



March 27, 2020

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Navigating the COVID-19 Crisis

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Kevin Rubenstein, Ed. D., CASE Policy & Legislative Chair

Julie Weatherly, Esq., Resolutions in Special Education

Moderated by: **Phyllis Wolfram**, Executive Director, CASE

Agenda

1. Welcome and Introductory Comments
2. Introductions
3. Laurie VanderPloeg/ OSEP Update
4. Stimulus Package & Special Education
5. Four Priorities
 - Safety, Health, Welfare
 - Provision of FAPE
 - Document Your Efforts
 - Comply with IDEA
6. Questions



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We Are In This Together!

“Everything will be okay in the end. If it’s not okay, then it’s not the end.” - John Lennon

- Leaders are optimistic and focused on the task at hand.
- We will continue leading through this pandemic because our communities rely on us to focus and come together during this time.
- Now, more than ever, strong and caring leaders are necessary in your community.

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Four Priorities for Special Education:

- 1** Focus on the safety, health, and welfare of students and staff members in your community.
- 2** Provide FAPE - Deliver services to as many students as you reasonably can in the best way you know how.
- 3** Document your efforts; make sure documentation is focused, consistent, detailed and demonstrates a good faith effort to provide good services.
- 4** Compliance during the pandemic - IDEA wasn't built for this.

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Real Talk

Disclaimer:

The information we are providing today is the best we know at this moment.

- It might change by the end of the webinar based on additional guidance.
- It could change by next week if this worsens or if things change.
- States have specific guidance which should be reviewed as well.



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CASE
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#WeKeepLeading Presenters for Today

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Federal Update

Laurie VanderPloeg

Director, Office of Special Education Programs (OSEP)
United States Department of Education



Laurie VanderPloeg
Director, Office of Special Education Programs (OSEP)
Office for Special Education and Rehabilitative Services (OSERS)
United States Department of Education

Washington, DC

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Resources & The Stimulus Package



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Current Resources & What's Coming



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- CASE has continually updated our resource document <http://bit.ly/CASE-COVID19>
- Federal government documents:
 - FERPA Virtual Learning - March 2020
<https://bit.ly/FERPAVirtual>
 - OSERS/OCR Supplemental Fact Sheet (03/21/2020)
<https://bit.ly/OSERSOCRSupplemental>
 - OCR Fact Sheet (03/16/2020)
<http://bit.ly/COVIDOCRFacts>
 - FERPA Guidance (03/12/2020)
<http://bit.ly/FERPA-COVID19>
 - OSEP Guidance (03/12/2020)
<http://bit.ly/OSEP-COVID>

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What We're Working On

Stimulus Bill - Flexibility Language

- As the voice for the local special education director, CASE is working with our partners in the school and disability community to develop a list of flexibilities which are necessary and reasonable.
- We need to be able to agree to extend deadlines and engage in a plan in ways that are reasonable and parent friendly.

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What We're Working On

- **Stimulus Funding as it relates to IDEA - Allowable Expenses:**
 - Any services provided under IDEA
 - Purchasing educational technology (including hardware, software, and connectivity) for students ... including... students with disabilities, which may include assistive technology or adaptive equipment.
 - Providing mental health services and supports.
 - Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of ... students with disabilities.



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Priority 1

Focus on the safety, health, and welfare of students and staff members in your community.



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Priority 1: Focus on the safety, health, and welfare of students and staff members in your community.

- Set clear boundaries for yourself.
- Set up a work space in your home where you have access to the things you need and where you can walk away from the work as needed.
- Be mindful of new mental health support needs that your staff and families might be facing due to loss of jobs, new people living in the home, food insecurity, or additional stress related to this pandemic.
- Triage families who may need additional support - who will do this and what does that look like?
- Demonstrate empathy and compassion for families as they navigate this with us.

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Priority 1: Focus on the safety, health, and welfare of students and staff members in your community.

- **For Special Education Providers:**
 - Follow CDC guidelines regarding physical distancing - even when it comes to providing services to students:
 - In home services, especially where a provider is visiting multiple homes, is not recommended
 - Wash hands and other highly touched surfaces (keyboards, etc.)
 - Be a good role model when you are on video.
 - Keep in mind your duty as a mandated reporter - even in video calls. If you suspect abuse or neglect - report it.

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Priority 2

Provide FAPE - Deliver services to as many students as you reasonably can in the best way you know how.



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Continuum of Closure Efforts

	Completely Closed	Homework Packets	Continuous Learning Opportunities	e-Learning/ Distance	Completely Open
Key Factors	No services provided to any student	Learning activities are primarily parent/guardian supported	Learning activities are supported by teachers and providers.	Learning activities are continuous, structured, and ongoing. Little parent support necessary.	Brick and mortar schools are open.
Focus of Efforts	Planning for next stage	<ul style="list-style-type: none">• Is the work accessible and accommodated?• Is there any way to tailor this work for students?• Is there any way to focus it on goals and progress?• Are you engaging with all students?			What's appropriate?

Document your good faith efforts so you know what has been provided!

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FAPE During School Closures

Completely Closed

Homework
Packets

Continuous
Learning
Opportunities

e-Learning/
Distance

Completely
Open

What's
Appropriate?

- No regular services provided to any student means no FAPE requirements

- What is **appropriate** in light of the current circumstances?
- Are you making **good faith** efforts to provide **appropriate services**?
- Are you making good faith efforts to **engage** with families to determine FAPE?
- Are you making good faith efforts to **tailor instruction**?
- What level of **student support** is needed from **parents** and what level of **consultation** is needed to support them?

- *Endrew F. Standard*

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Priority 3

Document your efforts; make sure documentation is focused, consistent, detailed and demonstrates a good faith effort to provide good services.



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FAPE is Not Just Programming - It's Also Procedural

During School Closures, Special Education Providers should be documenting, to the greatest extent possible, the following:

- Agreement or non-agreement:
 - Meeting timeline extensions
 - New services or temporary discontinuation of services
 - FERPA information
 - Temporary plans for learning during the next few months
 - Use of parent input to the extent possible

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FAPE is Not Just Programming - It's Also Procedural

During School Closures, Special Education Providers should be documenting, to the greatest extent possible, the following:

- Attempts to engage with the student and how the student responded.
- Tailored instruction documented and shared
- Progress on IEP goals measured and reported
- <https://bit.ly/CASEServiceLogS>



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IDEA Did Not Contemplate Changes in Placement in a Pandemic

Consider the Use of Temporary Learning Plans

- Work with families and school teams to develop a temporary plan for working with students during the pandemic.
- The “distance learning plan” is a separate individualized plan, developed in collaboration with parents, for the provision of temporary services until such time as this pandemic ends.
- Any DLP will be assessed both procedurally and substantively in light of the current circumstances.
- <https://bit.ly/CASEDistancePlan>



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FAPE is Not Just Programming - It's Also Procedural

IDEA Did Not Contemplate Changes in Placement During a Pandemic, Let's Not Treat it Like One



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- Avoid “changing placement” (i.e. to home setting) - this is not a “traditional” change in placement - the school is not doing this, the pandemic is.
- This “change of placement” is not one contemplated by IDEA that would trigger typical procedures (e.g., convening full IEP team, providing PWN). It is a forced “change of placement” being made by COVID-19.
- We do not want this “change of placement” to become the current IEP for purposes of stay-put!

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Priority 4

Compliance during the pandemic - IDEA wasn't built for this.



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Compliance During the Pandemic

All Schools Should Continue to Make Good Faith Efforts to Comply With IDEA:

- 60 day Timelines
- Annual Reviews
- Part C to Part B Transitions
- Prior Written Notice
- IEP Meeting Procedures (i.e. written notices, meeting participants, meeting procedures)

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Compliance During the Pandemic

Key Question:

What is the purpose of the procedure and how can we achieve that purpose “in light of the current circumstances?”



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Compliance During the Pandemic

All Schools Should Continue to Make Good Faith Efforts to Comply With IDEA:

- **60 day Timelines**
To complete evaluations in a timely fashion.
- **Annual Reviews**
To ensure that we are regularly reviewing progress toward IEP goals.
- **Part C to Part B Transitions**
To ensure continuity of services and seamless supports.

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Compliance During the Pandemic

All Schools Should Continue to Make Good Faith Efforts to Comply With IDEA:

- **Written Notice**
To ensure that parents are informed, in writing, of what is happening with their child.
- **IEP Meeting Procedures**
To ensure parents are provided the opportunity for meaningful and informed participation in decision-making and are made aware of their procedural safeguards

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Think Like a Hearing Officer for a Second:

What would a hearing officer say?

34 C.F.R. § 300.513: A decision made by a due process hearing officer “shall be made on **substantive grounds** based on a determination of whether the child received a free appropriate public education.”

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Think Like a Hearing Officer for a Second:

What would a hearing officer say?

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

- Impeded the child's right to a FAPE;
- **Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or**
- Caused a deprivation of educational benefits.

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Questions for Presenters

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and information visit:**

www.cec.sped.org

www.casecec.org

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**Thank you for participating in the
webinar today.**

Connect with CASE
next Friday:

April 3, 2020 - 12:00pm CST