



# **IDEA Best Practices During the COVID-19 Crisis**

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**Spring 2020**





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Council of the Great City Schools

# IDEA Best Practices During the COVID-19 Crisis



Spring 2020

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# Purpose of this Guide<sup>1</sup>

In response to the COVID-19 pandemic, school districts across the country were required to close school buildings in order to protect the health and safety of students and staff. During this time, district staff and leaders have taken extraordinary steps to provide continuity of learning for all students, developing and implementing creative approaches to the remote delivery of education and related services.

Nonetheless, this disruption has been difficult for all students and, in particular, for students with disabilities and their families. Distance learning as a form of instruction significantly alters the teaching and learning process and the student-teacher relationship.

The intention of this document is to offer guidance for districts to be mindful of as they continue to provide instruction and services to students with disabilities during and after the COVID-19 health crisis. This includes guidance on outreach and communication with parents; conducting virtual IEP, MTSS, PBIP, and remote eligibility meetings; handling parent evaluation requests and progress reporting; prior written notice procedures; the development of distance learning plans; and a range of other related topics. In addition to identifying key considerations in these areas, this guide provides [links](#) to a host of sample materials and policies from large urban school districts across the country. The goal is to support districts at this critical time, and to equip them with the knowledge and tools they will need to navigate the physical, educational, financial, and legal challenges of educating students with special needs in the aftermath of a global pandemic.

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<sup>1</sup> The information provided in this entire document and in the attachments does not, and is not intended to, constitute legal advice; instead, all information, content, and materials are intended to provide general information and guidance only. Please consult and follow your state statutory guidelines, regulations and school district attorneys as required.

# Framing the Challenge: Individualized Recovery Planning for Students with Disabilities Receiving Special Education, Compensatory Services, and COVID-19 Disputes

## Context

In determining “Best Practices” for supporting students with disabilities in the time of emergency school closures, it is important to remember that the original intent of the Individuals with Disabilities Education Act (IDEA) was to address the inadequate educational services offered to children with disabilities and combat the exclusion of such children being educated with their peers. 20 USC §1400(c)(2)(A)-(B). In other words, students with disabilities should have the same opportunity to receive an education as non-disabled peers. Students with disabilities receiving special education under the IDEA thus have a procedural and substantive right to a free appropriate public education (FAPE) and that right is enforceable through the courts.

The IDEA is clear that, in order to deliver a FAPE, special education and related services must be delivered “in conformity with the [IEP].” (20 U.S.C. § 1401 (9)). Many circuit courts (including the 9th, 5th, and 8th Circuits) have found that material failures to deliver the services called for in an individualized education program (IEP), in the manner and frequency required by the IEP, is a violation of the IDEA and a denial of a FAPE.<sup>2</sup> Other circuits such as the 3rd Circuit further consider whether a school district has taken steps that are reasonably calculated to enable a student to make appropriate academic progress in light of his or her circumstances.<sup>3</sup>

## The Challenge of School Building Closures

The mandatory conversion due to the COVID-19 pandemic from traditional learning at school facilities to distance education at home has created a major disruption in the delivery of all education, including special education supports and services. COVID-19 disruptions have also highlighted divides in access to technological resources that are available to families and districts as we all respond to this situation.

In other words, no students (students with and without disabilities) are receiving the same level of educational experience as before COVID-closures. Moreover, it is likely that all students (with and without disabilities) will require some additional supports upon their return to school facilities following the COVID-19 closures.

Yet, while the circumstances within which all children, in the general and special education populations, are educated changed virtually overnight, there has been no corresponding legislative or regulatory change in what it means to comply with an IEP or provide FAPE.<sup>4</sup> While the range of circumstances and individualized needs is vast, the delivery of remote learning opportunities and student and staff interaction are limited by factors such as teacher and parent availability, health and safety concerns, willingness to participate in their child’s education, and capabilities, as much as by technology access and other at-home circumstances.<sup>5</sup>

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2 *Van Duyn v. Baker School District* (9th Circuit 2007) 481 F.3d 770.

3 *S.C. v. Oxford Area School District* No. 17-2990 (3rd Circuit 2018).

4 The USDOE declined to seek waiver recommendations to FAPE, LRE Requirements, Timelines, etc. as requested by Congress for their consideration.

5 One example of a challenge most schools will face is how to simultaneously accommodate individualized instructional needs and honor LRE placements.

Thus, LEAs have been placed into an untenable situation: because they were forced, through no fault of their own, to change the manner of IEP service delivery and face the predicament that notwithstanding their equitable, good faith actions to deliver services to students with disabilities, they may be unable to provide the services as described in students' IEPs and expose themselves to expensive, burdensome, and resource-consuming litigation, and attendant fee shifting, once the dust settles.

As the U.S. Department of Education wrote, "the IDEA, Section 504, and Title II of the ADA do not specifically address a situation in which elementary and secondary schools are closed for an extended period of time (generally more than 10 consecutive days) because of exceptional circumstances, such as an outbreak of a particular disease." In guidance dated March 12, 2020 and March 21, 2020, the USDOE did acknowledge that FAPE may need to be provided in a different manner and that services may not be delivered as they typically would in a school building. The guidance states: "an IEP Team and, as appropriate to an individual student with a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to make an individualized determination as to whether and to what extent compensatory services are needed under applicable standards and requirements."

The critical concern is that some would seek to impose a presumption that school districts are expected to provide "compensatory services" due to a global pandemic resulting in the closure of school buildings. Compensatory services have traditionally been required only when a school district has failed to offer an appropriate education to a student with disabilities. Under the extraordinary and unprecedented circumstances of COVID-19, the ability to educate all students and for educating students with disabilities in particular changed dramatically and suddenly. The unique circumstances of an unsafe school environment must be considered when evaluating a school district's offer of education generally, and good faith effort to implement a student's IEP or Section 504 plan. Reasonably, compensatory services should be applicable only when services were not offered when school personnel could have reasonably done so through distance learning under stay-at-home orders.

Recognizing the disruptive effect of this abrupt and imposed change in education delivery, the USDOE declaration in a guidance document that IEP teams would subsequently need to engage in an "individualized determination as to whether compensatory services are needed"<sup>6</sup> requires proper interpretation. This statement should be interpreted in light of the underlying reason why children may need other services, attributable to a global pandemic, to avoid confusion with the compensatory education liability standard set forth in jurisprudence analyzing the IDEA requirements, which was never intended to apply to this type of unprecedented circumstances. The IDEA itself neither mentions nor defines the term "compensatory services."<sup>7</sup> Nor has USDOE sought to clarify whether "compensatory services" are the equivalent of "compensatory education." Thus, LEAs are rightfully concerned that the guidance to consider "compensatory services" will be interpreted as an invitation to litigate disagreements arising from adjusted services caused by mandatory COVID-19 school facility closures regardless of what distance education services are offered or what steps schools take to assist students to catch up when normal school operations resume.

This concern is not unfounded. Indeed, parent demands for compensatory education and resulting litigation has already begun, and threats of individual and class action litigation are widespread.<sup>8</sup> LEAs should not be required to make up for each service not provided during school closures due to a global pandemic wherein districts were mandated to close school buildings and provide distance education services instead of the traditional programming the school teams planned for and provided for its students. This is not a situation where an LEA has intentionally or negligently denied FAPE to a student; it is a forced response to a national crisis not within the control of the LEA. That

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6 Questions and Answers On Providing Services To Children With Disabilities During the Coronavirus Disease 2019 Outbreak, dated March 12, 2020; Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities, March 20, 2020.

7 Interpreting regulations (at 300.151 and 300.432) mention compensatory services as part of remedies to a state complaint alleging IDEA violations.

8 On April 13, 2020, a special education attorney sought to certify a class action against the Hawaii Department of Education involving compensatory education remedies and claims resulting from the failure to implement IEPs during the coronavirus school closings. (*W.G. v. Hawaii Department of Education*.)

is not to say that districts would not be required to address the recovery planning of individual students in some way, but it should not be a requirement that each individual minute of service not provided during school closures be provided once schools reopen.

## Moving Forward

Districts are committed to working for the success and progress of all students and engaging in a common approach that is viable for students and school districts. School districts will continue to keep their FAPE obligation at the forefront of their decision-making, taking into account the specific needs and circumstances of each student with disabilities in these challenging times. As school districts implement some form of distance learning for all students, they need to make sure students with disabilities are also receiving instruction through these methods. Supporting students with disabilities will also require districts to conduct an individualized review of the educational impact of these unique circumstances and determine appropriate next steps, taking into consideration whether or not a student has experienced a loss of skills and/or lack of progress as compared to their non-disabled peers, in light of the child's circumstances. An analysis in light of the child's circumstances is consistent with the ruling of the Supreme Court in *Endrew F.*<sup>9</sup>

It is critical, however, to distinguish this commitment to individualized recovery planning, on the one hand, from any presumption that all districts must make up for each and every minute of service students did not receive due to the school closures resulting from the COVID-19 pandemic, on the other. It is currently a nationwide challenge to employ enough special education providers to adequately cover existing services, let alone adding tremendous numbers of compensatory hours to those already required by student's IEPs. Most school districts would not have the capacity to provide additional services alleged to have been missed by students during COVID-19 school facility closures while also providing ongoing IEP services. For students with disabilities, FAPE during pandemic-related school closures should be measured by taking into consideration the remote learning opportunities being offered to nondisabled students. If a nondisabled student is not receiving the same degree of instruction and service during distance learning as they would receive in a school building, it is reasonable to expect that students with disabilities would similarly not be offered the same amount of instruction that they would receive while in a school building. This approach is aligned to the equalizing purpose for the creation of the IDEA and Section 504 of the Rehabilitation Act. This distinction will facilitate districts' ability to focus on meeting the needs of individual students, while avoiding unnecessary pressure on the system to elevate form over substance.

LEAs additionally should not be required to bear the financial and resource burdens arising from IDEA compliance disputes and lawsuits when they neither created the violation, nor were given adequate time to prepare and plan for the scenario that underpins them. The costs of litigation, both to the limited financial resources provided to carry out LEA obligations and to the already overburdened teachers and service providers attempting to meet those obligations, have always been difficult to manage, even in normal times. School districts bear all the costs of such special education disputes, including due process hearings, which can easily range for an individual dispute between \$10,000 and \$200,000 at the district level. The number of cases varies across districts, but could annually be in the millions nationwide. This does not include appeals. Therefore, without legislation and/or appropriate additional funding, claims for—and disputes regarding—compensatory services due to school disruption caused by the COVID-19 response have the potential to overwhelm LEAs and leave them unable to effectively fulfill their missions to provide quality education to all students, including those with disabilities.

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<sup>9</sup> *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S., 137 S.Ct. 988 at 999 (2017).



There is also a tremendous impact to the school district in terms of personnel time. Teachers, therapists and other related service providers will be removed from their duties serving students on a regular basis in order to participate in defense of these cases. When a school district loses, the potential remedies they will have to bear will cause serious financial ramifications to districts that are already experiencing financial constraints and potential significant budget and corresponding personnel cuts brought on by COVID-19. This will lead to fewer teachers and administrative supports, which would in turn have devastating effects on the ability of school districts to serve all students. Potential class action lawsuits could have catastrophic impact on services to all students, including those that the IDEA intends to serve, and instead fund attorneys' fees and costs (parents' attorneys as well as LEA's outside counsel to defend claims).

In summary, LEAs face a Herculean task—they must try to use the resources, personnel, and finances they have to educate students safely, thoroughly, and in a way that is consistent with their legal obligations. As districts pursue the work of planning for physical reopening, they are considering various ways of addressing ongoing health and safety issues through potential staggered schedules as well as addressing childcare needs of working parents (including their own staff). Decisions about individual students will need to be made in the context of the realities of what reopening looks like for each district. Without shirking any obligation to use good faith efforts to look at each child individually, LEAs need reasonable expectations on how they can recover from this catastrophic and historic situation and the opportunity to move forward without having to defend themselves from the issuance of orders requiring compensatory services.

Upon return to operations, districts will also need sufficient time to determine the best way to address the needs of all their students and time to collect data to determine the best way to provide an education without the disruption and costs of disputes and litigation. Districts will need the patience and support of families, advocates, and the legal community in consultation with parents to take the time to make an appropriate determination, taking into account the needs of students and capacity of staff. That time can be used to allow districts to identify the range of and plan for additional supports and services that may be needed to allow all of their students to regain skills and make progress in their education.

# Guidance and Resources on Selected Topics

## IEP Meetings

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### Should we conduct IEP meetings during distance learning?

- If the team has appropriate current data to hold an IEP meeting (virtual or teleconference), the meeting should be held.
- In the event that a parent is uncomfortable having an IEP meeting or if an IEP meeting cannot be held the meeting should be scheduled upon a return to school and stress that there will not be a lapse in service until that time.
- Part of the consideration of whether to request an extension from parent should consider the following:
  - Will the changes being made to the IEP have a direct impact on the distance learning format being utilized? If the answer is no, an extension of the meeting may be appropriate.
  - Are there changes to FAPE that could be difficult to implement in a distance learning format? (i.e., changes to PBIP)
  - Is this a meeting that involves advocates, lawyers or concerns that may result in substantive changes to FAPE?

In these situations, an extension, if agreed to by the parent, may be best. If team does not have appropriate current data or the conditions listed above are present, an extension should be requested from the parent. If a parent does not consent to an extension in writing via email, the meeting should be held.

## IEP/504 Meeting Requirements and Annual Reviews

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- If a student's IEP or 504 Plan is due for an annual review, schedule a virtual or teleconference meeting. Proceed as usual to update the IEP or 504 plan, taking into consideration the current learning environment as well as the learning environment when the student returns to school.
- Please type in participants' names in the plan and indicate that they participated virtually.
- For IEP Meetings make sure there is a Prior Written Notice that goes into the detail of the "why" behind every determination and rejection.
- Make sure the conference notes capture any parent concerns and a statement like:
  - Due to the National Emergency in response to the COVID-19 epidemic and guidelines set forth by the CDC for social distancing, this meeting was held virtually. The parent participated by (phone/virtually). The implementation date is (district to insert date) so that the parent has an opportunity to review the Prior Written Notice and Procedural Safeguards. The parent was provided a draft via (mail/email) and will receive the Procedural Safeguards, IEP and Prior Written Notice via (mail/email).

- Please make sure your implementation date takes into account the amount of time it will take for the parent to receive the Prior Written Notice.

## Distance Eligibility Meetings (conducted virtually or by teleconference)

- If evaluations have been completed and there is sufficient data for the team to determine eligibility, meeting should be held.
- Flexibility regarding number of observations/time period of data collection is encouraged if professionals performing the evaluation determine that sufficient data (Existing data, Tier I and Tier II data that supports the Tier III data being reviewed) has been collected in order for the team to make an appropriate determination. The meeting to draft an IEP or 504 Plan must occur within the statutory timeframe for making the eligibility determination and may or may not take place on the same day as the eligibility determination. Another meeting can be scheduled at a later date, as long as the meeting is scheduled within the statutory timeframe.
- The Eligibility Determination document for special education services should be filled out completely with the “why” of every determination and rejection by the team as well as every evaluation measure used to make the determination as this will serve as the Prior Written Notice.
- This statement should be put in the appropriate section of the document (i.e., “Additional Considerations by Team section”):
  - Due to the National Emergency in response to the COVID-19 epidemic and guidelines set forth by the CDC for social distancing, this meeting was held virtually. The parent participated by (phone/virtually). The Consent to special education services will be sent to the parent via (mail/email) and the parent has the option of providing consent via email. The Eligibility paperwork, Procedural Safeguards will be (mailed/ emailed) to the parent by (date) and an IEP Meeting will be scheduled to write a plan within the required statutory number of days following receipt of the parent/guardian written consent.

## How to Prepare for Virtual Meetings with Parents?

### Scheduling the Meeting

- Contact the parent via email or phone to schedule a virtual meeting using one of the available virtual meeting platforms.
- Create a Meeting Notice that you will send via email or mail. Please document at least two notices. Include Procedural Safeguards in the mail or email.
- If the parent has internet access and can participate virtually send an invitation via these platforms.
- If the parent does not have technology to participate virtually use phones/virtual platform to call parent so they can fully participate.

### Documentation for the Meeting

- Send a draft of the IEP to the parent 5 days before the scheduled meeting. In addition, send any evaluation reports if applicable to the meeting.
- Make sure the parent is emailed or mailed an agenda for the meeting.

## Parent Evaluation Requests During Distance Learning?

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- Contact the parent within the required statutory number of days of the parent request for evaluation using a virtual platform or the phone.
- Review the data and consider suspected areas of disability as usual.
- Include a statement in the notes from the meeting such as:
  - “This consent was obtained during the school building closures related to COVID-19. The parent was in attendance and has provided verbal agreement with the proposed evaluation plan. A copy of this consent will be provided to the parent with a copy of the Procedural Safeguards via mail or email. Due to school operations closures, some elements of the evaluation which require direct, face-to-face assessment or observation may not be completed until school buildings reopen which may impact typical case timelines.”
- After the meeting is concluded, mail or email the parent a pdf copy of consent and Procedural Safeguards. Request that the parent respond to the mailing or email confirming their receipt of and consent to the proposed evaluation plan.

## Current Open Evaluation and Re-Evaluations

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- Identify cases that are currently open.
- Determine if all remaining evaluation components can be completed remotely.
- If so:
  - Complete evaluation components, then
  - Continue to Eligibility Meeting/IEP, as appropriate.
- If some parts of the evaluation require direct assessment (e.g. direct testing/observation):
  - Compile a list of such cases and draft a proactive communication to the parent.
  - Example communication would be:

“Your child has a current open evaluation to consider due to the COVID-19 school building closures, certain elements of direct assessment cannot be completed until school buildings reopen and your student returns to school. This may impact typical evaluation timelines. We appreciate your understanding during this difficult time, and if you would like to discuss this further you can contact <INSERT APPROPRIATE CONTACT HERE>.”

## Requests for Independent Educational Evaluations (IEE)

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- Continue to follow your state’s specific statutory time period for responding to requests for IEEs if there is one in place. For states with no specific statutory time period for response to a request for an IEE, districts must respond without unnecessary delay. This has been viewed to be a very short time period so responses should be provided as quickly as possible.
- If a parent requests an IEE, the district must make a decision as to whether to provide the IEE or file a due process action to defend the district evaluation.
- If the district is going to move forward with the IEE, the district should provide the documents that are normally provided to parents who request an IEE.



- If the evaluation is one that requires face-to-face interaction, the district should do whatever can be done to prepare for the evaluation to proceed when possible and inform the parent of the status of the evaluation.

## MTSS and PBIP Meetings<sup>10</sup>

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- Plan Facilitators should reach out to the parent/guardian to let them know that staff are still working and interested in connecting with them to discuss their child's progress and current performance with distance learning. If the parent requests to reschedule the meeting for a later date, then document that request. If the parent requests to proceed, then the MTSS/PBIP meetings can be conducted as a virtual meeting or phone conference.
- A statement can be included in the review document (MTSS/PBIP) such as:
  - "This review meeting was held during school building closures due to COVID-19. Data available for review included <INSERT DATA REVIEWED>; however, other sources of progress monitoring data cannot be collected until school buildings reopen."
- During these review meetings teams should emphasize care and concern for the student and family, ask if they are appropriately accessing the distance learning, problem solve barriers to access and provide strategies to increase instructional/intervention time, etc.
- Any communication with the parent/guardian should always include general questions related to their child's distance learning experience, whether there are any barriers to access, letting them know about the continued support of staff from the school who are still working, and bringing back any parent/guardian concerns to the designated personnel to help problem solve solutions for students and families.
- In general, these meetings may look different from their typical content and context; however, the default position should be to continue to offer to meet regularly with the parent/guardian, update on any relevant indicators of progress and performance, and document continued parent/school collaboration in an ongoing problem-solving process during distance learning.

## Prior Written Notice

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Should a Prior Written Notice be issued for the change to distance learning?

- Each district must come to its own conclusion regarding whether to provide a Prior Written Notice (PWN) to each parent of a student with a disability regarding the change to distance learning. The factors that have been used by districts in the decision of whether to issue a PWN are:
  - Districts that have chosen not to issue a PWN are generally relying on the argument that the change to distance learning is not a district-initiated change in placement, therefore a PWN is not necessary and should not be issued as it provides a mechanism for parents to challenge the change to distance learning.
  - Districts that have chosen to issue a PWN have determined that the change to distance learning is a change in placement because the school day has been shortened and other material changes have been made to the delivery of instruction. For those that choose to issue PWNs, a few [examples](#) are provided.

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<sup>10</sup> Multi-Tiered System of Supports (MTSS) and Positive Behavior Intervention Plan (PBIP).

## Services

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What services should be provided to students with disabilities during periods of school closure?

- To the extent services are provided for students receiving general education, resources should be provided for students with disabilities (SWD) receiving special education as well. Students with disabilities should be provided the services in their IEPs to the extent available, taking into consideration the services that are being provided to students in the general education program. Multiple methods for providing services (virtual instruction, paper packets, etc.) should be encouraged for all students to the extent possible in the distance learning environment in order to accommodate the needs of students with different skills. Collaboration with parents as to the best method to serve the student and amount of work to be provided should be encouraged. Accommodations (such as extended time) in the distance learning environment should be provided.

## Distance Learning Plans

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Should the district create a separate distance learning plan for each SWD or amend each student's IEP?

- Each district must come to its own conclusion regarding whether to create a [distance learning plan](#), a [brief document](#) for each student, a more defined learning plan, or to actually amend each student's IEP. Districts should consult any guidance provided by the department of education within their state to determine what the expectations of their DOE are. The factors that have been used by districts in making this determination are:
  - Districts that are creating a distance learning plan for each student are creating a separate plan to document services and accommodations that can and are being provided during distance learning without amending the student's IEP. The plan is being created and discussed with the student's parent. It allows for a formal plan to guide distance learning without requiring an IEP meeting and formal amendment to the student's IEP. The student's IEP will resume upon return to school.
  - Some districts feel it is appropriate to amend the student's IEP to reflect changes during distance learning.

Should teachers who provide special education services and related service providers continue tracking the delivery of services to SWD?

- Yes. Districts should document all services being provided to students with disabilities using whatever documentation each district finds appropriate. This is of critical importance during this time. Some sample documents for tracking services and how those services relate to the student's goals are [provided](#). In addition, all communications with parents should be documented. If a parent cannot be reached, that should be documented and additional attempts to reach them should be made and documented as well.

Should districts send out progress reports on goals?

- Yes. Progress reports should be sent consistent with the way your district normally provides progress reports to parents. More information regarding Progress Reporting/Progress Monitoring is provided below.

If a parent makes a request for records, should those records be provided?

- You should consult your individual state's statutes with regard to provision of student records. Unless your state has issued some guidance that extends deadlines for provision of student records, those records should be provided to the extent possible in compliance with your state's and district's rules for accessing school buildings.

## Considerations for Child Find

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Should districts continue following its child find processes?

- Absent waivers from the USDOE or individual state departments of education, districts are still obligated to disseminate child find notices and communicate with teachers and parents to make referrals. The obligation also applies to other entities, such as private schools and health care providers. District procedures should be revised as necessary to implement processes for accepting and processing referrals, conducting evaluations, and utilizing screening measures in alignment with remote limitations. For example, it is still possible to review existing data and have parents complete questionnaires.
- Teachers should be reminded to look for and document the following occurrences: (1) a student does not log in or complete assignments; (2) a parent expresses concerns or requests accessibility accommodations for provided materials in hard copy or electronic formats; (3) a student begins to fall behind or exhibits slow progress; or (4) a student is having trouble understanding assignments.

## Progress Reporting/Progress Monitoring

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### IEP Goal Progress Reporting During COVID-19

- It is recommended that LEAs continue to report on the student's progress towards his/her goals during the provision of distance learning during COVID-19 school building closures. Advocacy groups and the Parents' Bar are advising parents to maintain their tracking of their child's progress on IEP goals "while schools are closed." This advisement is being provided for a dual purpose which is to (1) increase familiarity with their child's education to determine if their child is learning more or forgetting what was learned in order to have meaningful discussions with their child's teacher and/or related services providers; and (2) compile documentation for possible requests for "compensatory education." As students are receiving instruction at home through distance learning frameworks, parents are more involved with their child's education and have a greater opportunity to observe first-hand the daily instructional process. Therefore, parents will have a great deal more input as members of the IEP team in upcoming IEP meetings. It is important that teachers and related services providers document their efforts and ensure that documentation is focused and as detailed and consistent as possible in order to demonstrate the efforts the District made to continually provide services during this time.
- LEAs should follow the distance learning protocols and grading practices it has determined are applicable during COVID-19 (i.e., held harmless on grades). Note: Grading determinations made during this time do not override or overrule the LEAs obligation and legal mandate to report progress on a student's IEP goals. In accordance with 34 CFR 300.320 (a)(3)(i) and (ii), the IEP must include a "description of how the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided."

## Progress Reporting During COVID-19 School Building Closures

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- It is the responsibility of special education teachers/related service providers to prepare and send the report of progress home to parents. Special Education Case Managers and Related Service providers must continue to document the student's current level of performance. The level of performance for each goal/objective is based on various forms of data collection.
  - **Information:** Each student still requires a SUMMARY of the progress towards his/her goal (objective). During the COVID-19 school building closures and provision of distance learning, it is recommended to also include the following statement in the COMMENTS Section of the Progress Report. Note: Continue to make additional comments, as needed, to report adequate information to the Parent/Educational Rights holder.
  - **Guidance:** School Closure COMMENTS STATEMENT on Progress Report. Due to COVID-19 and State-mandated school building closures on March \_\_, 2020, data and progress summary information has been collected by the following as available: report card information, informal assessment data, formal assessment data, district or site-based assessments, teacher-made assessments, as well as distance learning activities.
- As part of progress monitoring and progress reporting under distance learning frameworks, it is important to consider all of the following:
  - Explore all assessment possibilities recognizing that conducting assessments may be limited during school building closures;
  - Maintain documentation of what services were offered;
  - Maintain documentation of what services were delivered;
  - Maintain documentation of student "attendance" to the extent possible (if digital learning is being offered, how often did the student log in, what work was produced during that time, etc.);
  - Determine what aligns to IEP goals and how to gather solid data on IEP progress to support this determination in the best way possible;
  - Manage the data gathered; and
  - Analyze the data against student progress at the point school building closures took place to ensure COVID-19 impact is made clear (this is a necessary determination for students without disabilities as well).

## Example of Comment Statements on a Progress Report

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*GUIDE: Below are summary starters to assist in the reporting of a student's progress. The starters are examples of ways to summarize a student progress.*

### Increased Progress or Met Goal

- [Student Name] has successfully completed this goal in all the learning opportunities during this year.
- [Student Name] has worked hard throughout the year and has contributed successfully towards his/her goal.
- [Student Name] is a positive member in class and has successfully met this goal.
- [Student Name] routinely and independently works well in a group setting.



- [Student Name] displays a positive attitude toward learning, demonstrating motivation and seeking new learning opportunities and has met his/her goal.
- [Student Name] continues to make a positive increase towards this goal.
- [Student Name] continues to make a positive increase towards this goal and now is at \_\_\_% mastery towards this goal.
- [Student Name] consistently completes and submits all assignments on time. He/She works well independently, shows good motivation, especially when working on tasks that require problem solving and creativity. [Student Name] has met this goal.
- This term [Student Name] has made gains and progress toward his/her goal. He/She continues to maintain a high level of commitment and (eagerness/willingness/readiness/synonym) toward learning.
- [Student Name] is developing suitable skills necessary in the preparation for achieving his/her goal.

### Minimal or Limited Progress

- [Student Name] enjoys sharing his/her ideas and concerns in small group discussions. [Student Name] is encouraged to continue to concentrate on achieving his/her (personal transition) goal.
- [Student Name] continues to show improvement towards this goal.
- [Student Name] is a motivated student; however, has made limited progress towards his/her goal and will need to continue to work effectively to attain it.
- [Student Name] has made minimal progress towards this goal. It is recommended [Student Name] continue to participate in this goal.
- [Student Name] has established some challenges towards this goal, especially in the area of\_\_\_\_\_.
- Since the time of school closure (COVID-19), [Student Name] has made limited access in meeting his case manager and data reflects minimal progress towards her goals.
- [Student Name] has made a decrease in progress on his/her goal since school closure (COVID-19) while participating in a distance learning environment.

### Unable to Contact Student During School Building Closure

- Case Manager was unable to obtain data to determine overall progress, at this time, due to limited contact with [Student Name] during this reporting period while in school closure.
- Since the time of school closure (COVID-19), data collection has been insignificant and progress on goal is unknown as student contact has not been established.
- Since the time of school closure (COVID-19), case manager was unable to establish progress measures due to the inability to make contact with [Student Name]/parent.

# Links to Sample Materials and Resources

- [Temporary Distance Learning Plan](#)
- [Continuity of Learning Individualized Plan](#)
- [FAQs for Parents](#)
- [Continuity of Learning Plan Parent Receipt](#)
- [Parent Letter](#)
- [Preferred Mode of Communication Letter to Parents](#)
- [Parent Opt-Out of Services Form](#)
- [IEP Meeting Continuity Guide](#)
- [COVID-19 Progress Reports Guide](#)
- [IEP Data Tracker](#)
- [Notice Regarding Evaluation Timeline](#)
- [Update to Parents Letter](#)
- [Prior Written Notice of Extended School Year](#)
- [Prior Written Notice of IEP Meeting Abeyance](#)
- [Prior Written Notice of Extended School Year and Related Services](#)
- [Prior Written Notice Letter Regarding COVID-19 Emergency Response Distance Learning Program](#)
- [Practice Pointers for Special Education Staff in Drafting Prior Written Notice](#)

# Bios of Contributors/ IDEAS Small Working Groups

## Co-Chairs

### **DENEEN EVANS COX, ESQ.**

Deneen Evans Cox is the Chief Compliance and Performance Monitoring Counsel of the Los Angeles Unified School District in the Office of the General Counsel. In this capacity, Ms. Cox oversees internal monitoring processes to ensure that LAUSD programs and services operate in a manner that promotes equity, access and compliance with the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA) Title II program accessibility requirements and protects student civil rights. As the LAUSD's lead counsel in the *Chanda Smith v. Los Angeles Unified School District* special education consent decree litigation, Ms. Cox's representation of the LAUSD recently led to the conclusion and termination of the 26-year consent decree litigation resulting from the LAUSD's commitment to special education compliance and remediation efforts. Ms. Cox strongly believes that an effective system of compliance requires that while focusing on improved student outcomes, special education supports and services to the general education program be driven by, centered on and responsive to the needs of students with disabilities.

### **HEATHER WALLACE, ESQ.**

Heather J. Wallace has served as the Assistant School Board Attorney for the Pinellas County School Board since 2013, representing the district in matters involving special education, purchasing, contracts, facilities, construction, real estate and charter schools. Prior to that, she served as the Assistant School Board Attorney in Lee County. Ms. Wallace is Board Certified in Education Law and currently serves as the Chair of the Education Law Certification Committee for the Florida Bar.

### **YOLANDA ASAMOAH-WADE, ESQ.**

Yolanda Asamoah-Wade is a veteran educator and attorney with 28 years of experience in serving children and families in Monroe County. She holds a Juris Doctorate from the State University of New York at Buffalo specializing in international law, environmental Law and finance transactions, a Masters in Teaching from the University of Rochester and, a Masters in Educational Leadership with building and district leadership certification and a Bachelor of Arts. Yolanda is a New York state certified teacher in multiple disciplines, having taught all grade levels, K-12 students in several Monroe County school districts. Her legal practice has included serving subject children as a Law Guardian and representing parent/guardian respondents in Family Court. As a private practitioner, Yolanda supported multinational corporate joint ventures, mergers and acquisitions, and public infrastructure projects. From 2016 to 2018, Yolanda was the Rochester City School District's first Chief Ombudsman and Compliance Officer responsible for promoting procedural and substantive fairness for families. She currently serves as the Rochester City School District's Chief Counsel for Special Education, providing counsel to staff, managing special education legal matters, developing procedures and protocols, and supporting organizational design initiatives. A native of Ghana, Yolanda is trilingual and has lived and studied in Ghana, the UK, and France. She is admitted to practice in New York State and the Western District of New York and was a recipient of the Daily Record's Attorney of the Year Award in 2014.

### **SUSANNE STARECKI KIM, ESQ.**

Susanne Starecki Kim is a Senior Deputy General Counsel at San Francisco Unified School District. She earned her Bachelor of Arts from the University of California at Berkeley and Juris Doctor from the University of California, Hastings College of the Law. As a daughter of refugees, who fled Poland in 1969 due to anti-Semitism, and as an immigrant herself, she was raised to value education. After graduating college, she worked as an AmeriCorps member in a low-income high minority school, and pursued a career in law with the goal of improving public schools. For about ten years, she worked at Semple, Farrington and Everall, PC, an education law firm in Denver, Colorado, and handled cases ranging from employment discrimination to free speech. In 2016, she joined the Legal Department at SFUSD, and provides advice and counsel on all special education matters impacting students from pre-school to high school at SFUSD. She is committed to collaborating with special education directors, school psychologists and teachers to serve the needs of all students.

### **MARY C. LAWSON, ESQ.**

Mary Lawson has been an Assistant Attorney representing the School Board of Miami-Dade County since January 2007. Prior to becoming in-house counsel for Miami-Dade School Board, she worked as an Assistant Attorney at the Office of the General Counsel for the Broward County School Board. Mary's educational law practice includes Special Education, Student Discipline, Mental Health, Title IX, FERPA and various other issues. Ms. Lawson holds a Florida Bar designation of Board Certified Specialist in Education Law. Prior to working in-house for public school districts, Ms. Lawson worked in a variety of practice areas at Hogan & Hartson, L.L.P., an international law firm headquartered in Washington D.C. Before becoming a lawyer, Ms. Lawson was a middle and high school Social Studies teacher in Florida, Maryland, and Pennsylvania. She obtained her Bachelor of Arts in Political Science and Master of Arts in Teaching from the University of Pittsburgh and her J.D. from Howard University Law School.

### **ELEISSA LAVELLE, ESQ.**

Ms. Lavelle is General Counsel for the Clark County School District, Las Vegas Nevada which serves approximately 320,000 students and more than 40,000 employees. In addition to advising and providing other legal services to the District, Ms. Lavelle oversees and manages the CCSD Office of General Counsel which delivers legal assistance to all departments within the District, including, but not limited to, special education, employment matters and human resources, CCSD sponsored charter schools, contract review and preparation, school related matters, state and federal legislation affecting students, teachers, administrators, trustees, facilities (including real property construction), and representation in litigated matters. In addition, Ms. Lavelle oversees complex litigation handled by outside counsel. Ms. Lavelle is working to develop a dispute resolution program within CCSD to resolve conflict between parents and schools.

Ms. Lavelle is a mediator and arbitrator with JAMS and is an Adjunct Professor of Law at the Boyd School of Law, University of Nevada Las Vegas, where she teaches Negotiation and Real Estate Finance. She serves on the Nevada Supreme Court Settlement panel. Before joining CCSD, Ms. Lavelle was a partner in national, regional and Nevada based law firms, where she was both a litigator and transactional attorney focusing in the areas of real property, construction and other commercial matters. Ms. Lavelle holds an LL.M. in Dispute Resolution from Straus Institute, Pepperdine University Law School, and a J.D. and B.A. from the University of Utah. She established the State Bar of Nevada's Office Bar Counsel and served as its first Bar Counsel and was a founding member of the Southern Nevada Association of Women Attorneys.

### **SARA MARKEN, ESQ.**

Sara Marken has been an Assistant Attorney representing the School Board of Miami-Dade County for the past eight years. Prior to joining the School Board Attorney's Office, she worked as an Assistant Public Defender for the Law Offices of the Public Defender for the 11th Judicial Circuit of Florida. Sara's educational law practice includes Special Education, FERPA, Mental Health, Personnel, and Transactional. She obtained her Bachelor of Arts in Political Science and Philosophy from Florida State University and her J.D. from Florida International University.



### **SARA MONTALVO, ESQ.**

Mrs. Montalvo is the General Counsel for the Washoe County School District where she advises and represents the District on all legal matters including litigation, special education claims, District contract/policy review and revisions, and preventative law for all District departments and employees through program reviews and in-service training. Prior to joining the Washoe County School District, Mrs. Montalvo was a litigation attorney for two private law firms with a focus on business, commercial, and employment litigation.

Mrs. Montalvo is active in her community. She has been hired under letters of appointment with the University of Nevada, Reno to teach Special Education Law to graduate students in the Education Leadership Program. She was also hired by the University of Nevada, Reno to edit and co-draft the Nevada Education Law Manual for teachers. Since 2015, Mrs. Montalvo has served on the City of Reno Access Advisory Committee, charged with improving access to public facilities, businesses, and residences for use by individuals with physical or other disabilities. Since 2015, Mrs. Montalvo has been appointed to serve on the Northern Nevada Disciplinary Board by the Nevada State Bar Board of Governors. She served on the Board of the Northern Nevada Women Lawyers Association from 2012-2014, serving as its president during 2014. For three years, she served on the Founding Board and the Board of Directors of a local K-8 charter school. She has twice been named to the Nevada Business Magazine Legal Elite list wherein recipients are voted in by their peers and represent the top 3.7 percent of practicing lawyers.

Mrs. Montalvo received her undergraduate degree in Journalism from the University of Nevada, Reno, earning the Senior Scholar Award as the top graduating student of the Reynolds School of Journalism. She received her Juris Doctorate from the William S. Boyd School of Law at the University of Nevada, Las Vegas, achieving CALI Awards in Gaming Law and Pretrial Litigation, and was a member of the Society of Advocates Moot Court Competition Team. While in law school, she externed for the Eighth Judicial District Court and the Nevada System of Higher Education.

### **BARBARA J. MYRICK, ESQ.**

Barbara J. Myrick is the General Counsel for The School Board of Broward County, Florida

She joined the GCO in August of 2007, after six years as an administrator in the Department of Exceptional Student Education and Student Support Services of the School District. Prior to her service as General Counsel, her practice concentrated on issues related to students with disabilities, which was a natural fit, in that Barbara spent over 25 years working in the Broward County community implementing a broad spectrum of community-based programs for children and adolescents with disabilities. In January 2016, Barbara was named Interim General Counsel for the School Board and in June was named to position on a permanent basis. Barbara leads an office of nine attorneys and seven support staff. She is a member of the Florida School Board Attorneys Association (FSBAA) and the Florida Bar's Education Law Committee.

### **LAURA PINCUS, ESQ.**

Laura Pincus currently serves as an Assistant General Counsel in the Office of General Counsel for the School District of Palm Beach County, Florida, where her practice concentrates on the laws surrounding students with disabilities. Previously, Ms. Pincus served as the Director of Exceptional Student Education for the School District of Palm Beach County, where her responsibilities included oversight of programs for special needs, 504, gifted, and ESE pre-k programs.

Ms. Pincus is proud to be one of few attorneys in the State of Florida to be certified by the Florida Bar in Education Law. She serves on the Education Law Certification Committee of the Florida Bar and is an active member in the Florida School Board Attorneys Association. She is an adjunct professor for Nova Southeastern University's Shepard Broad Law Center, teaching Discipline Law and an Independent Research class to students earning a Master's in Education Law. She is also an adjunct professor for Florida Atlantic University where she teaches Legal Foundations of Special Education to doctoral candidates.

Ms. Pincus received her J.D. from Nova Southeastern University. She also earned a Master's degree in Education and a Bachelor's Degree in Communication from The American University in Washington, DC.

#### **LYNN ROSNER RAUCH, ESQ.**

Lynn Rosner Rauch joined the School District as General Counsel in 2017. In this role, she advises the Superintendent and other District leaders, the Board of Education, and program offices throughout the District. Lynn manages the Office of General Counsel, overseeing the provision of legal services. Her experience with the District dates back to the mid-1990's, having since represented the District in desegregation, constitutional and civil rights, equitable and adequate funding, and environmental proceedings.

Before joining the District, Lynn was a partner at both Dilworth Paxson LLP, and Manko, Gold, Katcher & Fox, LLP. In addition to the School District, she represented clients such as the Barnes Foundation, SEPTA, Independence Blue Cross, and prospective investors in Major League Baseball in high stakes litigation in federal and state courts, administrative forums, and mediation.

After graduating from Duke University, Lynn earned her law degree from the University of Pennsylvania Law School. She remains active with her alma maters, chairing the Philadelphia region of the Duke University Alumni Association, founding the Philadelphia Chapter of the Duke Women's Forum, and co-chairing Duke and Penn Law reunions.

#### **JILL R. WILSON, ESQ.**

Jill R. Wilson is general counsel for the Guilford County Board of Education in Greensboro, North Carolina. As a partner at the law firm of Brooks Pierce, LLC, she leads the education practice, and currently represents public and private schools, colleges and universities on a broad range of education issues, including special education, employment, student matters, school funding and discrimination. She has been involved in significant education litigation in State and federal courts. She graduated from Wake Forest University School of Law, where she served on the Law Review, in 1982.

#### **ARSEN ZARTARIAN, ESQ.**

Arsen Zartarian serves as Deputy General Counsel of the Newark Public Schools, the largest school district in New Jersey, with approximately 40,000 students. In addition to litigation responsibilities, he provides daily legal advice, preventative counseling and training regarding all aspects of state and federal education and labor/employment law to school administrators who supervise a work force in excess of 7,000 employees. He regularly appears in administrative court on employee discipline and special education matters, as well as the New Jersey Appellate Division and United States District Court. Mr. Zartarian is Past President and currently an officer of the New Jersey Association of School Attorneys, President of the New Jersey State Bar Association's School Law Committee, and a member of the State Bar Association Labor and Employment Law and Administrative Law Sections. He frequently presents at statewide school and employment law seminars and moderates the annual CLE programs "Administrative Law Forum" and "Representing School Employees and Boards of Education in Employment Law Cases." Mr. Zartarian received his undergraduate degree from Rutgers College, where he was Sports Editor of The Daily Targum, and his law degree from Villanova University School of Law, where he was Case & Comments Editor of the Villanova Law Review and a national moot court competitor.

### **JULIE WRIGHT HALBERT, ESQ.**

Julie Wright Halbert has been legislative counsel for the Council of the Great City Schools for over 25 years. In that capacity, she has served as a national education legal and policy specialist, with emphasis on special education. She worked extensively on the reauthorizations of the Individuals with Disabilities Education Act (IDEA) in 1997 and 2004. Ms. Halbert is responsible for drafting numerous technical provisions to the IDEA and providing technical assistance to Congress and the U. S. Department of Education. In 1997 and again in 2005, she testified before the U.S. Department of Education on its proposed regulations on IDEA 2004. Ms. Halbert has directed each of the Council's special education strategic review teams, including in the school districts of Anchorage, Austin, Boston, Chicago, Charleston, Cincinnati, Clark County (Las Vegas), Cleveland, Des Moines, Detroit, District of Columbia, Guilford County (NC), Memphis, New York City, Richmond, Philadelphia, Pittsburgh, Providence and St. Louis. Working with national experts Sue Gamm and Judy Elliott, she has published a Council national white paper on the implementation and development of MTSS, Multi-Tiered Systems of Supports for our nation's urban school districts. Ms. Halbert took the lead working with our cities in the development of the Council's amicus brief to the Supreme Court of the United States in *Endrews v. Douglas County School District*, on determining the educational benefit standard due by our districts to students with disabilities when implementing their IEPs. She was also the counsel of record for the Council of the Great City Schools' amicus briefs in the Supreme Court of the United States in (a) *Board of Education of the City School District of the City of New York v. Tom F., On Behalf of Gilbert F., A Minor Child* (2007); (b) *Jacob Winkelman, a Minor By and Through His Parents and Legal Guardians, Jeff and Sander Winkelman, et al., v. Parma City School District* (2007); (c) *Brian Schaffer v. Jerry Weast, Superintendent of Montgomery County Public Schools, et al.*, (2005); (d) *Parents Involved in Community Schools v. Seattle School District, and Meredith v. Jefferson County Board of Education* (2007) and *Forest Grove School District v. T.A.*, (2009). Additionally, for the past three years, together with Husch Blackwell partner John Borkowski, Ms. Halbert is assisting to develop and implement national legal webinars on emerging legal issues for Council districts.







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