

February 6, 2021
Illinois Council for Children with Behavioral Disorders

LEGAL UPDATE

The Top 10 Legal Issues in These Difficult Times, Including Compensatory Education

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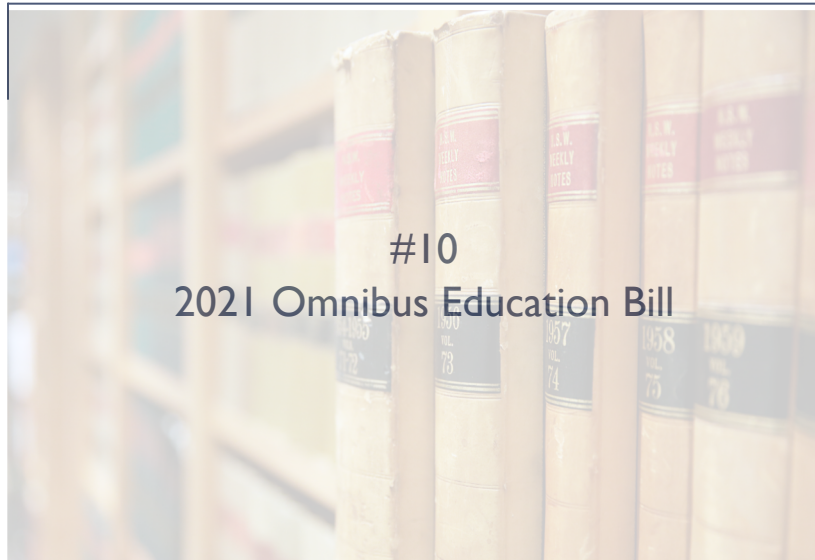


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#10

2021 Omnibus Education Bill



What is in the 2021 Omnibus Education Bill?

- Early Intervention Services
- Kindergarten Assessments
- “Whole Child Task Force”
- Social science learning standards
- Black history study (public school districts only)
- Increased standards of coursework to obtain a high school diploma.
- Computer science standards and coursework
- Requirement to review of university admission coursework
- Alternative Educator Licensure Program



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Early Intervention Services

Beginning July 1, 2022:

- ✓ Children who receive EI services prior to their third birthday
- ✓ And are found eligible for an IEP
- ✓ And whose birthdays fall between May 1st and August 31st
- May continue to receive EI services until the beginning of the school year following their third birthday

Purpose: To minimize gaps in care, ensure better continuity of care, and align practices with those of typically developing peers



Kindergarten Assessments

Beginning no later than 2021-2022 school year:

- ☐ ISBE will annually assess all public school students entering kindergarten
- ☐ Unless ISBE determines student is exempt
- Assessments in multiple developmental domains, including literacy, language, mathematics, and social and emotional development.
- Results will be used to tailor instruction and identify a need for professional development of teachers



Whole Child Task Force

- The Omnibus Education Bill establishes several “task forces”
- The *Whole Child Task Force* is created to establish recommendations to create an equitable, safe, and supportive environment in all schools for all students.
- Focused in part on creating a common definition of a trauma-responsive school, a trauma-responsive district, and a trauma responsive community and the training and resources to create and sustain support for these spaces.
- Report is due February 1, 2022 to the General Assembly.



Social Science Learning Standards

On or before July 1, 2021, ISBE must adopt revised social science learning standards that are inclusive and reflective of all individuals in this country.



Black History Study

- Every public elementary school and high school shall include in its curriculum a unit of study of:
 - ☐ The events of Black people from 3,000 BCE to AD1619
 - ☐ The African slave trade
 - ☐ Slavery in America
 - ☐ The study of the reasons why Black people came to be enslaved
 - ☐ The vestiges of slavery in this country
 - ☐ The study of the American civil rights renaissance
- Individual school boards will determine the minimum amount of instruction time which shall qualify for a unit of instruction to satisfy this requirement.
- An online course may meet the requirements of this section.



High School Requirements

- Beginning in the 2024-2025 school year, students entering 9th grade student must complete two years of **laboratory** science.
 - Beginning in the 2028-2029, students entering 9th grade must complete **2 years of foreign language**. Students may choose third year to satisfy one year of music, art, vocational or foreign language requirement.
 - Beginning in the 2022-2023 school year, students entering 9th grade must complete one year of a course that includes **intensive instruction in computer literacy**, which may be English, social studies, or any other subject and which may be counted towards the fulfillment of other graduation requirements.
- These sections **do not** apply to students with disabilities whose course of study is determined by an IEP.



Computer Science

- On or before December 1, 2021, ISBE shall develop or adopt rigorous learning standards in the area of computer science and analyze and revise, if appropriate, existing course titles dedicated to computer science or develop a short list of existing course titles that are recommended for computer science courses.
- Also, all **school districts** that maintains any of grades 9-12, must provide an opportunity for every high school student to take at least one computer science course.



Accelerated Placement and Automatic Enrollment

No later than the beginning of the **2023-2024** school year, school district's accelerated placement policy shall allow for the **automatic enrollment** of a student into the next most rigorous level of advanced coursework offered by the high school if the student meets or exceeds state standards on a State Assessment in:

- English/Language Arts
- Mathematics
- Science



Accelerated Placement and Automatic Enrollment

- The next most rigorous level of advanced coursework may include a dual credit course, an Advanced Placement course, an International Baccalaureate course, and honors course, and enrichment opportunity, a gifted program, or another program offered by the district.
- For a student entering 9th grade, results from State assessments in grades 6 through 8 may be used.
- For other high school grades, results from a locally selected, nationally normed assessment may be used, if those assessments are most recent.



Accelerated Placement and Automatic Enrollment

- District must provide the parent the opportunity to enroll with alternative coursework that better aligned with student's post-secondary or career goals.



Review of University Admission Coursework

- Every public high school must provide students in grades 8 through 12 and their parents a review of coursework expectations for admissions to Illinois colleges and universities.
- ISBE must post the review to the public on its website.
- Beginning in 2022-2023, every high school must provide access to each course identified in the review to any of its students who request to enroll in the course.
- Review is completed by the Board of Higher Education.



Alternative Educator Licensure Program

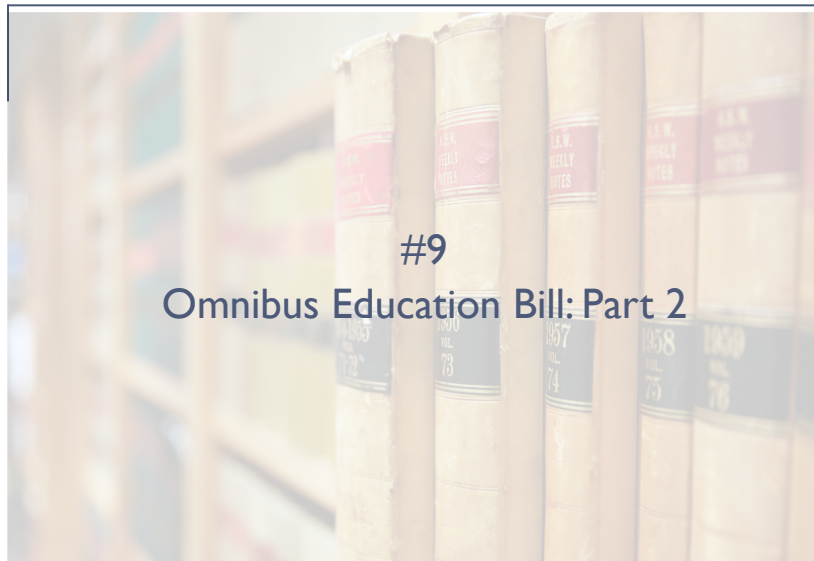
Program is comprised of four phases:

- 1) Course of study that at a minimum consists of instructional planning, instructional strategies (including special education), reading and English language learning, classroom management, and the assessment of students and use of data to drive instruction.
- 2) A year of residency (assignment to a full-time teaching position or as a co-taught teacher for one full school year).
- 3) A second year of residency, which shall include assignment to a full-time teaching position for one school year.
- 4) A comprehensive assessment of the candidates teaching effectiveness as evaluated by principal and the program coordinator at the end of the second year of residency.



Alternative Educator Licensure Program

- The institution offering the Alternative Educator Licensure Program must partner with a school district (including a preschool educational program, charter school, or a state-recognized nonpublic school in this state in which the Chief Administrator is required to have the licensure necessary to be a principal in a public school and a majority of the teachers are required to have licensure necessary to be instructors in a public school).
- Upon completion of the four phases and all assessments required, an individual shall receive a PEL.



What else is in the 2021 Omnibus Education Bill?

- Freedom school (6 weeks over the summer)
- Task force to look at adjusting evidence-based funding for racial equity, foreign language instruction, adult student ratios, increased funding impact.
- Equity of Higher Education Act
- Minority Teachers of Illinois Scholarship Program



#8 RESTRAINT & SECLUSION

What are the new changes and implications?



OVERVIEW

- All the changes to date have been regulatory, meaning ISBE has rewritten the rules (or implementing regulations) on restraint and seclusion, both as emergency rules and amended rules.
- Now members of the legislature are involved and want to change the STATUTE.
- Statutes trump regulations. Regulations are written to interpret and provide additional guidance on statutes. Regulations cannot exceed the scope of the statute or be inconsistent with a statute.



PROPOSED HOUSE BILLS

- On January 11, 2021, **HB 2263** was introduced by Senator Gillespie.
- On January 13, 2021, HB2263 (101st General Assembly) did not advance out of the General Assembly during the veto session and the General Assembly was adjourned without a vote on this bill. This was due to time constraints with complete expectation that it will be brought back during the new legislative session and under the 102nd General Assembly.
- On January 22, 2021, in the new legislation session of the 102nd General Assembly, Representative Carroll introduced **HB0219**, which is a replication of the HB2263. This bill has been referred to the Rules Committee.
- We have been given the impression that this is the (close to) final language that will be proposed, and that stakeholder input has been fully considered.



PROPOSED HOUSE BILL: Compliance and Monitoring

- ISBE shall establish procedures for progressive enforcement actions to ensure that schools are complying with the documentation and reporting requirements...which shall include meaningful and appropriate sanctions for the failure to comply.
- ISBE may contract with a third party to provide assistance with oversight and monitoring of the use of isolated time out, time out, and physical restraint by school districts.



PROPOSED HOUSE BILL: Compliance and Monitoring

- ISBE shall establish goals with specific benchmarks for schools to accomplish the systematic reduction of isolated time out, timeout and physical restraint.
- Each school board shall create an oversight team to develop a school specific plan for reducing isolated time outs, time outs, and physical restraints and eventually eliminating their use.
- Progress measured by reduction in overall numbers of incidents. In limited cases, upon written application made by a school district and approved by the State Board, the reduction may be measured by the frequency of those interventions on individual students and the student population as a whole.



PROPOSED HOUSE BILL: Measurement and Goals

- Schools shall submit a report to ISBE once a year for three years on progress made towards the goals and objectives established by ISBE and modify their plans as necessary.
- Schools shall notify parents and guardians that the plans and reports are available for review.



PROPOSED HOUSE BILL: Physical Restraint

- Physical restraint or restraint does **not** include momentary periods of physical restriction by direct person to person contact without the aide of material or mechanical devices, that are accomplished with limited force and that are designed to prevent a student from completing an act that would result in potential harm to himself, herself, or another or damage to property.
- However, momentary periods of physical restriction by direct person to person contact, without the aide of material or mechanical devices, that are accomplished with limited force to remove a disruptive student who is unwilling to leave the area voluntarily (i.e., an escort to safety) is no longer an exception and would be considered a restraint unless the situation meet the above definition.
- Prone restraint is prohibited.



PROPOSED HOUSE BILL: Meeting Requirements

- Within 2 school days of an incident, schools must notify parent that he or she may request a meeting to discuss the incident.
- Meeting is separate and apart from an IEP meeting or Section 504 meeting.
- If parent requests meeting, meeting must be held within 2 school days of the request, unless parent requests an extension. Parent may request the meeting via telephone or videoconference.
- Meeting must include student, if appropriate, at least one school staff member involved in the incident, parent, at least one staff member not involved, such as a social worker, psychologist, nurse, or behavioral specialist.



PROPOSED HOUSE BILL: Meeting Requirements

- Staff, student and parent must be provided an opportunity to describe the antecedents, the incident, and what followed the event.
- All parties shall have the opportunity to discuss what school personnel could have done differently to avoid the incident and how to alternatively support the student in the future.
- Schools cannot exclude a student solely because a meeting has not occurred.
- Summary of meeting shall be documented in writing and become part of the student's school record, with a copy provided to parent.



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PROPOSED HOUSE BILL: Meeting Requirements

- If parent fails to request a meeting within 10 school days after school provided documents to parent or parent fails to attend a requested meeting, that fact will be documented as part of student's school record.
- Unclear how this new meeting requirement meshes with the current regulatory meeting requirements of 23 Ill.Admin. Code 1.285, including meetings when there is:
 - ☐ Three instances of isolated time out, time out, and physical restraint within 30-days; and
 - ☐ Supine physical restraint in 2 separate instances within 30 school days.

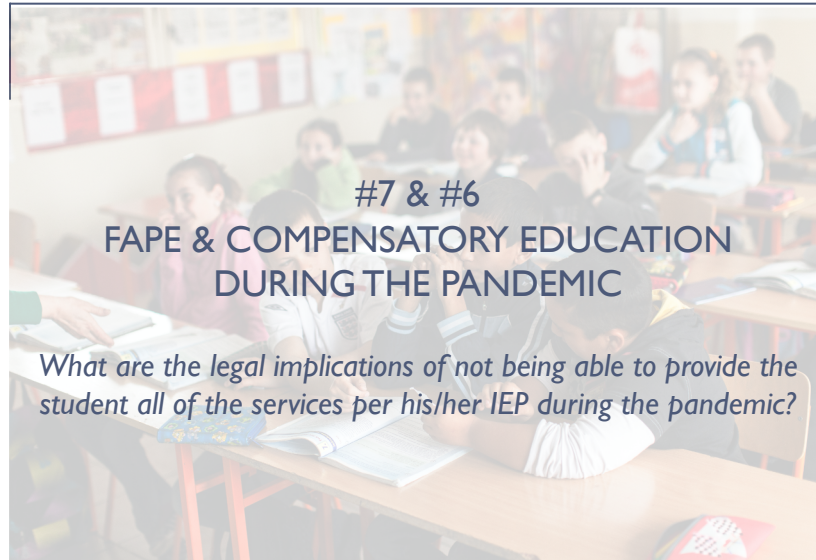


PROPOSED HOUSE BILL: Documentation

- Each incident of time out, isolated time out and physical restraint must be reported to ISBE, and include:
 - ☐ The events leading up to the incident
 - ☐ What alternative measures (less restrictive and intrusive) were used prior to the incident
 - ☐ Why those measures were ineffective or deemed inappropriate
 - ☐ The type of restraint, isolated time out, or time out used
 - ☐ The length of time of incident
 - ☐ The staff involved.
- Schools must provide parents with the following information after each incident in printed form, unless parent requests in writing for the school to use email:
 - ☐ Copy of the standards for when restraints, isolated time outs, and time outs can be used.
 - ☐ Information about parental and student rights
 - ☐ Information about parent's right to file a complaint with the State Superintendent

NOTE: This notice to parents may in the discretion of ISBE be worked into their prescribed form





September 28, 2020 U.S. Dept. of Education OSEP Q&A Document

As public agencies and officials grapple with challenging decisions, administrators, educators, and parents may need to consider multiple options for delivering instruction, including special education and related services to children with disabilities. Those options could include remote/distance instruction, in-person attendance, or a combination of both remote/distance instruction and in-person attendance (hybrid model). However, OSEP reminds SEAs and LEAs that **no matter what primary instructional delivery approach is chosen, SEAs, LEAs, and individualized education program (IEP) Teams remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities.** If State and local decisions require schools to limit or not provide in-person instruction due to health and safety concerns, SEAs, LEAs, and IEP Teams are not relieved of their obligation to provide FAPE to each child with a disability under IDEA.



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FAPE in a Pandemic:

What are the legal standards for providing students with an appropriate education?



Common Questions:

What is a remote learning plan?

Does it replace the IEP?

Are we still implementing the IEP?

What level of services are required?



HYPOTHETICAL: A Hybrid Model

Due to COVID-19 your school is in a hybrid model, half days at school, half days remotely. You are providing both asynchronous and synchronous instruction while remote. One of your parents insists that their child is not able to access remote learning. Further, they are claiming that the 50% of in-person instruction is a change of placement in violation of the IDEA.

In reviewing the student's plan you have been providing all the student's related services in-person, addressing 4 of the 5 goals, and have created a remote learning plan to address additional accommodations and modifications in the remote setting. The student did not receive ESY services because services were only offered remotely and the parent refused.

The student's re-evaluation is due in a month and you are in the process of evaluating the student in tandem with the school district. An FBA is part of the evaluation.



HYPOTHETICAL: A Hybrid Model

Questions:

- Is the student's program sufficient under the IDEA?
- How should you conduct the FBA?
- What additional steps should be taken in response to the parent's concerns?



FAPE in a Pandemic:

What is a material implementation error?

- Courts have analyzed the initial COVID-19 cases by focusing on whether what was missed as a result of school shutdowns or schedule changes was a material implementation error.
- In determining whether a missed service was “material,” courts have looked at:
 - Whether the service was timely made up;
 - The nature of the service; and
 - The impact on the student.



FAPE in a Pandemic:

Addressing a missed service

Due Process Case: District of Columbia Public Schools (July 13, 2020)

In this case, the hearing officer found that general education students did not receive educational services in April 2020 and, therefore, pursuant to the Department of Education Guidance, there was no requirement to provide services to special education students. Even so, the hearing officer also found that the loss of one month of services was not material, especially since in May 2020 the District made up some one the loss of services.

Good Faith + Documentation = No Liability



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FAPE in a Pandemic: *Addressing a missed service*

Due Process Case: District of Columbia Public Schools (July 13, 2020)

Interestingly, in this case, which also had non-COVID-19 issues, the facts established that the student, who had multiple disabilities, was reluctant to participate in related services because he did not want his peers to know about his speech and language issues. The hearing officer ordered the District provide related services, for the entirety of the 2020-2021 school year, through video conferencing in a discreet manner.

Remote learning was found to be part of a FAPE!



FAPE in a Pandemic: *The Nature of the Service*

State Complaint: *In re: Student with a Disability* (Kansas SEA, July 27, 2020)

A District's shift to remote learning does not relieve it of its obligation to provide accommodations and modifications to a student with a disability who needs to access the general education curriculum. In this case, the 7th grade student was functioning at a 6-year-old level in the areas of reading and math. The student had a remote learning plan that failed to include the accommodation in her IEP regarding her assignments be modified to her academic levels. The failure to modify her assignments was determined to be a violation of FAPE. Further to the extent that the remote learning plan was to act as the student's IEP, the Kansas State investigator indicated that Prior Written Notice ('PWN') was required before removing a service.



FAPE in a Pandemic:

Impact on the Student

State Complaint:

Brookings School District (S. Dakota Educ. Agency, Aug. 7, 2020)

Minor discrepancies between services provided and those called for by an IEP don't give rise to a denial of FAPE. Moreover, a district can establish substantial compliance by showing the student made progress toward his goals, improved his grades, and passed state assessments.

The state investigator pointed out that the high schooler's service logs and progress reports indicated he generally received speech services twice-weekly as required by his IEP. While the minutes provided were less than those required by the IEP, providers' logs indicated that the district implemented teletherapy and that the student performed well and made progress toward his IEP goals.



FAPE in a Pandemic:

Impact on the Student

State Complaint:

Brookings School District (S. Dakota Educ. Agency, Aug. 7, 2020)

However, in this case the District did have to provide compensatory education to the Student. A denial of FAPE was found since the District failed to provide his special education services through distance learning during the first day of ESY.

Arguably, this could have been avoided if the District tried to make up for the missed day of instruction.



FAPE in a Pandemic:

When Failures Rise to the Level of a Denial FAPE

State Complaint:

Beech Grove City Schools (Indiana SEA, July 16, 2020)

IEP minutes for academic support not provided during COVID-19 (and before) led to a finding of a violation of FAPE as FAPE obligations were not suspended.

“Because there were multiple weeks where 120 minutes of academic support provided in the general education setting was not demonstrated, a violation....is found”

District ordered to convene an IEP to determine compensatory education.



FAPE in a Pandemic:

When Failures Rise to the Level of a Denial FAPE

State Complaint:

In re Student with a Disability (Wisconsin SEA, June 22, 2020)

Where district staff provided all the supplementary aids and services and specially designed instruction that are outlined in the student's IEP, it is acceptable that some of these services were provided through different methods during the school closure. Student's IEP didn't require paraprofessional support where student received support from teachers when school was open. Four to five direct, one-to-one telephone calls per day from the teacher to the student was sufficient for determining that the district properly implemented the student's IEP during the emergency school closure.



FAPE in a Pandemic:

When Failures Rise to the Level of a Denial FAPE

Due Process Decision:

Los Angeles Unified School District, 77 IDELR 116 (California SEA, August 24, 2020)

From March to May 2020 (when complaint was filed), distance learning program provided Student less than half of the number of instructional minutes required by IEP and none of the in-person hands-on community life skills and vocational instruction necessary for Student to Make meaningful progress towards her goals for her transition to post-secondary high school life. This was a material failure to implement the Student's IEP and a denial of FAPE.



FAPE in a Pandemic:

Material Implementation Failure

Due Process Complaint:

Long Beach Unified School District (Calif SEA, October 12, 2020)

California district denied FAPE when it provided only 80% of specialized instruction during distanced learning.

Hearing officer found this to be material. Could have been cured by providing 5, instead of 4, hours of academic instruction daily

What is “material?”

→ Whatever the judge, administrative hearing officer or state investigator says!



Reduction in Compensatory Education: *Parent Response to Remedial Services*

Federal Court Decision:

P.P. v. Northwest Indep. Sch. Dist., 120 LRP 39134(5th Cir., December 14, 2020)

A Texas district that violated its child find obligation (by waiting seven months to evaluate) did not have to provide additional services where the Parent refused additional remedial services.

In this non-COVID 19 case, Parents declined offers of additional evaluations, a dyslexia class, and individualized tutoring sessions. Based on students progress under the IEP and the refusal to allow the district to correct deficiencies, student was not entitled to compensatory education.



HYPOTHETICAL: A Hybrid Model

Q. Is the student's program sufficient under the IDEA?

A. Student is receiving all of his/her related services.
Student is in a 50% hybrid program with mix of synchronous and asynchronous instruction.

What should the program be asking:

- Is the student making progress on goals?
- Why are we not addressing one of the goals?

If we are making progress and have a good reason for not addressing the 5th goal, then probably no violation, or if there is a violation, minimal compensatory education may be due.





#5 Evaluations in a Pandemic



HYPOTHETICAL: A Hybrid Model

Q. How should you conduct the FBA?

A. There is no excusal of IDEA timeframes for an evaluation. So the FBA should proceed with the available information.

TIPS:

- Recommend looking at all educational settings, including the home setting, during synchronous instruction.
- Recommend obtaining parental input regarding asynchronous and synchronous instruction.

NOTE: Unique situation in that parents have documentation of present levels of performance to share. Usually it is the other way around.



Due Process Hearing: CPS School District #299 (September 29, 2020)

- Absent an agreement between the parent and the district, there is no flexibility on timelines due to COVID-19. ISBE SPED-FAQ dated 04-20-20; ISBE Frequently asked Questions for Special Education on the Transition to In Person Instruction, Last Updated June 30, 2020.
- “Districts must adhere to timelines for annual IEP meetings and required evaluations. Illinois State Board of Education, “Starting the 2020-21 School Year, June 23, 2020, Part 3 Transition Joint Guidance. (Parents Exhibit 87, p. 1113.)
- “The failure to complete all necessary evaluations results in a substantive denial of FAPE which results in harm to the disabled child.” *Long v. District of Columbia*, 780 F. Supp. 2d 49 (D.D.C. 2011).
- There is no dispute in this case that the COVID-19 pandemic has impacted the educational process. The District repeatedly argued that it was unable to complete Student’s evaluations due to the pandemic. While the Hearing Officer is sympathetic to the District’s argument. Sympathy, does not change the law.



Due Process Hearing: CPS School District #299 (September 29, 2020)

- The Parents provided consent for Student’s re-evaluation on February 6, 2020. Even providing the District maximum consideration, including Gubernatorial “Act of God” dates, and the District’s reopening date of April 13, 2020, Student’s re-evaluation would be due on June 8, 2020. Other than the Social Work evaluation, which was completed timely but never considered at an IEP meeting, the District has offered no evidence, that it attempted to complete Student’s re-evaluation.
- “School authorities cannot properly address problems which they do not understand.” *Bd. of Educ. of Pak Park and River Forest High School Distr. No 200 v. Illinois State Board of Educ.*, 21 F. Supp. 2 862, 870 (N.D. Ill. 1998). Evidence demonstrates that Student’s April 2020 IEP is based entirely on Winter 2017 evaluations. Therefore, in light of Student’s established pattern of regression, Student’s educational IEP programming, without updated evaluations, could not be calculated to provide any educational benefit to Student.
- This IHO finds that Parents have met their burden on this issue.



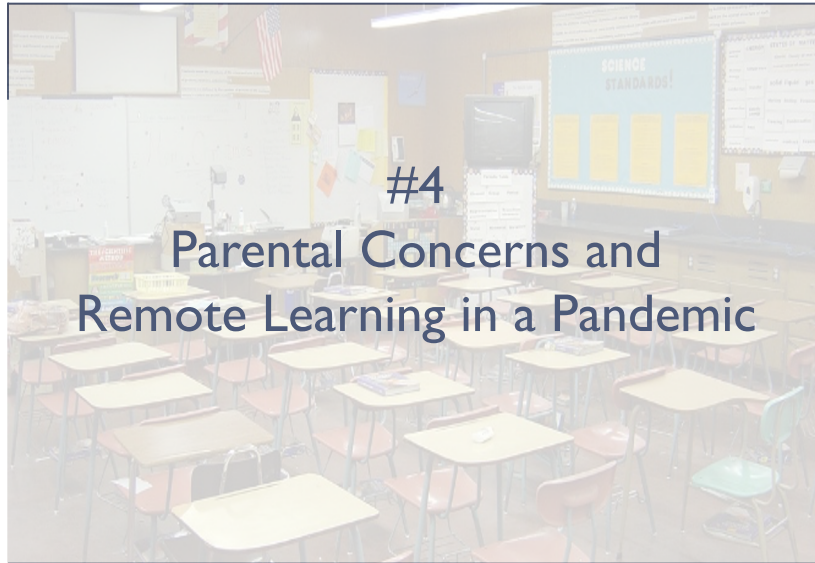
Q. What if the same parent is unwilling to consent to his/her child's triennial evaluation due to COVID-19, what do you do?



A. Document!

- Document parents' wishes and attempts
- Communicate with school district regarding refusal and discuss options for evaluation
- Hold remote domain review meeting and discuss assessment options that can occur remotely, i.e., records review, parent/student interviews, rating scales, etc., and other creative options that may also parent to be comfortable with in-person testing
- Document plan for revisiting evaluation options at future date





HYPOTHETICAL: A Hybrid Model

Q. What additional steps should be taken in response to the parent's concerns?

A. Hold an IEP Meeting!

Considerations for the IEP Team:

- Are there additional accommodations or modifications, supports and services needed during remote learning?
- Is there an ability to increase in-person instruction due to student's profile?
- Determine the barriers to remote learning. Is there a need for parental support? Training on a communication device? A 1:1 aide to support during virtual learning?



PRACTICE TIP: Follow Your Policies!

In re Student with a Disability (Illinois State September 29, 2020)

Where a District's policy indicated that a remote learning plan would supersede an IEP during COVID-19, a District's failure to hold a remote learning plan meeting for a student meant that the IEP drafted for the students was in effect. As a result, the District's failure to implement the IEP in totality was a denial of FAPE, entitling the student to compensatory education. The hearing officer noted that the requirements under the IDEA have not been suspended and absence a remote learning plan, the IEP must be evaluated under the IDEA.



HYPOTHETICAL: Remote Learning Option

How do you address parental concerns regarding COVID-19 health and safety standards being utilized at school?

- Communicate your policies and protocols, which should be in adherence to ISBE's & IDPH's guidance
- Enforce and implement those policies
- Provide remote option

PRACTICE TIP: Plan for flexibility and fluidity between remote and hybrid or in-person options, to the extent possible. Fluid models will help to provide continuity of special education instruction and services, to minimize school district concerns regarding potential compensatory claims, and will allow the school to change direction should schools have to shut down again.



Q. Is our school required to provide I:I aide services in the home if I:I services noted in a student's IEP?



A. Schools can provide I:I services in the home, but are not required to do so

Considerations:

- No explicit federal and state guidance on requiring in-home service
- What are other (creative) ways to meet the purpose of I:I service?
 - I:I check-ins throughout day be teacher or aide
 - Breakout rooms with teacher or aide before, after, during instruction
 - Utilizing adult family members for support
 - Parent training option as part of remote learning plan





#3 PPE, Masks, and Teaching In-Person



Q. What happens when a student is unable or unwilling to wear a mask?



Students Who Cannot Wear Masks

ISBE has stated: *Students with an IEP or 504 Plan who are unable to wear either face coverings or face shields due to a medical contraindication may not be denied access to an in-person education if the school is offering in-person education to other students.*

What to do?

- Seek medical documentation of contraindication that would prevent student from wearing a mask by healthcare provider and seek recommendation from providers of alternative PPE options.
- Increase PPE for staff working with student (i.e., fitted N95 mask, gloves, cover, goggles/face shield, etc.)
- Other PPE around student (i.e., plexi-glass wall)
- Other students and staff, to extent possible, should maintain six feet distance.

What if a classroom has multiple students with I:I needs, who are all mostly unable to wear a mask?

- Remote Learning
- Reassess space for class
- Hybrid schedules

PRACTICE TIP: It is within the discretion of each school to determine how it can maintain the health and safety of its school community while adhering to the required IDPH/ISBE guidelines.



Q. What if a student experiences a COVID-symptom that may be related to a pre-existing condition (i.e., allergies, migraines, etc.), do they have to be sent home for testing?



A. In an abundance of caution, YES!

Remember:

- Every symptomatic person should be evaluated by their healthcare provider on a case-by-case basis and decisions to test for COVID-19 should be based on their personal health history.
- While a school nurse may be qualified to make an assessment on need for medical evaluation, it is recommended that diagnostic testing be sought by a medical provider.
- A student/staff only requires to exhibit one symptom to be suspect for COVID-19, and each episode of a new symptom onset should be evaluated.
- It is possible to have COVID-19 and other health conditions at the same time.



Q. When can a student/staff member come back after having symptoms of COVID-19?



A. All students and staff sent home with COVID-like symptoms should be diagnostically tested. Students and staff should remain home from school until they receive the test results.



Q. What if student is tested and it's not COVID-19?



A. Student should only be permitted to return to school after:

- Meeting the criteria for returning to school for the non-COVID illness.
- Minimum standard: Individual must be fever-free for 24 hours without the use of fever-reducing medications and have had no diarrhea or vomiting in the previous 24 hours.
- Receiving a healthcare provider's note documenting an **alternative diagnosis** or negative COVID-19 test result should be requested and accompany the student/staff member returning to school



COVID-19 INTERIM EXCLUSION GUIDANCE¹ Decision Tree for Symptomatic Individuals in Pre-K, K-12 Schools and Day Care Programs



Send home or deny entry (and provide remote instruction) if ANY of the following symptoms ² are present: Fever (100.4°F or higher), new onset of moderate to severe headache, shortness of breath, new cough, sore throat, vomiting, diarrhea, abdominal pain from unknown cause, new congestion/runny nose, new loss of sense of taste or smell, nausea, fatigue from unknown cause, muscle or body aches. Medical Evaluation and Testing are Strongly Recommended for ALL Persons with COVID-Like Symptoms.				
Status	Evaluated by Healthcare Provider	Return to School Guidance	Quarantine for Close Contacts?	Documentation Required to Return to School
A. COVID-19 diagnostic test Positive (confirmed case) OR COVID-like symptoms without COVID-19 testing and exposed to confirmed case (probable case)	YES / NO	Stay home at least ten ³ calendar days from onset of symptoms AND for 24 hours with no fever (without fever-reducing medication) AND improvement of symptoms.	YES	Release from isolation letter (if received from their LHD) provided by the parent/guardian or staff person, notification via phone, secure email or fax from the LHD to the school, OR other process implemented by your LHD
B. Symptomatic individual with a negative COVID-19 diagnostic test Negative COVID-19 diagnostic tests are valid only for the date on which they are collected; specimens collected 48 hours prior to symptom onset, after symptom onset, or while symptoms are present are acceptable for determining school exclusion status.	YES / NO	Stay home until symptoms have improved/resolved per return-to-school criteria for diagnosed condition ⁴ . Follow provider directions, recommended treatment and IDPH Communicable Diseases in Schools .	NO	If staff/student is a close contact to a confirmed case, the school is experiencing an outbreak, or the LHD is requiring validation due to community transmission levels, documentation of a negative RT-PCR COVID-19 test result is needed. In other situations, a negative RT-PCR, rapid molecular (rapid PCR) or negative antigen test is acceptable.
C. Symptomatic individual with an alternative diagnosis without a negative COVID-19 diagnostic test	YES	Stay home until symptoms have improved/resolved per return-to-school criteria for diagnosed condition ⁴ . Follow provider directions, recommended treatment and IDPH Communicable Diseases in Schools .	NO	If testing is not performed due to the clinical judgment of the healthcare provider, a medical note is needed to return to school/day care documenting that there is no clinical suspicion for COVID-19 infection and indicate an alternative diagnosis with exclusion consistent with this diagnosis
D. Symptomatic individual without diagnostic testing or clinical evaluation Individuals may move to Columns A, B, or C based on results of diagnostic testing and/or clinical evaluation.	NO	Stay home at least ten ³ calendar days from onset of symptoms AND for 24 hours with no fever (without fever-reducing medication) AND improvement of symptoms.	Household Member (e.g., Siblings, Parent) ⁵	After the ten-day exclusion, a note from parent/guardian documenting that the ill student and/or household contacts are afebrile without fever-reducing medication and symptoms have improved
E. Asymptomatic individual who is a close contact⁶ to a confirmed or probable COVID-19 case	NO	Stay home for 7-14 calendar days ⁷ after last exposure to the COVID-19 case. Local health departments must authorize early release from quarantine. If COVID-19 illness develops, use the ten-day isolation period ⁸ guidance for a COVID-19 case from the onset date. Testing is recommended.	NA	Release from Quarantine letter (if received from their LHD) and negative PCR lab result (if applicable) ⁹ provided by the parent/guardian or staff member, LHD notification via phone, secure email or fax to the school OR other process implemented by your LHD



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Q. When can a student/staff member come back after having tested positive for COVID-19?



A. Students and staff who are confirmed or probable cases of COVID-19 must:

- ✓ Complete 10 calendar days of isolation from the date of first symptom onset;
- ✓ Be fever-free for 24 hours without use of fever-reducing medications; and
- ✓ Other symptoms have improved before returning to school.

Note: Individuals who have been cleared by the Local Health Department for release from isolation may return to school even if other household members are in isolation or quarantine in the home.



Q. What if a family is unable to have student COVID-tested and does not provide a doctor's note of an alternative diagnosis, when can the student come back to school?



A. These students must also:

- ✓ Complete 10 calendar days of isolation from the date of first symptom onset;
- ✓ Be fever-free for 24 hours without use of fever-reducing medications; and
- ✓ Other symptoms have improved before returning to school.



Q. If other students are determined to be close contacts, or are exposed to someone outside of the school community who tested positive for COVID-19, do they have to quarantine?



A. Yes, students who are exposed to COVID-19, should quarantine for 14 calendar days.

PRACTICE TIP: Utilize IDPH's Exclusion Decision Tree (attached) to determine when students/staff are required to be excluded and what criteria should be met before returning to school.



Q. When a student/staff test positive for COVID-19, what, if anything, can I disclose to the school community?

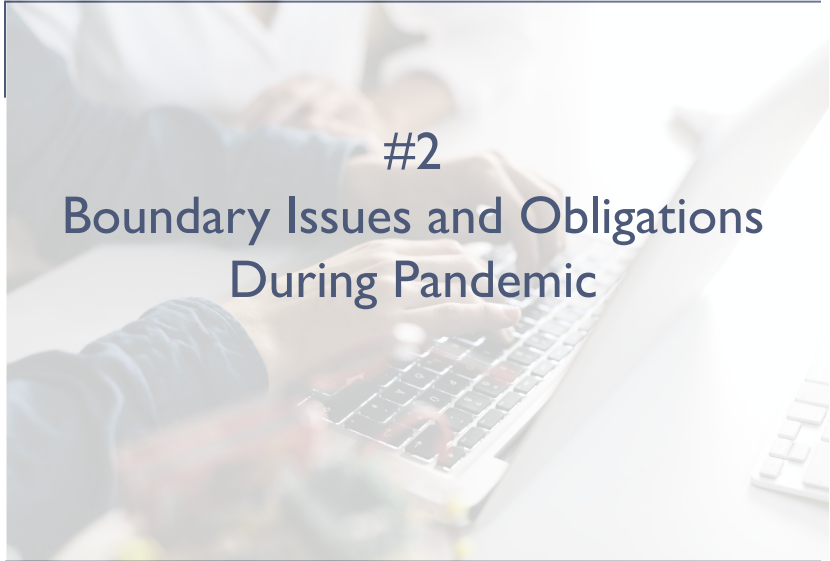


A. Generally, non-personally identifiable information regarding positive tests or probable cases may be disclosed to the school community.

Best Practices:

- Schools should limit information to information that is not personally identifiable – e.g., “a student in our school tested positive for COVID-19..”
- Consider the use of non-identifiable information that could become identifiable, including if paired with other information.
- Utilize standard notice letter when required to communicate positive/probable cases.
- Personnel information should also remain confidential and names should not be released in notifications.





#2 Boundary Issues and Obligations During Pandemic



Q. What best practices should be encouraged as remote learning continues?



BEST PRACTICES:
**MAINTAINING APPROPRIATE BOUNDARIES &
COMMUNICATION DURING REMOTE LEARNING**

Tips to Avoid Blurring the Lines:

- Avoid relaxing professional standards while providing education and services remotely (i.e., appropriate attire, background setting, etc.).
- What is in your background can be seen by the student and family. Encourage staff to utilize a space that is *appropriate* when conducting remote sessions.
- While time constructs have been blurred, consider having staff abide by any guidelines and policies on appropriate times for communication with students and families.
- Help staff set boundaries regarding when and how to communicate (e.g., What is the latest your staff should be e-mailing/communicating with a parent? What is an appropriate response time? When is texting permitted? Is there an office hours schedule that could be applied?)



BEST PRACTICES:
**MAINTAINING APPROPRIATE BOUNDARIES &
COMMUNICATION DURING REMOTE LEARNING**

- Continue to follow school protocols on appropriate contact with students and parents, i.e., texting, social media, sharing of personal information.
- If possible, avoid utilizing personal contact information for communication during this time.
- What is on your computer? Be careful what you're sharing when you're sharing your screen (i.e., e-mail inbox open, personal information/pictures, student personally identifiable information).
- Supervision of remote employees is more difficult. Reminders, check-ins, team meetings, and observations of remote learning by administrators may be helpful and warranted.



BEST PRACTICES: TOUGH RESPONSIBILITIES WHILE REMOTE

❖ *What do you do about the student who has not signed on to Zoom (ever)?*

- Document contact/attempted contacts with family
- Wellness check by school team
- Law enforcement safety check

❖ *How do I execute my mandated reporter duties remotely?*

- Students may be more vulnerable to risk of harm during this time of stay-at-home orders
- Reasonable cause to believe that child is being abused/neglected is required to be reported to DCFS.
- Reminder to staff of their mandated reporter responsibility
- Reminder to discuss issues/concerns with you
- Reminder to remain cognizant of what they can see and hear that is going on in the student's home.



General Standard

- The standard establishing whether a district has failed to identify a student with a disability under Child Find is that the district has overlooked clear signs of disability and was negligent in failing to test or that there was no rational justification for not deciding to evaluate. *Demarcus L. v. Board of Education of the City of Chicago, Dist. 299*, 63 IDELR 13, quoting *Board of Educ. of Fayette County, Ky v. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007).



General Standard

- When there is information suggesting the student's educational program is not meeting the student's individual needs, such as a significant decline in student's grades or behavior, a group of knowledgeable persons should consider whether further evaluation or revisions to the student's Section 504 Plan or placement is necessary. *Allendale County (SC) Public Schools*, 76 IDELR 263 (OCR, Southern Division, D.C. South Carolina March 27, 2020).
- One low score doesn't trigger a requirement to evaluate, but two low scores justify the need for an evaluation. *Z.J. v. Board of Education of the City of Chicago, Dist. 229*, 344 F.Supp.3d 988 (N.D. Ill. 2018).



Spring Branch Indep. Sch. Dist. v. O.W 961 F.3d 781 (5th Cir. June 12, 2020)

- Student had above average intelligence but experienced various behavioral problems at school, including aggression against peers and staff.
- School implemented a BIP but did not refer for a case study evaluation.
- Waited until January of that school year to refer for special education consideration.
- Court found district should have known by October 28th of that school year and that the delay in evaluating was unreasonable because student was not exhibiting typical behaviors instead behaviors were significant and severe and informal interventions were not successful.
- Ordered reimbursement to parents for \$50,000 in private school tuition.



QUESTIONS?

Thank you!



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E. Asymptomatic individual who is a close contact⁶ to a confirmed or probable COVID-19 case	NO	Stay home for 7-14 calendar days ^{7,8} after last exposure to the COVID-19 case. Local health departments must authorize early release from quarantine. <i>If COVID-19 illness develops, use the ten-day isolation period³ guidance for a COVID-19 case from the onset date. Testing is recommended.</i>	NA	Release from Quarantine letter (if received from their LHD) and negative PCR lab result if applicable ^{7,8} provided by the parent/guardian or staff member, LHD notification via phone, secure email or fax to the school OR other process implemented by your LHD

1 Based on available data and science, schools must make local decisions informed by local context in consultation with their local public health department. This chart should be used in conjunction with the [Public Health Interim Guidance for Pre-K-12 Schools and Day Care Programs¹ for Addressing COVID-19](#).

2 New onset of a symptom not attributed to allergies or a pre-existing condition.

3 Severely immunocompromised or severely ill: may need to isolate for 20 days as per guidance from the individual's infectious disease physician.

Rev. 1/4/2021 Interim Guidance, Subject to updates

4 If the individual has been identified by public health for quarantine or knows they are a close contact to a case, the quarantine period must be completed.

5 Consider quarantine for other close contacts if there was poor adherence to social distancing or use of face coverings.

6 Contacts to close contacts of a case do not need to be excluded unless the close contact becomes a confirmed or probable case.

7 Quarantine options: Complete a. 14 days, OR b. 10 days with no symptoms, OR c. –for ADULT STAFF ONLY: 7 days with no symptoms and a negative SARS-CoV-2 RT-PCR test. Specimen for testing must be obtained within 48 hours of Day 7. Last exposure date = Day 0. See <https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-options-to-reduce-quarantine.html>

8 Molecular testing (PCR) is recommended for individuals ending quarantine at Day 10 after exposure; may be required by LHD.

Box A. Assessment of Symptomatic Persons

Consider the following when assessing symptomatic students/staff:

Are symptoms new to the student/staff person or are they a change in baseline for that individual?

Does the symptomatic individual have any of the following potential exposure risks?

Did the student/staff have an exposure to a suspected or confirmed COVID-19 case in the past 14 days?

Is there a household or other close contact with similar symptoms who has not been yet classified as a confirmed or probable case?

Is there a household member or other close contact with high-exposure risk occupation or activities (e.g. HCW, correctional worker, other congregate living setting worker or visitor)?

Did the student/staff member have potential exposure due to out-of-school activities (private parties, playing with friend groups, etc.) or have poor compliance with mask wearing and social distancing?

Do they live in an area of moderate or high community transmission? (as defined in the [Adaptive Pause Metrics guidance](#)¹)

Do they have a history of travel to an area of high transmission in previous 14 days?

Is there an outbreak in the school or has there been another known case of COVID-19 in the school building in the last 14 days or are there other students or staff in the classroom or cohort currently out with COVID-19 symptoms?

Box B. Clinical Evaluation for Children with Symptoms of COVID-19

(<https://www.cdc.gov/coronavirus/2019-ncov/hcp/pediatric-hcp.html>)

Consider the individual's risk of exposure. See Box A.

No Exposure Risk Identified & resides in County with Minimal County Transmission¹

If no known close contact to COVID-19 case and no other exposure risks, testing and exclusion for COVID-19 may be considered based on level of clinical suspicion and testing availability.

Alternate diagnoses should be considered, and exclusions based on usual practice. (Isolate until at least 24 hours fever-free without fever-reducing medicine)

Has Exposure Risk and/or Clinical Suspicion for COVID-19

Isolation
COVID-19 Testing Recommended

TESTING

PCR or antigen (Ag) testing is acceptable.

- If an Ag detection test is negative and there is a high clinical suspicion of COVID-19, confirm with PCR) (see Column B, pg. 1), ideally within 2 days of the initial Ag test.
- If RT-PCR testing is not available, clinical discretion can be used to recommend isolation.

Test result is only valid for the day of specimen collection.

¹ Adaptive Pause and Metrics: Interim School Guidance for Local Health Departments. Available at <https://www.isbe.net/Documents/IDPH-Adaptive-Pause-Metrics.pdf> and CDC Indicators for Dynamic School Decision-Making available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/indicators.html#thresholds>

Resources:

- COVID-19 Testing Overview <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html>
- Isolation and Quarantine: CDC <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/index.html>