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COVID-19 and Students with Disabilities

Introduction

The following information and resources are provided to outline the general responsibilities of a local educational agency (LEA) during the emergency closure of school buildings caused by the Coronavirus Disease of 2019 (COVID-19) to students with disabilities under the Individuals with Disabilities Education Act (IDEA) and Chapter 388 of the Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC). Neither the IDEA nor the NRS and NAC specifically address closure of school buildings due to this type of emergency situation. In order to provide the most reliable information on each LEA's responsibility for, and accountability to, students with disabilities enrolled in the LEA, this guidance from the Nevada Department of Education's Office of Inclusive Education (OIE) is based primarily on the guidance provided by the United States Department of Education, Office of Special Education Programs (OSEP). This guidance can be found at: <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf>.¹ A follow-up webinar conducted by NASDE/CASE/CCSSO on the COVID-19 entitled, "Guidance for Students with Disabilities" provides additional guidance and is available at: <https://www.casecec.org/>.² As more information becomes available, the Office of Inclusive Education (OIE) will provide further technical assistance and clarification to assist LEAs in fulfilling their unique responsibilities to students with disabilities during this emergency school closure.

Question 1: Is the requirement to provide a free appropriate public education (FAPE) to students with disabilities waived as a result of this emergency school closure of school buildings?

Answer: No.

"If an LEA closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. [Once school buildings reopen], the LEA must make every effort to provide special education and related services to the child in accordance with the child's individualized education program (IEP) or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504. The [U.S. Department of Education] understands there may be exceptional circumstances that could affect how a particular service is provided. In addition, an IEP Team and, as appropriate to an individual student with a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements." (OSEP Guidance, 2020)

¹ On March 17, 2020, the United States Department of Education released a factsheet entitled, "[Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#)".

² https://zoom.us/rec/play/usIvJbr-pm03TNGXsQSDAaB4W469L_6s03VK-PIEyhuyUXMLMFekZ7NDNOZ0KplYrwl9W5AsPdOeqZSC?startTime=1584110179000

As the general student population will be receiving educational services through distance learning or independent study beginning no later than March 23 and ending no sooner than April 6, 2020 (outside of periods already designated for spring break), LEAs will be required to provide services to students with disabilities during that same period of time. The Nevada Department of Education (NDE) recognizes that given this situation, it is unlikely that LEAs will be able to precisely duplicate the special education and related services identified in each student's Individualized Education Program (IEP) during this emergency closure of school buildings or even as a compensatory service, if required, after school buildings reopen. However, the implementation of alternative ways to provide special education and related services to each student with disabilities during the closure of school buildings may diminish the need to provide compensatory services to the student when schools reopen and traditional learning resumes. Virtual schools should continue to service students according to their standard practice as aligned to IDEA and the NRS/NAC.

The determination of whether a student requires compensatory services at the time school reopens for traditional learning must be made on an individual basis by the student's IEP Team in accordance with the applicable standards under both the IDEA and the NRS/NAC. During the previously mentioned webinar, the director of the OSEP indicated that, when traditional school operations resume, an IEP Team would determine on an individual basis whether there had been a "significant loss" in the provision of services to the student and whether or not compensatory services would need to be considered. It is important to note that this articulated standard is informal guidance only and LEAs are advised to confer with their legal counsel on the applicable legal standards for this determination under the IDEA and NRS/NAC, as interpreted by the courts.

LEAs are also encouraged to proactively communicate with the parents of students with disabilities during this emergency school closure on this and other related matters impacting the student, including any plans for after school resumes.

Question 2: When and how must LEAs provide special education to students with disabilities during this emergency closure of school buildings?

Answer: The OSEP Guidance addresses the situation in which elementary and secondary school buildings are closed for an extended period of time due to exceptional circumstances, which is characterized by OSEP as generally more than 10 consecutive days as is currently the circumstance in Nevada's LEAs:

"If an LEA closes its school [buildings] to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's individualized education program (IEP) or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504....If an LEA 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. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504))." (OSEP Guidance, 2020)

As LEAs are providing services to the general student population during this emergency closure of school buildings (outside of periods already designated for spring break), the LEA will need to consider ways to deliver services to students with disabilities to meet each student's individual needs. The following are some alternative ways to deliver services to a student with a disability, as appropriate:

- Accessible distance technology such as online or virtual instruction;

- Instructional telephone calls, and/or;
- Other curriculum-based instructional activities.

It is recommended that each LEA collect progress data on the delivery of any alternative services relative to each student’s IEP goals. This data will be important to an IEP Team in its determination regarding the impact of the school closure on each individual student with a disability. LEAs are also encouraged to proactively communicate with the parents of students with disabilities during this emergency school closure on this and other related matters impacting the student, including any plans for after school resumes.

Question 3: Are there any recommendations for an LEA after school resumes traditional operations?

Answer: Given the differences in each LEA’s school calendar and the unknown length of this emergency closure of school buildings, each LEA will need to make a determination regarding whether this emergency constituted a meaningful period of time. The OSEP Guidance (2020) may be utilized to determine whether the closure of school buildings was for an “extended period of time”.

Upon the resumption of traditional school, each LEA will need to develop a plan to facilitate each IEP Team’s consideration of the impact on the individual student of the school closure and how, if appropriate, the student’s needs must be addressed. As mentioned previously, these considerations may require the consideration of compensatory education.

Question 3: Does the emergency closure of school buildings waive any of the IDEA and NRS/NAC timelines and requirements with regard to an LEA’s responsibilities in the conduct of a due process hearing?

Answer: No.

If there is an open Due Process Complaint and any concerns arise with regard to the impact of the closure of school buildings on the conduct of the hearing or related requirements, the LEA that is party to the Due Process Complaint or the parents of the student with a disability or their representative should bring the matter to the attention of the appointed Hearing Officer. It is solely the determination of each individual Hearing Officer whether the school closure does impact the proceeding and, if so, how the hearing or related events will proceed.

Conclusion

As previously stated, the Office of Inclusive Education (OIE) will continue to provide further technical assistance and clarification to assist LEAs in fulfilling their unique responsibilities to students with disabilities during this emergency closure of school buildings. For questions, please contact Mr. Will Jensen, Director of the Office of Inclusive Education at wjensen@doe.nv.gov.

Educationally Yours,



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