



RESOLUTIONS IN SPECIAL EDUCATION, INC.

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General Suggestions for Responding to the Move to Distance Learning for Your Students with Disabilities

Dear ESE Director:

On behalf of myself and my dedicated and concerned law partners, Kevin Pendley and Leslie Allen, I want to let you know, first of all, that we are here for you in this time of national emergency and great challenge to schools. Please call on any of us if and when you need our assistance in any way. I realize that our firm does not provide legal services to some of you and that you have ESE attorneys or other General Counsel that is not us, so please feel free to share this information with your counsel. It will be their guidance that will count most.

Since the beginning of the school closure announcements, I have been working diligently to review all available guidance and updates regarding the continued provision of services to students with disabilities in light of COVID-19. Now that there is a probability that Florida schools may be closed even past April 15, I thought it might be helpful to offer some suggested components of what would be, in our view, a good faith, reasonable plan for providing distance learning opportunities for students with disabilities during the period of school closure.

Please understand that it is our position that “FAPE” (both substantively and procedurally) provided to students during the school closure period will be assessed by courts and ALJs in light of the current health and safety emergency presented by COVID-19. We also understand that these suggestions will not answer all of the questions that you have but know that many of your technical questions can be answered with “do the best you can in light of the current circumstances” and “document all of the good faith, reasonable efforts made to address all aspects of procedural and substantive compliance.”

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Here are our general suggestions, at this time, for your consideration:

1. Hold IEP annual review meetings that are due (or past due) using procedures that are feasible in light of the current circumstances. I do think that it is important that student progress made during what was almost a full school year (prior to the school closure) is reviewed with parents and discussed. Certainly, there should be adequate data to discuss during the review meeting with respect to progress made during the 2019-20 school year.
2. Keep intact all students' IEPs that were in place when school closed. The placement and services in that IEP should remain the child's "current placement" during the school closure period that will be implemented when school reopens should there be any time left in the 2019-20 school year. We do not recommend the use of "Prior Written Notice," because the school district is not proposing a change in placement for the student that triggers numerous procedural safeguards; rather, it is being changed because of COVID-19.
3. For "distance learning" time, schools should develop a temporary "Distance Learning Plan," but not through the traditional IEP meeting or IEP meeting amendment process, since this is not a document through which FAPE is being proposed or changed. Rather, the "Distance Learning Plan" will reflect the district's plan (with input from the parent as discussed below) about what can be appropriately and feasibly provided to benefit and support the learning of each individual student in light of the school closures and all circumstances surrounding the COVID-19 situation, including the student's educational needs in a distance learning environment.
4. Have each student's special education and related service providers (and regular education teachers, where appropriate and feasible) contacting parents and working with them to let them know what each student's "Distance Learning Plan" will look like and to solicit their input regarding the feasibility of providing services. Do not worry about procedures related to IEP team meetings, because this is not a proposed change of placement or an IEP revision or amendment. Rather, it should be explained to parents that this is a temporary plan for providing some distance learning services that will benefit their child in light of the current circumstances.
5. Send a copy of the temporary "Distance Learning Plan" to the parents with a cover letter/memo that will serve as notice that the Plan is temporary; that the IEP in place when school was closed will stay intact; that the impact, if any, of the school closure on the child's educational needs will be assessed when normal school operations resume and when feasible; and that IEP meetings will be held and IEPs revised for the 2020-21 school year based on the current needs of the student as determined when school operations resume.
6. Document, document, document all parent contacts, agreements made regarding procedural and content issues (or lack thereof) and everything that was done! It will be important to be able to show all good faith, reasonable efforts made to provide learning opportunities to students with disabilities that are accessible, appropriate and reasonable in light of the current circumstances.

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I am certain that this guidance may generate more questions for you than it does answers. If it does, please feel free to contact us about those. That is what we are here for.

Please keep yourself and your family safe and healthy. Most importantly, stay calm, cool, collected and concerned. I am convinced that you and your support staff will get more done that way. We will get through this together!

Sincerely,



Julie J. Weatherly

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