parent declines, the meeting will be postponed until school reopens
  - Consider encouraging parent to have meeting remotely to extend existing IEP – keep everything the same



# 504 MEETINGS

- Meetings should be held remotely
- If the parents do not consent to a remote meeting, it will be rescheduled to when school is back in session
- Remember, 504 plans are not educationally based, they are access based anti-discrimination plans
- Team can make accommodation or modification recommendations that relate directly to remote or virtual learning only
- 504 can be changed once schools are reopened



# IEP/504 IMPLEMENTATION

- IEP students are entitled to be educated with their peers in the least restrictive environment appropriate for their needs
- Difficult for some students to participate online, particularly for services such as physical and occupational therapy and social/emotional support
- These may require in person support
- May require an adult onsite as a facilitator
- Recommend notifying parents regarding remote instruction if providing any live stream group instruction by form that they must complete



# CONTINUED...

- For 504 students, if remote instruction is appropriate, all students receiving 504 modifications and accommodations must continue to do so where appropriate
- Paraprofessionals can review weekly assignments and check in with the parent/ students daily to make sure the students understand the assignments.
- Teachers should ensure that all modifications that can applied to remote learning be utilized
- For example, if a student gets extended time for homework or assignments, same should be applied to remote instruction
- Teachers must be cognizant of timelines and due dates in relation to their positing of assignments





# HOME INSTRUCTION

- As all in-person services are suspended by Order of Governor Murphy, in-home instruction is not recommended
- Executive Order states that Districts , in consultation with the Commissioner of the Department of Education, shall have authority and discretion to determine home instruction arrangements on a case by case basis
- Districts cannot choose on their own to provide home instruction
- Districts must consult with the Commissioner of Education



# MEDICALLY FRAGILE STUDENTS

- All health care plans should be sent to the parent
- Districts must make a case by case determination of whether medical services are necessary for remote learning
- If medical services are necessary, districts must first get county approval to provide in-person services



# PARENTAL WAIVERS REGARDING ONLINE INSTRUCTION

- Due to Executive Order 104, Districts are now developing virtual learning groups and/or classroom opportunities as a primary learning platform
- It is recommended that schools address parental privacy concerns by informing parents about proposed services, their platforms for delivery, and obtain parental consent in writing for any services administered.
  - Some platforms require affirmative consent
  - Notice / Opt-out acceptable for others
- Parents should be informed that group virtual learning means that their child's name and live video could potentially be seen by anyone in the background of the other students who are participating, and that their child may see actions in the background of other students.
- A child's information, such as, but not limited to, classification status, accommodations, related services, academic levels and/or skills may also be inadvertently disclosed to others during group sessions.



# DON'T:

- Forget about your out of district students
- Assume things will be forgiven given COVID closures
- Relay on outside advice where your particular situation is not considered.
- Assume Remote Related Services will negate compensatory education.
- Do things on your own. Collaborate!



# DO:

- Communicate effectively with parents and teachers.
- Document everything!
- Start budgeting for compensatory education
- Follow procedural safeguards as much as possible
- Keep a list of pending evaluations
- Start developing forms for how to assess compensatory education and train your teams
- Consult with YOUR Board attorney



# WHAT WILL THE FUTURE HOLD?

- As this is an unprecedented occurrence, further guidance will likely be issued by the Federal Government and the State of New Jersey.
- In the meantime, continue to document all parental contact, as well as all changes or modifications to existing plans.
- When in doubt, contact your Board attorney.
- Stay safe and be well!

