



# IEPs, School, and a Pandemic

What We Should Know

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# Welcome

- These are difficult times, at their best.
  - Isolation
  - Balancing work and children
  - Lack of socialization
  - Health concerns
  - Mental health issues
  - Home school
  - Economic stressors

# We know what we are SUPPOSED to do...

- "Educational institutions should take special care to ensure that all students are able to study and learn in an environment that is healthy, safe, and free from bias or discrimination." United States Department of Education, "OCR Coronavirus Statement," March 4, 2020.





We are just not  
real sure how  
to do it

- The federal and state guidance is just that—guidance.
- Until legislation is passed or regulations are modified, the guidance gives school districts an idea of how the federal and state departments may view or act .
- But they cannot be relied upon fully in the event there are legal challenges to the District's provision of FAPE to students.

# Discrimination

- Intentional discrimination is when an individual or organization sets out deliberately to disadvantage an individual or group, or to advantage another group or individual over them.
- Unintentional discrimination can happen because of ignorance or unintentional prejudice.





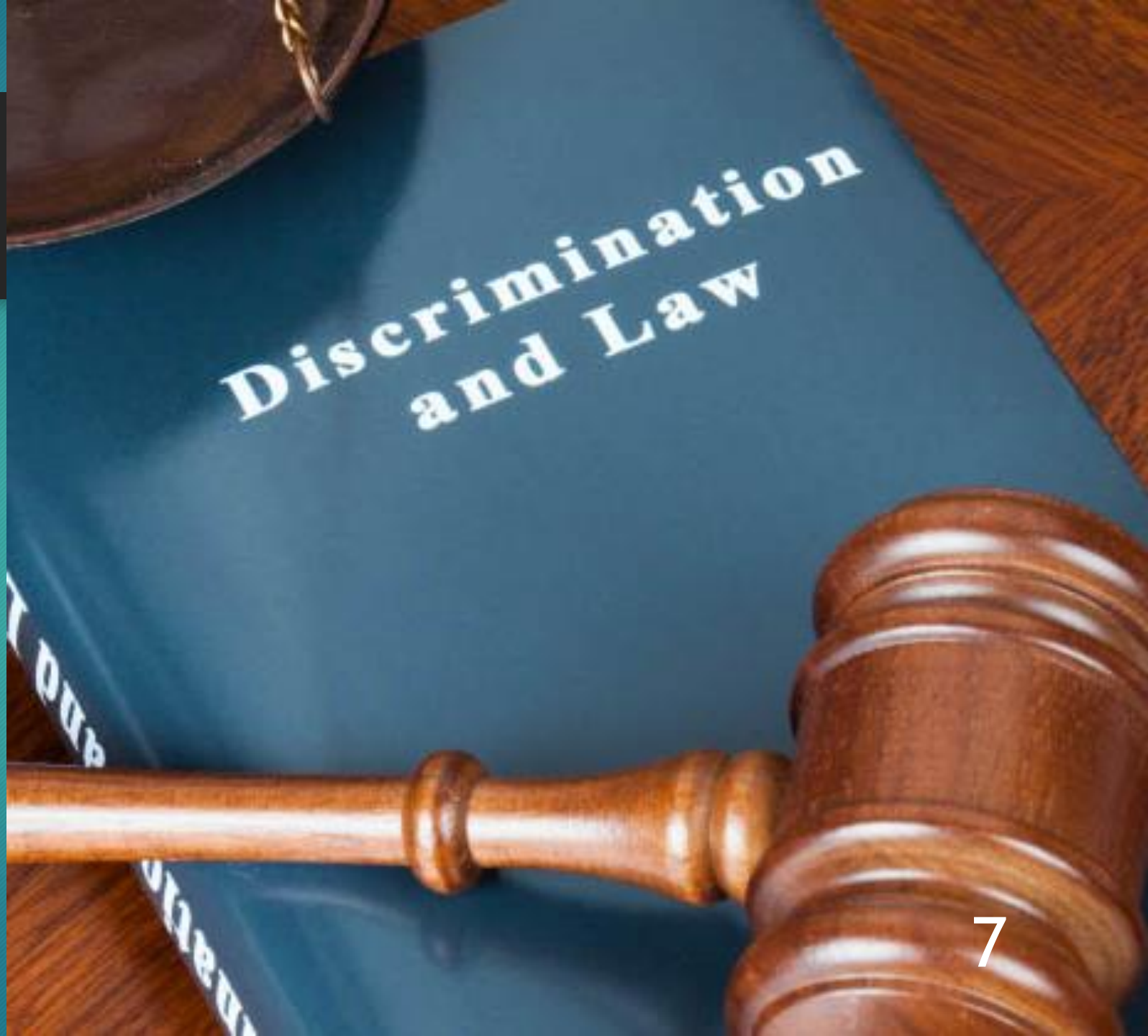
# Examples

A school has set up a Physical Education program for students while they are virtual learning. To get the maximum grade, the student must accomplish multiple physical feats (such as running in place for 1 mile each day).

Students with an IEP are not allowed to return to school with other students and must continue virtual learning at home.

A law is a  
law...Right?

But how we address  
implementation will  
be driven by the  
intent of the school's  
actions.



# United States Department of Education

## Office of Civil Rights

March 16, 2020 Fact Sheet:

Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students



# Obligations



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- School officials have an obligation to avoid discrimination based on disability under Title II and Section 504, while cooperating with public health authorities to ensure that students with disabilities have access to the school's education program.

If a student who has an individualized education program (IEP) through the Individuals with Disabilities Education Act, or is receiving services under Section 504, is required or advised to stay home by public health authorities or school officials for an extended period of time because of COVID-19, provision should be made to maintain education services.





# But...

- “If a school district closes its schools and does not provide any educational services to the general student population, then a school would not be required to provide services to students with disabilities during that same period.”
- Once school resumes, the school must return to providing special education and related services to students with disabilities in accordance with the student’s IEP or, for students entitled to FAPE under Section 504, consistent with any plan developed to meet the requirements of Section 504. “





I did NOT know that!!!

If school 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.





# IEP Status



Current



Emerging



Renewals



# Current

- Have an IEP
- Put into place prior to pandemic

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# Regulations

- When a child with a disability is classified as needing homebound instruction because of a medical problem and ordered by a physician, and is home for an extended period of time (generally more than 10 consecutive school days), an individualized education program (IEP) meeting is necessary to change the child's placement and the contents of the child's IEP, if warranted.
- If the IEP goals will remain the same and only the time in special education will change, then the IEP Team may add an amendment to the IEP stating specifically the amount of time to be spent in special education.

But...(there it  
is again)

- If a child with a disability is absent for an extended period of time because of a COVID-19 infection and the school remains open, then the IEP Team must determine whether the child is available for instruction and could benefit from homebound services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available.
- If a public school for children with disabilities is closed solely because the children are at high risk of severe illness and death, the LEA must determine whether each dismissed child could benefit from online or virtual instruction, instructional telephone calls, and other curriculum based instructional activities, to the extent available.



- If a child does not receive services during a closure, a child's IEP team (or appropriate personnel under Section 504) must make an individualized determination whether and to what extent **compensatory services\*** may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

**\*Compensatory services** are **educational services** that are awarded to students with disabilities to make up for **services** that they lost because of a school board's failure to provide an appropriate **educational** placement under the Individuals with Disabilities Education Act (IDEA).

There is help though...

# COVID Safety Implications

- If the type or amount of services listed in the IEP or 504 plan must change because they can only be provided face-to-face and not virtually, the IEP team should convene to discuss the type and amount of services to be provided.
- The team must document any services missed and assess the need for compensatory education.
- Parents still have a right to request dispute resolution even during these school closures.



# Emerging

- In the middle of testing
- IEP Meeting scheduled, but postponed
- Meeting held but services not started





# The Law

- Pursuant to 34 CFR §300.323(c), a meeting to develop an IEP for a child must be conducted within 30 days of a determination that the child needs special education and related services. As soon as possible following the development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP. “As soon as possible” recognizes that there may be some isolated circumstances where, because of damage caused by the storm, power outages, closure due to pandemic, etc., an LEA may need to delay the start of special education and related services to a particular child.

# Assessments

An initial assessment that includes classroom observation, which is often very important to the assessment, would suggest rescheduling.

Even if classroom observation is not indicated, you or the district may be concerned about unnecessary human contact at this time, and any assessments or meetings may need to be delayed.



## Recent Evaluations

- Students who have had a recent evaluation of any kind should have the school hold a 30-day Emergency IEP, review the evaluations, address parent concerns, and update goals and objectives according to current school options.



# Adjusting the Law

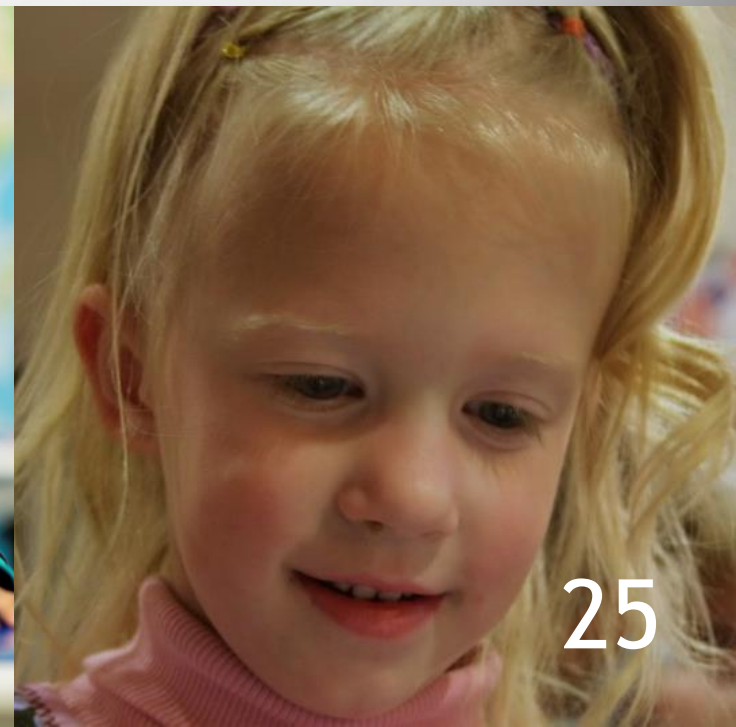
- The IDEA provides that initial evaluations must be conducted within 60 calendar days of receiving parental consent or within a state established timeframe. Due to the current states of emergency at the federal and state levels, evaluations initiated or in process on or after March 3, 2020 may be completed within 90 calendar days of receipt of parental consent, rather than the usual 60-day requirements.



# Renewals

- ▶ 1-year update
- ▶ 3 Year Renewal

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## It fits...

- 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.
- In making changes to an IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.
- In addition, when conducting IEP Team meetings and placement meetings, the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation requirements, such as video conferences and conference calls.



# Re-evaluations

- IDEA does not provide an evaluation timeline for re-evaluations other than the 3-year re-evaluation timeline.
- For re-evaluations due during a school closing, teams should complete the re-evaluation as soon as possible upon return.
- For re-evaluations due while students are attending a virtual instructional setting, cases should be treated on an individual basis; however, every attempt should be made to complete the reevaluation to the extent possible, given reasonable access to the student.

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# Services



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- For now, there is no absolute right to an agreed-to IEP.
- For example, your child has group speech therapy. You would have a difficult time arguing that “to the greatest extent possible” requires a group meeting, since this would require other children to be forced to attend a group activity, which no school (or court) would enforce in this crisis.



# Who Monitors Services

- The No Child Left Behind Act requires schools, school districts and states to measure their progress objectively and report their progress every year.
- If parents do not know how to monitor progress, they should ask the school to develop a plan since the school is mandated to monitor “measurable progress” in the child’s Individual Education Plan (IEP)



# Accommodations

An accommodation allows a student to complete the same assignment or test as other students, but with a change in the timing, formatting, setting, scheduling, response and/or presentation.

Examples - A student who is blind taking a Braille version of a test or a student taking a test alone in a quiet room.



# Modifications

A modification is an adjustment to an assignment or a test that changes the standard or what the test or assignment is supposed to measure.

Example = A student completing work on part of a standard or a student completing an alternate assignment that is more easily achievable than the standard assignment.

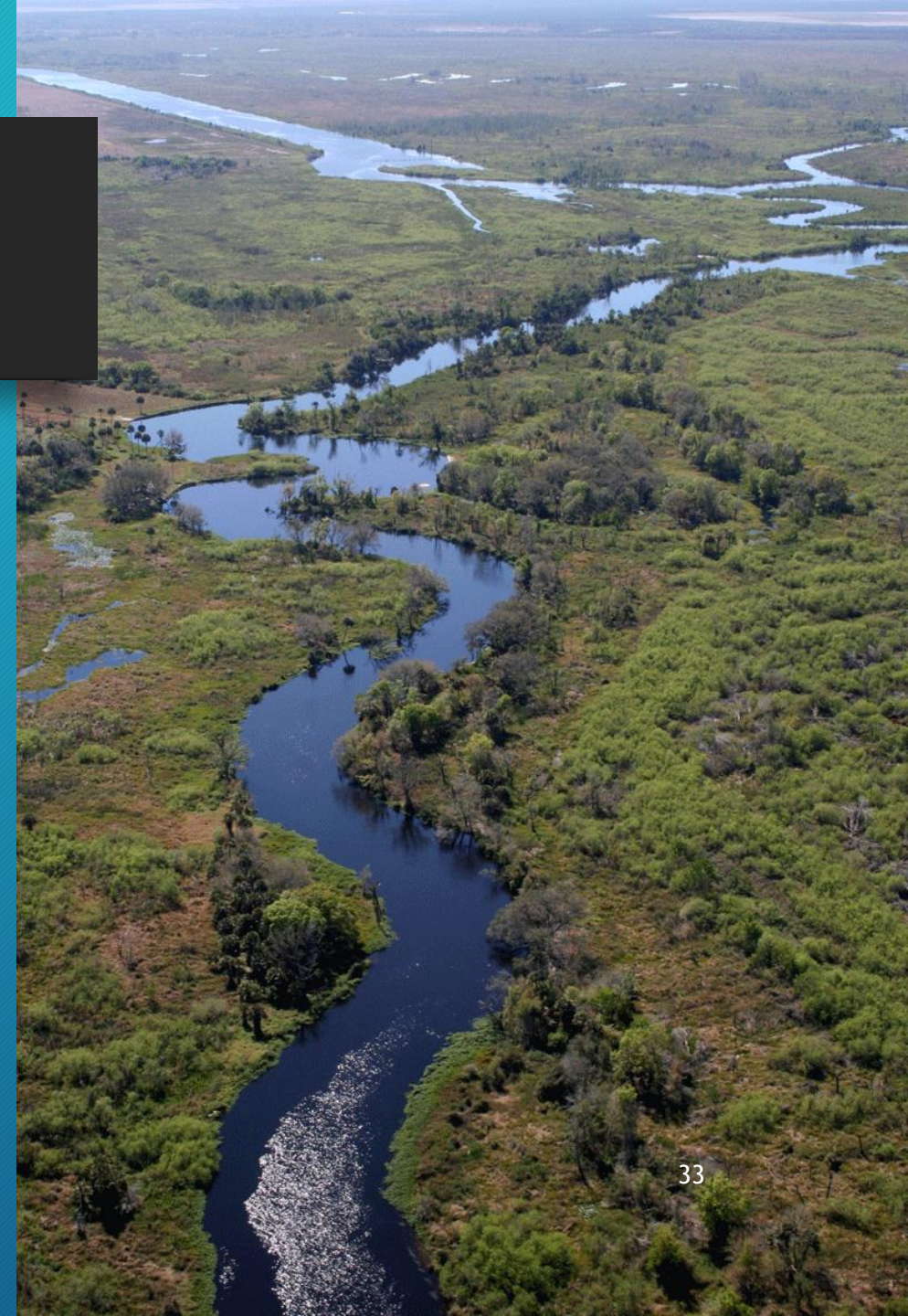
# If your child's school is offering online learning

- Disability-related modifications may include:
  - Extensions of time for assignments,
  - Speech and language services through video conferencing,
  - Videos with captioning or embedded sign language interpreting,
  - Providing accessible reading materials to all
  - Having inaccessible documents read over the phone to those who need it.



# Thinking Outside of the Box

- Keep in mind:
  - The “rules and options” change daily
  - There will be not one solution to challenges and barriers
  - Always focus on the needs of the student
  - Policy, procedures, recommendations, and even rules are NOT laws.
  - Be a visionary problem solver.





# Documenting Progress

- Document or request documentation on where the student is as far as skill level:
  - Through video or through data sheets to monitor any regression in skills,
  - And to see if there has been a significant regression in their skills.
- This can assist in IEP modification and determining if compensatory services are warranted.





# Documentation Bonus

- If your child is missing services, schools are directed to track the number of hours missed to help document for make up sessions. It might be smart to document that information yourself as well.

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# Compensatory Services Become Major

- In the case that districts, or schools are closed, but virtual or home-based work is assigned (to count towards any attendance requirements or to provide instructional time), students with IEPs who do not receive services may be eligible for compensatory services.
- Compensatory services should be provided to elevate him or her to the position he or she would have otherwise occupied had the services not been delayed or postponed.
- This can include making up missed hours of occupational therapy, hours of individual academic intervention, etc.





# Proactive Planning

- IEP teams could include distance learning plans in a child's IEP that could be triggered and implemented during a selective closure due to a COVID-19 outbreak.
- These may include the provision of special education and related services at an alternate location or the provision of online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, and may identify which special education and related services, if any, could be provided at the child's home.
- Creating a contingency plan before a COVID-19 outbreak occurs gives the child's service providers and the child's parents an opportunity to reach agreement as to what circumstances would trigger the use of the child's distance learning plan and the services that would be provided during the dismissal.

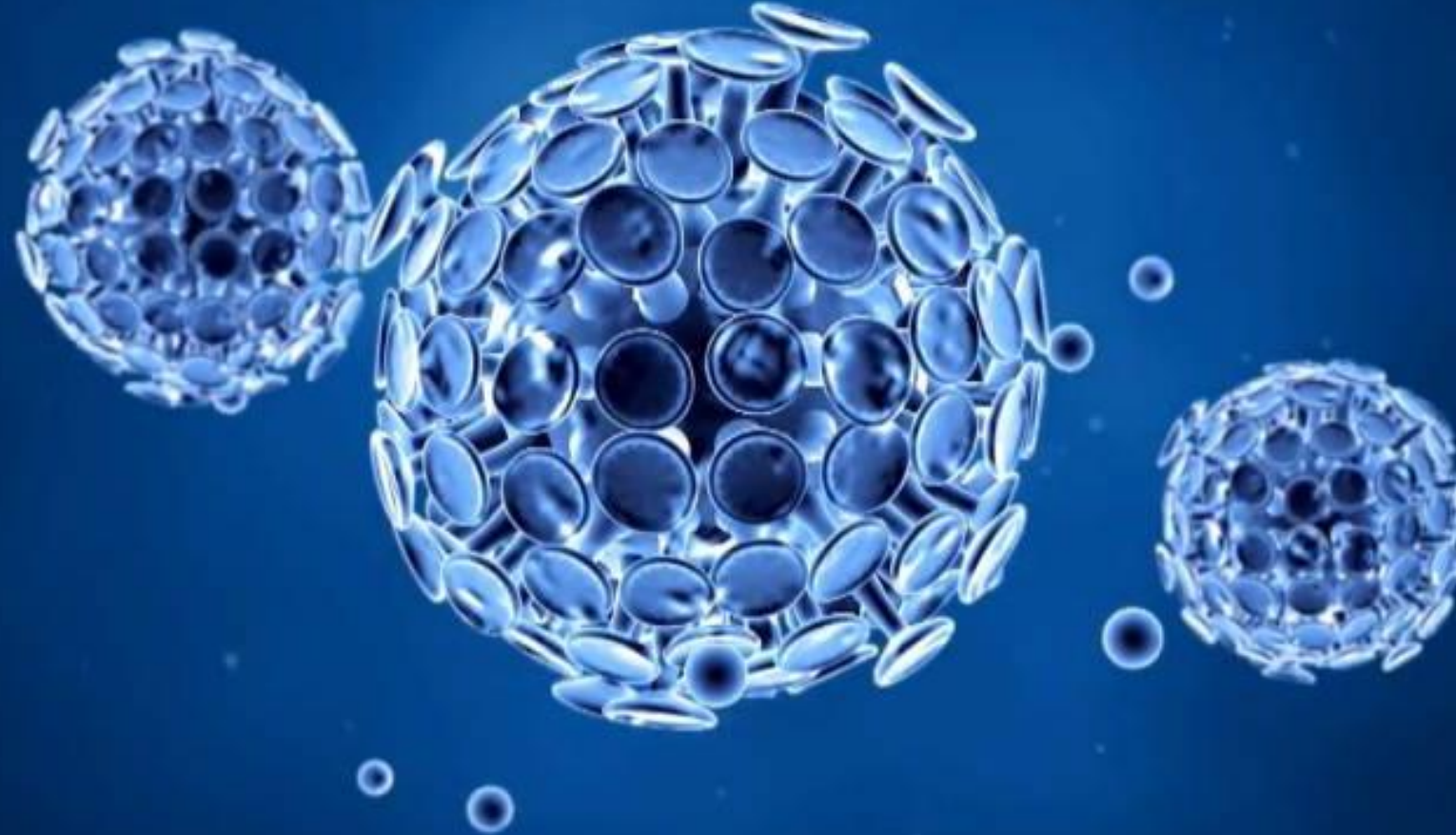
US Dept. of Ed, March 2020



# Health and Safety

- Health issues may trump IEP mandates, and the U.S. Department of Education (DOE) recognizes that schools may not be able to provide all services in the same manner they are typically provided

# Coronavirus



# Due Process

- The extraordinary circumstances we face:
  - Will mean delays in any mediations or hearings.
  - May not be the best time to proceed with a due process complaint if you haven't filed one yet.
  - Be prepared for delays. Your child's specific situation will determine whether filing now, so the matter is "in line," or waiting makes more sense.





# IEP and Prior Written Notice

If parents agree to the Prior Written Notice-PWN and they do not read it carefully nor understand it appropriately, they may be agreeing to changes that reflect what the school stipulated due to the pandemic.

PWN may be used as a tool to amend the existing IEP for purposes of the COVID-19 crisis and their ability or inability to provide FAPE. Prior to signing the PWN parents should be very comfortable with what it states.

## Record Meetings

- Record all IEP meetings by providing the school with a 24-hour notice prior to the IEP meeting in **writing**.
- **For example**; I intend to record my child's IEP on 4/25/20. Consider this my 24-hour prior written notice. This notice may be submitted to the school anytime up to the 24-hour timeline.

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# Questions to Ask

- Will my child be able to access the online delivery of learning and instruction?
- Has the learning been customized to assist my child in reaching their IEP goals?
- Does my child require adult support to access curriculum online?
- Who will provide this support and how?
- Are there accommodations that can be provided through electronic resources such as the accessibility setting for text-to-speech or screen reader, bookmarked links on a single document, speech-to-text software or apps, etc.?

# Questions to Ask

- What accommodations, accessibility features, or differentiated instruction is available and what is missing but needed for my child to have equal access?
- Who will create the alternate activities for those students who require significantly modified assignments or who cannot access the activity in the virtual format?
- Who and how will my child's progress be monitored?
- What if my child gets ill and cannot do the work?

Adapted from: <https://fespeditn.blogspot.com/2020/03/covid-19-school-closure-updates-for.html>



# Resources Used in this Presentation

- US Department of Education
  - <https://www.ed.gov/coronavirus>
- Wrights Law
  - <https://www.wrightslaw.com/>
- NOLO
  - How COVID-19 and School Closures Affect Special Education and Children With IEPs
  - <https://www.nolo.com/legal-encyclopedia/how-covid-19-and-school-closures-affect-special-education-and-children-with-ieps.html>

# Local Resources

46

- District's website or call to find out what they are doing as far as distance learning, and how they plan on meeting the IEP and other needs of your child.
- Look on your state Department of Education website.
- Check your state Parent Training and Information Center (PTI) website.



# Expert Q&A

- *Carol Wilson, M.Ed Special Education, is a mom and grandmom of children with special needs, a family advocate, and a special education teacher from Louisiana. Her first commitment is to the unique needs of each child and to ensure each has a true IEP, individualized according to the specific needs of the child.*





Committed to the provision of high quality, evidence-informed services based on System of Care principles that are family-driven, youth-guided, and culturally and linguistically competent.

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