

Update on Coronavirus and Special Education at Home

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Federal education authorities likely will continue to issue guidance for school districts on how to handle special education during the COVID-19 pandemic, drilling down further each time to make the guidance more clear.

Our recent [update](#) provided information on the U.S. Department of Education's (DOE), through the Office of Civil Rights (OCR) and Office for Special Education and Rehabilitative Services (OSERS), guidance for schools on providing a free appropriate public education (FAPE) for students with disabilities during the nationwide school closures.

On Saturday in its most recent guidance, the DOE provided a [supplemental fact sheet](#), emphasizing that compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act should not prevent schools from offering educational programs through remote instruction.

Neither guidance document provides the clarity that public school districts seek in support of efforts to continue instruction for all students equitably. In the supplemental fact sheet, OCR and OSERS remind schools that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities, and that the provision of FAPE may include distance instruction virtually, online, or telephonically for special education and related services. While the guidance addresses the flexibility of how services are delivered, it does not provide any specificity as to the scope of services that must be provided to confer FAPE, or what relief may be offered in connection with such efforts.

The most recent guidance reiterates that IEP teams must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations. From a practical standpoint, however, offering compensatory services to a vast number of students at the same time would likely overwhelm what will most assuredly already be strained resources. Another troubling aspect of the guidance is that it fails to address enforcement through the courts for Section 504 or Americans with Disabilities Act liability. The fact that OCR promises flexibility in enforcement does not relieve districts of their obligation to provide equal access opportunities for individuals with disabilities. It is unclear whether promising to provide compensatory education in the future is feasible or will satisfy legal obligations.

In addition, OCR and OSERS suggest schools offer disability-related modifications and services online such as:

- Extensions of time for assignments
- Videos with accurate captioning or embedded sign language interpreting
- Accessible reading materials

- Speech or language services through video conferencing
- Teachers reading documents over the phone or provide an audio recording to a blind student
- Holding meetings on digital platforms

Putting aside the practical concerns regarding the availability of necessary resources and personnel to accomplish these modifications on a large scale, these suggestions do not address issues presented by complex medical needs, behavioral needs, and other scenarios that present significant challenges in a remote delivery setting.

The DOE is asking parents, educators, and administrators to collaborate creatively to continue to meet the needs of students with disabilities. OSERS is also encouraging schools to work with parents to reach mutually agreeable extensions of IDEA timelines, as appropriate.

Given the lack of clarity provided by DOE's guidance to date, additional guidance or legislative remedies are likely to be forthcoming.

If you have any questions on this or any other topic, please reach out to any member of the [Barley Snyder Education Practice Group](#) if you have any questions about continued legal obligations related to coronavirus.

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