Navigating the COVID-19 Crisis

Erin Maguire, CASE President
Myrna Mandlawitz, J.D., CASE Policy and Legislative Consultant
Kevin Rubenstein, Ed. D., CASE Policy & Legislative Chair
Julie Weatherly, Esq., Resolutions in Special Education

Moderated by: Phyllis Wolfram, Executive Director, CASE

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Agenda

1. Welcome and Introductory Comments
2. Introductions
3. Some Reminders: 4 Priorities
4. An update from Washington DC
5. Collaborative work with your Department
6. Dos and Don’ts
7. Questions

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Welcome and Introductory Comments

Phyllis Wolfram
Executive Director
Twitter: @phylliswolfram

April 3, 2020

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We Are In This Together!

“Is this how you do special education during a pandemic?”

- Are we documenting too much? Too little?
- Am I working too hard?
- Do these services look appropriate for this time?
- None of us have been here before - we have no baseline.
- We are doing exactly what we are supposed to be doing and creating a new baseline. We are learning and growing together!

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Four Priorities for Special Education:

1. Focus on the safety, health, and welfare of students and staff members in your community.

2. Provide FAPE - Deliver services to as many students as you reasonably can in the best way you know how.

3. Document your efforts; make sure documentation is focused, consistent, detailed and demonstrates a good faith effort to provide good services.

4. Compliance during the pandemic - IDEA wasn’t built for this.

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**Presenters for Today**

- **Erin Maguire**
  - CASE
  - President
  - Vermont
  - @VTEducator

- **Myrna Mandlawitz, JD**
  - CASE
  - Policy & Legislative Consultant
  - Washington, DC
  - @myrnamandlawitz

- **Kevin Rubenstein, Ed.D.**
  - CASE
  - Policy & Legislative Chair
  - Illinois
  - @kdruben

- **Julie Weatherly, Esq.**
  - Resolutions in Special Education
  - Alabama
  - @jweatherlyesq
Real Talk

Disclaimer:

The information we are providing today is the best we know at this moment.

- It might change by the end of the webinar based on additional guidance.
- It could change by next week if this worsens or if things change.
- States have specific guidance which should be reviewed as well.
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Updates from Washington DC

Myrna Mandlawitz, J.D.
CASE Policy & Legislative Consultant
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Current Resources & What’s Coming

- Federal government documents:
What We’re Working On

CARES Act - Flexibility Language

- As the voice for the local special education director, CASE worked with the National Association of State Directors of Special Education (NASDSE) to send a letter to OSERS seeking specific flexibilities.
- 31 state units signed the same letter.
- In our organizational history, we have never sought such flexibilities.
- Flexibilities sought in timelines, procedures, and fiscal management.
Continuing to Address Federal Needs

CASE will continue to consider how the federal decisions relate to local practices in special education:

- **Funding and allowable uses**
  - Will there be a COVID-19 Stimulus 4?
  - State specific issues

- **Flexibility requested and granted (or not)**
  - How will Secretary Devos act on our requests?
  - What will Congress do with these requests?

- **Case law that results from decisions during this time**
  - Will there be litigation that results from this time and, if so, what case law will be used as a basis for the decision?
Let’s Talk About Flexibilities

Erin Maguire
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Twitter: @vteducator

Kevin Rubenstein, Ed.D.
CASE Policy & Legislative Chair
Twitter: @kdruben
CARES Act - Flexibilities Needed

Timelines

- **60-day initial evaluation timelines** and **re-evaluation triennial due dates** [34 C.F.R. §300.301(c); 34 C.F.R. §300.303(b)(2)].
- **Annual IEP review timelines** [34 C.F.R. §300.324(b)(1)].
- **Complaint timelines** [34 C.F.R. 34 C.F.R. §300.508; C.F.R. § 300.510(a) and (c); 34 C.F.R. § 300.515(a) and (c)].
- **Part C to Part B Transition Timelines** [34 C.F.R. §300.124].
**CARES Act - Flexibilities Needed**

### Timelines

- Do you have evaluations (initials or reevaluations) that are overdue?
- Do you have parents who have requested a delay in a meeting timeline?
- How many parents have requested to schedule an IEP meeting review?
- Have you had parents file state complaints/ due process over COVID-19 related service delivery issues?
CARES Act - Flexibilities Needed

Procedures

- **Documentation of FAPE under each district's circumstances and IEP meeting procedures** [34 C.F.R. §300.323(c)(1); 34 C.F.R. §300.324(b)(1); 34 C.F.R. §300.324(a)(4)(i); 34 C.F.R. §300.328].

- **Data collection and corrective action plans** [34 C.F.R. § 300.152]
CARES Act - Flexibilities Needed

Procedures

- Do you have parents who are requesting to meet in person during the pandemic?
- How many parents have requested that you cease services at this time?
- Have you had to request to excuse more team members than usual because of the extraordinary circumstances?
- Do you anticipate meeting the standards of your State Performance Plan (i.e. the indicators)?
CARES Act - Flexibilities Needed

Fiscal Management

- **Maintenance of Effort** [34 C.F.R. §300.203-205],
- **Comprehensive Coordinated Early Intervening Services set-aside funds** [34 C.F.R. §300.205; 34 C.F.R. §300.326]
- **Proportionate Share** [34 C.F.R. §300.133]

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CARES Act - Flexibilities Needed

Fiscal Management

- Are you spending more or less money than you were before the pandemic?
- Do you forecast expending your proportionate share dollars?
- Do you forecast expending any CCEIS funds?
- Are you focused on addressing significant disproportionality?
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Dos and Don’ts of Special Education Practices during COVID-19

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CASE Policy & Legislative Chair
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Priority 1:  Focus on the safety, health, and welfare of students and staff members in your community.

Make Sure That You:

- Check in with all of your staff members (secretaries, parapros, social workers, etc.) to see how they are doing and provide appropriate space for sharing.
- Get outside and walk/jog/exercise as much as you can handle while adhering to appropriate physical distancing recommendations.
- Set appropriate limits for yourself while you are in this crisis and doing your work at home.
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**Priority 1:** Focus on the safety, health, and welfare of students and staff members in your community.

Make Sure To Avoid the Following:

- Engaging in unhealthy behaviors (i.e. too much drinking, overeating, etc.)
- Holding staff to high expectations that might not be realistic in the home setting.
- Getting out of routines that you once had (bed times, morning, etc.)
- Going against recommendations of the CDC (home visits, etc.)
Priority 2: Provide FAPE - Deliver services to as many students as you reasonably can in the best way you know how.

Make Sure That You:

- Engage, as much as possible, with parents and families.
- Provide some services to every student that are in line with the services you provided on the previously written IEP.
- Make sure that services provided by general education teachers is appropriately accommodated and provides access for all learners.
Priority 2: Provide FAPE - Deliver services to as many students as you reasonably can in the best way you know how.

By All Means, Avoid These:

- Doing nothing because it won’t be the same as when the students were in school.
- Wait until the Fall to see how it shakes out and what kinds of services students need.
- Don’t rely on compensatory services as a solution to COVID 19. Do not plan in this direction.
- Argue with parents about services and supports that are provided.
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**Priority 3:** Document your efforts; make sure documentation is focused, consistent, detailed and demonstrates a good faith effort to provide good services.

**Make Sure That You:**

- Document as much as you can right now. If you didn’t document that it happened, it didn’t happen.
- Create naming conventions, folders, etc. for your teams to use while they are working remotely (remember that much of this will need to be printed when we are back).
- Keep notes about those parents and families who are saying that they want less services now because they are feeling overwhelmed (and how you responded).
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Priority 3: Document your efforts; make sure documentation is focused, consistent, detailed and demonstrates a good faith effort to provide good services.

By All Means, Avoid These:

- Plan to rely on your memory- our memories during stressful situations are not activated again until the next stressful event.
- Plan on relying on documentation that might be scattered across the homes of your service providers.
- Stop sending your regular meeting, conference, involvement notices!

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Dos and Don’ts from a Legal Perspective in Special Education During COVID-19

Julie Weatherly, Esq.
Resolutions in Special Education
Twitter: @jweatherlyesq
Priority 4: Compliance during the pandemic - IDEA wasn’t built for this.

Don't worry so much about providing "compensatory education" right now. For each child with a disability, focus on preventing severe/significant regression in critical skill areas to the best of your ability.
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**Priority 4:** Compliance during the pandemic - IDEA wasn’t built for this.

Do ensure that distance learning service decisions are individualized and allow for the opportunity for parent input.
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**Priority 4:** Compliance during the pandemic - IDEA wasn’t built for this.

Do talk things through with your attorney, if you have one, and help your attorney devise a plan that you and your attorney feel confident is defensible.
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Priority 4: Compliance during the pandemic - IDEA wasn’t built for this.

Do remember that we are currently in a circumstance where there are no answers that we know to be 100% right from a legal perspective.

Us attorney-types are doing the best we can.
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Questions for Presenters

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To stay up to date on resources and information visit:

www.cec.sped.org

www.casecec.org

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Thank you for participating in the webinar today.

Connect with CASE next Friday:

April 10, 2020 - 12:00pm CST