

Accessing Educational Services During COVID-19 Crisis

National Council On Severe Autism – April 14, 2020

Coronavirus **Share & Care**



Accessing Educational Services During the Covid-19 Crisis

*Tuesday, April 14
11am PT / 2pm ET*

This interactive online event will discuss remote instruction, federal and state guidance, issues surrounding FAPE and compensatory education and advocacy going forward. Featuring attorneys **Denise Dimson Rekem** and **Judith Weinstock** of Parles Rekem LLP. Moderated by **Lisa McCauley Parles**, NCSA board member.



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Federal and State Laws Protect Children With Disabilities

- Federal Laws that grant rights to children with disabilities
 - §504 of the Rehabilitation Act (Civil Rights Law For the Disabled) 1973
 - Individuals with Disabilities Education Act 2004 (IDEA) - 20 USC § 1400 *et. Seq.*
- In NJ State Law
 - N.J.A.C. 6A:14-1 et seq. & 18A:46-1 et seq.
- Case Law
 - Both State and Federal case law

The IDEA's Mandate

- Entitles all children who meet the definition of “**a child with a disability**” to receive:
 - A **Free Appropriate Public Education (FAPE)**
 - In the **Least Restrictive Environment (LRE)**

March 2020 Federal Special Education Guidance

- School districts must ensure that, students with disabilities are provided FAPE [Free Appropriate Public Education] to the “**greatest extent possible.**”
- FAPE is, at a minimum, the special education and related services identified in the student’s IEP developed under IDEA, or a plan developed under Section 504.
- (Source: US DOE Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak, March 2020)



March 2020 Federal Special Education Guidance Cont'd...

- Once school buildings re-open, the IEP team will need to determine **“whether compensatory services are needed”** to ensure FAPE.
 - (Source: US DOE Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak, March 2020)

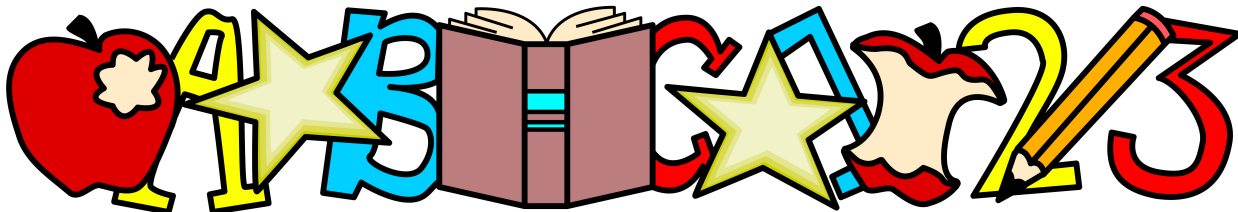


Initial Referrals for Special Education

- Referrals may still be made
- Provide Early Intervention evaluations to district
- Some testing may be delayed
- Proceed with testing that can be conducted via telephone or videoconference
- If IEP is delayed, may require compensatory education

IEP Annual Review Meetings

- Via teleconference
- Crafted to reflect school-based program, not distance learning
- IEP is Stay-put
- Will be used to determine compensatory education



Temporary Plan

- Implementation of some IEP services may not be possible or practicable.
- A **temporary** plan may be helpful to accommodate the extenuating circumstances.
 - Developed by case manager with parent collaboration and with creativity to meet the individual needs of the child during the COVID-19 crisis.
- **Do not modify IEP**

Compensatory Education

- Request services and raise concerns about provided services now and document them to preserve compensatory education claims.
- It is critical to keep data on progress and/or regression of skills (as best you can) so that an accurate assessment of the need for compensatory education can be made **when students return to school.**

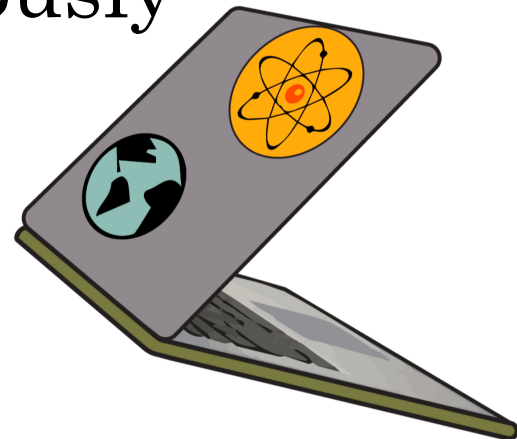


School District Responses & Student Needs

- School Districts are responding differently to this unprecedented crisis.
- Equity in access.
- Students with severe autism may not be able to take advantage of remote learning due to the limitations this type of learning presents.

Telehealth/Videoconference

- Telehealth services, including ABA, Speech, OT, PT services, are being made available in certain states.
- NJ Example – law and regulations revised to allow for related services over video because previously prohibited



Waivers

- Different types of waivers.
- Districts should not condition receipt of services on parental waivers of IDEA rights.
- Parent observation of group lesson.
- Do not waive any rights to compensatory education or to challenge educational services being offered during the closure of schools due to the COVID-19 crisis.

Graduation Issues

- Many transition programs with community based instruction can not run due to social distancing
- Graduation may be delayed to provide compensatory education.



Procedural Concerns

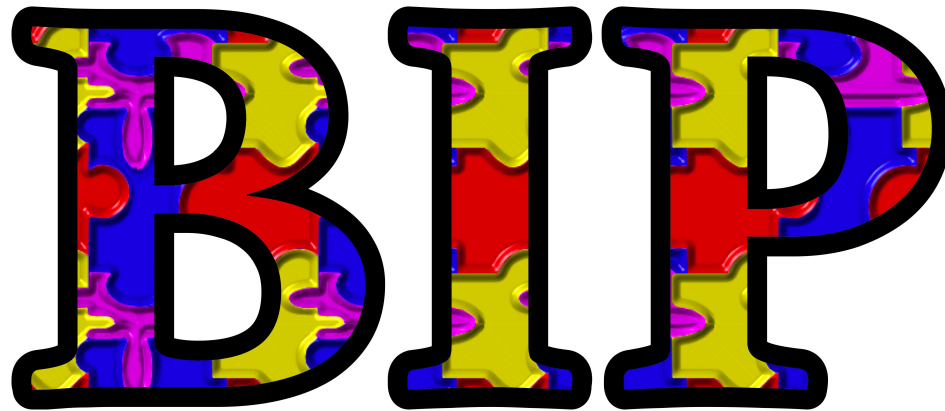
- Timelines – waiting for federal guidance
- Some reevaluation assessments can be done remotely with parental consent.
- In-person testing/observations will need to be postponed.
- Mediation and due process can still be initiated during COVID-19 crisis regarding FAPE violations.

Barriers Faced By Students with Severe Autism

- Lack of in-person support may lead to ineffective teaching and/or dangerous situations.
- Safety issues: addressing severe challenging behaviors versus working on skill acquisition.

Barriers Faced By Students with Severe Autism Cont'd...

- Implementation of behavior intervention plans may not be possible for parent to implement without an additional person present.



Barriers Faced By Students with Severe Autism Cont'd...

- Significant barriers to non-educational services such as State and Medicaid funded in-home services, insurance funded ABA services, State and Medicaid funded emergency placements and hospitalizations.

Residential Placements

- Pursuant to the FAPE provision of the IDEA school districts may be required to provide a residential placement, which must be provided at no cost to the child's parent or guardian. 20 U.S.C. §1401(9)(A); 34 C.F.R. §300.17(a); N.J.A.C 6A14-1.1(d)(1)
 - Note: FAPE is a federal entitlement and a school district cannot require a family to pursue state funding or health insurance.
 - Seminal 3rd Circuit Residential Placement Case: ***Kruelle v. New Castle County School District***, 642 F. 2d 687 (3d Cir. 1981)

Advocacy

- Federal Advocacy: CARES Act allows Betsy DeVos to request waivers to federal requirements.
 - Note: While the CARES bill requires the Secretary of Education to send a report to Congress on any IDEA waivers she may request regarding the COVID-19 crisis, **no IDEA waivers can be granted without approval from Congress.**
 - Consortium For Citizens with Disabilities (CCD) April 3, 2020 letter to DeVos opposing IDEA and Rehabilitation Act waivers.
- State Advocacy:
 - Importance of connecting with and supporting your state's educational advocates.
 - NJ advocacy – online related services & waivers.

Questions? Feel Free to Contact us

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