AUTHORIZING LEADERSHIP & COVID-19

MARCH 23-24, 2020

www.qualitycharters.org

COVID19@qualitycharters.org

nacsa

COVID-19 and Students with Disabilities

March 23 & 24, 2020

This webinar will be recorded.

NATIONAL CENTER FOR SPECIAL EDUCATION IN CHARTER SCHOOLS

ncsecs.org

Background on the Center

The National Center for Special Education in Charter Schools (**the Center**) is an independent non-profit organization created to proactively engage stakeholders in ensuring that students with disabilities are able to access and thrive in charter schools.

www.NCSECS.org

National Center for Special Education in Charter Schools

Our Mission

To ensure that students with disabilities are able to fully access and thrive in charter schools.

Document and Communicate Facts

The Center is committed to proactively disseminating information about the status of students with disabilities in the charter sector.

Inform Policy

As a part of our efforts to engage in the national discussion, the Center works to track and inform federal, state, and local policy.

Develop Coalitions

The Center is committed to bringing together stakeholders to change the status quo for children with disabilities.

Build Capacity

The Center works to actively engage key stakeholders to fully leverage the innovative opportunities created by charter school laws.

Agenda

The Evolving Crisis

Legal Parameters

Delivery and Implications - “Must Dos”

Key Takeaways

Questions and Next Steps

An Evolving Crisis

As of March 22 at 6:55 pm:

- 46 states have closed all public schools
- Combined with district closures in other states, at least 121,000 public schools are closed or are scheduled to close
- At least 54.5 million public school students are affected
- The CDC has indicated that closures of 8 weeks or more may be necessary

Source: Edweek

Legal Parameters

Disclaimer: Nothing in this document or in these conversations should be construed as legal advice. If you have specific legal questions, you should consult your lawyer.

Requirements: Closure/ Transition to Alternative Models

Current U.S. Department of Education guidance states that:

- The IDEA, Section 504, and Title II of the ADA do not specifically address emergency situations where schools are closed.
- If an LEA suspends instruction to ***all*** students in an attempt to slow the spread of COVID-19, the LEA is not required to provide services to students with disabilities during that same period of time.
- If an LEA reopens or continues to provide educational opportunities to the general student population through an alternative means, **the school must ensure equal access for students with disabilities, including the provision of FAPE.**

Requirements: Closure/ Transition to Alternative Models

- New OCR guidance indicates that IEP teams and 504 personnel may meet via teleconference if needed. Where evaluations require face-to-face interaction, they should be postponed until school reopens.
- 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.
- The Department of Health and Human Services announced last week that privacy restrictions on platforms for telehealth have been waived. Otherwise HIPAA and FERPA rules could have gotten in the way of online delivery of therapy and other health services

Requirements: Closure/ Transition to Alternative Models

Supplemental guidance released over the weekend clarifies the following:

- Ensuring compliance with IDEA and Section 504 should not prevent any school from offering educational programs through distance instruction.
- Federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities.
- The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency.
- Federal law does not mandate specific methodologies. Where technology itself imposes a barrier to access or where educational materials are not available in an accessible format, educators may still meet their legal obligations by providing equally effective alternate access to the curriculum or services provided to other students

The Law is the Law

NOTE: *DOE guidance does not replace applicable federal, state and local law and regulations but is, instead, the Department's interpretation of those authorities in the context of the specific current situation.*

Authorizer Considerations

- Authorizers should be a powerful force ensuring equity and strong educational offerings for kids;
- In the chaos of this health emergency, authorizers should be a source of support, guidance, structure and accountability for students, families, and communities;
- Consistent communication is one key part of that; another is establishing clear policies for schools to follow.

Authorizer Considerations

- Authorizers need to be up to speed on the current rules relating to special education during the COVID-19 outbreak.
- Look to www.NCSECS.org, www.ed.gov and www.edweek.com for appropriate guidance.
- Authorizers should require schools to articulate their plan for serving all students (unless they are entirely closed)

Authorizer Considerations

- Do not assume that schools you oversee are familiar with the rules relating to SwDs and closure and remote learning.
- Require that schools:
  - Gather and maintain data on what they are doing for SWDs and how it is faring
  - Report that information to you in some viable format
  - Make such changes as you require in order to comply with law and their own policies

Delivery and Implications

Delivery “Must Dos”

1. How are schools ensuring that all teachers have continued access to student’s IEPs in a FERPA compliant platform?
2. Describe how schools are communicating with students with disabilities and their families:
   - Providing updates and expressing commitment to ongoing supports and services
   - Assessing what technology and/or virtual learning access needs exist (family/home needs assessments)
   - Determining who will be supporting the student in the home (e.g., younger students and students who require 1:1 supports)

Delivery “Must Dos” (continued)

3. How are schools and IEP Teams determining how students with disabilities will receive special education supports and related services via the current learning environment/distance learning plan?
    - Reviewing all components of each IEP (e.g., special education services, related services, accommodations and modifications, supplementary aids and services, transition services, etc.) and identify where elements need to be modified
    - Determining, where appropriate, which services cannot be delivered at distance and consider possible temporary conversion to consult services for adult responsible for the student
    - Developing guidelines on how will IEP goals be measured

Delivery “Must Dos” (continued)

4. How are schools determining which IEPs need to be revised and developing virtual IEP Team protocols to ensure IEPs remain in compliance as related to changes in the education of students with disabilities?
5. If services are disrupted due to illness or other pending issue (e.g., staffing shortage or lack of access to technology), how are schools determining provision of compensatory services?
6. How are schools assessing level of need related to educators skills and knowledge with virtual learning and instruction and developing capacity building plans for staff?

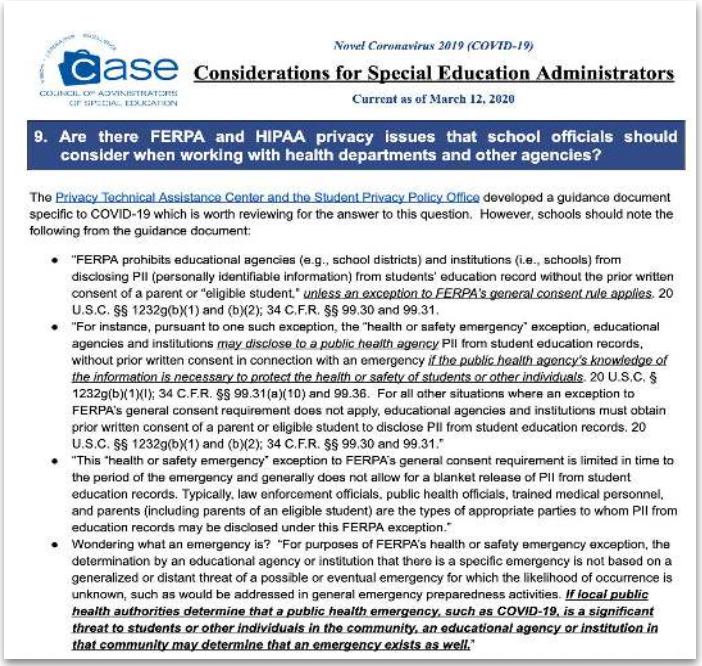
Delivery “Must Dos” (continued)

7. Describe how schools are collaborating with instructional teams and special education teams to determine how students will access content
    - If virtual - Access to computers, wifi, hotspots
    - If independent study or packets - Accessibility for each student, given unique needs
8. Collaborate with instructional teams and special education teams to determine what content students will access
9. Determine how evaluations will be completed within legal timelines and develop protocol for conducting virtual evaluations and IEP meetings

Delivery "Must Dos" (continued)

10. Determine how to navigate HIPAA/FERPA privacy issues

CASE COVID-19 - Considerations for Special Education



Novel Coronavirus 2019 (COVID-19)

Considerations for Special Education Administrators

Current as of March 12, 2020

9. Are there FERPA and HIPAA privacy issues that school officials should consider when working with health departments and other agencies?

The Privacy Technical Assistance Center and the Student Privacy Policy Office developed a guidance document specific to COVID-19 which is worth reviewing for the answer to this question. However, schools should note the following from the guidance document:

- "FERPA prohibits educational agencies (e.g., school districts) and institutions (i.e., schools) from disclosing PII (personally identifiable information) from students' education record without the prior written consent of a parent or "eligible student." *unless an exception to FERPA's general consent rule applies.* 20 U.S.C. §§ 1232g(b)(1) and (b)(2); 34 C.F.R. §§ 99.30 and 99.31.
- "For instance, pursuant to one such exception, the "health or safety emergency" exception, educational agencies and institutions *may disclose to a public health agency* PII from student education records, without prior written consent in connection with an emergency *if the public health agency's knowledge of the information is necessary to protect the health or safety of students or other individuals.* 20 U.S.C. § 1232g(b)(1)(I); 34 C.F.R. §§ 99.31(a)(10) and 99.36. For all other situations where an exception to FERPA's general consent requirement does not apply, educational agencies and institutions must obtain prior written consent of a parent or eligible student to disclose PII from student education records. 20 U.S.C. §§ 1232g(b)(1) and (b)(2); 34 C.F.R. §§ 99.30 and 99.31."
- "This "health or safety emergency" exception to FERPA's general consent requirement is limited in time to the period of the emergency and generally does not allow for a blanket release of PII from student education records. Typically, law enforcement officials, public health officials, trained medical personnel, and parents (including parents of an eligible student) are the types of appropriate parties to whom PII from education records may be disclosed under this FERPA exception."
- Wondering what an emergency is? "For purposes of FERPA's health or safety emergency exception, the determination by an educational agency or institution that there is a specific emergency is not based on a generalized or distant threat of a possible or eventual emergency for which the likelihood of occurrence is unknown, such as would be addressed in general emergency preparedness activities. ***If local public health authorities determine that a public health emergency, such as COVID-19, is a significant threat to students or other individuals in the community, an educational agency or institution in that community may determine that an emergency exists as well.***"

Google for Education

Health Insurance Portability and Accountability Act (HIPAA)
Family Educational Rights and Privacy Act (FERPA)

Rolling Up Their Sleeves

- Develop a COVID-19 working group that includes two members of the special education team, one focusing on compliance and one focusing on instruction/academics. Multidisciplinary team meets every day.
- Develop vision and purpose of distance learning (e.g., review, development of routine, introduction of new material, social emotional considerations).
- Determine which service options from students' IEPs can be provided in a distance learning model (e.g., general education, co-teaching, push-in, pull-out, resource room)
  - Special education teachers have weekly office hours for 1) co planning with GenEd content teachers, 2) consultation with other content teachers
- Instructional decisions:
  - Delivered lessons are recorded via Google Hangout and posted to Google Classroom
  - Synchronous small group instruction, co-teaching w/ breakout rooms, etc.
  - Asynchronous learning (because family contexts are very unique) oriented around peer to peer discussions, meaningful and individualized feedback, and individual check-ins
- Ongoing family contact and support - weekly calls, support strategies, etc.

Key Takeaways

Key Takeaways

1. IDEA rights apply ***even in times of crisis***.
2. Schools/districts should convene IEP teams (remotely, if needed) before changing students' placements.
3. Schools/districts that close and/or move to remote instruction must ensure that all students have the resources needed to access the new model.
4. Accommodations, modifications, or other supports guaranteed under Section 504 must also be provided.
5. Schools must work closely with parents to think and plan how to meet students' needs in this chaotic time.
6. Do not let the perfect be the enemy of the good.

Report from New York

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Questions?

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