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Guidance Related to COVID-19:

IDEA, Part B Provision of FAPE

Background

As part of Delaware's response to the COVID-19 outbreak in the United States, DDOE is offering this guidance document to accompany guidance issued by the U.S. Department of Education, Office of Special Education Programs (OSEP) on ensuring a free appropriate public education (FAPE) during the COVID-19 outbreak, which can be accessed at the following website: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>

Scope

This document contains guidance on local education agencies' (LEAs) responsibilities under Part B of the federal Individuals with Disabilities Education Act (IDEA) relating to the provision of FAPE. This document generally constitutes informal guidance and does not impose any additional requirements beyond those included in applicable federal and state regulations.

Date Issued

The guidance from OSEP issued on March 12, 2020 will remain in effect until further notice.

Guidance on the Provision of FAPE

If all schools close without general education services:

If an LEA closes its schools to slow or stop the spread of COVID-19, and 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 that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services in accordance with the child's IEP. If there is an exceptional circumstance that could affect how a service is provided, an IEP team must make an individualized determination to decide whether a student with a disability requires compensatory education.

If all schools close with general education services:

If an LEA continues to provide educational opportunities to the general student population during a school closure, including distance learning, e.g., online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, the LEA must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE.

Specific student(s) are advised to remain out of school:

In the event that a particular student with a disability has an extended absence from school (generally more than 10 consecutive school days) because that student has been advised, requested, or required to stay away by public health authorities, the student's IEP team must convene to review the student's placement determination. Homebound instruction is on the continuum of placements that the IEP team should consider. If the IEP team determines that a change in the student's placement to homebound instruction is necessary, the team must revise the student's IEP to reflect the student's change in placement, and as appropriate, revise services, including specialized instruction and related services.

Concerning service delivery for such a student, school administration officials and the student's IEP team, in consultation with public health officials, must determine whether the student is available for instruction and would benefit from such instruction during the period of any absences. Homebound services may include online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. There may be exceptional circumstances that could affect how particular services are provided to children with disabilities during extended absences. If a student does not receive services for an extended period of time, an IEP team must make an individualized determination to decide whether a student with a disability requires compensatory education to make up for any skills that may have been lost because the student did not receive educational benefit.

If a public school for children with disabilities is selectively closed due to the possibility of severe complications from a COVID-19 outbreak:

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. 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 must make an individualized determination whether, and to what extent, compensatory services may be needed for any skills that may have been lost during the closure.

Questions?

If you have questions relating to this guidance, please contact the Exceptional Children Workgroup at the Delaware Department of Education at 302-735-4210 or maryann.mieczkowski@doe.k12.de.us.