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Navigating the COVID-19 Crisis

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Myrna Mandlawitz, J.D., CASE Policy and Legislative Consultant

Kevin Rubenstein, Ed. D., CASE Policy & Legislative Chair

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Moderated by: **Phyllis Wolfram**, Executive Director, CASE

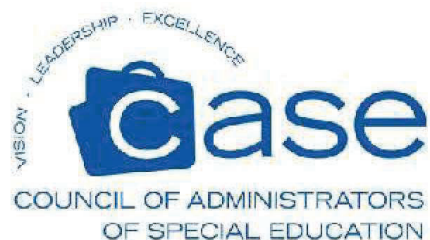
Agenda

1. **Welcome and Introductory Comments**
2. **Introductions**
3. **Some Reminders: 4 Priorities**
4. **An update from Washington DC**
5. **Collaborative work with your Department**
6. **Dos and Don'ts**
7. **Questions**



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Welcome and Introductory Comments



Phyllis Wolfram
Executive Director
Twitter. @phylliswolfram

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We Are In This Together!



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“Is this how you do special education during a pandemic?”

- Are we documenting too much?
Too little?
- Am I working too hard?
- Do these services look appropriate for this time?
- None of us have been here before - we have no baseline.
- We are doing ***exactly*** what we are supposed to be doing and creating a new baseline. We are learning and growing together!



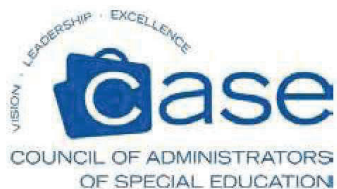
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Four Priorities for Special Education:

- 1 Focus on the safety, health, and welfare of students and staff members in your community.**
- 2 Provide FAPE- Deliver services to as many students as you reasonably can in the best way you know how.**
- 3 Document your efforts; make sure documentation is focused, consistent, detailed and demonstrates a good faith effort to provide good services.**
- 4 Compliance during the pandemic - IDEA wasn't built for this.**



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Presenters for Today

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Julie Weatherly, Esq.
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@jweatherlyesq

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Real Talk

Disclaimer:

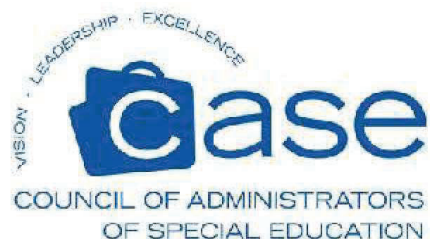
The information we are providing today is the best we know at this moment.

- It might change by the end of the webinar based on additional guidance.
- It could change by next week if this worsens or if things change.
- States have specific guidance which should be reviewed as well.



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Updates from Washington DC



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Current Resources & What's Coming

- CASE has continually updated our resource document [http://bit.ly/CASE -COVID19](http://bit.ly/CASE-COVID19)
- Federal government documents:
 - FERPA Virtual Learning - March 2020
<https://bit.ly/FERPAVirtual>
 - OSERS/OCR Supplemental Fact Sheet (03/21/2020)
<https://bit.ly/OSERSOCRSupplemental>
 - OCR Fact Sheet (03/16/2020)
<http://bit.ly/COVIDOCRFacts>
 - FERPA Guidance (03/12/2020) <http://bit.ly/FERPA-COVID19>
 - OSEP Guidance (03/12/2020)
<http://bit.ly/OSEP-COVID>

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What We're Working On

CARES Act- Flexibility Language



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- As the voice for the local special education director, CASE worked with the National Association of State Directors of Special Education (NASDSE) to send a letter to OSERS seeking specific flexibilities.
- 31 state units signed the same letter.
- In our organizational history, we have never sought such flexibilities.
- Flexibilities sought in timelines, procedures, and fiscal management.

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Continuing to Address Federal Needs

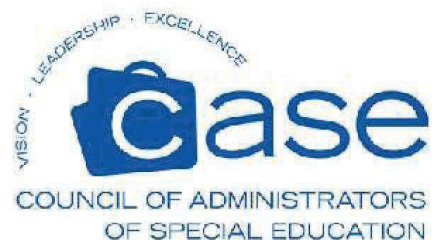
CASE will continue to consider how the federal decisions relate to local practices in special education:

- **Funding and allowable uses**
 - Will there be a COVID-19 Stimulus 4?
 - State specific issues
- **Flexibility requested and granted (or not)**
 - How will Secretary DeVos act on our requests?
 - What will Congress do with these requests?
- **Case law that results from decisions during this time**
 - Will there be litigation that results from this time and, if so, what case law will be used as a basis for the decision?



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Let's Talk About Flexibilities



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CARES Act - Flexibilities Needed

Timelines



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- ***60-day initial evaluation timelines*** and ***re-evaluation triennial due dates*** [34 C.F.R. § 300.301(c); 34 C.F.R. § 300.303(b)(2)].
- ***Annual IEP review timelines*** [34 C.F.R. § 300.324(b)(1)].
- ***Complaint timelines*** [34 C.F.R. § 300.508; 34 C.F.R. § 300.510(a) and (c); 34 C.F.R. § 300.515(a) and (c)].
- ***Part C to Part B Transition Timelines*** [34 C.F.R. § 300.124].

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CARES Act - Flexibilities Needed

Timelines

- Do you have evaluations (initials or reevaluations) that are overdue?
- Do you have parents who have requested a delay in a meeting timeline?
- How many parents have requested to schedule an IEP meeting review?
- Have you had parents file state complaints/ due process over COVID-19 related service delivery issues?



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CARES Act - Flexibilities Needed

Procedures



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- ***Documentation of FAPE under each district's circumstances and IEP meeting procedures*** [34 C.F.R. §300.323(c)(1); 34 C.F.R. §300.324(b)(1); 34 C.F.R. §300.324(a)(4)(i); 34 C.F.R. §300.328].
- ***Data collection and corrective action plan*** [34 C.F.R. §300.152]

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CARES Act - Flexibilities Needed

Procedures

- Do you have parents who are requesting to meet in person during the pandemic?
- How many parents have requested that you cease services at this time?
- Have you had to request to excuse more team members than usual because of the extraordinary circumstances?
- Do you anticipate meeting the standards of your State Performance Plan (i.e the indicators)?



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CARES Act - Flexibilities Needed

Fiscal Management

- ***Maintenance of Effort*** [34 C.F.R. §300.203-205],
- ***Comprehensive Coordinated Early Intervening Services set aside funds*** [34 C.F.R. §300.205; 34 C.F.R. §300.326]
- ***Proportionate Share*** [34 C.F.R. §300.133]



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CARES Act - Flexibilities Needed

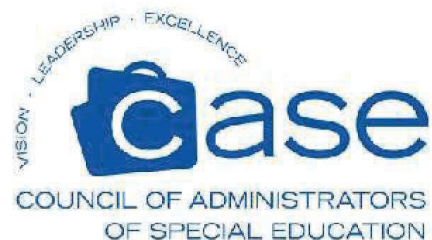
Fiscal Management

- Are you spending more or less money than you were before the pandemic?
- Do you forecast expending your proportionate share dollars?
- Do you forecast expending any CCEIS funds?
- Are you focused on addressing significant disproportionality?



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Dos and Don'ts of Special Education Practices during COVID-19



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Priority 1: **Focus on the safety, health, and welfare of students and staff members in your community.**

Make Sure That You:

- Check in with all of your staff members (secretaries, paraprofessionals, social workers, etc.) to see how they are doing and provide appropriate space for sharing.
- Get outside and walk/ jog/ exercise as much as you can handle while adhering to appropriate physical distancing recommendations.
- Set appropriate limits for yourself while you are in this crisis and doing your work at home.

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Priority 1: Focus on the safety, health, and welfare of students and staff members in your community.

Make Sure To Avoid the Following:

- Engaging in unhealthy behaviors (i.e. too much drinking, overeating, etc.)
- Holding staff to high expectations that might not be realistic in the home setting.
- Getting out of routines that you once had (bed times, morning, etc.)
- Going against recommendations of the CDC (home visits, etc.)

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Priority 2: Provide FAPE- Deliver services to as many students as you reasonably can in the best way you know how.

Make Sure That You:

- Engage, as much as possible, with parents and families.
- Provide some services to every student that are in line with the services you provided on the previously written IEP.
- Make sure that services provided by general education teachers is appropriately accommodated and provides access for all learners.

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Priority 2: Provide FAPE- Deliver services to as many students as you reasonably can in the best way you know how.

By All Means, Avoid These:

- Doing nothing because it won't be the same as when the students were in school.
- Wait until the Fall to see how it shakes out and what kinds of services students need.
- Don't rely on compensatory services as a solution to COVID 19. Do not plan in this direction.
- Argue with parents about services and supports that are provided.

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Priority 3: Document your efforts; make sure documentation is focused, consistent, detailed and demonstrates a good faith effort to provide good services.

Make Sure That You:

- Document as much as you can right now. If you didn't document that it happened, it didn't happen.
- Create naming conventions, folders, etc. for your teams to use while they are working remotely (remember that much of this will need to be printed when we are back).
- Keep notes about those parents and families who are saying that they want less services now because they are feeling overwhelmed (and how you responded).

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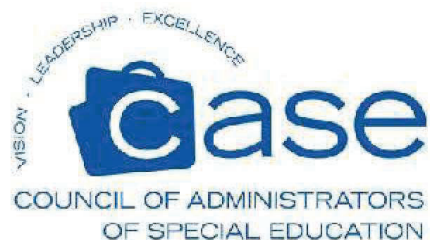
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Priority 3: Document your efforts; make sure documentation is focused, consistent, detailed and demonstrates a good faith effort to provide good services.

By All Means, Avoid These:

- Plan to rely on your memory- our memories during stressful situations are not activated again until the next stressful event.
- Plan on relying on documentation that might be scattered across the homes of your service providers.
- Stop sending your regular meeting, conference, involvement notices!

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Dos and Don'ts from a Legal Perspective in Special Education During COVID-19



Julie Weatherly, Esq.
Resolutions in Special Education
Twitter. @jweatherlyesq

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Priority 4: Compliance during the pandemic -
IDEA wasn't built for this.

Don't worry so much about providing "compensatory education" right now. For each child with a disability, focus on preventing severe/significant regression in critical skill areas to the best of your ability.

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Priority 4: Compliance during the pandemic -
IDEA wasn't built for this.

Do ensure that distance learning
service decisions are individualized
and allow for the opportunity for
parent input.

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Priority 4: Compliance during the pandemic -
IDEA wasn't built for this.

Do talk things through with your attorney, if you have one, and help your attorney devise a plan that you and your attorney feel confident is defensible.

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Priority 4: Compliance during the pandemic -
IDEA wasn't built for this.

Do remember that we are currently in a circumstance where there are no answers that we know to be 100% right from a legal perspective.

Us attorney-types are doing the best we can.

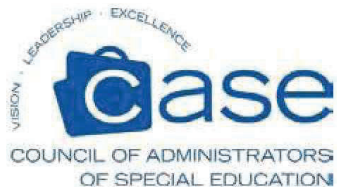
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**To stay up to date on resources
and information visit:**

www.cec.sped.org

www.casecec.org

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**Thank you for participating in the
webinar today.**

**Connect with CASE
next Friday:**

April 10, 2020 - 12:00pm CST