



## March 31, 2020 Special Education Client Alert

### **ALERT: SPECIAL EDUCATION DURING THE COVID-19 PANDEMIC**

#### **SUMMARY**

We are truly in unprecedented times as a result of the COVID-19 pandemic. This pandemic has brought with it much uncertainty, including the disruption of special education services. Guidance and regulations have been pouring out of Springfield and Washington D.C. at a rapid rate impacting the special education services and supports available to students with disabilities. Please visit our “COVID-19” page on our website ([www.whittedtakiffllaw.com](http://www.whittedtakiffllaw.com)) for updated documents, statements and guidance memoranda related to special education.

We will plan to update this alert as new information and guidance is distributed.

#### March 17, 2020 to March 30, 2020

On March 13, 2020, Governor Pritzker issued an Executive Order shutting down all schools from March 17, 2020 through March 30, 2020. The Illinois State Board of Education (“ISBE”) clarified that these days are considered, “Act of God” days and will not need to be made up. This holds true for students attending schools in their public school districts as well as those placed in nonpublic special education facilities in Illinois. Furthermore, federal and state guidance has clarified that since schools are closed for all students, there is no entitlement to special education services during this mandated school closure and, therefore, no FAPE (*free appropriate public education*) obligations. However, if a school chooses to provide “continuity of education” opportunities (e.g., e-learning, home packets) to general education students during this mandated closure, then schools must also offer special education students to similarly appropriate educational services.

For purposes of special education timelines under the *Individuals with Disabilities Education Act* (“IDEA”) that specifically reference “school days” (as opposed to “business days” or “calendar days”), it is important to note that the mandated school closure days from March 17, 2020 through March 30, 2020 are not considered “school days” for purposes of calculating these timelines. However, any timelines that reference “business days” or “calendar days” continue to run during the mandated closure days. Additionally, timelines for Annual Review IEP meetings are required to be followed (e.g., if a student’s Annual IEP is from April 15, 2019 to April 15, 2020, the IEP team must still convene meeting on or before April 15, 2020). Annual IEP meetings and other meetings may be convened virtually by teleconference and/or virtual meeting platforms. Due to the current stay-at-home order in Illinois as well as school closures, team meetings will not be held in-person until after the stay-at-home order has been lifted.

#### March 31, 2020 to April 30, 2020

On March 20, Governor Pritzker had issued an initial Executive Order mandating that citizens of Illinois “stay at home” from March 21, 2020 through April 7, 2020. On March 31, 2020, Governor Pritzker announced the extension of this stay-at-home order and the extension of school closures through April 30, 2020. Mayor Lightfoot confirmed the closure of the Chicago Public Schools during this period as well. As

such, unless a school is observing a previously scheduled spring break, schools in Illinois are required to resume educational services for Illinois children as “remote learning days”. These days are expected to be considered instructional days (as opposed to “Act of God” days. As a result, beginning on March 31, 2020, we believe that school districts must provide students with disabilities with FAPE by providing services aligned with a student’s IEP. Remote learning is expected to look different from district-to-district and school-to-school and could include the use of virtual class and service options.

All other requirements regarding obligations under the IDEA remain in effect including, but not limited to, holding IEP meeting, conducting evaluations, and participating in mediations, resolution sessions and due process hearings. Again, many of these events will likely be held remotely through video or teleconferencing in order to comply with existing Executive Orders. We expect additional guidance from ISBE related to special education and remote learning shortly and will post such guidance and our interpretation on our website once it is issued.

#### April 30, 2020 and beyond

At this point in time, we are advocating that clients prepare for an extended period of school closure that could continue beyond April 30, 2020.

### **RECOMMENDATIONS**

- An IEP is an **individualized** education plan. While it may be convenient in these difficult times to provide a one size fits all approach to special education, it is our position that the IDEA requires more, even in these unprecedented times.
- However, it may not be realistic to expect that every IEP service will be provided during remote learning. The U. S. Supreme court case of *Endrew F.* states that school districts are obligated to ensure progress to children that is “**appropriate** in light of the **child's circumstances.**” No one knows what this will mean in light of an unprecedented pandemic. That said, we would argue that the analysis is an individualized one and that for some students this might be increasing certain services during remote learning and for others it may be a reduction of services.
- Compensatory education may be an appropriate remedy to address omitted or reduced services during remote learning. Compensatory education is a level of services that is specifically tailored to put the student in a place in which he or she would have been if they received all of their appropriate IEP services. What is appropriate during these times remains unclear.
- Document all of your communications during remote learning. Review IEPs and determine what services are not being provided and what services are being reduced. Determine whether additional services over the summer may be appropriate for your student.

Should you have questions regarding the information provided in this alert, please feel free to contact [Shermin Ali-Andani](#) or [Neal Takiff](#).

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