

United States Department of Education Underscores Need to Provide Educational Services to Students with Disabilities During School Closure

New guidance from the United States Department of Education (USDOE) addresses “a serious misunderstanding” of USDOE’s initial guidance issued on March 12, 2020, and clarifies that school districts should be working to provide educational services to all students and meeting the needs of students with disabilities during the school closure. Challenges in providing services to students with special needs should not dissuade districts from collaborating creatively to educate all students through the use of different virtual platforms and educational methods of instruction. The clear take away for districts from the new guidance is: provide educational services through all means possible. The guidance also provides anxiously awaited direction regarding IDEA timelines during this period of a national emergency. The guidance issued by DOE on March 21, 2020, *Supplemental Fact Sheet Addressing Serving Children with Disabilities during COVID-19 National Emergency* (“*Supplemental Fact Sheet*”) can be [found here](#).

Moving Forward with Flexibility and Creative Collaboration

The USDOE’s prior guidance was clear that during the current pandemic, if districts did not provide services to students in the “general population,” then districts “would not be required to provide services with disabilities during the same period of time.” The Supplemental Fact Sheet specifically clarifies that this prior guidance was not intended to be a call to inaction based upon a belief that it was too difficult to provide a free appropriate public education to students with disabilities, and therefore no student should receive services. Ensuring compliance with the IDEA “should not prevent any school from offering educational programs through distance instruction.” Instead, parents, educators, and administrators should “collaborate creatively to continue to meet the needs of students with disabilities.”

The USDOE acknowledges that districts may not be able to provide services as previously provided but emphasizes that districts have great flexibility in determining how to provide those services. Given that schools may continue to be closed for an extended period of time and potentially well-beyond the April 24, 2020 date listed in the Wisconsin Department of Health Services’ most recent Emergency Order ([See Emergency Order #12](#), dated March 24, 2020), districts should heed the USDOE guidance as a call to action. Districts should be working to establish educational services via online, virtual, videoconference or telephone communication or consultation. In the process of establishing those services, districts should not let the challenges paralyze them and should move cautiously but swiftly and with common sense to avoid any extended lapses in instruction.

IDEA Timelines

In its recent *Supplemental Fact Sheet*, the USDOE also addressed timelines associated with state complaints, due process hearings, IEP team meetings and evaluations/reevaluations. With regard to state complaints, USODE notes that due to “exceptional circumstances,” such as the COVID-19 pandemic, the state may extend the 60-day

timeline to reach a determination. Similarly, an administrative law judge, at the request of either party, may extend the timelines associated with a due process hearing. Finally, the parties to a due process hearing or a state complaint may agree to extend the timelines associated with either process “because of unavoidable delays caused by the COVID-19 pandemic.”

USDOE also clarifies that IEP teams may conduct meetings via alternate means, such as conference calls and videoconferencing. The USDOE, consistent with guidance from the Wisconsin Department of Public Instruction (“DPI”), further provides that “in making changes to a child’s IEP after the annual IEP Team meeting, because of the COVID-19 pandemic, the parent of a child with a disability and the public agency may agree to not convene an IEP Team meeting for the purposes of making those changes, and instead develop a written document to amend or modify the child’s current IEP.”

While USDOE’s guidance does not expressly provide any exceptions to the timelines associated with annual or initial IEPs, DPI’s most recent guidance states that these timelines may be extended. DPI notes that “IEP team’s deliberations may be extended only if: the LEA has reasonably determined the use of virtual technology is not a suitable method of conducting the required meeting; or information necessary for the IEP team’s deliberation is not attainable due to recommendations of the state or local health departments.” (See [Extended School Closure for Students with IEPs due to COVID-19 Special Education Question and Answer Document](#) (Revised March 20, 2020)). DPI also notes that if a parent refuses to meet virtually or via telephone, and further expressly prohibits the IEP team meeting from proceeding without their presence, “it is acceptable to wait to hold the meeting in person once the school reopens.”

In addition, with regard to initial evaluations, DPI expressly states that “if a student is not available because the school is closed, the timeline may be extended. LEAs should maintain documentation as to why the timeline was extended, and communicate to the parent as to why the evaluation cannot be completed within the 60 days.”

We know that our school district clients are working tirelessly to establish educational programs for all students and to explore different virtual and online learning platforms. To assist you, the School Law Team at Boardman & Clark is continually monitoring new and proposed legislation and regulatory guidance so we can provide updates to you and advise you accordingly. Please know our team is available to assist and provide legal and practical guidance and to collaborate with you as you navigate these issues moving forward. Please contact us via email or phone at any time for assistance.

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