Introduction

• Unless school is closed, LEAs must make reasonable efforts to provide FAPE to students served by special education or under section 504 even in extreme circumstances such as the current COVID 19 pandemic response
• To the greatest extent possible, LEAs are responsible for continuing to provide special education and Section 504 services while offering limited educational services to general education students
• However, above all, LEAs should prioritize health and safety of students, staff, and communities.
Continuum of Learning Environments

A TASB Student Solutions Webinar Series  Presented by Thompson & Horton LLP

100% Face to Face Learning

- Greatest hope
- Critical for optimal learning
- Without it, our students are at risk of falling behind
- Health concerns may prevent 100% return to face-to-face learning

Source: Jill M. Siler Blog: [https://jillmsiler.com/2020/05/16/into-the-unknown/](https://jillmsiler.com/2020/05/16/into-the-unknown/)
Remote Learning

- What we have been doing since Spring Break
- Countless hours to create platforms and train teachers
- Not ideal for long term
- Need to assess
  - What worked?
  - What needs to be improved?
  - What is the best mix of taped/live learning?
  - What are the reasonable expectations of parents/caregivers?
  - What are the reasonable expectations for students?
  - How do we best sustain connection and support learning?

Source: Jill M. Siler Blog: https://jillmsiler.com/2020/05/16/into-the-unknown/

Sporadic Short-Term Closure

- Another emergency with short-notice could occur
- Fluctuating between open and closed/limited instruction
- Assessing on-line needs District-wide
- Flexible calendar options
- Personnel ramifications

Source: Jill M. Siler Blog: https://jillmsiler.com/2020/05/16/into-the-unknown/
Hybrid Learning

- Most challenging to plan
- Bring students back, but maintain social distancing
- Rotational schedules
- Logistic concerns (arrival, dismissal, lunches, extracurriculars, etc.)
- Student with disabilities with health issues – most vulnerable
- Staffing issues

Source: Jill M. Siler Blog: [https://jillsiler.com/2020/05/16/into-the-unknown/](https://jillsiler.com/2020/05/16/into-the-unknown/)

Continuum of Learning Environments

WE MUST PREPARE FOR IT ALL…
PROVIDING SERVICES DURING REMOTE INSTRUCTION

IDEA & Section 504 Services During COVID19 - USDOE

- Recognizing that implementation of the IDEA and the Rehabilitation Act can present difficult challenges during the COVID-19 pandemic, the Department has consistently emphasized (and will continue to do so) that schools and other recipients can and should find solutions for their students.
- The Department is not requesting waiver authority for any of the core tenets of the IDEA or Section 504 of the Rehabilitation Act of 1973, most notably a free appropriate public education (FAPE) in the least restrictive environment (LRE).

Report to Congress of U.S. Secretary of Education Betsy Devos April 27, 2020
IDEA & Section 504 Services During COVID19 - USDOE

- The Department’s position is based on the principles that:
  - Schools can, and must, provide education to all students, including children with disabilities;
  - The health and safety of children, students, educators, and service providers must be the first consideration;
  - The needs and best interests of the individual student, not any system, should guide decisions and expenditures;
  - Parents or recipients of services must be informed of, and involved in, decisions relating to the provision of services; and
  - Services typically provided in person may now need to be provided through alternative methods, requiring creative and innovative approaches.

Report to Congress of U.S. Secretary of Education Betsy Devos April 27, 2020

IDEA & Section 504 Services

- Must provide students served under the IDEA and Section 504 access to the same or equitable learning platform as their peers

- “LEAs should consider how current accommodations and modifications are provided in a physical classroom setting (i.e. extra time, redirection, small group, etc.) and what this looks like in a virtual environment”

TEA COVID-19 FAQ, March 20, 2020
Providing Services Virtually

“FAPE may include, as appropriate, services provided through distance instruction virtually, online, or telephonically.”

U.S. Dept. of Educ. Supplemental Fact Sheet, March 21, 2020

Considerations for Virtual Learning

• Consider:
  • The needs of the individual student;
  • The context and environment in which the student interacts;
  • The student and family’s comfort level with and access to technology;
  • The types of services that can be provided; and
  • Any alternative ways to meet the student’s needs, when necessary
Considerations for Virtual Learning Platforms

• Is the online program backed by research?
• Does the program have an interface that makes it easily accessible for students?
• Does the program utilize tenants of instruction needed for students with disabilities?
• Can the teacher, service providers, student, and parent easily track the amount of time the student worked, the skills addressed, and progress on those skills?

Related Services During COVID-19 Closures

• May be unfeasible or unsafe to provide some instruction in a direct and hands-on manner (ex: OT or PT services)
• May not be recommended in your county to provide related services using person-to-person contact
• If it is necessary and allowed under local orders, follow all guidance regarding proper safety protocols
Methods of Providing Services

• Possible ways to provide services:
  • Packets, workbooks, etc.
  • Consultation with/training of parents/caregiver (indirect service)
  • Direct one-on-one instruction provided virtually
  • Direct group instruction provided virtually
  • Recorded lessons, either generalized by topic or individualized to the student
  • Telephone calls
  • Emails/chats
  • Social distanced visits/check-ins

Related Services During COVID-19

• The service provider should ask:
  • What skills does this student most need to work on given the current learning environment?
  • What skills, if strengthened now, would best position this student to make progress on goals once traditional school resumes?
  • Can we revisit and review skills taught earlier in the year?
  • Are there any barriers to services, such as a lack of access to technology or privacy concerns?
  • Is this method of service appropriate for the student?
Tele-Therapy Services

• Texas licensing rules allow teletherapy if certain criteria are met
• Obtain documentation of informed consent from the family that includes:
  • (1) a description of the equipment and services to be delivered;
  • (2) how services via tele-practice may differ from services delivered in person;
  • (3) the individual’s right to revert to traditional face-to-face care at any time (may not be possible);
  • (4) any modifications that will be made in assessment protocols; and
  • (5) potential confidentiality issues

Group Virtual Services

• Consider sending consent forms for group sessions to protect confidentiality
• Take other precautions with online platforms to prevent parents from seeing full names of other students
• Follow FERPA guidelines as if you were in a classroom
Individual Services

- Communicate with parent
- Consider additional consent
- Consider allowing/requiring parent to be present
- Document/record interaction
- Ensure confidentiality

Assistive Technology

- If the ARD committee determines the child needs access to school-purchases AT devices outside of school settings, schools must permit the use of such devices at home or in other settings

- If it isn’t already in the student’s IEP, consider completing an IEP amendment to document the necessity of home-access
**Assistive Technology**

- Where AT is not easily portable, the district may need to facilitate temporary transfer to the student’s home
- Best practice – have some sort of written agreement
- Districts should ensure that any equipment is clean and disinfected and that any hand-off meets local, state, and national safety guidelines and protocols

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**Section 504 and IDEA Accommodations**

<table>
<thead>
<tr>
<th>Distance Learning Accommodations Helper</th>
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<td>Do this during virtual hangout, virtual zoom meeting</td>
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<td>Send announcements, reminders using virtual classroom, zoom, reminder phone app, etc.,</td>
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<tr>
<td>Have these available in your virtual classroom, send to parents via email, snail mail, etc.</td>
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<tr>
<td>At home calculator, calculator app on phone, calculator access via chromebook or other device</td>
</tr>
<tr>
<td>They’re at home... it’s a small group!</td>
</tr>
<tr>
<td>They’re at home... it can easily be an individual setting!</td>
</tr>
<tr>
<td>Post notes in your virtual classroom, email them a copy of the notes, snail mail a copy of the notes</td>
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SEE ATTACHMENT
## Distance Learning Accommodations Helper

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<td>Note taking assistance</td>
<td>Post notes in your virtual classroom, email them a copy of the notes, snail mail a copy of the notes.</td>
</tr>
<tr>
<td>Frequent breaks</td>
<td>Give brain breaks while in virtual classroom, post schedule with breaks built into it, communicate with parents via email, remind apps.</td>
</tr>
<tr>
<td>Breaks assignments into smaller parts, chunking</td>
<td>Make available in virtual classroom, send accommodated version via email, snail mail.</td>
</tr>
<tr>
<td>Color overlays</td>
<td>Changing background/text colors on device or assignment, parents can make one using colored report cover.</td>
</tr>
<tr>
<td>Enlarge print materials</td>
<td>Provide this just as it says, enlarge and get it to the student!</td>
</tr>
<tr>
<td>Follow routines or schedules</td>
<td>Post the schedule for your virtual classroom time, and assignment due date, testing schedule</td>
</tr>
<tr>
<td>Positive reinforcement</td>
<td>Send students emails, notes, pictures, virtual or recorded message!</td>
</tr>
<tr>
<td>Highlighters</td>
<td>Can be done using background color on device, most everyone has a highlighter, colored pencil, marker, crayon, or different colored pen at home.</td>
</tr>
<tr>
<td>Modify workload/length of assignments</td>
<td>Do this virtually!</td>
</tr>
<tr>
<td>Reduce paper/pencil tasks/busywork</td>
<td>Provide more online assignments, decrease busywork load...just do what lets you know they understand material.</td>
</tr>
<tr>
<td>Utilize manipulatives</td>
<td>Anything at home can be used for counting, grouping, etc. Talk with parent and see what they have.</td>
</tr>
<tr>
<td>Offer choices</td>
<td>Make a choice board of assignments they can choose from, post to virtual classroom, send to student via email, snail mail</td>
</tr>
<tr>
<td>Add pictures/visuals to test</td>
<td>Modify test with visuals, post to virtual classroom, send to student via email, snail mail</td>
</tr>
<tr>
<td>Teach skills in several settings and environments</td>
<td>Teach via virtual classroom, use recordings, use videos.</td>
</tr>
<tr>
<td>Practice</td>
<td>Description</td>
</tr>
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<tr>
<td>Reduce amount of information seen at one time.</td>
<td>Do this using virtual, or video format, communicate with parent to make a chunking folder, cover up parts with index card, or piece of paper.</td>
</tr>
<tr>
<td>Adjust assignment timelines</td>
<td>Give student alternate timeline, provide student/parent with a copy of due date expectations.</td>
</tr>
<tr>
<td>Allow for preferential seating</td>
<td>They’re at home! Easy one...</td>
</tr>
<tr>
<td>Allow for open book notes or tests</td>
<td>Provide them a copy of notes and areas from text they need via posting in virtual classroom, email, or snail mail.</td>
</tr>
<tr>
<td>Allow student to record or type assignments</td>
<td>Record virtual classroom meetings so students can access for review, students type assignments/end to teacher via virtual classroom, email, etc.</td>
</tr>
<tr>
<td>Blank place markers</td>
<td>Index card, ruler, piece of paper, let parents know that anything like that can be used!</td>
</tr>
<tr>
<td>Eliminate or limit copying activities</td>
<td>Provide copies via virtual classroom, email, or snail mail.</td>
</tr>
<tr>
<td>Emphasize critical information</td>
<td>Show and/or provide information highlighted, different text color, provide a critical information sheet.</td>
</tr>
<tr>
<td>Have student paraphrase or repeat directions to ensure understanding</td>
<td>Real conversation, chat option in virtual classroom, virtual classroom discussion.</td>
</tr>
</tbody>
</table>
Behavior Supports/BIP

- Many behavior interventions are classroom-based
- Behaviors may increase during online instruction
- Parent may need to act as proxies for school personnel to provide supports listed in the IEP/BIP
- Offer parent training as a related service for behavior
- Offer counseling for the student
- Schedule live instruction to enforce consistent learning routines
- Follow up with parent and students
- Document efforts and responses to parent concerns

Virtual Services & FERPA Concerns

- Any information a school therapist has is FERPA-protected only
- While FERPA does not have data security requirements, encourage confidentiality
- If a Zoom session is recorded by a district employee, it will become a district record and will thus be subject to FERPA requirements
Virtual Services & HIPAA Concerns

- Schools are not HIPAA-covered entities
- However, if a school’s “health care provider...delivers health services and engages in covered transactions, such as billing Medicaid for Medicaid-covered services in the school setting,” the resulting records may be covered by HIPAA

Number of Minutes Required

- Texas Education Code 25.081 requires a school to operate 75,600 minutes per year including time for instruction, intermissions, and recesses for students (first bell to last bell)
- Commissioner of Education may approve waivers due to disaster, flood, extreme weather conditions, fuel curtailments, and other calamities that cause school closures.
- Missed school day waivers for COVID 19 will be granted “as long as the LEA commits to supporting students instructionally while at home”
Number of Minutes Required

- Students with disabilities must have available an instructional day commensurate with that of students without disabilities. The ARD committee must determine the appropriate instructional setting and length of day for each student, and these must be specified in the student’s IEP [19Tex. Admin. Code 89.1075(e)]
- Not going to be able to provide all the minutes indicated in the student’s IEP during COVID-19 closures
- Needs to be commensurate with that of students without disabilities
- Need to provide FAPE

Documentation of Decisions During COVID-19 Closures

- According to TEA, LEAs should be documenting:
  - Decisions made;
  - What services were provided; and
  - Input/agreement from parent
- Must be individualized
  - Do not use a standard form or language that is not individualized and applies to all files and activities
Documentation of Services During COVID-19

• DOCUMENT:
  • Date and time of service
  • Amount, duration, and specifics of the service
  • The mode of delivery of services
  • The skills and objectives worked on
  • All progress on skills or objectives worked on
  • Any scheduled and cancelled sessions, as well as the reason for the cancellation
  • Parent concerns and District’s response to parent concerns

• Should be sufficiently detailed for the ARD or Section 504 committee to determine whether and/or to what extent additional services are needed once campuses reopen

Documenting Progress During COVID-19

• Continue to document as you do when school is in session to the best of your ability
• However, may need to create different documentation forms or put the data in a different part to document progress during COVID-19 closures so that this data is separate from the data for in-person instruction
• Monitor during virtual sessions
• Assess student assignments/work turned in
• Obtain parental input (may even want to create a form for the parent to fill out)
• Use virtual platforms that can assist with documentation of progress
• All service providers should be documenting
• All contacts should be documented
• The circumstances of the event should be documented as well (i.e. during COVID-19, with parental assistance, etc.)
• If a student is not making expected progress, determine why and consider if there are better reasonable and available methods of instruction
When the Student Is Not Made Available

- Documentation is key!
  - If you know why services are being declined, document the reason
- Inform the parent of the offer & document it
  - Document all offers of services
  - Consider parental input
- Be accommodating and responsive to parents’ and students’ needs
  - Document what the parent concerns are and the ways the multiple ways the District responded to those concerns
  - Is there a different mode of instruction that can be offered as a second option

Lack of Access to Technology

- Ask:
  - Can the district provide access, either by providing a laptop or a hotspot to the student?
  - Can the service be provided over the phone?
- If it is not possible for the district to provide technology, send home packets and document efforts made to provide technology
ESY Services Defined

- ESY Services provide individualized instruction and services to prevent the severe or substantial loss of skills or learning during the time beyond the regular school year when schools are not in session.
- ESY services are not a substitute for compensatory services.

TEA Guidance – Consideration for ESY and Compensatory Services for Students with Disabilities During and After Texas School Closures Due to COVID-19
# ESY Services

- Use data that you have to determine if ESY is necessary for summer of 2020

- “ARD Committees need to carefully consider any individual cases where an extended break due to closure is likely to result in severe or substantial loss of critical skills, or regression is reasonably expected to result in immediate physical harm to the student or others”

  TEA's Considerations for ESY and Compensatory Services, May 14, 2020

## Possible Considerations for Summer 2020:

- Face-to-face instruction for all eligible students (if possible)
- Face-to-face instruction for limited number of students (if possible)
- Continuation of virtual learning
### TEA Guidance on Summer Programs

- Starting June 1, in-school instruction and visits by students, teachers, and staff to the school campus may resume for certain activities, including:
  - **Summer learning options** (if offered by school systems) including
    - In-person summer school programs
    - Virtual summer school programs which require use of school facilities by teachers
  - **Instructional activities that school systems would like to prioritize** (e.g. specialized assessments, individualized tutoring, etc.)

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### TEA Guidance on Summer Programs

#### Deciding Whether to Offer In-School Instruction

School Systems should take their local context into account when deciding whether to offer summer school on campus by monitoring the situation on the Texas Department of State Health Services dashboard.

Dashboard:
[https://txdshs.maps.arcgis.com/apps/opsdashboard/index.html#/ed483ecd702b4298ab01e8b9cafc8b83](https://txdshs.maps.arcgis.com/apps/opsdashboard/index.html#/ed483ecd702b4298ab01e8b9cafc8b83)
TEA Guidance - Bringing Students on Campus

- Must be optional
- Consider prioritizing for:
  - Students with significant academic delays
  - Students with disabilities whose needs pose additional challenges to learning in a virtual environment but who are otherwise not medically at risk
  - Student learning experiences that cannot be done remotely (CTE, OT, PT)
  - Students experiencing homelessness
  - English learners
  - Younger students whose parents need childcare

TEA Guidance - Bringing Students on Campus

- Teachers and staff will need to be trained specifically on safety protocols
- No more than 11 individuals should be in an enclosed area together regularly, including teachers, staff, and students
- If in large space, groups of 11 need to be separated by 30 feet
- Desks should be at least 6 feet apart
- Where possible, no group or pairs work (recognizing that this is not possible for early childhood and some students with disabilities)
- When feasible, outdoor instruction is preferable
- Consistent groupings of teachers and students; teachers should teach only one group of students
### TEA Guidance- Bringing Students on Campus

- Teachers and staff should self-screen for symptoms before coming onto campus
- All students should be pre-screened before coming onto campus and at the start of every week of instruction, prescreen for COVID-19 symptoms for student and household.
- Take temperatures of students each day
- Hand sanitizer at each entrance and classroom and used often
- Supervised handwashing
- Consider having employees and students wear facemasks
- Place dividers on desks, where possible
- Implement extensive cleaning practices

### TEA Guidance- Bringing Students on Campus

- Plan for entry and exit procedures to reduce congregation
- Minimize school visitors
- Students should eat lunch at their desks
- Limited play space and procedures
- Contingent employment plans
- Procedures for positive COVID-19 case – require two week closure of the individual’s class group and all classes the teacher teaches (anyone who had regular contact)
- Written notification of positive COVID-19 case
Returning to Campus

• Before returning, school districts need to be considering:
  ✓ How and when will we assess students with disabilities upon returning to campus?
  ✓ Can we make distance learning an optional path for students with disabilities if it is not an option for general education students?
  ✓ Should we provide services over the summer to students with disabilities?
  ✓ Are there any potential transportation implications?
  ✓ Should we have a plan in place for students who are absent to encourage students with illnesses or vulnerable students to stay home?
  ✓ What kind of PPE should be used and by whom?
  ✓ How will we continue to social distance while providing services if necessary?
Returning to Campus

• “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.”

USDOE, March 12, 2020, Questions and Answers On Providing Services to Children With Disabilities During the Coronavirus Disease 2019 Outbreak

Compensatory Services

• Compensatory services are generally defined as educational services that a student needs to make up for skills lost because an LEA did not provide the services required by the IEP.

• While compensatory education is not a remedy expressly identified in the IDEA, courts have awarded it in appropriate circumstances by exercising their authority to "grant such relief as the court determines appropriate." 20 USC 1415 (i)(2)(C)(iii); and 34 CFR 300.516 (c)(3).
Compensatory Services

- Compensatory services “aim to place disabled children in the same position they would have occupied but for the school district’s violations of IDEA.” Reid v. Dist. of Columbia, 43 IDELR 32 (D.C. Cir 2005); Stapleton v. Penns Valley Area Sch. Dist., 67 IDELR 268 (M.D. Pa. 2016)
- Compensatory services is an equitable remedy. Noting that the IDEA permits a court to "grant such relief as [it] determines is appropriate," the 10th Circuit ruled that courts can also withhold relief based on equitable principles. Garcia v. Board of Education of Albuquerque Public Schools, 49 IDELR 241 (10th Cir. 2008)

COVID Response Services

- Compensatory services, however, does have a negative connotation in the case law
- It usually presumes that it was the District’s failure to provide the student with appropriate services that results in the award of compensatory services.
- COVID-19 closures are not the District’s fault
- COVID-19 closures impact all children
“[T]he ARD committee’s determination should not be viewed as remedy for a failure on the part of the LEA, but rather as a means to mitigate the impact of the loss of critical skills or learning that might have occurred as a result of special education and related services that could not be provided during the pandemic.”

TEA’s Considerations for ESY and Compensatory Services, May 14, 2020

COVID Response Services

• **COVID Response Services** – the educational services needed to make up for skills or learning that have been lost when services described in an IEP could not be provided during the health emergency.

• The ARD committee and/or Section 504 team must make an individualized determination whether and/or to what extent COVID response services are needed
COVID Response Services Analysis

STEP ONE: GATHER DATA

(1) Gather data regarding where student was when schools were closed before Spring Break
(2) Gather data regarding services provided and progress made during COVID-19 closures
(3) Gather data when student returns to in-person instruction after a certain amount of time for the student to adjust

COVID Response Services Analysis

STEP TWO: COMPARE TO ANTICIPATED PROGRESS

(1) Compare the data of when the student left and when student returned to in-person instruction
(2) Review Annual ARD goals and objectives
(3) Ask whether the student will meet his/her goals and objectives with continued services by his/her annual ARD and/or within appropriate time frame?
   • YES – COVID Response Services may not be necessary
   • NO – COVID Response Services may be needed
COVID Response Services

• Need time to gather data and assess progress
• Use beginning of year testing or other curriculum-based assessment benchmarks (preferably the same assessment used in prior years)
• Consider possible formal evaluations if necessary
• Use numerous data points from a variety of sources
• Data should be compiled and analyzed by key professionals
• Parent input should be obtained
• Analysis should be presented to ARD Committee/Section 504 Committee for review and decision

COVID Response Services

• This decision should be made on an individualized basis
• ARD Committees must consider individual data for each student once the campus reopens, including:
  • What services were temporarily reduced or suspended due to school closure;
  • Benchmark data from before school closure;
  • Progress documentation from during school closure;
  • Services provided and student’s response to the services
  • If adequate progress was not made, any documentation as to why it was not; and
  • Any additional considerations or documentation necessary to determine whether the student requires COVID response services
COVID Response Services

• If COVID Response Services necessary, committee should determine type, location, duration and frequency
• Should not be misconstrued to necessarily require a minute for minute make-up of services missed
• Consider student and family implications on delivery of services
  • Overloading student may do more harm than good
  • Removal from routine/peers may have negative impact
  • Should be in addition to services already provided in IEP
• Monitor and revise, as appropriate

Options for Providing COVID Response Services

• Before or after school
• Increase frequency of current minutes during school day – but must consider LRE concerns
• Summer services (in addition to ESY)
• Remediation camps – if special education services are provided
• Reimbursement to parents for outside tutoring or programs
• Services during vacation periods or on weekends

May require us to “think outside the box”
COVID Response Services

• Districts may need to prioritize the scheduling of ARD/Section 504 Committee review
• May not be possible to hold 100s or 1000s of meetings in the first 30-90 days of school reopening
• Need time to gather data and determine effect on student
• Review should be at the campus level – case managers in best position to look at all the data/circumstances for student
• Parental input and communication is key

What Can LEAs Be Doing Now to Prepare for Next Year?

✓ Effectively communicate with families regarding services that are being provided and not being provided

✓ Maintain detailed documentation of all services provided and all contacts with parents and responses to parent concerns

✓ Maintain records of whose IEPs were amended and whose IEP services were otherwise temporarily reduced or suspended

✓ Gather and review documentation of where the student was prior to Spring Break.
## What Can LEAs Be Doing Now to Prepare for Next Year?

- Gather and review documentation of where the student is at the end of the school year.
- Determine the evaluation data needed to determine present levels of academic and functional performance and plan for assessment of student’s progress upon return.
- Determine the most common types of services that will likely be needed upon return and start planning accordingly.
- Consider staffing and scheduling needs.
- Communicate with families about the plan for determining COVID response services upon returning to campus.

## Most importantly…

- Take a deep breath – we will all get through this together!
THANK YOU!

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