

Special Education Considerations for COVID-19 Interruptions

By Susan D. Friedfel & Monica H. Khetarpal

March 13, 2020

Meet the Authors



Susan D. Friedfel

Principal
914-872-8027
Susan.Friedfel@jacksonlewis.com



Monica H. Khetarpal

Principal
(312) 803-2529
Monica.Khetarpal@jacksonlewis.com

Related Services

COVID-19
Disability, Leave and Health
Management
Higher Education

In response to the threat to safety and health from the Coronavirus (COVID-19) outbreak, some school districts across the country have closed and others are contemplating closing or moving to a home-based program. Such closures and home-based programs may have unique implications for students with disabilities.

The Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act (ADA) do not specifically address schools closing for an extended period (generally, more than 10 consecutive days) because of exceptional circumstances, such as an outbreak of a disease. Issues a school district should consider when making school-closing decisions include the following:

1. If a district closes its schools to slow the spread of COVID-19 and it does not provide any educational services to the general student population, it would not be required to provide services to students with disabilities during that same period.
2. If a district continues to provide educational opportunities to the general student population during a closure, it must ensure that students with disabilities also have equal access to the same opportunities, including the provision of Free and Appropriate Education (FAPE). Districts must ensure that each student with a disability can be provided the special education and related services identified in the student's Individualized Education Program (IEP) developed under IDEA, or a plan developed under Section 504.
3. If a student with a disability is absent for an extended period because the child is infected with COVID-19, the district must provide special education services to them while the schools remain open. When a child with a disability is classified as needing homebound instruction because of a medical problem, as ordered by a physician, and is home for an extended period (generally, more than 10 consecutive school days), an IEP meeting is necessary to change the child's placement and the IEP, if warranted. Further, if the IEP goals will remain the same, but only the time in special education will change, the IEP team may add an amendment stating the amount of time to be spent in special education.
4. If schools in the district are closed selectively due to the possibility of severe complications from a COVID-19 outbreak, the district must determine whether each dismissed child with a disability could benefit from online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. In so doing, school personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of the services. Exceptional circumstances may exist that could affect how a service is provided. If a child does not receive services during a closure, the child's IEP team (or appropriate personnel under Section 504) must make an individualized determination on whether and to what extent compensatory services may be

needed.

5. If a school closure is a temporary measure (generally, up to 10 consecutive school days), the provision of services, such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, is not considered a change in placement. During this time, a child's parent or other IEP team member may request an IEP meeting to discuss the possible need for services if the exclusion is likely to be of long duration (generally, more than 10 consecutive school days). For long-term exclusions, a district must consider placement decisions under the IDEA's procedural protections on the continuum of alternative placements and the determination of placements. A change in placement decision must be made by a group of persons, including the parents and other persons knowledgeable about the child and the placement options.
6. If a child meets established high-risk criteria and, due to safety and health concerns, the child's needs could be met through homebound instruction, then the district must issue a prior written notice proposing the change in placement. The decision to dismiss a child based on their high risk for medical complications must be based on the individual needs of the child and not on perceptions of the child's needs based merely on stereotypes or generalizations regarding their disability.
7. An IEP team may consider a distance learning plan in a child's IEP as a contingency plan in the event of a COVID-19 outbreak that requires the school's closure. Such contingent provisions may include delivering special education and related services at an alternate location or the providing online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, and may identify which special education and related services, if any, could be provided at the child's home.
8. IDEA Part B funds may be used for activities that directly relate to providing, and ensuring the continuity of, special education and related services to children with disabilities. A district may use Part B funds to circulate health and COVID-19 information specifically related to children with disabilities, to develop emergency plans for children with disabilities, or to provide other information to parties who may need such information (including school staff responsible for implementing IEPs, parents of eligible children, and staff in alternate locations where special education and related services may be provided). Local education agencies, however, may not use IDEA Part B funds to develop or distribute general COVID-19 guidance or to carry out activities that are not specific to children with disabilities.

The possibility of closing schools or removing children from school because of their unique medical risks presents complex legal issues. Contact a Jackson Lewis attorney for more information.

To better support clients as they respond to this challenging public health issue, Jackson Lewis has established a dedicated [COVID-19 Task Force](#) that is continually assessing risks, preparing employee communications, and providing practical advice on the compliance issues flowing from Coronavirus [workplace concerns](#) and the [travel restrictions and new facts](#) we are continuing to learn about COVID-19.

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.