

Dear Colleagues,

With all of the concerns regarding COVID-19, after reviewing guidance from OSEP, the CDC and DHHS the bureau is putting out the following guidance around special education services for students with disabilities. Please note that throughout this document when the term students with disabilities is used it refers to students who have individualized education programs.

#### **FAPE**

The Department's position is consistent with the OSEP guidance stating that if non-disabled students are receiving remote or other instruction, we need to find ways to provide special education student's services outlined in their IEP. If non-disabled peers are not receiving instruction, special education students would not necessarily receive services.

Our approach is a three-tiered safety net of support for students with an IEP:

- Services may be of a nature that they can be provided in a remote instructional environment. This may include, for example, daily "check-ins" with a student, which may be able to be provided seamlessly in a remote instruction model.
- Another option may be to have a limited number of students (hence lower COVID-19 risk) continue to come to the school for those specific services. This might be OT/PT, or perhaps speech therapy or student counseling. You may determine that these students can come to the school building for these limited services only.
- When services cannot be provided, the child can expect to receive compensatory services (to make up for the special education and/or related services the child missed), or
- A combination of any of these options.

Given this guidance from OSEP, it will be important to take this planning time to look at the nature of services you provide in support of your students and what approach will be best to provide those services. You need to look at students individually to determine the feasibility of continuing to provide services.

As you are weighing the determination of how you will provide the support services, please give consideration to students with a disability at high risk of severe medical complications or because they are ill or have been exposed and they may need to be excluded from school during an outbreak of COVID-19 and the child's school remains open. If the exclusion is a temporary emergency measure (generally 10 consecutive school days or less), the provision of services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available, is not considered a change in placement.

During this time period, a child's parent or other IEP team member may request an IEP meeting. There is no prohibition on holding an IEP meeting, although a telephonic meeting would of course be lower risk to all involved. This request for a meeting may be to specifically discuss the potential need for services if the exclusion is likely to be of long duration (generally more than 10 consecutive school days).

For long-term exclusions, an LEA must consider placement decisions under the IDEA's procedural protections of 34 CFR §§ 300.115 – 300.116, regarding the continuum of alternative placements and the determination of placements.

### **Evaluations and Timelines**

Evaluations are another area of concern at this time. OSEP has stated they are still looking at this and will provide guidance in the near future. Given the low risk of a limited cohort size, evaluations may continue to be provided. As a district, you will need determine how you can support that work. Teams may also look at exceptions and determine if your situation falls under the currently approvable exceptions (parent fails to produce the child, new student moving into the district or a schools district disaster). Currently this crisis has not been deemed an acceptable exception; however, we are still waiting for guidance around this from OSEP.

Once districts have evaluated each situation, they can then communicate with parents and guardians to help them understand how those evaluations might be provided.

### **Grant Funds**

We continue to seek guidance from OSEP regarding staff members that are compensated through IDEA funds, as well as paying for out of district placements with IDEA funds. Again, this is a topic still under consideration by OSEP and we have reached out with our questions. As of today, our assumption is that staff paid through IDEA funds in support of students, including in a remote instruction and support model, are appropriate. As well, there is no change to out-of-district placements for students.

### **Private Providers**

Contrary to some of the new reporting, the Governor's order does not apply to private providers who can continue to support students. This includes both resident and day students of the district. There are, however, certain considerations that providers should make with respect to these students.

Resident Students: Residential facilities may continue to provide services. They will want to consider how those services are delivered, where they are delivered and the risk of continuing services as they are currently provided. Providers should evaluate the medical risks of students and implement precautionary measures to help guard against COVID-19. Both CDC and HHS have broad guidelines on this topic that providers will find useful.

Day Students: Facilities serving day students should also implement risk mitigation strategies that will provide protective factors to both the day students and the residential students. This may mean limiting interaction among the populations of students, limiting visitors to your facilities, reducing cohort sizes or other social-distancing practices. Providers can coordinate these measures with the supporting LEA's.

Private providers need to be working with districts to determine the most appropriate course of action for each student. If the LEA feels that students should not be attending school at all, LEAs and private providers will need to determine how those services will be provided to the student as the LEA is still responsible for the provision of FAPE. This may mean, for example, that the district will continue to provide transportation for the student to the private provider location. Our counsel is to find opportunity to continue services wherever possible.

Please also consult the following resources regarding services for special education students:

OSEP Q&A Document: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>

US DOE COVID -19 Resources: <https://www.ed.gov/coronavirus?src=feature>

Resources from CASE: <http://bit.ly/CASE-COVID19>

NH DOE resources: <https://www.education.nh.gov/who-we-are/commissioner/covid-19>

OSEP recorded webinar: <https://zoom.us/rec/share/5uJEf6ms7UULf9aSwWjuZI0dXYr4T6a813IX-fALxEjMSlcBa7SQ8UntTJxXCS9k?startTime=1584110179000>

If you continue to have specific questions that have not been addressed in this email please reach out to us here in the bureau so that we may assist you.

Sincerely,



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