

*SPECIAL  
EDUCATION  
CONSIDERATIONS  
FOR  
SECONDARY  
ADMINISTRATORS :*

*COMPASSION  
OVER COMPLIANCE*

Presented by:  
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## TOPICS FOR TODAY

- Recent special ed compliance guidance
- Continuum of virtual learning experiences
- Service delivery considerations
- Compensatory education



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## GUIDANCE RECEIVED TO DATE REGARDING STUDENTS WITH DISABILITIES

USDOE Q & A-March 2020

MDE Memo-March 13, 2020 re: Compliance with IDEA/MARSE

OCR Fact Sheet-March 16, 2020 re: Protecting Civil Rights

USDOE Supplemental Fact Sheet-March 21, 2020

MDE Memo-March 23, 2020 re: Distance Learning



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## CONSISTENT COMPLIANCE MESSAGES

Districts must ensure that students with disabilities (SWDs) have **equal access** to the learning opportunities provided to all students.

To the extent that all students are being provided with continuous learning opportunities, SWDs must be provided with a **FAPE (free appropriate public education)** as described in their IEPs/504 Plans.

- If the district provides NO services to the general population, no services are required for SWDs.

**Compensatory education** will need to be considered on a case-by-case basis after normal school operations resume.



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## COMMENT FROM PERRY ZIRKEL

“First, the most recent guidance from USDE, the more recent OCR guidance, and any SEA guidance are all just that—guidance, or interpretations by the agencies responsible for administering the IDEA, §504/ADA, and corollary state laws, respectively. ***None of these documents has the force of law; whether courts will find them persuasive is an “it depends” matter.***”



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## EMERGING EMPHASIS

***Special ed requirements should not get in the way of providing services to all students.***

USDOE realizes that ***not everything can be done in the usual way*** during these unusual circumstances.

- Virtual learning/meetings are permitted.

MDE/OSE ***will not issue corrective actions*** for past due timelines for meetings or evaluations.



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## EMERGING EMPHASIS

What is *reasonable* and *individually appropriate* in light of *current circumstances*?

Make decisions in the context of *protecting the health/safety of both students and staff*; this context may change over time, requiring different decisions over time.

Parent communication/collaboration is critical.

Document, document, document!

- Parent contacts/conversations/conclusions
- Services to students (date, duration, type, progress, etc.)
- Decision-making (data considered, rationale, results)



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## IN OTHER WORDS: COMPASSION OVER COMPLIANCE

- A Compliance Mindset asks:
  - What must we do?
  - How much is “enough”?
  - What will be the consequence if we don’t do it right?
- A Compassion Mindset asks:
  - How are you feeling?
  - What do you need right now?
  - How can we help you in these difficult circumstances?

*Compassion actually compels us to higher quality service because it is driven by our own conscience rather than directives from an outside source.*



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## COMMENT FROM PERRY ZIRKEL

Rather than emotion-laden legalism, the key factors during this unusual crisis *start with health/safety and, within this overriding consideration, what is essential and what is practicable.*"



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## CONSIDERATIONS FOR SPECIAL ED SERVICES

Think about **CAPACITY**:

- Of the district (as a whole) to provide instructional services to all students during the closure
- Of families to access instruction while at home
- Of special education staff to develop and deliver high-quality instruction to all students in a manner other than face-to-face

*Where is your district on the continuum of providing meaningful virtual learning experiences?*



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## WHERE IS YOUR DISTRICT ON THE VIRTUAL LEARNING CONTINUUM?

Enrichment resources/homework packets that reinforce already-acquired skills, perhaps with no expectation of completion

Continuous learning opportunities for existing and/or new skills where providers frequently check in with students/parents, likely with some expectation for completion

True distance learning with structured activities that are teacher directed, student implemented, and assessed for progress



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***"Online learning is not an ideal experience, so let's extend grace to school districts as we work really hard to provide sound educational experiences for all of our students. We cannot allow perfection to be the enemy of any kind of progress."***

Michelle Reid, Superintendent  
Northshore School District/Suburban Seattle



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**“Do what you can, with what you have,  
where you are.”**

Theodore Roosevelt



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## CONSIDERATIONS FOR SWD IF THE DISTRICT IS PROVIDING **ENRICHMENT RESOURCES/HOMEWORK PACKETS:**

- Make reasonable efforts to provide **appropriate access** for SWDs to the extent possible given the current circumstances:
  - Clarity of written instructions
  - Accommodate different reading or math levels
  - Shorten assignments to account for attention issues
  - Consider focused work for specific classes versus everyone in the grade gets the same work



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## CONSIDERATIONS FOR SWD IF THE DISTRICT IS PROVIDING **CONTINUOUS LEARNING OPPORTUNITIES**

Heightened efforts to provide *meaningful, equal access for SWDs* to the extent possible:

- Similar expectations for educational benefit for all students in these circumstances
- Accommodations and modifications of general education materials per IEP or 504 plan
- Various input/output modalities to the extent possible
- Virtual behavioral consultation to parents to support work completion

Provide more *focused work* for specific classes, or for specific groups of students within a class

Considerations for *related services*



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## CONSIDERATIONS FOR SWD IF THE DISTRICT IS PROVIDING **RIGOROUS DISTANCE LEARNING**

Full-fledged *equal access* for SWDs

Moving toward *full delivery of FAPE* for SWDs

- Teacher directed, student implemented, and assessed for progress
- Individually tailored work to *address IEP goals/objectives* as well as *progress in the general curriculum*
- Delivering all special education programs and related services in a *reasonable and individually-appropriate manner given the circumstances*



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## CONSIDERATIONS FOR STUDENTS WITH DISABILITIES

*Endrew F* standard for FAPE (free, appropriate, public education):

- “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*”

*Endrew F* also gives deference to well-reasoned decisions (“cogent explanation”) by the IEP Team

Rely on your IEP Team; document your “cogent explanation”



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## RULE OF THUMB: COMPARABILITY

*As rigor, accountability, and the expectation for progress increase for the general population, our special ed obligation moves toward full implementation of FAPE as described in the IEP.*



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## BUT WHAT ABOUT COMPENSATORY EDUCATION?

- Comp ed is not a punishment to be feared.
- Comp ed is a *safety net* that we will consider after the crisis *because we care about our kids*:
  - What did we provide during the closure?
  - How well did it work for this particular student?
  - Is there anything we need to do to help get this student get back up to speed?
- We can prepare now for later comp ed considerations by documenting:
  - Contacts with parents and students (date, discussion, results, next steps)
  - Services provided (type, frequency, duration, results)
  - Student progress before, during, and after the closure



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## BOTTOM LINE FOR BUILDING ADMINISTRATORS: COMPASSION OVER COMPLIANCE

Are we doing what's *reasonable* and *appropriate* in light of the *circumstances*?

Are we trying to provide *meaningful access* for all students with disabilities?

As the rigor increases for the general population, are we *moving toward full FAPE* for students with disabilities as well?

Am I working closely with my special ed administrator to address questions/concerns, particularly as related to compliance issues?



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## QUESTIONS/SUPPORT?

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