



UPDATED Guidance from OCR and OSERS re COVID-19 and Students with Disabilities (As of March 23, 2020)

As promised, the Department of Education (“ED”)’s Office for Special Education and Rehabilitative Services (OSERS) and Office for Civil Rights (OCR) jointly issued [updated Guidance](#) over the weekend (March 21, 2020) for serving students with disabilities while addressing COVID-19.

The Guidance seeks to clarify that: (1) federal disability laws do not present insurmountable barriers to remote education for students with disabilities during school closures; and (2) the Department of Education will offer flexibility in these unprecedented times “within the confines of the law.” Key takeaways from each of these points is summarized below.

Distance Education for Students with Disabilities

ED stresses that compliance with the mandates of IDEA, Section 504, and the ADA “should not prevent any school from offering educational programs through distance learning.”

While recognizing that “schools may not be able to provide all services in the same manner they are typically provided” during this “unprecedented national emergency,” ED encourages schools and parents to “collaborate creatively” to continue to meet the needs of students with disabilities. This may include both high-tech distance instruction (teletherapy, tele-intervention, meetings on digital platforms, online data tracking) and low-tech means (instructional packets, projects, and written assignments).

ED acknowledges that the provision of FAPE “may need to be different” in this context and notes that federal disability law provides “flexibility” in determining how to meet individual student needs.

For example, it may be “unfeasible or unsafe” in some situations to offer “hands-on” physical therapy, occupational therapy, or tactile sign language. However, many such services may be effectively provided online. And where technology itself imposes a barrier to access, educators are directed to provide “equally effective alternate access,” such as reading a document over the phone to a blind student.

Education Law



David D. Garner

(602) 640-9358

[E-mail](#)



Lynne C. Adams

(602) 640-9348

[E-mail](#)



Mackenzie C. Woods

(602) 640-9396

[E-mail](#)

Flexibility, Including Timelines

Repeating the term four times in the two-page cover memo, the Guidance emphasizes ED's commitment to offer "flexibility," though always with a caveat: "where we can," "where possible," or "within the confines of the law." Regarding timelines, the Guidance encourages schools and parents "to reach mutually agreeable extension of time, as appropriate," and outlines circumstances under which IDEA allows extensions or workarounds in the contexts of state complaints, due process hearings, IEP reviews, and initial eligibility determinations.

Of note for Arizona schools, while the Guidance notes that there is no specifically mandated timeline for making an eligibility determination after an initial evaluation under IDEA, Arizona regulations are more stringent and mandate that the 60-day evaluation timeframe (which may be extended by agreement an additional 30 days) must "conclude with the [MET] determination of eligibility." A.A.C. § R7-2-401(E)(3).

Compensatory Services

The Guidance reiterates that where there has been "an inevitable delay" in providing services or deciding how to provide services, IEP teams must determine whether and to what extent compensatory services are needed when normal school operations resume.

Osborn Maledon stands ready to assist you in addressing particular issues relating to students with disabilities in connection with the COVID-19 outbreak or otherwise. David Garner at Osborn Maledon, P.A. may be contacted at: (602) 640-9358 or at dgarner@omlaw.com.

[Unsubscribe](#) | [Forward to a friend](#)

2929 N. Central Ave., 21st Fl., Phoenix AZ 85012 | (602) 640-9000 | www.omlaw.com