

# COVID-19 & Students with Disabilities:

## *The Danger of IDEA Waivers*



CONSORTIUM FOR CITIZENS  
WITH DISABILITIES

# Introductions



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# Current Context: COVID-19

## School Closures:

- **All 50 states** have mandated school closures into April or beyond
- **21 states** ordered or recommended closures for the remainder of the school year
- **124,000 schools** are affected
- **55.1 million students** are affected
- **7.1 million** public school students are **students with disabilities**

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# Overview of IDEEA

## Findings Sec. 601(c)(2)

Before the date of enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94–142), the educational needs of millions of children with disabilities were not being fully met because—

(A) the children did not receive appropriate educational services;

(B) the children were excluded entirely from the public school system and from being educated with their peers;

(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

# IDEA Principles

## Identification for IDEA

**Child Find:** All children with disabilities are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

**Child with a Disability:** One of 13 disability classifications AND need special education and related services

# IDEA Principles

## IDEA Entitlement

**Free Appropriate Public Education (FAPE):** Special education and related services designed to meet the child's needs as outlined by the IEP.

**Least Restrictive Environment (LRE):** To the maximum extent appropriate, children with disabilities are educated with non-disabled peers.

**Individualized Education Program (IEP):** Special education, related services, and supplementary aids and services to enable the child to make progress in the general education curriculum.

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# The Danger of Waivers



# IDEA Purposes

## IDEA waivers threaten the key purposes of IDEA Sec. 601(d)(1)

- A. Prepare children with disabilities “for further education, employment, and independent living”
- B. Ensure that the rights of children with disabilities and parents of such children are protected
- C. To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities

And they are unnecessary if we utilize current flexibility, and empower educators to work with families.

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# Flexibility within IDEA

# Evaluation

**Evaluation must occur within 60 days of receiving parental consent or within the timeline established by the State. 34 CFR § 300.301(c)(1)**

**Flexibility #1:** School teams can contact parents by phone or videoconference to receive consent and begin the evaluation.

**Flexibility #2:** For initial evaluations, other than the actual assessments themselves, all steps in the evaluation process may be done remotely, including the review of existing evaluation data and the determination of what if any additional evaluations may be required.

# Reevaluations

Reevaluations “must be conducted at least every three years,” but parents and the public agency have the ability to agree that a reevaluation is unnecessary. 34 CFR. § 300.303(b)(2)

**Flexibility #1:** As written, parents and schools can agree not to complete the reevaluation.

**Flexibility #2:** The reevaluation can be done by the IEP Team alone based on a review of existing evaluation data, current assessments, classroom observations, and parent input.

# IEP meetings

**IDEA calls for public agencies to “take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate. 34 CFR. § 300.322(a)**

**Flexibility #1:** IDEA allows for parents and public agencies to “agree to use alternative means of meeting participation, such as video conferences and conference calls.” 34 CFR. § 300.328

**Flexibility #2:** IDEA allows for amendments to an IEP without an IEP meeting as long as the parent and district agree to those amendments and a written document is created and attached to the IEP. 34 CFR. § 300.324(a)(4)

# Due Process

**IDEA ensures that children with disabilities and their parents are guaranteed procedural safeguards.**

**Flexibility #1:** "Absent agreement by the parties, a state may be able to extend the 60-day timeline for complaint resolution if exceptional circumstances exist with respect to a particular complaint." 34 C.F.R. § 300.152(b)(1)

**Flexibility #2:** Due process: parties can agree in writing to waive the meeting or to use mediation (34 C.F.R. § 300.510(a).) or the LEA can offer alternate participation (phone, etc.) (34 C.F.R. § 300.510(a)(3)).

**Flexibility #3** IDEA does not prevent the parties from mutually agreeing to extend the timeline because of unavoidable delays. 34 C.F.R. § 300.510(c),

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# Current Guidance from ED

The U.S. Department of Education released several guidance documents in March:

- Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak
- Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students
- Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities
- Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency
- FERPA & Coronavirus Disease 2019 (COVID-19) Frequently Asked Questions (FAQs)



# ED Guidance Summarized

- For any educational opportunities provided to the general student population, **LEAs** are required to ***ensure equal access for students with disabilities, including the provision of FAPE.***
- These rules apply to students with **IEPs** and students with **504 plans**.
- The determination of how **FAPE** is to be provided may need to be different in this time of unprecedented national emergency.

- Federal disability law **allows for flexibility** in determining how to meet the individual needs of students with disabilities.
- Federal law does not mandate specific **methodologies** but does mandate **equal access** to educational opportunities.
- Where technology imposes a barrier to access or where materials are not available in an accessible format, educators can **provide “equally effective alternate access** to the curriculum or services provided to other students”

- IEP **amendments** should be addressed **through IEP team meetings or through written agreements with parents** in lieu of meetings
- **Meetings** and some evaluations can be conducted **via alternative means**, but evaluations which require in-person meetings must be postponed
- OCR is exercising enforcement discretion on regulatory requirements **under HIPAA**

- **Schools** should **carefully document** communication with parents, provision of services, and all decisions related to provision of services under these extraordinary circumstances.
- A **student's IEP team**, or appropriate personnel under Section 504, **may determine** that **compensatory services are appropriate**, based on each student's specific situation and needs, including in situations where skills are lost during the disruption.

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# Best Practice & Opportunities

# Emerging Best Practices

Schools that are dedicated to providing FAPE in this environment are doing three things:

1. **Communicating** with families and with each other
2. **Assessing** resources and needs
3. **Collaborating** to develop plans to move forward

# Communicating

The **foundation** in each instance of success **is clear, frequent communication**:

- Reaching out **frequently to families**
  - Giving **clear information** on the district plan
  - Expressing **concern & commitment**
  - Letting families know the **situation is developing**
  - Letting families know their **partnership is critical**
- Reaching out **to staff**
  - Giving **clear direction** on the district plan
  - Expressing **commitment to equal access** for all students

# Assessing Need

Schools are making an effort to determine the **needs of families**

- **How does the student access** information?
  - Technology
  - Assistive device
  - Other accessible materials (braille, etc)
- **Can the family access** the materials?
  - Do they have wifi? Needed device?
  - Can they retrieve paper materials?
- What **other support needs** are there?
  - Who will supervise/ support student?
  - What supports do they need to succeed?



# Assessing Resources

Schools are then doing an internal assessment to match those needs to resources:

- **How** will instruction be **delivered** (live, taped, packets?)
- What **systems** are **available** for the school to use?
- Do the systems **match** the **needs of** these **students**?
- Are there **other options** that are a better match?
- What **other school resources** can be leveraged to support these students (general education teachers, specialists, etc)?

# Collaborating

Once the needs assessment is completed, schools and families are employing a **true team mentality**:

- **Continued regular, ongoing communication** with families
- **Engaging** the IEP **team, including** the **family, in** the **decision-making** process
- Working together to **support and train parents/ student supports** in the home
- **Working together** to successfully deliver quality education

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# Q&A

# Connect with Us

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# Thank you!