

What Elementary and Secondary Schools with IDEA Students Need to Know about the CARES Act

Monday, March 30, 2020

Overview

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“[CARES Act](#)”), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our [main alert](#), the \$2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history.

Given the disruption caused by the federal response to containing the COVID-19 outbreak, there are a number of policy changes that are requiring almost every private or public institution to reconsider and reconfigure how services are delivered. This is especially true for individuals with disabilities and the protections afforded to them and their families through the Individuals with Disabilities Act (IDEA) and other civil rights protections.

Key Points

For 45 years, IDEA has provided grants to states to ensure federal funding is available and used to provide specially designed school-based instruction at no cost to parents for children with disabilities. A key component of IDEA is funding that covers special education needs of children with disabilities between the ages of 3 and 21, which most recently served 7 million individuals. With millions of children out of school indefinitely, questions about civil rights protections have rightfully been raised about the delivery of educational services and supports for individuals with disabilities.

The Department of Education put forth guidance this month around key questions surrounding the provision of services during prolonged school closures caused by the COVID-19 outbreak. This guidance is important for state and local educational agencies who are faced with exceptional and unforeseen circumstances, such as prolonged school closures, which affect how students access school instruction and services.

Importantly, the guidance states that if a local education agency continues to provide education opportunities to the general student population during a school closure, such as through distance learning, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of free appropriate public education (FAPE).

To the greatest extent possible, state and local education agencies must ensure students with disabilities can be provided the special education and related services identified in the student's specific individual education program (IEP) developed under IDEA, or through Section 504.

The Department guidance seeks to clarify requirements and flexibilities that schools will need to continue providing services to students with disabilities. The CARES Act includes a handful of provisions intended to address these questions. Those include:

- **National Emergency Education Waivers.** Within 30 days of enactment, the Secretary of Education will prepare and submit recommendations to Congress on any recommendations for additional waivers under IDEA that are needed in order for states and local educational agencies to continue meeting the needs of students during the public health emergency.
- **Emergency Designation.** The legislation also includes an "Education Stabilization Fund," which authorizes the Department of Education to provide emergency funding relief for state education agencies (with an approved application) for the continuation of various education programs, including IDEA. This funding can be used to provide guidance on carrying out requirements of IDEA, purchasing necessary assistive technology or adaptive equipment, or other educational technology, among other matters. The use of distant learning including components of telehealth to meet related service needs such as occupational therapy and physical therapy are being discussed. The Department of Education will publish guidance within 30 days of enactment on submitting applications for funding.

Looking Ahead

Given that much of the guidance addressing IDEA and COVID-19 will take time to be published, it is important to understand the availability of potential modifications to service delivery and how those modifications would affect students with disabilities in meeting their Individualized Education Program (IEP) goals and objectives. The use of distant learning including components of telehealth to meet related service needs such as oral placement therapy (OPT), speech-language therapy, are being discussed.

Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney. For guidance on CARES Act IDEA issues, please contact [Connie Garner](#), [Kate Josephson](#), or [Eli Greenspan](#).