



Covid-19



Know your rights and the District's obligations to educate your child with special education needs during this unprecedented health crisis.

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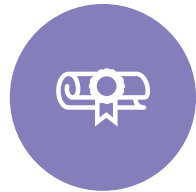
Where is the information coming from?



Various Sources



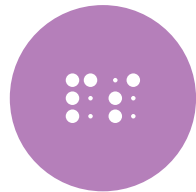
Governor's Cuomo's
Executive Orders



New York State Education
Department of federal Office
of Special Education have
issued various guidance
documents



NYS Board of Regents has
adopted Emergency
Regulations



Possible Amendments to the
federal Individuals with
Disabilities Education Act
(IDEA) but nothing yet

Governor Andrew Cuomo - "Coronavirus Czar"

NYS on PAUSE -
<https://coronavirus.health.ny.gov/new-york-state-pause>

Schools across the State directed by the Governor to close as of March 18th

Governor Cuomo has waived the requirement that NY public schools must instruct students for at least 180 days to receive State funding

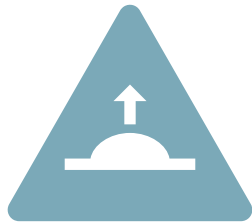
Governor's order closing schools has been extended a few times

Situation is evolving

A lot of confusion

e.g. NYC's Mayor De Blasio declared schools in NYC closed for the rest of the year; Governor Cuomo said you can't do that

Status of School Closures



Schools are closed until at least
May 15
Governor Cuomo has indicated as late as
yesterday that he is not ready to say that
schools will be closed the rest of the year;
however, it appears that may be the case



PA and MA have closed their schools for the
rest of the academic year



Currently, Gov. Cuomo has said that schools
will not open until all schools open
Statewide; however, this may change and
some schools in the State may re-open
before others

What does this mean for students?

Under the **Governor Cuomo's Executive Orders** - School Districts are required to establish a Covid-19 closure plan for alternative instructional options

Means: schools districts are required to provide each student with a disability the special education and related services in the Student's IEP to the greatest extent possible

Districts required to provide meals to children

In addition to instruction and related services, school districts have been directed by Governor Cuomo to develop a plan for distribution of meals to children.

Per NY State Education Department, All School Food Authorities (SFA) must provide meals to low-income children during school closures related to Covid-19 **and** to every child who comes to their meal sites

Federal Guidance from the U.S. Department of Education

Dept. of Education has issued guidance encouraging schools and parents to collaborate to meet the needs of students with disabilities

Suggested alternative methods for providing instruction and related services include: distance instruction, teletherapy, meetings on digital platforms, data tracking and documentation

Does the District have to amend the Student's IEP if it is being implemented remotely?

Guidance from the Federal Dept of Education indicates that **no**, Student's IEPs will not have to be amended to include online learning if online learning is part of a school closure recommendation



Related Services


- The Federal Department of Education is encouraging districts to provide related services through telepractice to the extent possible and consistent with privacy practices

What does this mean? Some related services such as counseling or speech/language therapy can be continued remotely; however, services such as physical therapy and occupational therapy most likely can't be provided remotely

Services provided through teletherapy

NYS has regulations that mandate that providers who are providing services remotely are responsible for confidentiality and record-keeping to the same extent as when providing direct in person services

Governor Cuomo has issued an Executive Order to enable mental health professionals and licensed social workers in good standing in any State in the U.S. to practice in NYS without a NYS license or registration



What if related services can't be provided remotely?

Districts will have to address the issue of services that were not provided remotely either because:

the District did not offer the service remotely

Not possible for the Student to participate in the related service

CSE will have to make a determination as to **compensatory services** to be provided to the Student as a result of the Student not receiving IEP services during school closure



Compensatory Services

Two ways to calculate the compensatory services a child is entitled to:

First way - apples to apples

Student's IEP indicates that he gets 4 speech/language therapy sessions per week, 30 minutes (e.g. two hours per week); did not receive speech/language therapy, 4 times per week, 30 minutes, for 10 weeks so is entitled to 20 hours of make-up speech/language therapy sessions for each session that he/she missed



Compensatory Services Continued

Second way of calculating Compensatory Services - qualitative analysis that is more complicated



Compensatory services needed are based on an assessment of the services the child needs to be in the place that he/she would have been in if the District had provided the services per the child's IEP

How would this work?

- E.g. if the District can show that the child will be in the place he/she would have been in with 10 hours of speech/language therapy sessions, District be able to get around providing the speech/language therapy sessions mandated by the IEP

How can the District do this? May be able to show that the child will meet his/her IEP goals through just 10 speech/language therapy sessions instead of the full 20; however, if child can meet goals with fewer services, maybe goals are not appropriate?

Case by case determinations needed



Compensatory services that each child will need is a very individual decision - based on the child's needs and what they were provided and/or able to access during the school closure



These determinations regarding compensatory education should be made in IEP meetings



Parents challenge these IEP determinations in a due process hearing



Many districts will be looking to provide as few services as possible when school resumes; many parents will most likely need legal representation to get their children the services they are entitled to

English Language Learners

- All students who are identified as English Language Learners with disabilities should be provided to the extent possible with services in accordance with their IEPs

NYS Board of Regents' Emergency Regulations to address Covid-19

01

NYS Board of Regents has extended Governor Cuomo's waiver of 180 school days mandate to include nonpublic schools with an approved special education program and approved preschool special classes

02


As of April 7, 2020 - the NYS Board of Regents has canceled the June Regents examinations

03


- What does this mean practically for Students who were scheduled to take the Regents?

Regents exams

Students will be exempt from the exam if they are:



1) enrolled in a course culminating in taking Regents and will have earned credit in such a course, will receive diploma credit for the Regents course and an exemption from taking the Regents exam



If the student is enrolled in a course culminating in a Regents and they have failed to earn credit by the end of the school year, the student will have to return for summer instruction to make up for the failed course credit and will be subsequently granted diploma credit in 8/2020 but will not have to take the Regents in August



Regents Exams' exemption continued:

- Also applies to students who were previously enrolled in a course of student leading to a Regents exam who had achieved course credit but had not yet passed the associated Regents examination but were intending to take the test in June 2020- will now be exempt from the exam and credit for exam will be given towards Regents diploma

Loosening of NYS Special Education Regulations by NYS Board of Regents



Effective April 7, 2020:



Preschool providers who would otherwise have to make up services within 30 days of the missed session do not have to include days that the school is closed



Boards of Education generally have to provide appropriate special education programs and services to students within 60 school days of consent to evaluate; however, new amendments indicate that the 60-school day-time period will not include any days that the school is closed
- this means that for newly identified students, the District will not have to provide special education services while school is closed

What about Students referred to the CSE?



Are initial evaluations or re-evaluations being conducted?



Guidance from NYS and the federal Dept. of Education indicate that any evaluations that can be conducted remotely or over the phone should be done



However, most evaluations require face-to-face meetings; districts not required to do these meetings until school re-opens irregardless of the 60-day time frame for conducting evaluations (measured from when the parent provides consent to evaluate)



Re-evaluations and CSE meetings

- Re-evaluations may be done by using existing data; unless determined that additional evaluations are warranted
- District is not required to meet in person for CSE meetings while schools are closed; may agree to amend without an IEP meeting
- Parent and District may agree to use alternative means of meeting participation requirements e.g. video conference calls or just plain telephone conference call

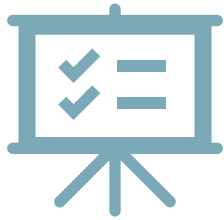
Board of Regents additional Emergency Regulations regarding due process hearings

Due Process Hearings under the IDEA are still allowed and moving forward. However, there have been some amendments:

Impartial hearing officers have been authorized to receive testimony by video

Impartial hearing officers are authorized to allow extensions for up to 60 days (instead of 30 days)

The situation is evolving quickly - where is this all going?



Under the Coronavirus Aid, Relief and Economic Security Act, signed March 27, 2020, United States Secretary of Education Betsy DeVos has 30 days to submit recommendations to Congress to change Federal IDEA regulations in light of school closures



United States Secretary of Education, Betsy DeVos, will be addressing Congress over the next few days with proposed amendments to the IDEA



It is anticipated that she will ask Congress to pass legislation to loosen the requirements of the IDEA to let the districts off the hook to provide FAPE to special education students during school closures and to lighten the District's obligation to provide make-up services

Possible Proposals by Betsy DeVos for IDEA changes

Betsy DeVos may request that Congress amend the IDEA to include waivers of requirements such as deadlines for conducting evaluations and providing services, data collection on progress monitoring, IEP meeting procedures

Concern is that if Congress passes these waivers to address this crisis, changes will remain part of the IDEA

Evolving situation at both the federal and State level

01

WILL HAVE TO SEE
WHAT IS PROPOSED
BY THE SECRETARY
OF EDUCATION
REGARDING IDEA

02

BETSY DEVOS IS
JUST MAKING A
PROPOSAL; WOULD
STILL HAVE TO BE
PASSED BY
CONGRESS

03

NOTHING
DEFINITIVE YET;
GOVERNOR CUOMO
IS ADDRESSING
SCHOOL CLOSURES
ON A WEEKLY/BI-
WEEKLY BASIS

What can you do now to protect your child's education?



Document as much as possible the services your child is receiving during the school closure



How many sessions of related services did the District offer?



What special education instruction did the District offer?



Was your child able to participate in the related services or special education instruction - remote learning may not work for some children at all - parents are not available/working, student just can't retain the services without teacher/related services provider/aide being present

Document instruction and related services as much as possible



Recommendation to keep a journal of instruction and related services; if the special education instruction only lasts 10 minutes during a session, document that



Reason: down the road, if pushing for compensatory services, it will be more difficult for the District to be able to make the argument that special education instruction/related services were provided remotely when in fact, you have documentation that the instruction/services were either not provided or your child was not able to participate in remote instruction

Questions?

