

COVID-19 (Coronavirus), School Closures, and e-Learning: Special Education Issues

As we all work together to consider solutions for the issues caused by COVID-19 (Coronavirus), school closures, and possible e-Learning scenarios, it is important to recognize that the problems, solutions, and legal ramifications may change quickly, and the answers to some important questions are still unknowable, as the rules remain unwritten for some aspects of these issues (particularly e-Learning opportunities).

Miller Tracy will be updating our guidance on these issues located here:

<http://millertracy.com/content/school-response-pandemic-disease-such-coronavirus>

Also, ISBE will be continually updating its guidance on the issue located here:

<https://www.isbe.net/Pages/covid19.aspx>

And here:

<https://www.isbe.net/Documents/ISBE-Guidance-to-School-Coronavirus.pdf>

The federal Department of Education issued guidance on special education matters which can be found here:

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>

While these documents answer many of the questions we have received from school districts and special education cooperatives, there are several other questions that have been frequently raised. We advise schools to check back often - we will not issue guidance until we are confident such guidance is both helpful and accurate. Also, as you have questions, we are likely to update the answers here so that we can all benefit from the evolving conversation.

1. If schools are closed, and are not using e-Learning or other distance learning opportunities, do special education and related services required by a student's IEP have to be made up?

The answer depends on a few factors, including the length of the closure and whether or not ISBE approves Act of God days for the closure. For closures within the school calendar's emergency days, we would treat them like any other emergency days (which would automatically be made up at the end of the year), so no compensatory or make-up special education or related services would be required. However, if the school closure extends beyond the designated emergency days, the answer would change.

If those additional days of closure are approved as Act of God days (which mean those days are not required to be made up), then a direct make-up is not likely to be required (although specific ISBE guidance on this question would be appreciated). However, there are still FAPE issues that could arise. For example, the IEP team may have to consider extended school year (ESY) services if the length of the closure would cause progress to be significantly jeopardized and/or cause excessive regression.

If those additional days of closure are not approved as Act of God days, then make-up services would have to be considered. The Department of Education guidance linked above notes: “If a child does not receive services during a closure, a child’s IEP team (or appropriate personnel under Section 504) must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.”

2. If schools are closed, but the school district uses e-Learning or other distance learning opportunities, how do we meet the IEP requirements for students with disabilities?

First and foremost, we should highlight the language from the Department of Education’s guidance: “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.”

So, if a school district decides to use e-Learning to continue to instruct all students during a closure, the district will need to make sure that all of an IEP student’s educational needs are met to enable him/her to benefit from this instruction as well. School districts cannot simply provide general educational services virtually without considering the needs of students with disabilities. Both special education and general education staff must understand that the decision to continue providing educational services in e-Learning or another distance learning option will implicate special education obligations.

Also, we should be careful to note that as of now, the precise e-Learning rules are not yet fully known or finalized. Because only a handful of districts have formally-approved e-Learning plans under the existing statute, it is unlikely that your students’ IEPs have accounted for e-Learning. If a school district is going to do e-Learning, it is probably the IEP team (either through an IEP meeting or an IEP amendment) that would determine the nature and extent of services on e-Learning days for IEP students.

Both the federal and Illinois guidance suggest that the plans for an IEP student on an e-Learning day should be determined by the IEP team. For most IEP students (who spend most of their typical school day in general education), their e-Learning plan likely is the same as their non-disabled classmates, with some additional considerations for special education and related services. For others, that is clearly a more complicated question.

There are obvious challenges with providing e-Learning to early childhood and early elementary students, as well as to students whose disability provides challenges to implementing e-Learning. This answer presumes, of course, that the school district has overcome the barriers to e-Learning access that may apply to all students (such as socio-economic or geographic barriers). Districts are actively working to find solutions to these problems. Regardless, school districts must ensure that, to the greatest extent possible, each student with a disability receives the special education and related services identified in the student’s individualized education program (IEP).

3. If schools are closed (whether or not e-Learning is in place), how do we meet required timelines for IEP annual reviews, evaluations, and other deadlines?

For annual review deadlines and other deadlines that are date-dependent (i.e. an annual review that must be completed by May 1), the school district must still make sure that the meetings are

happening by the required deadline. The ISBE guidance indicates the same: “ISBE continues to expect that all districts will comply with requirements to timely convene IEP meetings for students. Schools may wish to avail themselves of the opportunity to ensure parent participation at meetings via alternate means, including telephone or videoconference, which are allowable under the Individuals with Disabilities Education Act.”

At this point, so long as schools are open, school districts should continue to have IEP meetings as usual, taking into account the recommendations on hand-washing, not shaking hands, sitting further apart, and other social distancing. It is prudent to inform parents of their option to participate by phone or video conference, and schools can encourage remote participation if the school finds it is necessary or if recommended by the health department.

For deadlines that are not date-dependent, such as an evaluation timeline (i.e. parent consented to an evaluation on February 20th, and the evaluation and EDC/IEP must be completed within 60 school days), the answer depends on whether school is open (including via e-Learning) or closed. For school closures with no e-Learning, the closure days would toll the 60 school days, so that the deadline would be pushed back accordingly. However, if e-Learning is in place, those days would count as “school days” and therefore count in calculating the deadline.

4. What if some school districts in a cooperative are closed, but others remain open? How will students in cooperative programs be served?

The best solution to this would be for school districts within a cooperative to consider this issue when deciding to close, and help create consistency in programming for students.

Otherwise, each school district is going to have to take responsibility for its own students. If District A remains open, but a District A student attends a classroom in District B/Cooperative that is closed, then District A will be responsible for determining how to serve the student. Because it is unlikely that the student can be served by District A during that period without a change to the IEP, the most likely outcome will be that District A will have to provide compensatory services once the closure is over.

As noted in the Department of Education guidance:

If a public school for children with disabilities is closed solely because the children are at high risk of severe illness and death, the LEA must determine whether each dismissed child could benefit from online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. In so doing, school personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services. The Department understands there may be exceptional circumstances that could affect how a particular service is provided.

If a child does not receive services during a closure, a child’s IEP team (or appropriate personnel under Section 504) must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

If the reverse is true (the home District is closed, but the service District/Cooperative is open), then the student could elect to continue to attend their program. The home district may have to consider transportation options in this situation.

5. When would the school district be required to provide homebound instruction, and how to we accomplish that if the student may have been exposed or contagious?

In a situation where the school district remains open, but a student is medically unable to attend school because of exposure to or diagnosis of coronavirus, then homebound instruction may be necessary. Remember that homebound eligibility is contingent upon receipt of the required medical certification.

The ISBE guidance notes: “E-learning days are meant to be used for schoolwide or districtwide events rather than for individual students. However, such a student might qualify for homebound instruction, completed strictly through telecommunications or the internet.”

Similarly, the Department of Education guidance notes:

It has long been the Department’s position that when a child with a disability is classified as needing homebound instruction because of a medical problem, as ordered by a physician, and is home for an extended period of time (generally more than 10 consecutive school days), an individualized education program (IEP) meeting is necessary to change the child’s placement and the contents of the child’s IEP, if warranted. Further, if the IEP goals will remain the same and only the time in special education will change, then the IEP Team may add an amendment to the IEP stating specifically the amount of time to be spent in special education. If a child with a disability is absent for an extended period of time because of a COVID-19 infection and the school remains open, then the IEP Team must determine whether the child is available for instruction and could benefit from homebound services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. In so doing, school personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services. The Department understands there may be exceptional circumstances that could affect how a particular service is provided.