



A TASB Student Solutions Webinar Series

It's A New Day: Hard ARDs, Difficult 504 Meetings & Other Communications to Parents During and After COVID-19

PRESENTED BY:
David Hodgins
Merri Schneider-Vogel
Hailey Janecka

1

Legal Disclaimer

This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional advisor. Consult with your attorney or professional advisor to apply these principles to specific fact situations. The views and opinions expressed in this presentation are those of the presenters and do not necessarily reflect the views or opinions of Texas Association of School Boards, Inc., its affiliated entities, or its officers, board members, or employees.



2

When ARDC is Required During “Closed Instruction”

- Annual ARD
- ARD scheduled before schools closed
- To consider an FIE
- To implement terms of mediation agreement
- To comply with an order of a hearing officer
- To consider ESY services



3

Mechanics of an ARD

- Legal requirements remain the same
 - Proper notice
 - Reasonable time in advance of meeting (5 school days in Texas)
 - Location is uncertain
 - Identify reason for convening virtually or by telephone
 - Issues to be discussed
 - Just checking boxes will not work in our current situation



4

Mechanics of ARD

- Document attempts to have parents participate
 - If parent is not responsive, attempt to find out why
 - Think outside the box to accommodate parent participation
 - Document efforts to provide access for parents
- Make sure everyone has the technology to participate
 - Take the time to train staff and other participants
 - Be sensitive to “ scheduling struggles” of other participants
- Presentation
 - Still a meeting of school officials with parent(s)
- Signing necessary documents



A TASB Student Solutions Webinar Series

Thompson & Horton LLP

5

Mechanics of the ARD—Tone and Technique Matter

- Use professional and courteous tone—remember, you are being recorded
- Make introductions
- Have a clear agenda
- Work to maintain order and keep focus on agenda
- Consistently clarify and seek understanding
- Create an environment as much as you reasonably can that is a quiet, private, and free of distractions (avoid certain backgrounds; pets, children, cell phones etc.)
- Refrain from eating and drinking during the meeting
- Dress appropriately



A TASB Student Solutions Webinar Series

Thompson & Horton LLP

6

Mechanics of the ARD—Tone and Technique Matter

- Set up for meeting and test equipment/technology at least 15 minutes prior to the meeting
- Have a back up plan if technology does not work
- Be on time for the meeting
- Mute your microphone when not speaking
- Learn how to set-up a virtual background
- Look into the camera
- Remember the nonverbal (smiling, nodding, thumbs up etc.)
- Learn how to privately chat
- Stay focused on the meeting



Remember you are always on video and/or being recorded

A TASB Student Solutions Webinar Series

Thompson & Horton LLP

7

Issues to Address at ARD

- Content of IEP document
 - Determination whether student's current IEP can be implemented fully during public health crisis
 - If not, agreement on specific amendments
 - Evaluation dates
 - IEP Goals and/or Objectives
 - Accommodations/Modifications/Supports
 - Assistive Technology
 - Services Provided During Health Emergency
 - Instructional/Related Services



A TASB Student Solutions Webinar Series

Thompson & Horton LLP

8

Issues to Address at the ARD

- Transition Services
- Behavior Intervention Plan
- COVID-19 Schedule of Services
- Communication with Parent Regarding Progress
- Student Assessment
- PWN



IEP Amendment

- Under 34 CFR § 300.324(a)(4)(i),
 - In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP



IEP Amendment

- Check operating procedures to see if your district has decided when it can and cannot use an IEP amendment

Modification of Existing IEP

Changes to the IEP may be made either by the entire ARD committee or by amending the IEP by agreement, rather than redrafting the entire IEP.

After the annual IEP meeting for a school year, the parent and district may agree not to convene an IEP meeting for the purposes of making changes to the IEP and instead may develop a written document to amend or modify the child's current IEP.

Upon request, a parent shall be provided with a revised copy of the IEP with amendments incorporated.

To the extent possible, a district shall encourage the consolidation of reevaluation meetings for the child and other ARD meetings for the child.

20 U.S.C. 1414(d)(3)(D)-(F); 34 C.F.R. 300.324(a)(4)-(6)



Content of IEP Amendment

- Language from 34 CFR § 300.324(a)(4)(i)
- Prior Written Notice*
- Contact information for assistance in understanding the provisions of Part B of IDEA
- Procedural Protections
- Parent Agreement
- Information for person to contact if parent disagrees with amendment



Prior Written Notice

- **A description of the action proposed or refused by the school district**
 - Explanation of what will be provided to the student during the time in which the COVID-19 crisis continues
 - Grouped by type of placement/service and allow the case manager to
 - Individualize document for each student
 - Describe methods of delivery of instruction/services and other related information and either modify existing IEP goals or at least note the annual IEP goals will be impacted by the COVID-19 pandemic



A TASB Student Solutions Webinar Series

Thompson & Horton LLP

13

Prior Written Notice

- **An explanation of why the school district proposes or refuses to take the action**
 - Standard of FAPE
 - School closure
 - State of Emergency orders for local and state leaders
 - Concerns for safety

BREAKING EDITOR'S PICK

Governor: Schools will be closed throughout the remainder of the school year

Joseph Brown | The Item | Apr 17, 2020



A TASB Student Solutions Webinar Series

Thompson & Horton LLP

14

Prior Written Notice

- **A description of each evaluation procedure, assessment, record, or report that the school district used as a basis for the proposed or refused action**
 - Public health emergency
 - Orders of state and local leaders
 - Student's present levels of academic achievement and functional performance
 - Student's appropriate goals and objectives which are reasonably calculated to confer educational benefits on Student
 - Current evaluation/assessment data
 - Student's IEP and previous progress
 - Academic and behavioral records
 - Teacher and/or staff feedback and input



A TASB Student Solutions Webinar Series

Thompson & Horton LLP

15

Prior Written Notice

- **A description of other options that the ARD committee considered and the reasons why those options were rejected**
 - Conducting in-person IEP services but rejected to best ensure health and safety of student



A TASB Student Solutions Webinar Series

Thompson & Horton LLP

16

Prior Written Notice

- **A description of other factors that are relevant to the school district's proposal or refusal**
 - Length of time campuses will be closed to direct in-person instruction due to COVID-19
 - Whether delay in services will create a need for COVID-19 Response Services
 - The IDEA does not mandate a specific methodology to provide special education services. Thus districts may still meet their obligations by providing children with disabilities equally effective alternate access to the current general education curriculum or services provided to non-disabled same-aged peers



A TASB Student Solutions Webinar Series

Thompson & Horton LLP

17

SECTION 504 PLAN AMENDMENT

- Amendment should address:
 - During national emergency District will offer virtual and other at home learning opportunities
 - State and local orders preventing in-person instruction
 - District has reviewed student's Section 504 plan and determined the accommodations and services that can be provided through distance learning platform in order to allow student to continue to progress through the general education curriculum and to make appropriate progress on student's Section 504 plan
 - List specific amendments



A TASB Student Solutions Webinar Series

Thompson & Horton LLP

18

Section 504 Plan Amendment

- Amendment should address:
 - After District resumes in-person instruction, Section 504 Committee may meet to review student's plan, the amendments, and the progress student made during this period to consider whether additional revisions to student's Section 504 plan are appropriate
- Statement regarding parent's rights under Section 504



Meeting vs. Amendment

- If parent does not agree to IEP Amendment, must schedule an ARDC meeting
- If parent does not agree with Section 504 Plan Amendment, must schedule Section 504 meeting
- If changing services rather than changing methodology




Change in Service v. Change in Methodologies

- According to the U.S. Department of Education, "there is nothing in the [IDEA] that requires an IEP to include specific instructional methodologies." 71 Fed. Reg. 46,665 (2006); and 34 CFR 300.320 (d)(1).



MS1

TEA's Emergency Contingency Plan



Effective dates for this plan Date _____ until campuses reopen.

Name of LEA
SPECIAL EDUCATION DEPARTMENT

SPECIAL EDUCATION EMERGENCY CONTINGENCY PLAN

This form may be used to document the temporary special education services that are feasible and safe to provide to an individual student while a local education agency (LEA) is closed but continuing to provide instruction during the COVID-19 pandemic, which some or all of the information recorded in this document may come from the student's individualized education program (IEP). This form is not intended to create or to replace the most recent IEP agreed upon by the local education agency and parental/guardian consent. **Without documented parent/guardian agreement under 34 CFR 300.324 to amend the student's IEP, this document should not be considered a portion of an IEP requirement.** It may be used for documenting services that will be provided to the child by the local education agency and educators during this unique situation and to assist the ABE committee in determining which, if any, compensatory services will be provided to the student once school reopens. LEAs must cooperate with a student's parent/guardian in the completion of this document, and it must be individualized for each student.

STUDENT'S NAME _____ BIRTHDATE _____ AGE _____

STUDENT'S ID # _____

STUDENT'S HOME CAMPUS _____

STUDENT'S DISABILITY CATEGORY/CATEGORIES _____

PARENT'S/GUARDIAN'S NAME _____

HOME ADDRESS _____ CITY _____ ZIP _____

PARENT/GUARDIAN'S HOME/CELL PHONE NUMBER(S) _____

YES NO An interpreter assisted in completing this form.

WHO PARTICIPATED IN THE COMPLETION OF THIS DOCUMENT?
(PLEASE NOTE THAT THERE IS NO REQUIREMENT FOR ANY SPECIFIC INDIVIDUALS OTHER THAN THE STUDENT'S PARENT/GUARDIAN, TO PARTICIPATE IN THE DOCUMENTATION COMPLETION.)

Student	Parent/Guardian
General Education Teacher	School Administrator
Special Education Teacher	District Representative
Related Service Provider	Other



ARDC Meeting

- If parents ask for ARDC meeting to complain about lack of services
 - Stress health and safety issues are foremost
 - Cite to TEA guidance from March 20, 2020
 - Then address what services will be provided and how



Mandatory IEP Team Members Still Required

- Under 34 CFR 300.321, whether in-person or in a virtual setting, districts must ensure that the IEP team for each student with a disability includes:
 - The student's parents
 - At least one general education teacher if the student is or may be participating in the general education environment
 - At least one special education teacher or, where appropriate, at least one special education provider of the child



Mandatory IEP Team Members

- A district representative who is: 1) qualified to provide or supervise the provision of specially designed instruction; 2) knowledgeable about the general education curriculum; and 3) knowledgeable about the availability of resources of the district
- A person who can interpret the instructional implications of evaluation results
- At the discretion of the parent or the district, other people who have knowledge or special expertise regarding the child, including related services personnel as appropriate
- The student (if appropriate)



A TASB Student Solutions Webinar Series

Thompson & Horton LLP

25

Mandatory IEP Team Members

- If a district holds a virtual IEP meeting without a parent in attendance because the district was unable to convince the parents to attend, the district must keep a record of its attempts to arrange a mutually agreed upon time to tele- or videoconference the parents. 34 CFR 300.322(d)



A TASB Student Solutions Webinar Series

Thompson & Horton LLP

26

Section 504 Team Members

- Section 504 is not specific about who must attend a 504 meeting
 - Persons knowledgeable about the student
 - Persons knowledgeable about the meaning of the evaluation data
 - Persons knowledgeable about the placement options
- Student's disability will impact potential team members



A TASB Student Solutions Webinar Series

Thompson & Horton LLP

27

Virtual Meetings

- Conduct thorough staffing prior to virtual meeting
- Verify technology accessibility of parent
 - Most virtual meeting platforms are available as apps on smartphones
- Prepare for technology mishaps
- To record or not to record



A TASB Student Solutions Webinar Series

Thompson & Horton LLP

28

After the Pandemic

- When will we return to “normal?”
 - Safety is first
 - Keeping parents in the loop is critical
- What to do when we return to in-person services
 - Consider students’ current performance
 - Review document from school service providers
 - Consider documentation from parents
- COVID-19 Response Services



Questions?



THANK YOU!



David B. Hodgins
Partner
Thompson & Horton LLP
3200 Southwest Freeway,
Suite 2000
Houston, Texas 77027
dhodgins@thlaw.com
(713) 554-6745



Merri Schneider-Vogel
Partner
Thompson & Horton LLP
3200 Southwest Freeway
Suite 200
Houston, Texas 77027
msv@thlaw.com
(713) 554-6754



A TASB Student Solutions Webinar Series

Thompson & Horton LLP

31

THANK YOU!



Hailey R. Janecka
Associate
Thompson & Horton LLP
3200 Southwest Freeway,
Suite 2000
Houston, Texas 77027
hjanecka@thlaw.com
(713) 554-6761



A TASB Student Solutions Webinar Series

Thompson & Horton LLP

32