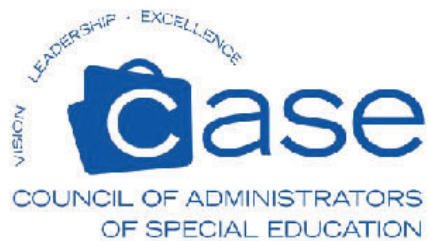


ATTACHMENT 22:

Council of Administrators of Special Education (CASE)
webinar materials



May 1, 2020

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Navigating the COVID-19 Crisis

Erin Maguire, CASE President

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

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

Julie Weatherly, Esq., Resolutions in Special Education

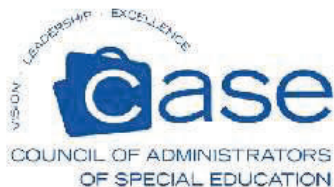
Moderated by: **Phyllis Wolfram**, Executive Director, CASE

Agenda

1. Welcome and Introductory Comments
2. Introductions
3. Four Priorities - Do's and Don'ts
4. Updates from Washington
5. Moving Forward: ESY, Compensatory Education, Data and Goal Progress
6. Questions



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Erin Maguire
CASE
President

Vermont



@VTEducator

#WeKeepLeading Presenters for Today

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Washington, DC



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Kevin Rubenstein, Ed.D.
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Julie Weatherly, Esq.
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May 1, 2020

Real Talk

Disclaimer:

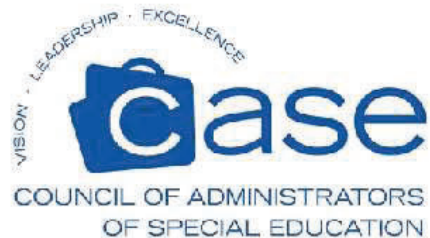
The information we are providing today is the best we know at this moment.

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



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Legal Considerations in this "Phase" of COVID-19 Service Implementation



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



Phyllis Wolfram
Executive Director
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May 1, 2020



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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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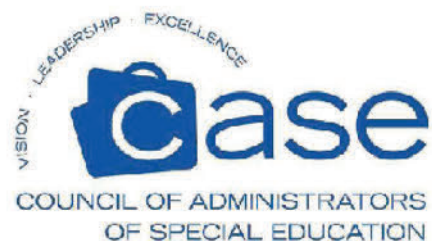
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Four Priorities for Special Education:

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

Do	Don't
<ul style="list-style-type: none">• Follow CDC and State Guidance Documents even during the summer as you are planning for ESY and reopening.• Plan for possible challenges with health and welfare in the long term.• Focus on mental health for your staff and for students - what are you doing to keep balance?	<ul style="list-style-type: none">• Bring populations of vulnerable children together because it's easier or because it's tradition.• Turn to your special education lawyer for answers as to when students should be brought back on school campuses.

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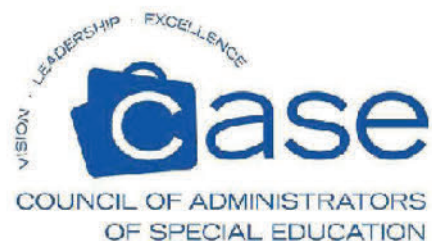
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Four Priorities for Special Education:

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

Do	Don't
<ul style="list-style-type: none">• Continue to provide as many services as possible through remote learning as you can.• Provide Extended School Year services as you typically would have (just provide them virtually)• Make services and supports individualized for students with disabilities.	<ul style="list-style-type: none">• Ask parents to sign "FAPE waivers."• Decide you'll just handle things through "comp. ed" when schools reopen.• Stop reaching out to families, even if they have disengaged with you.• Stop reaching out to general ed. folks.

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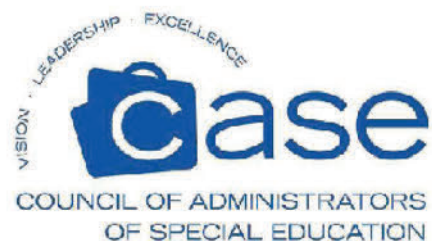
Four Priorities for Special Education:

3

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

Do	Don't
<ul style="list-style-type: none">• Assist your teams with staying organized with all of the “paper” and virtual records.• Organize yourself and your team over the summer for what the Fall will look like (i.e., evaluations, meetings, etc.)	<ul style="list-style-type: none">• Force yourself to rely on memory during this emotional and challenging time.• Count on others to be organized or to have a good plan of organization.• Plan to organize yourself “later” when things are back to “normal.”

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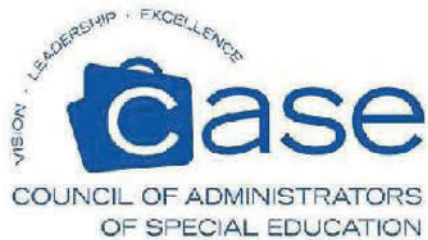
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Four Priorities for Special Education:

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

Do	Don't
<ul style="list-style-type: none">• Comply with meeting notification requirements in the best way you know how.• Attempt to meet timelines as best as possible.• Follow through with state guidance documents.	<ul style="list-style-type: none">• Count on any flexibilities coming from Congress.

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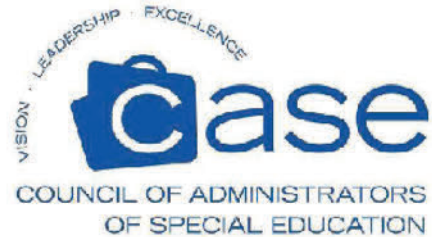
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Updates from Washington DC



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CASE Policy & Legislative Consultant
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How the Federal Government Monitors States

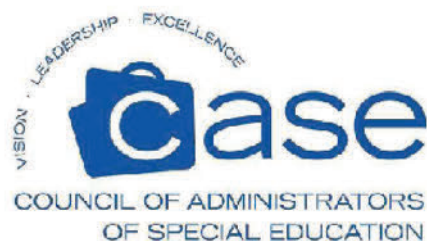
The Need for Flexibilities in Some of the Process Pieces

- Under Section 1416 of IDEA, the U.S. Department of Education is tasked with **monitoring compliance** of state and local education agencies with all of the “**process pieces**.”
- Each LEA is required to submit data to the state that reflects process compliance (e.g., timely completion of initial evaluations, annual reviews of IEPs, timely resolution of parent complaints)
- In turn, each state submits this information to the U.S. DOE through its **State Performance Plan**.

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Acting to Support Flexibilities

Temporary and Targeted Flexibility Is Necessary



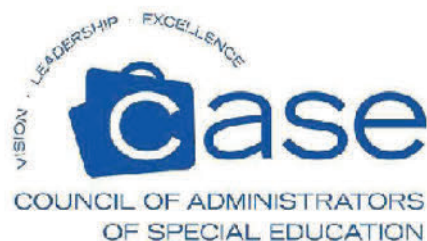
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- CASE sent a letter to Congressional leaders and to others at the Department of Education to support flexibilities under IDEA to address the challenges of COVID-19.
 - Letter is available at: <https://bit.ly/LetsBeFlexible>
- CASE does not support waivers of IDEA in any way.

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Acting to Support Flexibilities

Temporary and Targeted Flexibility Is Necessary



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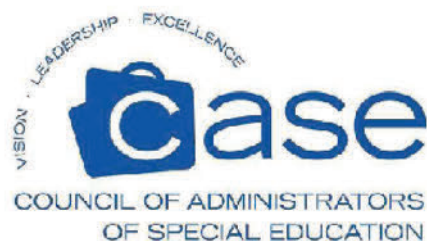
- Secretary DeVos issued recommendations for flexibilities on Monday:
 - No support for “blanket waivers.”
 - Recommended flexibilities in the Part C to B Transition Timelines

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Acting to Support Flexibilities

Temporary and Targeted Flexibility Is Necessary

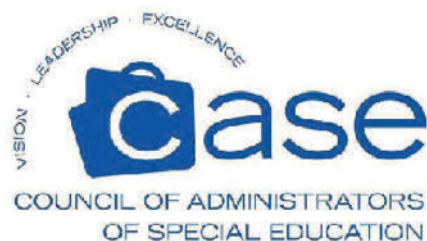
- Senator Cassidy (R-Louisiana) and Senator Murphy (D-Connecticut) offered a plan for narrow, temporary, and targeted flexibilities:
 - **Principle 1:** Preserve the right FAPE
 - **Principle 2:** Engage Parents, Ensure Due Process
 - **Principle 3:** Maintain Oversight and Accountability
 - **Principle 4:** Communicate Current Flexibilities Clearly and Provide Assistance
 - **Principle 5:** Provide Funding to States and School Districts



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CARES Act - K-12 Funding Summary



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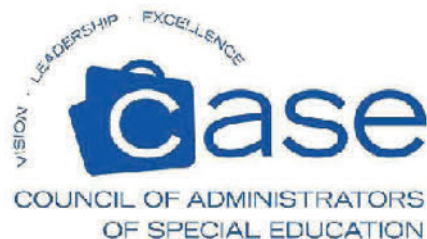
	Elementary and Secondary School Emergency Relief Fund	Education Stabilization Fund Discretionary Grants	Governor's Emergency Education Relief Fund
<i>Amount</i>	\$13.5 Billion	\$307 Million	\$3 Billion
<i>Formula</i>	Title I	Application	Population & number of K-12
<i>Distribution</i>	State Agencies	Governors' Offices in states hardest hit	By Governors' Offices

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Additional Asks - Funding

Potential Funding in Another Stimulus

- IDEA Funding - \$13 Billion?
- ESEA
- e-Rate
- Other Areas



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Moving Forward: ESY, Compensatory Education, Data and Goal Progress

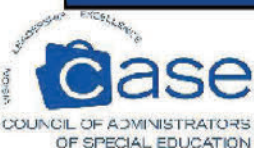


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CASE Policy & Legislative Chair
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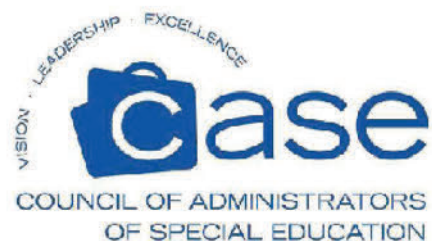
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Considering ESY in Light of COVID 19

June 2019 - Point the Schools Closed	March 2020 - June 2020 COVID-19 School Closures	June 2020 - August - 2020
<ul style="list-style-type: none">• Analyze the data and determine student progress at the point schools closed.• Consider ESY based on prior regression data at this point. (These students have likely already been identified or decided through a typical IEP meeting)	<ul style="list-style-type: none">• Maintain documentation of what services were offered.• Maintain documentation of what services were delivered.• Collect solid data on IEP goal progress across the time frame services are delivered under distance learning frameworks.	<ul style="list-style-type: none">• Implement ESY services based on team determinations• Analyze COVID Impact• Consider addressing COVID Impact for all students including students with disabilities• Plan for the Fall through assessment of student performance and delivery of FAPE

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Thinking Through ESY Logistics

Some Design Principles

- **Don't use ESY as the catch all**
- **Think about the 4 Priorities**
 - In person vs. virtual
 - Beginning of summer vs. end of summer
 - Provide FAPE based on individual needs and student circumstances
 - Classes vs. Group

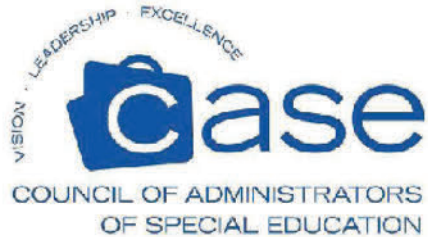
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Compensatory Education

A Legal Analysis:

FAPE is required during the Pandemic

- Compensatory Education is a legal remedy if a district does not provide FAPE
- Ask these questions:
 - What is FAPE under the circumstances?
 - Has the district documented and offered FAPE during the pandemic?



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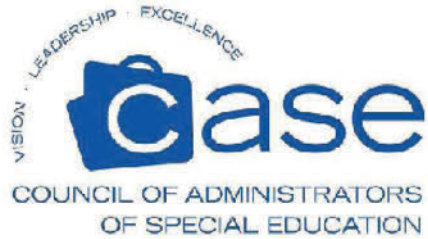
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IEP Goal Progress Monitoring

The Importance of the Final Benchmark

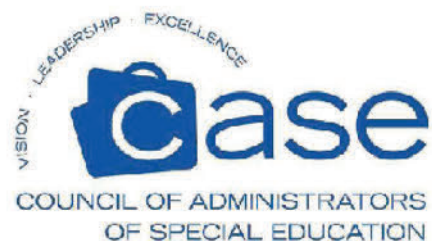
Understanding the Success of Distance Learning

- Consider Assessment Possibilities
- What aligns to goals and how could you gather this data?
- Manage the data
- Support Special Educators to analyze data to provide clear COVID impact.



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Questions for Presenters

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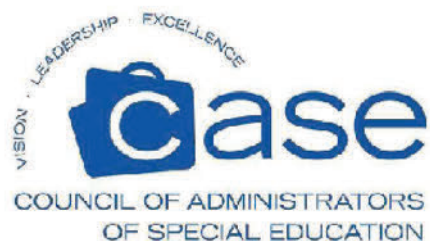
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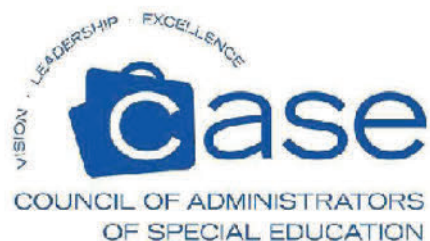
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**To stay up to date on resources
and information visit:**

www.cec.sped.org

www.casecec.org

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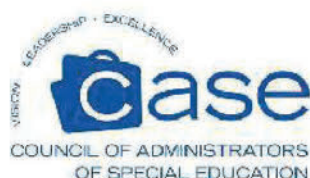
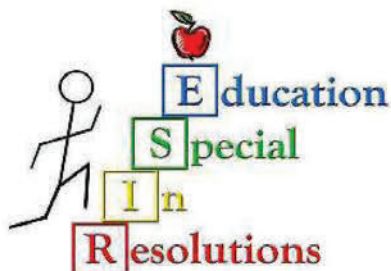
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**Thank you for participating in the
webinar today.**

Connect with CASE
Again soon!

May 12, 2020 - 4:30pm CST

May 22, 2020

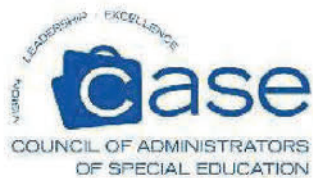


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The Provision of “COVID-19 FAPE” to Students with Disabilities: Top Legal Concerns

Julie Weatherly, Esq.
Owner, Resolutions in Special Education, Inc.

Moderated by Phyllis Wolfram, Executive Director, CASE



Phyllis Wolfram
Executive Director
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Presenters for Today



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Julie Weatherly, Esq.
Owner/Attorney
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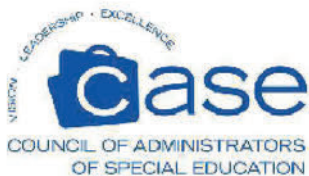
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Disclaimers

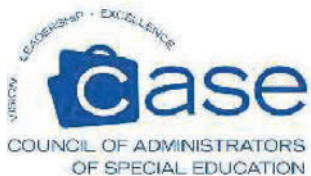


The information I am providing today is the best that I think I know right now.

- It may change by the end of the Webinar based on additional guidance or laws at the state or federal level.
- It is intended as general information on special education legal issues. You must consult with your attorney on specific, local matters and for legal advice.
- It must be analyzed in light of your State's guidance (on all things COVID), applicable legal guidance in your jurisdiction (there are wide variations), and your "phase" of reopening.



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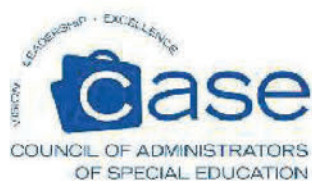
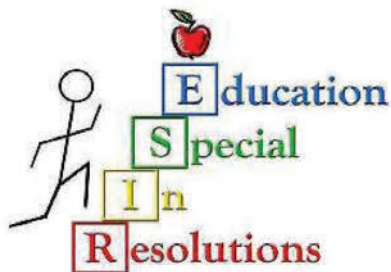


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We have a 6 phase plan to reopen the state. The plan will be a phased plan that we will plan to utilize in phases. The phases will be planned and the planning will be phased. We will move quickly and slowly to open but remain closed. I have created a staff of staffers who will plan the phase and planning while phasing their phases.

And that is our reopening plan.

Thank you



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SCHOOLS DURING THE COVID-19 PANDEMIC



The purpose of this tool is to assist administrators in making (re)opening decisions regarding K-12 schools during the COVID-19 pandemic. It is important to check with state and local health officials and other partners to determine the most appropriate actions while adjusting to meet the unique needs and circumstances of the local community.

Should you consider opening?

- ✓ Will reopening be consistent with applicable state and local orders?
- ✓ Is the school ready to protect children and employees at higher risk for severe illness?
- ✓ Are you able to screen students and employees upon arrival for symptoms and history of exposure?

ANY
NO

DO NOT
OPEN

Are recommended health and safety actions in place?

- ✓ Promote healthy hygiene practices such as hand washing and employees wearing a cloth face covering, as feasible
- ✓ Intensify cleaning, disinfection, and ventilation
- ✓ Encourage social distancing through increased spacing, small groups and limited mixing between groups, if feasible
- ✓ Train all employees on health and safety protocols

ALL
YES

ANY
NO

MEET
SAFEGUARDS
FIRST

Is ongoing monitoring in place?

- ✓ Develop and implement procedures to check for signs and symptoms of students and employees daily upon arrival, as feasible
- ✓ Encourage anyone who is sick to stay home
- ✓ Plan for if students or employees get sick
- ✓ Regularly communicate and monitor developments with local authorities, employees, and families regarding cases, exposures, and updates to policies and procedures
- ✓ Monitor student and employee absences and have flexible leave policies and practices
- ✓ Be ready to consult with the local health authorities if there are cases in the facility or an increase in cases in the local area

ALL
YES

ANY
NO

MEET
SAFEGUARDS
FIRST

ALL
YES

OPEN AND
MONITOR

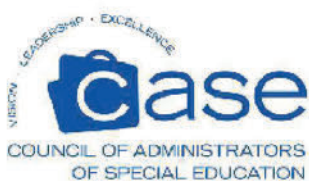
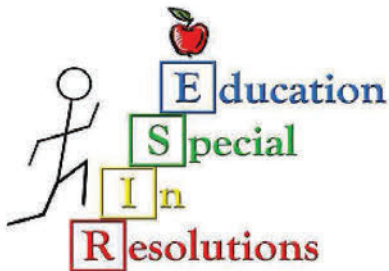


cdc.gov/coronavirus



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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.

Top Legal “COVID-19 FAPE” Issues: Past, Present & Future

Schools Closed with Distance Learning for All

- What is “FAPE” during the COVID-19 school closures?
- What do we do with the IEP in place when schools closed?
- What about IEPs that were and are up for annual review?
- What about pending evaluation/eligibility processes?
- What if the parent wants to wait until later for services, evaluations or IEP meetings?

Summer Break is Close or Has Arrived

- What about Extended School Year Services?
- If a student is found eligible for ESY, can we provide it in person?
- What about in-person evaluations right now?

Schools Reopen (Whenever and Whatever that Means)

- What is this I am hearing about Compensatory Education? Did we do something wrong?
- Question & Answer Session



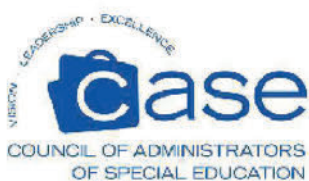


Schools Closed with Distance Learning for All

What is “FAPE” during COVID-19 school closures?

Though not decided at a time of a national health/safety emergency, I remain convinced that the *Endrew F.* standard for FAPE will be applied:

“To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress **appropriate in light of the child’s circumstances.**”

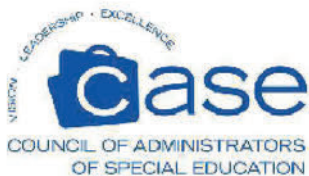


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Schools Closed with Distance Learning for All

The “child’s circumstances” should include those created by COVID-19 that impacted the ability of school personnel to provide “FAPE to the maximum extent possible,” such as:

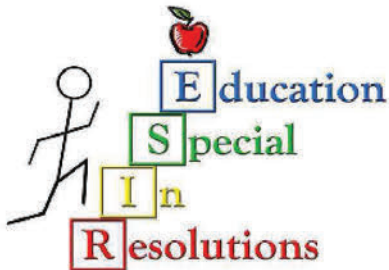
- All bricks and mortar schools closed with move to distance learning
- All students confined to the home (even if they are not sick)
- All service providers confined to the home (even if they are not sick), many with their own children to care for
- No (or limited) in-person services for any student
- No (or limited) reliable internet services or assistive technology



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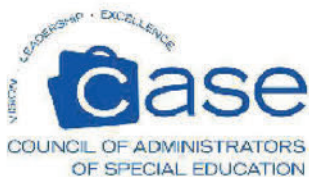


Schools Closed with Distance Learning for All



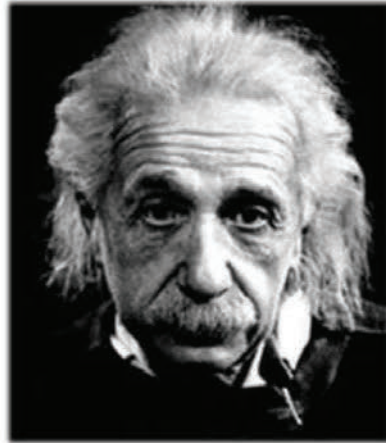
Should a “denial of FAPE” analysis also consider:

- **Efforts on the part of school personnel in light of the circumstances?**
- **Parent/student refusal of services offered in light of the circumstances?**



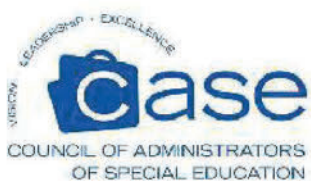
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For the FAPE analysis, I have to think so—understanding that a “reviewing court may fairly expect [school authorities] to be able to offer a cogent and responsive explanation for their decisions.”



Albert Einstein—

“I’d rather be an optimist and a fool than a pessimist and right.”



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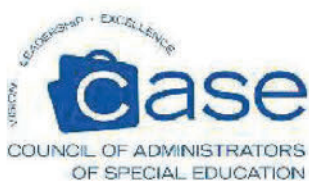
Schools Closed with Distance Learning for All

What do we do with the IEP in place when schools closed?

U.S. DOE guidance (March 21, 2020):

Parents and schools could agree not to convene an IEP Team meeting for purposes of making changes to the IEP and could, instead, develop a written document to amend or modify the child's current IEP. (34 C.F.R. 300.324(a)(4))

State or local guidance determined what was/is to be done right now, though Congress could change this answer for the future (language is still being negotiated).



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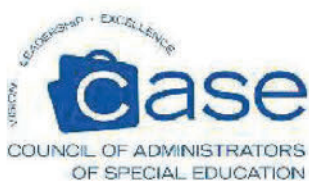


Schools Closed with Distance Learning for All



- What about IEPs that were/are up for annual review?
- What about pending evaluation/eligibility processes?

Notwithstanding the tireless efforts of CASE and other organizations to seek targeted and temporary flexibility—not waivers—on these issues, there is no provision in the law to extend these timelines, even if the parent agrees or wants to postpone these activities.

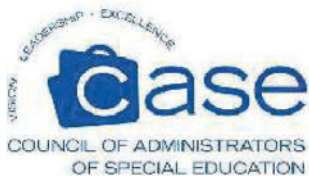


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Schools Closed with Distance Learning for All



While Secretary DeVos did not recommend flexibility to speak of in her Report to Congress on April 27th, it is expected that there will be further discussion/negotiation as the next relief package goes forward—probably in late June when the Senate begins to address it.



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Schools Closed with Distance Learning for All

What if the parent wants to wait until later for services, evaluations or IEP meetings?

I say don't push it. However, I also recommend that you check in and discuss the reason(s) why. Document the parent's reasoning and create an agreeable schedule as to when these things can/will occur.



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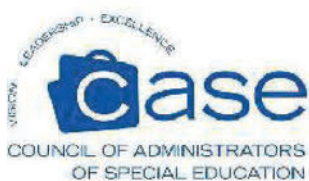
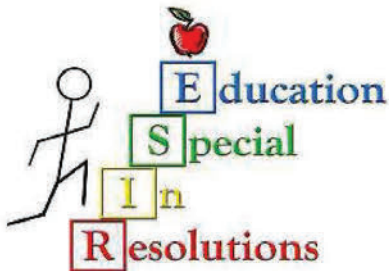


Summer Break is Close or Has Arrived

What about Extended School Year Services?

ESY is required if determined necessary for FAPE. During COVID-19, the need for ESY must be determined and, if needed, must be provided in the most reasonable and possible way “in light of the circumstances.”

It is important to understand the origins of ESY. It is not mentioned in the statute itself. It is what I call a “court-created phenomenon.”



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Summer Break is Close or Has Arrived



Early 80's - Circuit Court cases established the notion of ESY:

- *Battle v. Commonwealth of Pennsylvania* (3d Cir. 1980)
- *GARC v. McDaniel* (11th Cir. 1983)
- *Crawford v. Pittman* (5th Cir. 1983)

Blanket 180-day school year limitation for all students is a violation of the Act.



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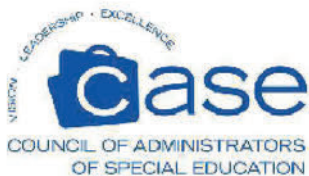


Summer Break is Close or Has Arrived



Late 80's/Early 90's - Circuit Court cases set forth possible standards for determining need for ESY:

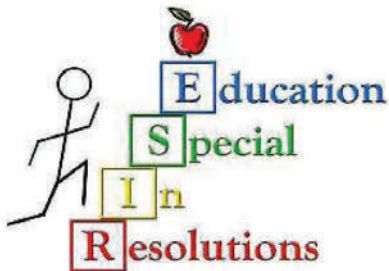
- *Alamo Heights Indep. Sch. Dist. v. State Bd. of Educ.* (5th Cir. 1986): "Substantial regression"/inordinate amount or unacceptable length of time to recoup lost critical skills due to the break in instruction is to be considered.
- *Johnson v. Independent Sch. Dist. No. 4* (10th Cir. 1990): to consider include more than regression/recoupment.



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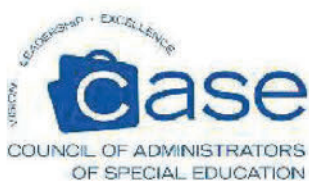


Summer Break is Close or Has Arrived



While IDEA does not mention ESY, the 1999 IDEA regulations finally did and contains these tenets:

- Must be determined on an individual and annual basis;
- Must not be limited to particular disability category or type, amount, or duration of services;
- Must be provided beyond the normal school year and in accordance with the IEP; and
- Must meet **state standards**.



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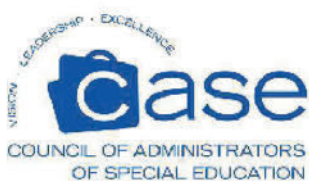


Summer Break is Close or Has Arrived



ESY determinations during the summer of COVID-19 should be based upon historical and current available data. Some common factors contained in state standards (typically derived from case law):

- Regression/recoupment in critical skills areas based upon data
- Consideration of what parent will provide or have available over the summer
- Child's overall rate of progress
- Child's behavioral and physical problems
- Professional judgment
- Substantial/significant jeopardization of emerging critical skill
- Pertinent extenuating circumstances



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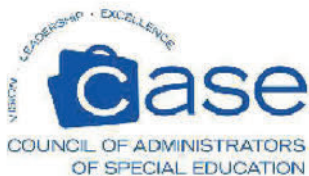
Summer Break is Close or Has Arrived



ESY is not:

- Child or respite care
- Intended to maximize educational potential or growth
- The same as summer school or other summer services
- For the purpose of maintaining skills
- For the purpose of continuing progress during a break in instruction

It is to prevent severe regression in critical skill areas due to a school-scheduled break in instruction.



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Summer Break is Close or Has Arrived

If a student is found eligible for ESY, can we provide it in person?

First and foremost, you must make these in-person service decisions based upon CDC and State and local health agency guidelines.

Many students who qualify for ESY services are your most vulnerable, so extra precautions must be considered.



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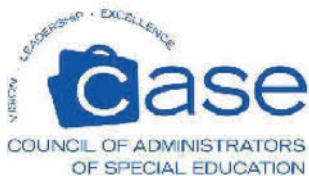
Summer Break is Close or Has Arrived



I am finding that there is a lot of angst about moving to in-person services for one reason: **Fear of liability!**

Alabama Governor's Proclamation (an example):

A “business,” health care provider, or other covered entity shall not be liable for the death or injury to persons or for damage to property in any way arising from any act or omission related to, or in connection with, COVID-19 transmission or a covered COVID-19 response activity, unless a claimant shows by clear and convincing evidence that the claimant’s alleged death, injury, or damage was caused by the entity’s wanton, reckless, willful, or intentional misconduct.



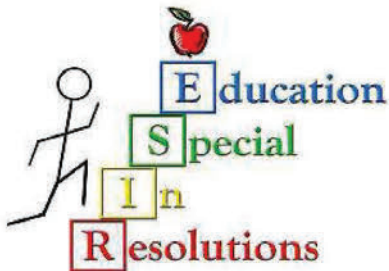
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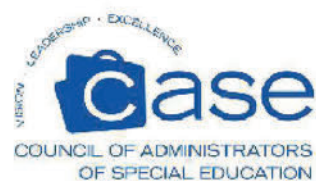
Summer Break is Close or Has Arrived

What about in-person evaluations right now?

Same answer but may be more easily/validly done if the evaluator, parent and student are completely comfortable with it—and it will be worthwhile data collection.



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Schools Fully Reopen (Whenever and Whatever that Means)

What is this I am hearing about Compensatory Education?
Did we do something wrong?

This discussion started with early (and quickly issued) guidance documents from U.S. DOE:

The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency....FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students. Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services - or even making decisions about how to provide services - **IEP teams must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.**

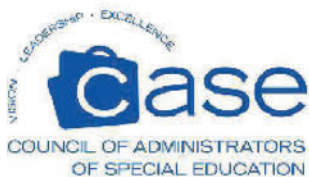


Schools Fully Reopen (Whenever and Whatever that Means)

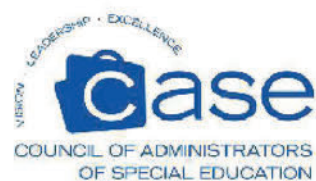
COPAA Blog Post & Comments (April 24, 2020)

Let's Not Talk "Comp Ed" Generally for COVID-19
Andrew Feinstein, Esq.

"Comp Ed' are fighting words. By talking that language, we are creating a confrontational posture with school districts and we are misleading our clients. Compensatory education is not the right analytic framework for this situation."



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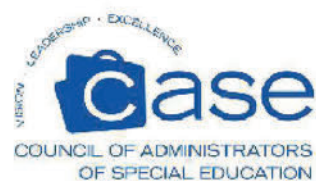
Schools Fully Reopen (Whenever and Whatever that Means)

**Why is the term “compensatory education”
provocative for schools?**

What it is:

Another “court-created phenomenon”—an equitable remedy—based upon IDEA’s language that courts have the authority to “grant the relief the court determines is appropriate.”

It is a legal remedy sought in almost every due process request based upon an alleged denial of FAPE by the school agency because of an inappropriate program or its failure to properly implement an IEP.



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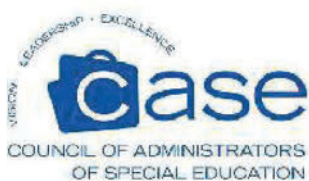
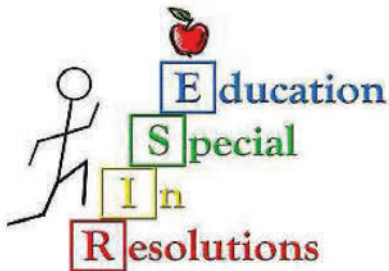
Schools Fully Reopen (Whenever and Whatever that Means)

What “compensatory education” is not:

It was not fashioned to remedy a denial of FAPE caused by massive school closures due to a pandemic.

Situations where it might be applicable:

The school agency failed to engage in good faith, reasonable efforts to try to provide FAPE during the school closure or refuses to take appropriate action when “normal operations” resume.

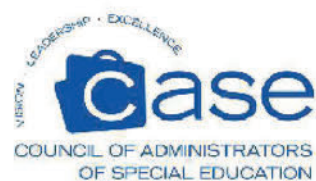
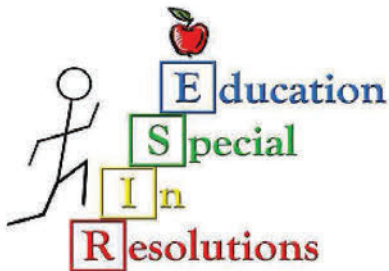


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Schools Fully Reopen (Whenever and Whatever that Means)

Even if it did apply, I have found “compensatory education” to be a very hollow legal remedy in my practice.

- **Often it is provided via settlement or ordered based upon a “minute denied, minute ordered” approach, whether the student actually needs the service or not.**
- **Often it is provided over and above the school day/school year or for a time period beyond the age of FAPE entitlement.**
- **Often the student does not want it or benefit from it (unless it is ordered in the form of funding for private or other services).**

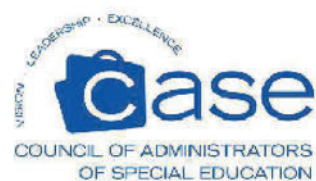


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Schools Fully Reopen (Whenever and Whatever that Means)

US DOE's term "compensatory services" is not the same as "compensatory education," so let's call it something else during this time (e.g., COVID-19 Impact Services and Supports (CISS), Future Services, Unfinished Learning Services).

Reasonable minds agree: When appropriate and feasible—i.e., when reliable and relevant data can be collected—schools will assess what impact, if any, COVID-19 school closures had on a student's levels of performance/critical skills and what revisions are necessary, if any, to the student's IEP.

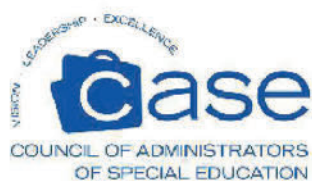


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Schools Fully Reopen (Whenever and Whatever that Means)

It is not educationally sound to assume that every student with a disability will need CISS or that schools will just provide CISS by “doubling up” or “piling on” services. The use of an MTSS framework for most students will be vital.

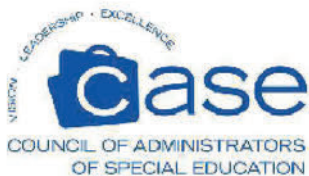
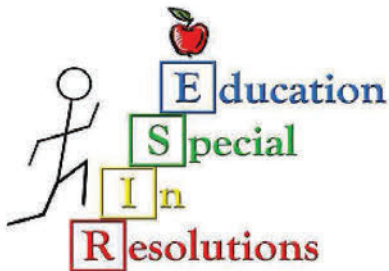
It is also not sound to fail to consider CISS for students with disabilities “because all students were impacted and experienced the ‘COVID slide’” or “well, it’s the mom’s fault because she refused services” or “he wouldn’t sign on to participate.” While “contributory negligence” might be relevant in determining whether a legal remedy should be ordered, it is not relevant to determining what the student needs when school resumes.



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Practical Summary Tips for Then, Now and the Future

- Use good “customer service” skills with parents and students and continue to engage with them as much as possible.
- Provide distance learning services to each student that are, as feasible:
 - **Individualized to the student’s and parent’s/family’s support needs**
 - **Aligned with critical skill areas and IEP goals/objectives when school was closed**
 - **Determined with the opportunity for parent input and collaboration**
 - **Documented**
 - **Progress monitored**

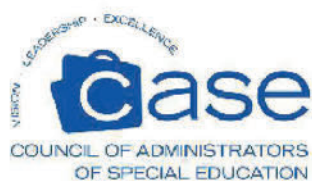


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Practical Summary Tips for Then, Now and the Future

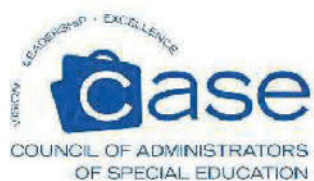
- Do not refer to distance learning services as a proposed “change of placement.” This is not a change of placement made by the district—it was/is a change of placement in response to a health and safety emergency.
- **Avoid compliance obsession with typical IDEA forms and procedures when providing distance learning services—do the best that you can—but consider not creating new forms/agreements for parents to sign.**
- Include related services in distance learning, where feasible and appropriate for the student.
- **Keep FERPA provisions in mind at all times, especially if providing instruction/related services virtually with groups of students.**

Practical Summary Tips for Then, Now and the Future



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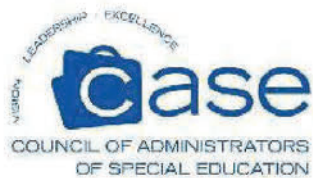
- Document informally everything discussed and agreed upon—parent agreements/disagreements on timelines, meetings, services; parent contacts/attempts to contact; services provided and when; etc.
- Try to get current IEPs in place by the beginning of the school year (whenever that is).
- Within a reasonable period of time in light of the circumstances, make appropriate team determinations regarding the impact, if any, the school closure had on critical needs/skills and determine whether changes are needed to the IEP.
- Learn from your past mistakes. Assess how the school closure period went—what went well and what did not—just in case school closure happens again (as some are predicting).
- Debrief everything then, now and in the future with your school attorney.



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Keep going.
Because you did not
come this far just to
come this far.





Phyllis Wolfram
Executive Director
CASE

Missouri



@phylliswolfram

Questions?



@jweatherlyesq



Julie Weatherly, Esq.
Owner/Attorney
RISE, Inc.

Alabama

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To stay up to date on resources and information visit:

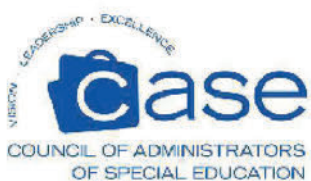
www.casecec.org

Visit the CASE Action Center:

<https://www.casecec.org/action-center>

Access COVID-19 Information:

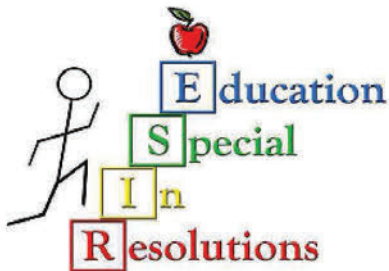
<https://www.casecec.org/covid-19>



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

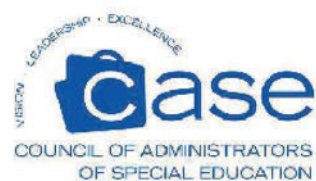


**Connect with CASE
again soon!**

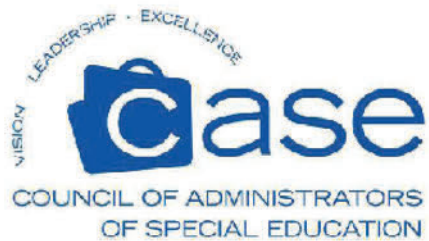
Save the Date: July 10, 2020

You Create the Agenda!

**Send Questions as they arise to
RISE, Inc. at IDEALaw@aol.com**



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Navigating the COVID-19 Crisis

Erin Maguire, CASE President

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

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

Julie Weatherly, Esq., Resolutions in Special Education

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

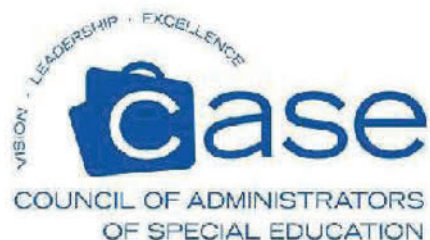
Agenda

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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April 3, 2020



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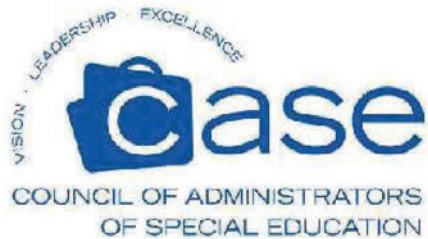
Welcome and Introductory Comments



Phyllis Wolfram
Executive Director
Twitter: @phylliswolfram

April 3, 2020

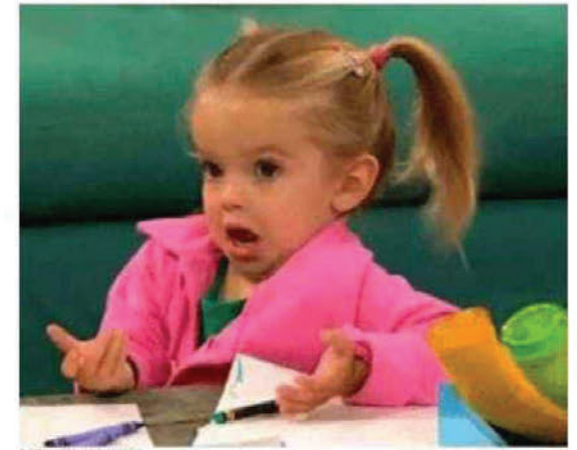
We Are In This Together!



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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!



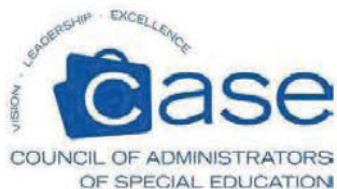
April 3, 2020



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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.**



Erin Maguire
CASE
President

Vermont



@VTEducator

#WeKeepLeading
Presenters for Today

Myma Mandlawitz, JD
CASE
Policy & Legislative
Consultant

Washington, DC



@myrnamandlawitz

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

Illinois



@kdruben



Julie Weatherly, Esq.
Resolutions in Special
Education

Alabama



@jweatherlyesq

April 3, 2020

Real Talk

Disclaimer:

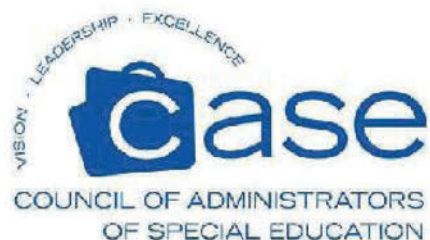
The information we are providing today is the best we know at this moment.

- 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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April 3, 2020



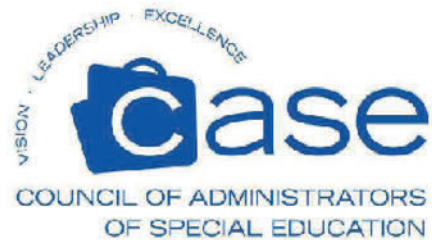
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Updates from Washington DC



Myrna Mandlawitz, J.D.
CASE Policy & Legislative Consultant
Twitter: @myrnamandlawitz

April 3, 2020



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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>

April 3, 2020

What We're Working On

CARES Act- Flexibility Language



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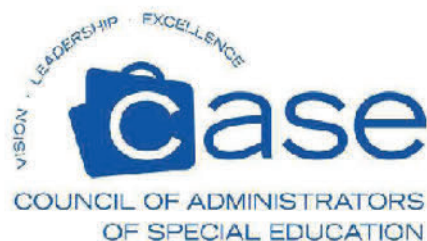
- As the voice for the local special education director, CASE worked with the National Association of State Directors of Special Education (NASDSE) to send a letter to OSERS seeking specific flexibilities.
- 31 state units signed the same letter.
- In our organizational history, we have never sought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

April 3, 2020

Continuing to Address Federal Needs

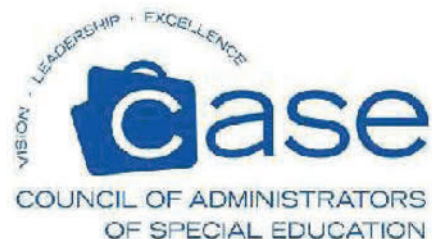
CASE will continue to consider how the federal decisions relate to local practices in special education:

- **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



Erin Maguire
CASE President
Twitter: @vteducator

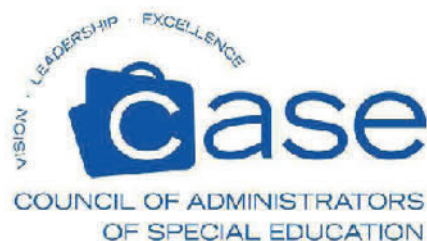
Kevin Rubenstein, Ed.D.
CASE Policy & Legislative Chair
Twitter: @kdruben

April 3, 2020

CARES Act - Flexibilities Needed

Timelines

- ***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. 34 C.F.R. § 300.508; 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].



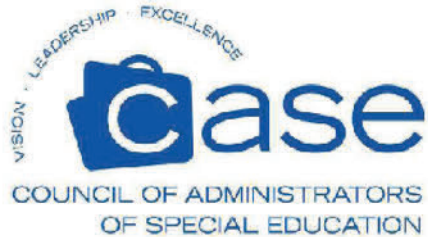
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CARES Act - Flexibilities Needed

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?

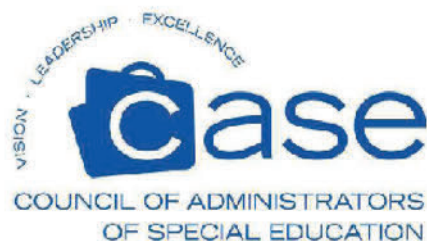


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CARES Act - Flexibilities Needed

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]

April 3, 2020

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)?



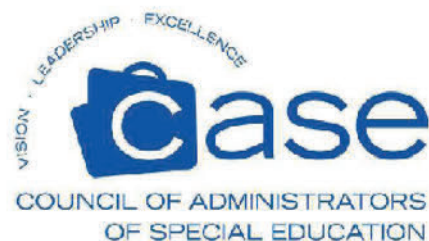
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CARES Act - Flexibilities Needed

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

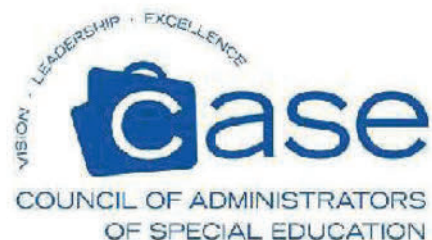
Fiscal Management

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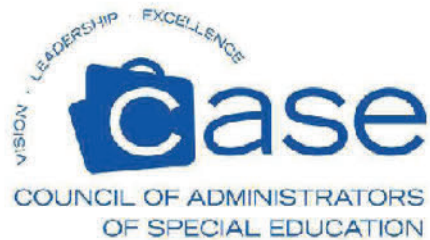
Dos and Don'ts of Special Education Practices during COVID-19



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CASE President
Twitter: @vteducator

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CASE Policy & Legislative Chair
Twitter: @kdruben

April 3, 2020



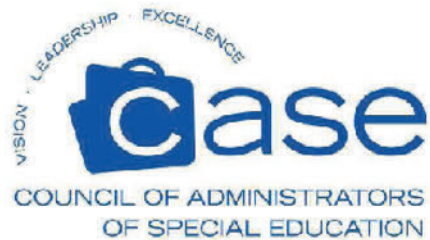
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Priority 1: Focus on the safety, health, and welfare of students and staff members in your community.

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.

April 3, 2020



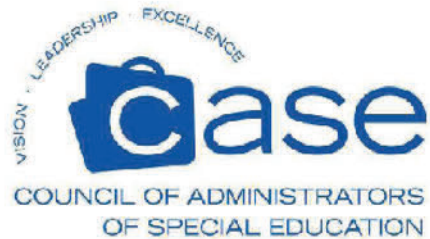
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Priority 1: Focus on the safety, health, and welfare of students and staff members in your community.

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.)

April 3, 2020



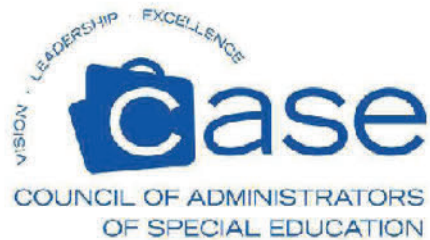
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Priority 2: Provide FAPE- Deliver services to as many students as you reasonably can in the best way you know how.

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.

April 3, 2020



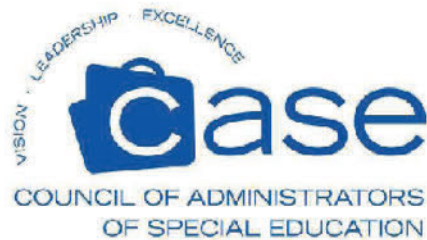
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Priority 2: Provide FAPE- Deliver services to as many students as you reasonably can in the best way you know how.

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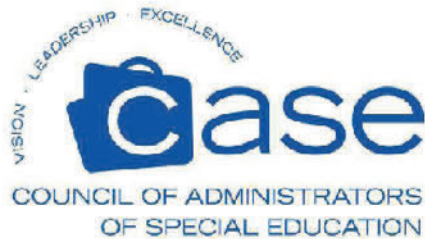
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Priority 3: Document your efforts; make sure documentation is focused, consistent, detailed and demonstrates a good faith effort to provide good services.

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).

April 3, 2020



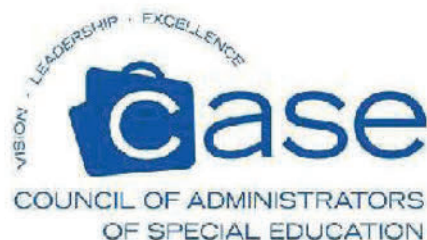
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Priority 3: Document your efforts; make sure documentation is focused, consistent, detailed and demonstrates a good faith effort to provide good services.

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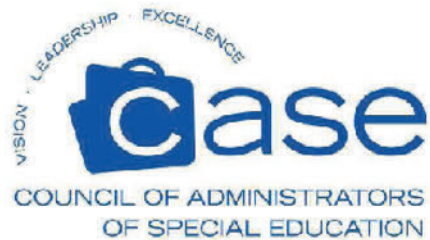
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Dos and Don'ts from a Legal Perspective in Special Education During COVID-19



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

April 3, 2020

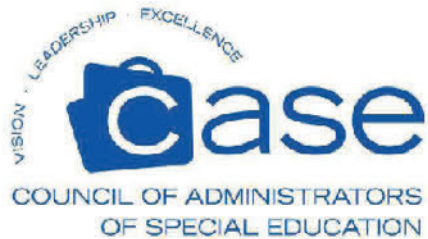


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Priority 4: Compliance during the pandemic -
IDEA wasn't built for this.

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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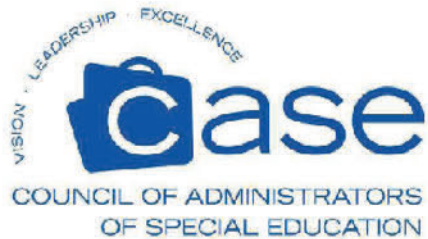


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Priority 4: Compliance during the pandemic -
IDEA wasn't built for this.

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

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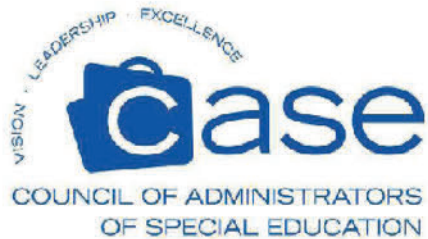


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Priority 4: Compliance during the pandemic -
IDEA wasn't built for this.

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.

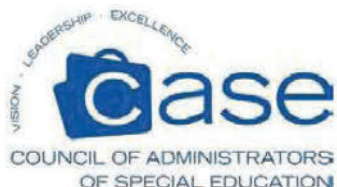
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Four Priorities for Special Education:

- 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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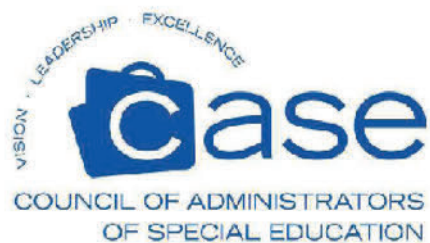
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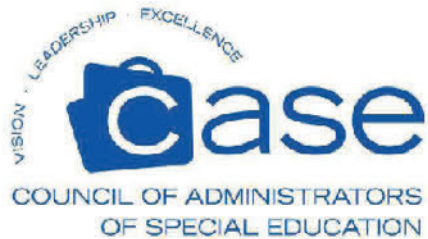
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April 3, 2020



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

**Connect with CASE
next Friday:**

April 10, 2020 - 12:00pm CST