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What are my Child's Rights?: IEP Planning During Covid-19



Presented
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In Collaboration with
Autism Society

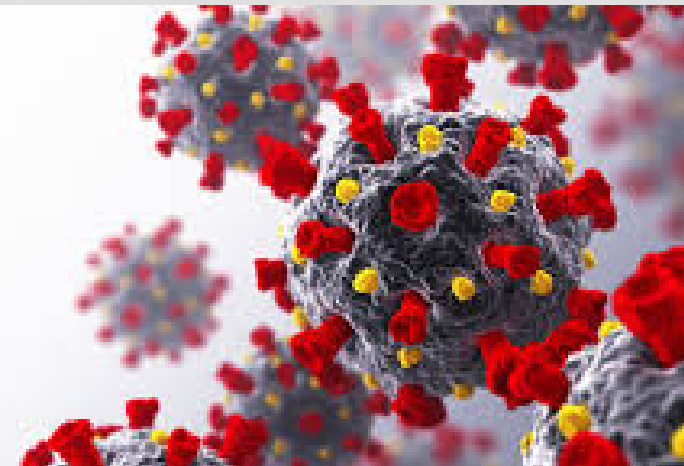
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A WORD ABOUT COVID-19

- The exceptional circumstances brought about by the COVID-19 pandemic represent challenges on a scale never before experienced in Special Education.
- Every effort has been taken to ensure that the most recent guidance and newly enacted legislation is presented today. However, guidance is changing daily and it is recommended that you check back frequently for changes and updates. The firm's website is updated weekly www.woodsmalllawgroup.com
- Guidance issued by agencies such as the US Department of Education is not binding law. It is, however, quite persuasive for the courts and frequently relied upon in decisions regarding the rights of our students.

PREPARING FOR THE IEP MEETING DURING COVID-19

Tips & Strategies for Surviving the Process



FEDERAL SPECIAL EDUCATION GUIDANCE

- On March 12, 2020 the U.S. Department of Education (“USDOE”) issued guidance regarding provision of special education services during the COVID-19. The USDOE has advised that the school district must ensure that students with disabilities have “equal access to the same opportunities, including the provision of FAPE.”
- Districts must, “make every effort to provide special education and related services in accordance with the child’s IEP,” and “must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP developed under IDEA.” IEP teams should also examine whether compensatory services are needed make up for skills lost.
- <https://www.ed.gov/coronavirus/program-information>

CALIFORNIA STATE GUIDANCE

- Although Governor Newsom has directed schools to close their classrooms, newly enacted legislation added Section 43503(b) to the California Education Code to require targeted supports and interventions for special education students, including accommodations necessary to implement IEPs through a distance model.
- California Education Code Section 56345 was recently amended to require IEPs to include an individualized description of how a student's educational program will be implemented under certain emergency conditions, including an epidemic, during which instruction and/or services cannot be provided to a student "either at the school or in person for more than 10 school days."
- Your student's IEP should include a protocol for implementation in emergency situations such as that created by COVID-19. You and your IEP team should create this emergency protocol together. Remember, the mandate requires an "individualized description," meaning services should be tailored to consider your student's unique needs. As a caregiver, and now as a de facto homeschool teacher, you are in the best position to guide this conversation.

"Classrooms Are
Closed But Learning
Must Continue"

IN PERSON SERVICES ARE POSSIBLE

- The California Department of Education (CDE) released guidance on April 9, 2020, which suggests that schools may provide in-person special education services during the pandemic if: (1) the service provider is considered an essential worker, and; (2) providing remote programming is not practical.
- Executive Order N-33-20 defines “essential workers” as those who “provide support to vulnerable populations to ensure their health and well-being including...[w]orkers supporting public and private...K-12 schools...for purposes of distance learning...”
- CDE’s April 9, 2020 statement provides further guidance and states, “if an individualized determination is made that a student needs services or supports in-person to maintain their mental/physical health and safety for the purpose of supporting the student in accessing the alternative options for learning being offered (e.g. distance learning), an LEA is not necessarily precluded from providing that service by Governor Newsom’s stay at home order.” To take this point home: service providers can provide in-person supports for your student if you meet the criteria above.

PREPARING FOR THE NEW YEAR THE IEP PROCESS

Step #1: Review Your IEP. Focus on your child's goals. The IEP team has already identified the key challenges that you should focus upon in the fall.

If this is your first IEP request that the School District's team provide you with any Draft assessments or proposed goals.



Request that copies of Draft assessments and proposed goals be provided at least 5 business days ahead of the meeting. This will give you time to review the material and share it with your child's current therapists.

PREPARING FOR THE NEW YEAR THE IEP PROCESS

Step #2: Track Behaviors and Progress. For each goal, track your daily efforts and progress. Identify all supports you have tried and whether they were effective.

Depending on your child's goals, some data you might track could include: a) number of minutes your child can attend to online instruction; b) number of prompts necessary to focus his/her attention; c) type and level of prompts that are effective; and d) triggers that make it more difficult for your child to learn.

For new IEPs solicit this information from your current therapists and early intervention program providers.



PREPARING FOR THE NEW YEAR

THE IEP PROCESS

Step #3: Identify private therapists who are currently available to provide your child with her IEP services in a manner that is safe and in compliance with local health regulations. If the District isn't currently willing to provide certain services, you can give the IEP team information about alternative resources to explore.



Inquire into whether the current providers can continue to serve in your child's case. Some agencies have existing contracts with your local school district.

PREPARING FOR THE NEW YEAR THE IEP PROCESS

Step #4: Call an IEP Meeting. If your child is having difficulty making progress towards his or her goals, then pull together all of this information (you may include your notes from the Spring term), and call an IEP team meeting to discuss your students progress and present levels of performance.

For first time IEPs your child's clinical notes from early intervention services may be particularly helpful. You may also invite your child's current therapists to attend the meeting. Their views must be considered by the IEP team.



PREPARING FOR THE NEW YEAR

THE IEP PROCESS

Step #5: Share Your Findings with the Team. You will now be speaking with authority as both your child's parent and teacher. You have nearly all the relevant data necessary to allow the team to develop accurate present levels of performance. Use this data to create a clear record of how your child has responded to distance learning and whether he is making progress or whether you have identified areas of regression. Share what you have learned about local providers who are currently available to provide the services your child needs in order to access education. *Make an audio recording of the meeting** so that you can be sure you have a complete record of the data, observations and recommendations you brought to the team, as well as how that information was received.

* You must provide notice 24 hours ahead of the IEP of your intent to record.

PREPARING FOR THE NEW YEAR THE IEP PROCESS

Step #6: Request an AT Assessment: If you have found that the tools your district has offered for distance learning are inappropriate for your child, and don't permit him or her to access the curriculum, then request an AT assessment to review a variety of alternatives. There may be other equipment or software that will make learning more accessible for your child.



Given the challenges of distance learning and the heavy reliance on web based platforms we are recommending that all children have an Assistive Technology (AT) assessment.

PREPARING FOR THE NEW YEAR THE IEP PROCESS

Step #7: Focus on Improving Access to Education. Now that the team has the information it needs, work collaboratively to consider which supports your child may need to access his or her education. Many nonpublic agencies are still available to provide in-person behavioral support, occupational therapy and physical therapy to students.

Discuss which supports are necessary and how to provide them effectively. When schools and families work together, we can find the best distance learning solutions for our special education students.

PREPARING FOR THE NEW YEAR THE IEP PROCESS

Step #8: Signing Your IEP. You are not obligated to sign the IEP on the date of the meeting. You may take it home and consider it outside of the pressures of the IEP.

You can agree to some parts of the program while disagreeing with others. The IEP is not an “all or nothing” proposition.



School Districts are not obligated to begin providing special education to your child until you have authorized the services for the first time. For three years olds transitioning to district services, consider whether components of the document can be agreed to even if you cannot agree with all portions.

IEP CONCEPTS

- Parents and Private Providers are equal members of the IEP team. Their voices must be heard and considered.
- Each IEP must be individually tailored for the child's needs.
- Goals must be measurable from year to year.
- Goals drive the services.
- Speak with other families going through similar issues and ask to review their IEPs for ideas on how the goals should look.

THE ROLE OF THE REGIONAL CENTER – THE PAYOR OF LAST RESORT OBLIGATION



- Regional Centers serve as a safety net for families in situations where the school system or private health insurer fail to provide essential services. If the regional center believes that one of these agencies has failed to meet its obligations, then it must provide the services and it is authorized to pursue reimbursement under Welfare and Institutions Code section 4659.
- Families should not be forced to pay privately for essential services.
- Consider inviting your Service coordinator to the IEP team meeting.

FINAL THOUGHTS

- Stay calm, professional and organized.
- You are not obligated to sign the IEP on the date of the meeting. You may take it home and consider it outside of the pressures of the IEP.
- Don't be afraid to disagree. There are mechanisms in place for resolution. Services in place before the dispute, in most cases, remain in effect (Stay Put).

I HAVE QUESTIONS ...



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