

Protecting Special Education Rights During COVID-19

Route 66 Abilities Virtual Conference

April 17, 2021

Today's Presentation

This presentation discusses public school closures during the Coronavirus COVID-19 outbreak and some of the issues that parents and students face in special education. This includes the provision of compensatory education services.

Agenda

- Recap on School Closures and Instructional Continuity
- Recap of State and Federal Policy Guidance
- Adaptation of Key Special Education Requirements
- Compensatory Services
- Questions and Answers

Overview of Texas Special Education

In the 2020-2021 school year, Texas school districts and charter schools provided special education services to **605,043 students with disabilities**.

In addition to the federal Individuals with Disabilities Education Act (IDEA), Texas has both statutory and regulatory requirements for special education.

- Texas Education Code, Chapter 29, Subchapter A
- Texas Administrative Code, Title 19, Chapter 89

The Texas Education Agency (TEA) is responsible for implementing Part B of IDEA.

COVID-19 and School Closures

The statewide closure of public schools in the 2019-2020 school year was unprecedented. On March 19, 2020, Governor Abbott issued the first executive order that closed all schools. Public schools remained closed for the 2019-2020 school year.

Only the Governor can close schools across the state. Our state department of education, the Texas Education Agency (TEA), **does not** have the authority to close schools.

TEA is playing a vital role during this period. TEA is providing guidance to school districts across the state, as well as adjusting state funding of public education.

COVID-19 and School Closures

TEXAS PUBLIC SCHOOL STUDENT ENGAGEMENT IN LEARNING DURING THE PANDEMIC				
TEA Crisis Code	Crisis Code Description	Student Count – All Students with Disabilities	Student Count – Learning Disabilities	Student Count – Speech Impairment
7B	No Contact For Entire Time Period	9,484	2,814	1,676
7E	Contact But Not Engaged For Majority Of Time Period	36,564	11,462	6,548
7H and 7I	Engaged Before 5/1; Either No Contact 5/1 Thru End Of Year, Or Not Engaged 5/1 Thru End Of Year	18,393	6,204	3,812

SOURCE: TEA crisis code data, School Year 2019-2020.

COVID-19 and School Closures

TEA has a dedicated page on its website for information on Coronavirus/COVID-19.

- [TEA Coronavirus COVID-19 Support and Guidance Documents Page](#)

TEA is assisting school districts with trying to continue to educate students while campuses are closed. TEA and schools are using the term “**instructional continuity**.” Instructional continuity applies to all students so they can pursue their studies while at home.

What instructional continuity looks like in your district is a **local** decision.

COVID-19 and School Closures

The TEA website has a page for special education guidance during the Coronavirus/COVID-19 outbreak.

[TEA COVID-19 Special Education Support and Guidance Page](#)

On August 7, 2020, TEA released a planning guide for special education in light of COVID-19 for the 2020-2021 school year.

[TEA Students with Disabilities Planning Supports Guidebook](#)

COVID-19 and School Closures

On December 10, 2020, TEA released a new tips resource about students with disabilities returning to campus from remote instruction.

[TEA Specialized Classroom Guidance](#)

On **January 21, 2021**, TEA released a revised version of its COVID-19 policy questions document on special education for school districts. The policy questions pertain to developing situations that arise across the state.

[TEA Special Education FAQs](#)

COVID-19 and School Closures

TEA has produced, or provided links to, additional resources to assist educators and families on a number of special education topics during COVID-19 pandemic.

[TEA List of Special Education Resources During Pandemic](#)

TEA is frequently updating its policy and documents on COVID-19 so it is **important to always check the TEA website for the most current version.**

COVID-19 and School Closures

The U.S. Department of Education website has a home page for information on Coronavirus/COVID-19.

- [Federal COVID-19 Guidance Page](#)

There is federal guidance on Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act (IDEA).

- [Federal COVID-19 Special Education Guidance Page](#)

Key Special Education Requirements

Prior Written Notice

- Prior written notice (PWN) is a document that the school must give to the parents of a student with a disability anytime the school wants to change something in the student's Individualized Education Program (IEP), such as where the student is educated or the amount of special education services currently provided.
- In Texas, the school must give the prior written notice to the parents **at least five school days** before the school proposes a change, unless the parent agrees to a shorter timeframe.

Key Special Education Requirements

Admission, Review, and Dismissal Committee Meetings

- The Admission, Review, and Dismissal (ARD) Committee is the group that discusses and decides where the student is educated and the type and amount of special education and related services provided.
- The school may hold a virtual ARD Committee meeting allowing remote participation to practice social distancing during the outbreak.
- The district may request that a usual school member of the ARD Committee be excused because she or he will not have a role in the meeting. Parents can excuse the attendance, especially if it will help to get the meeting scheduled.
- Parents retain the right to disagree at the conclusion of the meeting.

Key Special Education Requirements

Review and Revision of IEPs

- The school district and parents must review and update the IEP at least once a year.
- TEA has developed a model **SPECIAL EDUCATION EMERGENCY CONTINGENCY PLAN**.
 - [TEA Model for Documenting Temporary COVID Changes](#)
- The school and parents may mutually agree to an IEP amendment without a meeting.
- Parents must request a revised copy of the IEP with the amendments incorporated.

Key Special Education Requirements

Online Instruction

- Online instruction and services must be accessible. Online instruction must also afford the student an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.
- Accessibility and equal opportunity issues might range from the need for captioning of a live lecture or adoption of differentiated instruction to adaptation of methods for the student to demonstrate content knowledge.
- Every school district must have a Section 504 Coordinator who should help address any accessibility and equal opportunity issues.

Key Special Education Requirements

Discipline

- School districts still have codes of conduct and disciplinary rules in place, applying to both students on campus and those who are learning from home.
- For students with disabilities, the IEP may include a behavioral intervention plan (BIP). While a student might not have needed it before, a change in learning environment such as remote instruction might raise new or different behaviors.
- If a BIP needs to be updated, or a new one created, parents should request a functional behavioral assessment and ARD Committee meeting.

Key Special Education Requirements

Reevaluations

- The school district must reevaluate a student at least once every three years. The school should also reevaluate a student anytime it determines that the educational or related service needs of the student warrant a reevaluation. Parents may also request a reevaluation.
- For school closures that last for an extended period, the district should seek parental permission to reevaluate the student upon returning to school for regression of skills.
- If parents disagree with the reevaluation, they may request an independent educational evaluation at school expense.

COVID-19 and Compensatory Services

Compensatory Services and Extended School Year Services.

- Compensatory services are extra services provided by the school to return a student with a disability to a level of educational progress which the student should have attained but could not because of a failure by the school. Schools should provide compensatory services so students may catch up and reach IEP goals.
- Extended school year services are special education services provided beyond the normal school year. The school should offer extended school year services if the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time.

COVID-19 and Compensatory Services

On May 14, 2020, TEA released its COVID-19 policy guidance document on compensatory services for students with disabilities.

[TEA COVID-19 Special Education Comp Ed Guidance](#)

On August 27, 2020, TEA released a video presentation on special education compensatory services.

[TEA COVID-19 Special Education Comp Ed Webinar](#)

TEA has also produced an informational flyer on compensatory services for parents.

[TEA COVID-19 Special Education Comp Ed Flyer](#)

COVID-19 and Compensatory Services

TEA guidance on compensatory services makes several points.

- Encourages school districts to have a system to identify and track each student with a disability whose IEP was amended or supplemented due to the closure, as well as a system to identify and track each student with a disability whose IEP services were temporarily reduced or suspended regardless of a formal IEP amendment.
- In reviewing a child's need for compensatory services, Admission, Review, and Dismissal (ARD) Committees should discuss and weigh information from a variety of sources and consider need for a formal reevaluation.

COVID-19 and Compensatory Services

TEA guidance on compensatory services makes several points.

- ARD committees should keep the student and the family in mind when determining the duration and frequency of compensatory services.
 - Overloading a student with compensatory services may ultimately do more harm than good.
 - Removing a student too often from his/her routine settings, peers, and classes once school reopens in order to provide him/her with compensatory services may have a negative impact on the student's social and educational progress.

COVID-19 and Compensatory Services

While the school district has a duty to raise the provision of compensatory services, parents should not wait on the school.

There is a deadline for parents to formally challenge the school district on compensatory services for their student with a disability.

- Parents have one (1) year from the time that special education services were disrupted, suspended, or altered due to COVID-19 to file a complaint with TEA or request a due process hearing.
- In most cases, the deadline for going to TEA with a complaint or request for due process hearing will be **March, 2021**.

DRTx has created a sample letter for parents to use to request compensatory services. (See resource page.)

Issues During 2020-2021 School Year

- Completion of FIEs.
- Conducting Revaluations.
- Mask Wearing and Exceptions as an Accommodation.
- Preference for Remote Instruction
- Preference for In-Person instruction.
- New Supplemental Special Education Services program.
 - [TEA SSES Website Page](#)

Tips for Parents and Advocates

- Documenting Special Education and Related Services Suspended During School Closure
- Documenting Your Child's Educational Performance During School Closure
- Documenting Your Child's Noneducational Performance During School Closure
 - Behavioral
 - Social
 - Mental Health
 - Transition

Tips for Parents and Advocates

- Safeguarding the Health, Safety, and Welfare of Your Family
- Practicing Patience with Yourself, Your Children, and the School
- Communicating Both Directions with Your School and Teacher
- Reviewing Your Child's Current IEP
 - Present Level of Academic Achievement and Functional Performance
 - Measurable Annual Goals
 - Statement of Special Education and Related Services

Tips for Parents and Advocates

- Obtaining Private Independent Educational Evaluation for Your Child
- Requesting Reevaluation of Your Child
- Requesting Summer Instruction, Summer School, Extended School Year Program for Your Child
- Requesting Compensatory Educational Services for Your Child
 - DRTx has created a sample letter for parents to use to request compensatory services. (See resource page.)

Tips for Parents and Advocates

- Maintaining Your Child's Enrollment in School
- Signing Documents Only After You Have Reviewed and Understand
 - Consent
 - Releases
 - Waivers
 - IEP Amendments
- Ensuring Services for Your Child Even If Your Family Enters a Period of Homelessness
- Using Procedural Safeguards When Needed Such As State Complaint

2021-2022 School Year

On July 7, 2020, TEA released policy guidance on the **2020-2021 school year**. The guidance was contained in several documents.

As of the date of this presentation, there have been no official announcements regarding the **2021-2022 school year**. If TEA follows the same pattern, TEA will not release any updated guidance until the middle of summer, 2021.

At this point, factors such as the status of the pandemic and federal and state decisions are still uncertain. Presumably there will be an emphasis on school “returning to normal.”

General Resources During COVID-19

- Disability Rights Texas
 - [DRTx Website Home Page](#)
 - [DRTx COVID-19 Website Page](#)
 - [DRTx COVID-19 Compensatory Services Request Letter](#)
- Texas LawHelp
 - [Texas LawHelp COVID-19 Website Page](#)
- Texas Council for Developmental Disabilities
 - [TCDD COVID-19 Website Page](#)

Special Education Resources

- Disability Rights Texas
 - [DRTx Website Home Page](#)
 - [DRTx Education Website Page](#)
- Partners Resource Network
 - [PRN Website Home Page](#)
- Texas Special Education Information Center
 - [SPEDTEX Website Home Page](#)

Questions

Question and Answer Session as Time Permits

This presentation is for informational purposes and not intended to provide legal advice. If you believe that you are directly affected by violations of law or have questions about your specific rights, we encourage you to seek legal counsel as soon as possible.

This presentation is strictly the responsibility of the presenter. The host and sponsors have neither reviewed nor approved the content of the presentation.

