



March 13, 2020

Novel Coronavirus (COVID-19) Updated Guidance for Students with Disabilities

Educational services for students with disabilities

If an LEA closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's individualized education program (IEP) or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504.

If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504)).

Annual IEPs

The IDEA requires that the child's IEP be reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revise the IEP, as appropriate. 34 CFR §300.324(b). Annual IEP team meetings that are scheduled during the school closures may be postponed, but should be rescheduled as soon as possible after the school reopens. The LEA should communicate with the parents about the proposed delay and confirm in writing whether the parents agree with the delay. If any parent disagrees, the LEA should consider whether a telephonic annual IEP would be possible and if not, issue prior written notice about the proposal and decision on the delay, along with Procedural Safeguards.

Evaluations of students with disabilities

If an evaluation of a student with a disability requires a face-to-face meeting or observation, the LEA can delay the evaluation until school reopens. Evaluations and observations that do not require face-to-face assessments or observations may take place while the school is closed if the parent consents.

LEAs are required to provide the services and accommodations needed for students with disabilities to have an equal opportunity to participate in testing and assessments if the LEA administers any tests or assessments to the general student population during a school closure.

Compensatory Education Services

After school reopens, the IEP team must make an individualized determination as to whether, and to what extent, it may be necessary to provide compensatory education services are needed under applicable standards and requirements. The IEP team may consider using information assessment to determine whether there have been changes in a student's performance.

Due Process Hearings

Parents and LEAs will continue to be able to file special education due process hearing requests with the PED. The PED requires that LEAs have an administrator assigned to receive these complaints through electronic transmission during school closure. The parties to a due process complaint should address any requests for extensions of time to the PED appointed Due Process Hearing Officer.

State Complaint Process

PED will continue to accept State Level Complaints under the IDEA. The PED requires that LEAs have an administrator assigned to receive these complaints through electronic transmission during school closure. The parties to a State Complaint should request an extension of time for exceptional circumstances if Covid-19 will prevent them from responding to the complaint or participating in the investigation of a particular complaint.

Prior Written Notice (PWN) for a temporary change in service

The IEP can be amended without an IEP team meeting, however, the IEP team must clearly and specifically describe all proposed changes on the PWN in language that is understandable to the parent and send the form to the parent. Additionally, the IEP team designee must discuss with the parent any and all changes that are being considered to ensure that the parent understands the proposed changes in full. If there are specific changes to the educational services provided to a student with a disability due to a school closure made by the IEP as required above, the LEA must ensure that a prior written notice is developed setting forth any changes and the contents required by 34 C.F.R. 300.503 and 6.31.213(D)(3) NMAC.

IDEA Compliance Indicators

If a school closure due to Covid-19 impacts an LEA's ability to meet required compliance indicators, the Special Education Division is requesting the following for each student impacted:

- State student identification number
- Indicator(s) impacted for each student
- Dates when actions occurred (i.e. evaluation, IEP, transition IEP, etc.)
- Additional comments if necessary to support why the LEA was non-compliant

The Special Education Division will establish a due date for the information after school resumes. At the end of the school year, LEAs will be required to provide IEPs, consent for evaluation, evaluation timelines, etc. for each student and indicator, which were missed. All of this information will help the Division to ensure that LEAs are not indicated as non-compliant due to the school closure.

