



Alabama Disabilities Advocacy Program
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VIA EMAIL

July 26, 2020

Ms. Crystal Richardson, Coordinator
Special Education Services (SES) Division
Alabama State Department of Education
P.O. Box 302101
Montgomery, AL 36104

RE: Students with Disabilities and Return-to-School 2020

Dear Crystal,

I want to share with you some of the basic principles we are sharing with families of IDEA- and 504-eligible students to help them be effective advocates for their children as the 2020 school year gets underway. The principles are grounded in the law and simple in concept:

1. *The IDEA and Section 504 are in full effect* – The IDEA and Section 504 are in full effect, pandemic or not. An IDEA- or 504-eligible child is entitled to a Free Appropriate Public Education (FAPE), with all that FAPE entails, including the provision of all those special education and related services a child needs to meet all her academic, behavioral, functional or transitional needs.
2. *FAPE follows the child wherever he is being educated and requires individualization* – Whether a child is learning in school, virtually, or through some blended or hybrid structure, he is entitled to those special education and related services needed to pursue grade-level content standards and to address the child's other disability-related issues, including those for a child with the most significant disabilities. While on-site, virtual, blended, and hybrid frameworks are being developed, when it comes to special education students, schools must understand that individualization is a fundamental legal requirement. For those students learning remotely or through blended/hybrid structures, we expect that general and special education teachers and providers have been creatively working together on how they will collaborate to ensure that general and special education and related services are provided. This planning might include the opportunity for in-person services for a child who, although learning remotely, requires such services to meet his unique learning needs. Given that other school activities such as football, band, and cheer have started up, in-person IEP and 504 services can as well, in order to supplement virtual learning and ensure the provision of a FAPE. Doing individualized planning is at the heart of the IEP — an *Individualized* Education Program — and federal law. As with any IEP Team discussion, parents must be actively

engaged in this planning; they had a front-row seat this past spring as to what worked and didn't work for their child during remote learning and will have definite contributions as to how things can be improved upon this fall.

3. *This year's IEP must, as always, address current needs* – To develop an IEP that is appropriately ambitious, contains challenging objectives, and is responsive to all a child's needs, the IEP Team must understand her current abilities. In common special education lingo, what is the child's present level of performance (PLOP)? We understand that districts are putting together school-wide assessment programs for all students to gauge the magnitude of this spring and summer's "learning slide." In addition to such global assessments, it might be necessary to conduct special education evaluations for a student with disabilities, depending on her unique needs, including behavioral, functional, and transitional evaluations. Each school district must have a plan in place requiring IEP teams, in a timely manner upon school reopening, to review such regular and special assessment data and to consider input from parents regarding their impressions about their child's current needs so that a responsive IEP can be crafted for the new school year.
4. *Children may be entitled to compensatory education services* – As described by the U.S. Department of Education,¹ if a child failed to progress or, worse, regressed because his learning needs were not met during the spring 2020 closure and remote learning period, the child might be eligible for compensatory education services. Each school district must have a plan in place through which its IEP Teams will assess for the need for compensatory services.² As with any IEP Team decision, parents must play an active role in discussions about the lack of progress or regression. Similarly, parents must meaningfully participate in an IEP Team's development of a program of compensatory education services, which might include before- or after-school services and/or services going into spring, summer, and fall of 2021. We are particularly concerned about the effect of the school closure and the switch to remote learning for students with the most significant and behavioral disabilities, transition-aged students, and early learners (3-5 year olds).

The special education "Essentials" from the ALSDE's *Roadmap for Reopening Schools*³ reflect these foundational legal principles. Unfortunately, given what we have been hearing from families and through our own interactions with schools, it appears that some districts are not poised to

¹ <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>

² See, e.g., this guidance document entitled "Determining COVID-19 Recovery/Compensatory Education Services" from Vermont: <https://education.vermont.gov/sites/aoe/files/documents/edu-determining-covid19-recovery-compensatory-education-services.pdf>. See also this emergency order issued by the Governor of New Hampshire regarding the provision of ESY and compensatory education planning and implementation: <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-48.pdf>

³ "Revise students' IEPs in coordination with general and special education teachers to reflect the child's evolving needs based on assessment data and parent feedback, and design accommodations and match services accordingly. Support schools to incorporate accommodations for students with IEPs based on assessments and responsive interventions. Make sure general and special education teachers collaborate to share students' results from screeners and diagnostics to inform IEP revisions and accommodation design. Consider students' specific needs around accessibility and provide assistive technologies when possible. For students who have been identified as having a reading deficiency, communication with family needs to occur within 15 days after the date they are identified as stated in the Alabama Literacy Act."

implement the “Essentials” and these legal principles with fidelity. The emergency pivot in spring 2020 to remote learning was, for many families of students with disabilities, challenging at best and disastrous at worst. Adequate learning supports were not provided. Technology was glitchy where it was available. Learning platforms were not accessible to students with disabilities. Work was poorly planned and not individualized. Home-school communication was lacking. Children experienced emotional and behavioral challenges, because of the cessation of school services and the lack of interaction with peers. Extended school year (ESY) services, which could have been provided remotely during the summer, never seemed to materialize; it was as if this IDEA-mandate was just ignored this year. To prevent a repeat of spring/summer 2020 and further injury to the education of students with disabilities, we urge the ALSDE to be aggressive, not timid, in reaching out to LEAs regarding their legal obligations and in providing guidance regarding instructional strategies and supports. We also recommend that the ALSDE vigorously engage with and review districts’ return-to-school special education plans pursuant to its IDEA general supervision responsibilities (*see* 34 C.F.R. 300.149).⁴ If the ALSDE weakly supports districts – and families too, key “customers” of the ALSDE – the ALSDE risks long-term, if not irrevocable harm to children and places districts at risk of legal conflicts.

We welcome the opportunity to collaborate with the ALSDE in sponsoring outreach events and developing materials geared toward families. To that end, I have attached a list of questions that we collected from families as the 2019-2020 school year was winding down. The Alabama Parent Education Center (APEC) has expressed interest in collaborating on outreach as well.

Best Regards,



Nancy Anderson, Esq.
Associate Director

cc: Dr. Eric G. Mackey, State Superintendent of Education
Dr. Elisabeth Davis
Angela Martin
Jeana Winter
Special Education Advisory Panel (SEAP)

⁴All LEA plans are, per Dr. Mackey’s July 15 memorandum, to be submitted to Dr. Davis. In contrast to spring 2020, there is no required ALSDE approval process for local plans (see Dr. Mackey’s June 26 memorandum). Notwithstanding this (to me) curious decision, reviewing LEA special education plans for compliance with the state’s “Essential” activities and foundational federal and state legal mandates is a vital strategy to ensure the IDEA and Section 504 are being followed.



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FREQUENTLY ASKED QUESTIONS / AREAS OF CONCERN

Families of IDEA- and 504-Eligible Students

School Reopening

1. How will my child's school make up for the learning she missed this spring and for any regression she's experiencing?
2. Will I have input into the decision of what my child needs because of the school closure? How and who will make that decision? How can I prepare to help with that decision-making?
3. Will my child's school evaluate my child when he returns to school to see how he's doing? How will that evaluation be done?
4. What kind of services can be provided to make up for what my child lost this spring? Can we get extra help during the coming school year and next summer (2021)?
5. If my child regresses or fails to progress, how will the school measure his regression? How will it be addressed when he returns to school in the fall?
6. How can I help keep track of my child's progress or regression and do I have any rights to ask for additional instruction or related services when she returns to school?
7. My child was hit hard emotionally by the school closure this spring and with the social distancing we all had to do. His routines have been broken, he feels unsafe, and he's acting out more. How can the school help with that?
8. What will be done to help children transition back to school?
9. My child is on a Section 504 plan. How will her needs be considered and addressed when school re-opens?
10. Must an IEP meeting be held once school resumes if my child's needs have changed as the result of the school closure?
11. How and when will IEPs for next year be written?

12. I've heard that some schools are providing therapies such as behavior and speech and language therapy via Zoom or other interactive video conferencing. Is my school required to do this for my child? How can I get such services for my child?

Remote Learning Planning

13. Distance learning was next to impossible this spring. My child received homework packets from his teachers and had no direct instruction at all from any of them. None of the work that was sent home was individualized to his level. He's supposed to get small group instruction and 1:1 services in reading, math, and speech; he got none of that. I tried to help him as best I could but it was hard. If there's another school closure, how can I make sure it goes better next time?
14. To what extent is my school required to individualize remote learning for my child? How do I participate in that process?
15. If my child has a 504 Plan instead of an IEP, how will her needs be met through remote learning?
16. How is my child's progress going to be measured during distance learning?
17. How are transition services going to be provided for my older child with an IEP by distance learning?
18. I don't always have the ability to help my child when she has tantrums or is frustrated about doing schoolwork at home. How can my school help?
19. There's a lot of talk about expanding broadband coverage so that families that don't have access to the internet can gain access and, with it, be connected to online learning. That sounds great but I don't have internet in my house or a computer because I can't afford them. Will there be any kind of support for families like mine?
20. How will my child's social skill needs be met during any future distance learning?
21. How will behavioral interventions that are included in my child's IEP be provided during any future distance learning period?
22. How can speech services be provided to a child with language delays through distance learning?
23. What do I do if the distance learning provided to my child isn't working?

Recovering Lost Ground

(including questions specifically related to compensatory education)

24. What is compensatory education? Will my child be entitled to it?

25. If my school provided some services during the school closure, would my child still be entitled to compensatory education services?
26. Does a school district have to provide, via compensatory education, the same amount (minute for minute) of service time that was supposed to be provided to my child according to her IEP but that wasn't provided during the school closure? Does a school district have to provide, via compensatory education, the same amount (minute for minute) of service time that was supposed to be provided to my child according to her IEP but that wasn't provided during the distance learning period?
27. How must my child's school determine whether my child is entitled to receive compensatory education? How must my child's school determine the amount of compensatory education service time that she needs?
28. How am I, as a parent, involved in the determination of compensatory education?
29. My child didn't participate in all or some of the distance learning activities provided by his school while school was closed. Will my child still be eligible for compensatory education?
30. When can compensatory education services be provided? What will they look like?
31. What happens if my child's school fails, for any reason, to make an individualized determination of my child's need for compensatory education services?
32. What happens if I disagree with about compensatory education services that are going to be provided to my child?

Transition-Aged Students

33. How are schools going to work with Vocational Rehabilitation (VR) next school year if there are still limits as to where students can go in the community? What role will VR play?
34. My son is supposed to be doing employment development in the fall at a job at a grocery store. If that placement falls through for any reason related, for example, to the coronavirus, how will he get those necessary job skills?
35. My child was going to graduate school this year but now I want her to stay longer because of what she missed in the spring semester. Can she do that? If so, how would I arrange for that to happen?
36. How can we do the Summary of Academic Achievement and Functional Performance?

ESY during Summer 2020

37. What are Extended School Year (ESY) services?
38. What's the difference between ESY and compensatory education?

39. Will there be ESY summer services this year? If so, what will those services look like?
40. We didn't talk about ESY at an IEP meeting this spring. How can we now determine whether my child needs ESY this summer?

Evaluation Procedures

41. My child was being tested for services prior to the stay-at-home order. When can the testing be finished? When will the consent to implementation timeline begin again?
42. How will my child be evaluated if we're not in school?