

# Special Education in the Time of COVID-19

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# Objectives

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- Identify at least three strategies to address school district failures to meet the needs of students with disabilities.
- Name at least 3 advocacy groups with whom to coordinate to address the needs of students with disabilities resulting from COVID school closures.
- List at least 3 necessary steps to develop an action plan to ensure school districts are adequately prepared to address students' needs when they return to school.



# Covid-19 Disclaimer

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- IDEA never contemplated a pandemic resulting in long-term school closures, so we are in uncharted territory
- Not much federal guidance for SEAs/LEAs, so we are seeing many differences among the states
- This information may change
- We have to do the best we can



# FAPE

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FREE APPROPRIATE PUBLIC EDUCATION

# A Purpose of IDEA

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- “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living”
- 20 U.S.C. § 4100(d)(1)(A)



# IDEA FAPE Definition

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- Special education and related services that:
  - Are free
  - Meet SEA standards and IDEA requirements
  - Appropriate Education
  - Provided through an IEP developed under IDEA
- 34 C.F.R. § 300.17 (see also 20 U.S.C. § 1401(9))



# Endrew F. 137 S.Ct. 988 (2017)

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- Interpreted a standard for FAPE: “to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”



# Participant Survey

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Should school districts consider COVID-19 closures as “circumstances” under the Endrew F. standard?

*Submit answer in survey box*





# COVID-19 FAPE Concerns

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- School districts are:
  - Closing early or not providing services to all students
  - Not providing related services
  - Unilaterally amending IEPs or Issuing PWNs/WPNs
  - Focus on access to general education
- Many children cannot benefit from remote instruction
- Spotty or lack of internet access/lack of technology
- “Circumstances” of COVID-19



# Compensatory Services

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# Compensatory Services

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- Educational services to make up for a school district's failure to provide a FAPE in the past
- Might include additional special education services, tutoring, occupational therapy, speech-language therapy, counseling or other related services



# Compensatory Services cont.

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- School districts dislike this phrase
- We have to overcome this language
- End goal is to help students regain lost skills and meet IEP goals



# Compensatory Services – What's Required?

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- Not necessarily 1:1 replacement
- Data driven decision-making
- School/parent progress assessments
- Formal evaluations



# Compensatory Services – Advocacy Considerations

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- Beware of changes to IEP
- Document, document, document
- Raise concerns with IEP team
- When? Where? Who provides?



# Participant Input

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Can you think of any win-win language to use when advocating for compensatory education?

*Please use the chat box*



# Strategies to Address Concerns with School Districts

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# Our Stories, Our Efforts – SC

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- LEA's Office of Special Education Services (OSES) Stakeholder Group



# Our Stories, Our Efforts – NH

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- Governor's Emergency Order – NH Education issues guidance
- Initial communication and ongoing advocacy with Commissioner
- Advocacy for Emergency Order
- Getting the word out



# Informal Strategies

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- Individual Matters
  - Educating families
  - Spec. Ed. Dir./IEP meetings/Facilitated IEP meetings
  - Ombudsperson
- Systemic Concerns
  - Contact SEA
  - Letter of concern
  - Advisory council
  - Engage with media/communications



# Formal Strategies

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- Mediation (34 C.F.R. §300.506)
- Complaint
  - SEA (34 C.F.R. §§ 300.151 – 300.153)
  - USDOE – OCR (Violations ADA, § 504)
- Due Process (34 C.F.R. §§ 300.507-300.518)
- Lawsuit – Systemic issues, exhaustion (beyond scope of training)



# Collaboration

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WITH OTHER ADVOCACY GROUPS IN YOUR STATE

# South Carolina

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- Family Connection SC (SC's Parent Training and Information Center - PTI)



# New Hampshire

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- Parent Information Center (NH's PTI)
- ABLE-NH: Grass roots disability rights organization
- NH State Advisory Committee (20 U.S.C. §1412(a)(21))
- NH Education Commissioner and attorney
- Various ad hoc stakeholders:
  - NH Association of Special Education Administrators
  - NH School Administrators Association
  - UNH Institute on Disabilities (UCED)





# Participant Input

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In addition to those we mentioned, what individuals or groups would you recommend P&As collaborate with to address our concerns?

*Please use the chat box*



# Return to School Action Plan Thoughts

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# Financial Considerations

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**Coronavirus Aid, Relief and Economic Security Act, Pub. L. No. 116-136 (“CARES Act”) - \$30,750 billion**

- Governor’s Emergency Education Relief Fund (GEER)
- Elementary and Secondary School Emergency Relief Fund (ESSER)
- Maintenance of effort requirement
- General Education Provisions Act (GEPA), 20 U.S.C. §1322e and §1228a



# General Concerns for Students with Disabilities

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- How is your state planning for return?
- What needs might students have upon returning?
  - Transition back to school
  - Behavior/discipline
  - Support/safety
  - In-person/1:1 supports
  - Students who need consistent schedule
- Students still compromised/medical homebound



# Participant Poll

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Should P&As join their state's official school re-opening task force?

*Submit answer in survey box*



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# Planning for Individual Advocacy

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- Increase in intakes?
- Case acceptance criteria
- Training/outreach/information for parents & students
- Community partners
- Maintaining data for any patterns



# Planning for System-Wide Impact

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- Teacher supports/training
- Contact/collaborate with your SEA
- Collaboration with community partners
- Internal social media/communications staff
- Media





# Moving Forward (or possibly back to square one . . . )

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- Round Two!?!
  - Parent training
  - Distance learning plans
  - Technology/accessibility
- Data collection for lessons learned
- Other thoughts/areas to think of in a return to school action plan?



# Thank you!

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ANY QUESTIONS?

# Acronyms

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- FAPE: Free Appropriate Public Education
- IDEA: Individuals with Disabilities Education Act
- IEP: Individualized Education Program
- LEA: Local Educational Agency
- PWN/WPN: Prior Written Notice/Written Prior Notice
- PTI: Parent Training and Information Center
- SEA: State Educational Agency
- <https://sites.ed.gov/idea/acronyms/>



# USDOE Resources

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- Covid-19
  - [www.ed.gov/coronavirus](http://www.ed.gov/coronavirus)
  - [www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf](http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf)
  - [www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf](http://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf)
- Endrew F. Q&A
  - <https://sites.ed.gov/idea/files/qa-endrewcase-12-07-2017.pdf>



# Resources

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- DRC-NH Webinar: <https://drcnh.org/events/special-education-and-covid-19-understanding-your-rights/>
- Complaints:
  - James et al v. Tom Wolf Et Al (U.S. Dist. Ct, E.D. PA)
  - W.G. Et Al v. Kishimoto (U.S. Dist. Ct, HI)
- Ron Hager: Comp. Ed. Circuit Court Cases memo
- Seth Gallanter: CARES Act/LEA spending memo





*The Protection & Advocacy System for South Carolina*

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