The World As We Know It Comes To a Halt:

- 3-11-20 WHO characterizes the spread of COVID-19 a pandemic.
- 1-31-20 US government declares a public health emergency.
- 3-11-20 Houston Mayor and Harris County Judge declare a local state of disaster.
- 3-13-20 President declares a national emergency.
- 3-13-20 Governor declares a state of disaster in all counties.
- 3-19-20 Governor issues public health disaster declaration temporarily closing schools.
- 3-24-20 Harris County Judge issues stay home stay safe order.
- 4-27-20 Governor closes schools for the rest of the school year.
USDOE Begins to Issue Guidance

Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak – March 2020

• The IDEA, Section 504 and Title II of the ADA do not specifically address the situation of closure of schools for an extended period due to a disease outbreak.
• If schools are closed and no educational services are provided to the general student population, the district is not required to provide services to students with disabilities.

USDOE Begins to Issue Guidance – cont.

• When services to general education students begin, ”the LEA must make every effort” to provide special education to the student in accordance with student’s IEP or Section 504 plan.
• Schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services “in the student’s IEP or Section 504 plan.”
USDOE Issues Guidance Regarding Its Guidance

Supplemental Fact Sheet – Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools while serving Children with Disabilities – March 21, 2020

• At the outset, OCR and OSERs must address a serious misunderstanding that has recently circulated within the educational community.


• “School districts must provide FAPE” consistent with the need to protect the health and safety of students with disabilities and these individuals providing education, specialized instruction and related services to these students.

• Ensuring compliance with the IDEA, Section 504 and Title II of the ADA should not prevent any school from offering educational programs through distance instruction.

- OCR and OSERs recognize that these exceptional circumstances may affect how all educational and related services and supports are provided, and the Department will “offer flexibility where possible.”

TEA begins to issue guidance:

- If an LEA 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 the same time.
- If schools are closed, but the LEA continues to provide educational opportunities to the general student population during closure, the school must ensure students with disabilities also have equal access to the same opportunities, including the provision of FAPE.
TEA begins to issue guidance – cont.

- There has been no waiver of federal timelines related to special education compliance. Therefore, evaluation timelines will continue to apply for compliance reporting purposes. However, LEAs should prioritize the health and safety of students and their families, along with their staff, over meeting compliance deadlines. When timelines are not met, DOCUMENT the reason.
- “LEA and school staff will want to prioritize decisions and actions based on health and safety first, communication with staff and families, and then consider requirements of IDEA and state law.”

USDOE “Flexibility” and TEA Guidance Do Not Eliminate Requirements

- Secretary of Education was asked to provide Congress information/suggestions/recommendations regarding waiver of IDEA timelines and requirements.
- Secretary of Education recommended extending timeline for Part C to Part B evaluations until in-person assessment resumes.
Child Find – It’s Still a Requirement

- IDEA requires that all children with disabilities “... who are in need of special education services be identified, located and evaluated” whether enrolled or not. 34 C.F.R. § 300.111
- Child Find duty is triggered when district has reason to suspect an IDEA disability and, because of it, a need for special education and related services.
- When duty is triggered, courts will ask did district evaluate student within a reasonable time after notice of circumstances indicating disability and need for services?

Child Find – It’s Still a Requirement – cont.

- Parent may request an IDEA evaluation.
- Because Child Find is an affirmative obligation, parent is not required to request that a district identify and evaluate a student. See C.C. Jr. v. Beaumont Ind. Sch. Dist., 65 IDELR 109 (E.D. Tx. 2015, unpublished)
Section 504

Section 504 Contains Its Own Child Find Requirement

- Districts must annually “undertake to identify and locate every qualified [individual with a disability] residing in [the district’s] jurisdiction who is not receiving a public education.” 34 C.F.R. § 104.32
- District must take appropriate steps to notify children with disabilities and their parents about this Child Find duty whether enrolled or not.

Coordinating Child Find Activities

- Section 504 regulations do not specify the manner in which Child Find activities are to be executed.
- IDEA regulations do not specify the manner in which Child Find activities are to be executed.
- Section 504 and IDEA outreach can be coordinated together.
Coordinating Child Find Activities – cont.

• Community outreach may include:
  -- Year-round advertising and notices in the news media
  -- Periodic district-wide mailings
  -- Creation of Section 504 and IDEA informational pamphlets and distribution to police and fire departments, health care and childcare providers, social services agencies, adult literary programs, private schools, preschool programs
  -- Holding periodic screenings for preschool students
  -- Postings on district website

Coordinating Child Find Activities – cont.

• In-District education may include:
  -- Training ALL STAFF on duty to refer for evaluation under IDEA when there is a suspicion of an IDEA disability and a need for special education
  -- Training ALL STAFF on duty to refer for a Section 504 evaluation when student is suspected of having a physical or mental impairment that substantially limits a major life activity and the student “needs or is believed to need special education or related services.” 34 C.F.R. § 104.35(a)
  -- Including information on IDEA and Section 504 in Student Parent Handbook
Child Find Duties Have Not Been Waived by the Pandemic and Widespread School Closures

- USDOE has not waived Child Find duties under IDEA or Section 504.
- Congress has not amended laws regarding Child Find requirements.
- Continue Child Find activities.
- Explain on district website or in literature the procedures for referrals during school closures.

Child Find Duties Have Not Been Waived by the Pandemic and Widespread School Closures – cont.

What if a request for an IDEA evaluation or a Section 504 evaluation is received while schools are closed and normal operations are disrupted due to COVID-19?
A Dozen Questions on IDEA Evaluations

1. What if a district receives a request for an initial FIE while the district is conducting distance learning?
   • 15 “school days” to respond (Closed, Instructing; Open).
   • Obtain informed, written parent consent.
   • Complete components that can be done remotely.
   • PWN – Notify parent that parts of FIE cannot be completed remotely and plan to complete FIE when in-person instruction resumes.

A Dozen Questions on IDEA Evaluations – cont.

2. What if an initial FIE was in progress before schools closed, but is not yet completed?
   • Can the remaining components be completed remotely and the report completed – if yes, complete evaluation and report and hold virtual ARD Committee meeting.
   • If remaining components cannot be completed remotely, PWN to notify parent of the delay in completion and plan to complete evaluation when in-person instruction resumes.
A Dozen Questions on IDEA Evaluations – cont.

3. What if an initial evaluation was in progress before schools closed and is not yet completed, but there is enough testing to determine at least one eligibility?
   • TEA guidance as of 5-3-2020 is that special education eligibility determinations should not be made without consideration of all the relevant data points that would be provided in an initial FIE.
   • “Eligibility decisions, and any subsequent IEP development decisions, require consideration of all relevant data in order to ensure sound decisions are made in the best interests of the student. 34 C.F.R. § 300.306”

A Dozen Questions on IDEA Evaluations – cont.

• “LEA should continue to provide all appropriate general education interventions and supports to struggling students” in the interim.
A Dozen Questions on IDEA Evaluations – cont.

4. What components of an FIE can be completed remotely?
   • TEA guidance suggests a lot can be done remotely.
   • Rely on expertise of assessment professionals.
   • Validity of testing/results is critical.
   • For FIEs in progress – will some portions need to be updated? Redone?

A Dozen Questions on IDEA Evaluations – cont.

5. What if an initial FIE was completed before schools closed but had not been reviewed by the ARD Committee?
   • Finish evaluation report.
   • Hold ARD Committee meeting virtually.
   • Develop an IEP for when school resumes.
   • Develop the plan for distance learning now.
A Dozen Questions on IDEA Evaluations – cont.

6. What if consent for a reevaluation was obtained before schools closed, but it has not been completed?
   • 45 school day timeline does not apply.
   • Complete the components that can be done remotely.
   • PWN – Identify what cannot be done remotely and the plan to complete the reevaluation when in-person instruction resumes.

A Dozen Questions on IDEA Evaluations – cont.

7. What if a student’s three-year reevaluation is due while schools are closed?
   • Consider a REED to maintain eligibility and determine if additional testing is needed.
   • If additional testing is needed, provide PWN if some/all components cannot be completed remotely and plan to complete the reevaluation once in-person instruction resumes.
   • Do district operating guidelines need to be adjusted to permit REEDs in this situation?
A Dozen Questions on IDEA Evaluations – cont.

8. What about a student transitioning from IDEA Part C to IDEA Part B who will turn three years old while schools are closed?
   • TEA guidance states school closure dates are not applicable for Part C ECI to Part B IDEA evaluation timelines.
   • Make reasonable efforts to complete evaluation and develop and implement IEP by 3rd birthday.
   • Secretary DeVos on 4-27-2020 requested Congress to extend Part C to Part B evaluation timeline until face-to-face meetings can resume for evaluation purposes so toddlers can continue to receive Part C early intervention services.

A Dozen Questions on IDEA Evaluations – cont.

9. How do we count days for evaluation timelines during school closures?
   • Closed, preparing; Closed, temporary – Not school days in TEA guidance.
   • Closed, instructing; Open – School days in TEA guidance.
   • For evaluations that must be delayed to obtain valid test results, can the district reinstitute the timeline that was pending when schools closed? (Example: 20 school days remained to complete initial FIE and report when schools closed. Can the initial FIE be completed within 20 school days when in-person instruction resumes?)
A Dozen Questions on IDEA Evaluations – cont.

10. How does the LEA get informed parental consent for an evaluation while schools are closed?
   • TEA guidelines state 15 school day timeline applies to parent request for initial FIE when schools are closed.
   • LEA should not delay obtaining parent consent to evaluate until schools resume normal operations.
   • LEA should not decline to evaluate solely because FIE cannot be completed on time.
   • Use teleconference/virtual meeting capabilities to communicate with parent and obtain informed parent consent. Provide procedural rights and notices electronically and/or by mail.

A Dozen Questions on IDEA Evaluations – cont.

11. What if a parent consented to an evaluation before schools closed, but does not want the evaluation to continue during time of distance learning?
   • PWN – Fully document circumstances and provide to parent.
A Dozen Questions on IDEA Evaluations – cont.

12. What are the consequences for missing an evaluation deadline?

- What is outcome of evaluation when it is completed? DNQ/no new eligibility/no change to IEP – procedural violation but no substantive harm.
- Student qualifies for initial services/new eligibility is identified/IEP changes – case-by-case determination what the effect of delay in completing evaluation is on student.
- Address through ARD Committee.

Request for Section 504 Evaluation During School Closures Due to COVID-19

- Parent may request a Section 504 evaluation
  -- School may decline to evaluate if no reasonable basis for suspecting a disability.
  -- Section 504 regulations do not include a requirement for notice to parent but OCR interprets that a notice is required.
  -- If district refuses to evaluate upon a parent demand, it must provide parent with notice of right to challenge refusal under Section 504. OCR Memorandum 19 IDELR 876 (OCR 1993)
Request for Section 504 Evaluation During School Closures Due to COVID-19 – cont.

• School may agree to parent request, or initiate recommendation for a Section 504 evaluation.
  -- Provide parent with notice and obtain consent for Section 504 evaluation (not specifically in Section 504 regulations but required by OCR interpretation).
  -- Gather relevant data – parents, teachers, counselors, aptitude and achievement data, behavior, discipline, social and cultural background, physical and mental health issues, etc.

-- Decisions must be based on data from a variety of sources, documented and considered by a group of people who are knowledgeable about the child, the meaning of the evaluation data and the accommodation/placement options.

-- Materials, tests or evaluations used must be tailored to assess specific areas of educational need that are not racially or culturally discriminatory and are validated for the specific purpose for which they are used.

34 C.F.R. §104.35(c)
Request for Section 504 Evaluation During School Closures Due to COVID-19 – cont.

What if in-person contact is required for Section 504 evaluation testing?
- Section 504 regulations do not contain a timeline for conducting an evaluation.
- OCR applies a reasonableness standard.
- Reasonableness depends on the circumstances.

- Miami-Dade County Pub. Schs. (FL), 72 IDELR 194 (OCR 2017) – six month delay to evaluate after parent request unreasonable
- LaHonda – Pescadero United Sch. Dist. (CA), 20 IDELR 833 (OCR 1993) – 18 month delay between referral and evaluation violated Section 504
- Community High Sch. Dist. 155 (IL), 51 IDELR 228 (OCR 2008) – five month delay between referral and evaluation unreasonable
- Tracy Unified Sch. Dist. (CA), 115 LRP 17619 (OCR 2015) – four month delay in evaluating was unreasonable and blanket policy of requiring 6 to 8 weeks of intervention prior to referral was inappropriate.
Request for Section 504 Evaluation During School Closures Due to COVID-19 – cont.

- OCR has indicated IDEA 60 day initial evaluation timeline “informs” the standard for reasonableness under Section 504. Concept Charter Sch. (IL), 115 LRP 17593 (OCR 2015)
- OCR will consider state timelines to determine reasonableness. See Beach Park Cmty. Consol. Sch. Dist. (IL), 62 IDELR 155 (OCR 2013) (evaluation was not untimely where state’s 60 day timeline had not expired); Falls Church City Pub. Sch. (VA), 112 LRP 50238 (OCR 2012) (FAPE denied when district exceeded state’s 65-day timeline by 5 months.)

Request for Section 504 Evaluation During School Closures Due to COVID-19 – cont.

- Texas IDEA initial assessment timeline is 45 school days. TEC § 29.004(1)
- Compliance with timeline in conducting initial Section 504 evaluation allows district to argue reasonable evaluation timeline was met.
- Under normal circumstances, Section 504 evaluation may take much less time.
Request for Section 504 Evaluation During School Closures Due to COVID-19 – cont.

• If in-person contact is required as part of Section 504 evaluation, reasonableness of evaluation timeline will be substantially affected.
• Section 504 does not address this situation.

Request for Section 504 Evaluation During School Closures Due to COVID-19 – cont.

• Provide notice to parent that Section 504 evaluation requires in-person contact with student which is not currently possible due to school closures for protection of health and safety of student, school staff and community at large because of spread of COVID-19. Explain that a plan to complete the evaluation will be developed to be implemented when in-person contact with students resumes.
Request for Section 504 Evaluation During School Closures Due to COVID-19 – cont.

- What data and information can be gathered now while schools are closed that will be part of Section 504 evaluation?
- Gather and give to Section 504 committee members to review now.
- Get ahead of the backlog as much as possible now.
- Provide all appropriate general education interventions and supports to struggling students during distance learning.

More Thoughts on IDEA Evaluation Issues
While schools are closed:

- Do not be paralyzed – do all that’s possible now to keep moving forward on evaluations.
- Develop a plan for each type of data that is needed to complete a specific student’s evaluation.
  -- Is it available?
  -- Is it accessible?
  -- If not available or accessible, how can it be obtained?
  -- What is the plan for obtaining the data?
  -- Who is responsible?

(Cheramie/Gates)

While schools are closed – cont.

Is summer an option?
- Beginning June 1, in-school instruction and visits by students, teachers and staff to campuses may resume for certain activities including “instructional activities that school systems would like to prioritize during the summer.”
- Special education evaluations are specifically listed.
- Local option with many aspects to be analyzed and considered.
- See TEA guidance – Summer Instruction, Activities and School Visits: Guidance for Reopening and Student Interaction.
When in-person evaluations resume:

- Prioritize the evaluations to be completed.
- Initial evaluations (students not receiving services)
  -- In progress, mostly completed
  -- In progress, face-to-face evaluations needed
  -- Request for initial evaluation received during school closures and parent consent obtained
- Reevaluations
  -- Additional eligibility suspected
  -- In progress, mostly completed
  -- In progress, face-to-face evaluation needed

When in-person evaluations resume – cont.

- Three year reevaluations
  -- REED done, but additional testing requested
  -- REED done during school closures to maintain eligibility, no additional testing requested
  -- Three year date coming up soon
- Communication is key
  -- Communicate with parent for input on evaluation issues.
  -- Develop a plan to complete evaluation.
  -- Communicate plan to parents.
  -- Document all communication.
THANK YOU!

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