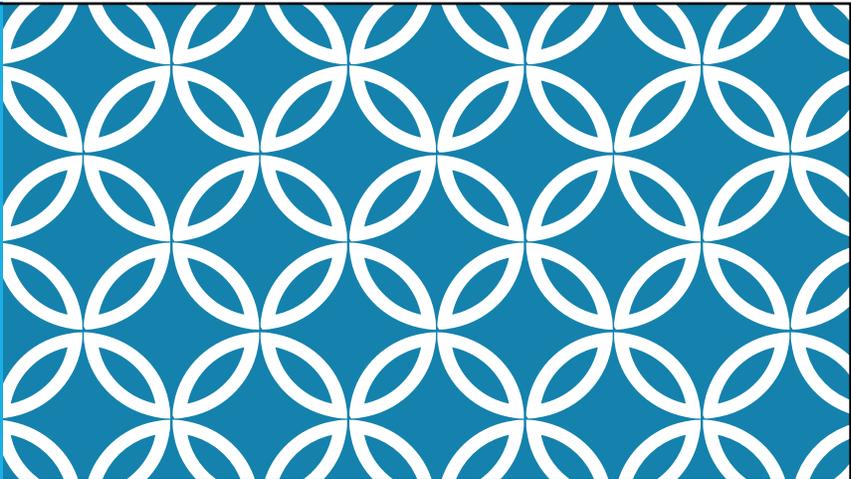


*SPECIAL ED  
LEADERSHIP  
DURING THE  
COVID-19  
CRISIS:*

**COMPASSION  
OVER  
COMPLIANCE**

Presented by:  
**Donna Tinberg and Robert Lusk**  
Lusk Albertson Special Education Services  
Wednesday, March 25, 2020

[www.LuskAlbertson.com/COVID19](http://www.LuskAlbertson.com/COVID19)



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## HOW DOES A COMPLIANCE MINDSET LOOK AT THE COVID-19 CRISIS?

Compliance: conformity in fulfilling official requirements

A Compliance Mindset asks:

- What must we do?
- How much is “enough”?
- What will be the consequence if we don’t do it right?

Not necessarily advocating the antonyms for compliance: defiance, disobedience, intractability, recalcitrance



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## HOW DOES A COMPLIANCE MINDSET LOOK AT THE COVID-19 CRISIS?

Original March 2020 Guidance from OSEP:

- If no services to general education students, no services required for students with disabilities (SWDs)
- If educational services are provided to general ed students, equal access must be provided for SWDs, including the provision of FAPE
- Distance learning may be considered for provision of FAPE
- IEP teams must consider the need for compensatory services if FAPE was not provided during the closure



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## HOW DOES A COMPLIANCE MINDSET LOOK AT THE COVID-19 CRISIS?

Guidance from March 16, 2020, OCR Fact Sheet:

- SWDs must have equal access to services offered to the general population
- Districts must provide accommodations/supports to ensure access
- If a student does not receive services after an extended period of time, the IEP/504 Team must make an individualized determination about whether and to what extent compensatory services are needed, including to make up for any skills that may have been lost



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## HOW DOES A COMPLIANCE MINDSET LOOK AT THE COVID-19 CRISIS?

Guidance from March 16, 2020, OCR Fact Sheet:

- IEP/504 Teams are not required to meet in person while schools are closed
- If an evaluation of a student with a disability requires a face-to-face assessment or observation, the evaluation would need to be delayed until school reopens
- Evaluations and re-evaluations that do not require face-to-face assessments or observations may take place while schools are closed, so long as a student's parent or legal guardian consents



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## HOW DOES A COMPLIANCE MINDSET LOOK AT THE COVID-19 CRISIS?

March 13, 2020, Guidance from MDE/OSE :

- Reiterated the FAPE requirements from USDoE/OCR
- Must consider technology needs in order to provide access to instruction
- Reiterated USDoE guidance regarding individual consideration of need for compensatory education



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## HOW DOES A COMPLIANCE MINDSET LOOK AT THE COVID-19 CRISIS?

March 13, 2020, Guidance from MDE/OSE:

- Adhere to timelines in IDEA/MARSE:
  - Initial evaluations within 30 school days but may request an extension
  - No extensions on annual reviews
  - Reevaluation extensions before the 3-year due date are OK
  - Extensions beyond the annual review or 3-year due date will result in untimely data but no corrective action



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## HOW DOES A COMPLIANCE MINDSET LOOK AT THE COVID-19 CRISIS?

March 13, 2020, Guidance from MDE/OSE:

- Must conduct annual and reevaluation IEP meetings
  - May consider a virtual IEP team meeting on a case-by-case basis
  - Virtual cannot be the only meeting format considered
  - Must include the parent
- All decisions made on an individual basis



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## HOW DOES A COMPLIANCE MINDSET LOOK AT THE COVID-19 CRISIS?

March 21, 2020, Supplemental Fact Sheet from USDoE:

- Ensuring compliance with IDEA/Section 504/ADA should not prevent any school from offering educational programs through distance instruction
- Must provide FAPE consistent with the need to protect the health and safety of SWDs and those individuals providing services
- USDoE understands that, during this national emergency, schools may not be able to provide all services in the same manner they are typically provided



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## HOW DOES A COMPLIANCE MINDSET LOOK AT THE COVID-19 CRISIS?

March 21, 2020, Supplemental Fact Sheet from USDoE:

- Highlights existing flexibilities in IDEA: emphasizes individualized decisions about how to provide services during the emergency
- If there is a delay in providing services, must make an individualized determination regarding the need for compensatory services



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## HOW DOES A COMPLIANCE MINDSET LOOK AT THE COVID-19 CRISIS?

March 21, 2020, Supplemental Fact Sheet from USDoe:

- Distance learning must be accessible
- Encourages parents, educators, and administrators to collaborate creatively to meet student needs:
  - distance instruction
  - teletherapy and tele-intervention
  - meetings held on digital platforms
  - online options for data tracking and documentation
  - low-tech strategies to exchange curriculum-based resources, instructional packets, projects, and written assignments



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## CAUTIONS 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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## CAUTIONS FROM PERRY ZIRKEL

“...practical implementation is bound to be a daunting challenge particularly in relation to students with disabilities that are severe, those with particular communication needs, and/or those requiring related services...

However, as a legal matter...*the courts have generally adopted the standard of reasonable accommodations, with the prevailing ultimate prerequisite of gross misjudgment, bad faith, or deliberate indifference.*”

(NOTE from LASES: This standard regarding reasonable accommodations may apply more to 504 cases than to cases brought under IDEA)



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## COMPASSION OVER COMPLIANCE

**Compassion: sympathetic consciousness of others' distress together with a desire to alleviate it**

▪ Antonyms: *callousness, cold-heartedness, heartlessness*

**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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## COMPASSION CONSIDERS 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



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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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# COMPASSION CONSIDERS CAPACITY

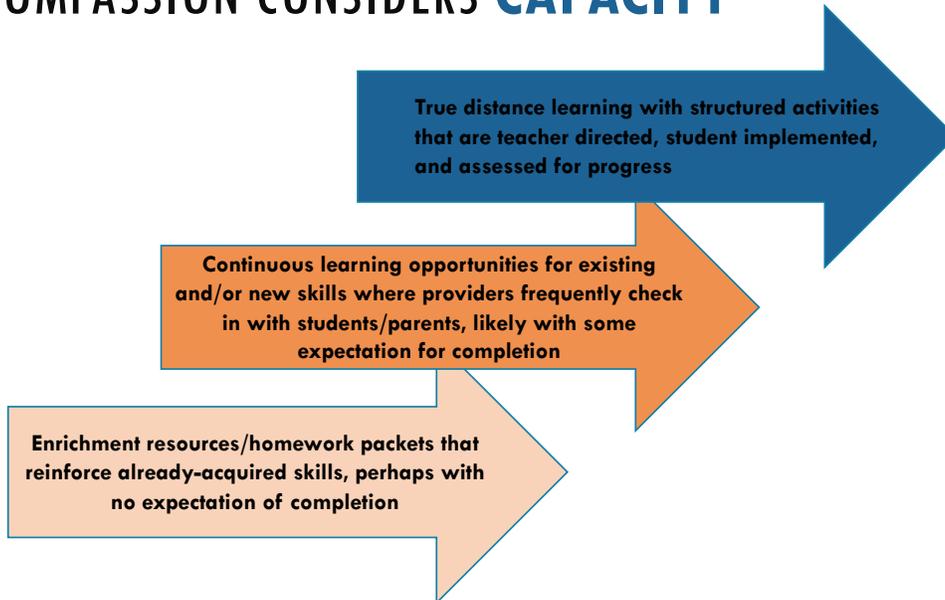
Where is your district on the continuum of providing meaningful alternative learning experiences?

*(Credit to Erin Maguire, Myrna Mandlawitz, Kevin Rubenstein, Julie Weatherly, and Phyllis Wolfram of CASE for the concept of a continuum.)*



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# COMPASSION CONSIDERS CAPACITY



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

Theodore Roosevelt



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## COMPASSION CONSIDERS **CAPACITY:** **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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## COMPASSION CONSIDERS **CAPACITY**: 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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## COMPASSION CONSIDERS **CAPACITY**: TRUE 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
- Individualized instruction with possible small group instruction in a virtual setting
- Delivering all special education programs and related services in a reasonable and individually-appropriate manner given the circumstances



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## COMPASSION CONSIDERS **COMPARABILITY**

As we develop capacity, how can we ensure meaningful access so that the services received by SWDs are comparable to the services received by the general population?

- Reasonable/appropriate accommodations that help SWDs access learning
- To the extent possible under the current circumstances
- Because we know it matters that all kids—including those with disabilities—continue to be engaged in meaningful learning during the closure
- Because we believe that sometimes “more” makes “equal”



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***“I did then what I knew how to do.  
Now that I know better, I do better.”***

Maya Angelou



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## COMPASSION CONSIDERS CIRCUMSTANCES

*Endrew F* standard for FAPE:

- “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

Document your “cogent explanation”



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## COMPASSION CONSIDERS CIRCUMSTANCES

Family circumstances

- Adult supervision in the home
- Basic needs being met
- Health situations in the home
- Educational background and capacity to support learning activities
- Availability of and comfort with technology

Keeping in mind that family circumstances are likely to evolve - for better or for worse - over time.



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## COMPASSION CONSIDERS CIRCUMSTANCES

### Staff circumstances

- Family responsibilities and constraints
- Health situations for staff and their families
- Staff capacity (skill and will) to develop online/virtual/alternative learning opportunities, including comfort/expertise with technology

Keeping in mind that staff circumstances also are likely to evolve - for better or for worse - over time



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## COMPASSION VALUES COMMUNICATION AND COLLABORATION

### Recognizing parents as partners

Ensuring parents have reasonable and appropriate opportunities to participate in decision-making

To the extent possible given the circumstances

Putting compassion ahead of compliance

Documenting our efforts and our thinking in the clearest way possible given the circumstances

Because the tone we set is the model our staff will adopt when working with families



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## COMPASSION DOES NOT MEAN **CLUELESS!**

Must understand compliance in order to be wise about why/how/when to deviate from it under these unique circumstances

Focus on what's reasonable and appropriate given the current, unique circumstances for each child/situation

Document decision-making and communication with parents/staff when requirements cannot/should not be implemented exactly as written

Does it feel like a bit of a gamble? Perhaps, but...



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***“You gotta know when to hold ‘em,  
know when to fold ‘em...”***

Kenny Rogers (The Gambler)



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## COMPASSION ANTICIPATES CONVERSATIONS ABOUT **COMPENSATORY EDUCATION**

Not as a punishment to be feared

Rather, as 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?



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## COMPASSION ANTICIPATES CONVERSATIONS ABOUT **COMPENSATORY EDUCATION**

Compensatory ed is a conversation we can prepare for by documenting:

- Contacts with parents and students
- Services provided (type, frequency, duration, results)
- Student progress before, during, and after the closure



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## COMPASSION CONSIDERS **CONSEQUENCES** BUT ACTS WITH **COURAGE**

Demonstrating leadership in doing what's right for kids

Not out of fear of potential consequences, but in the spirit of caring and in good faith

What's reasonable and appropriate at the time, given the circumstances

Knowing that circumstances may change over time and decisions are not immutable



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## FINAL WISDOM FROM PERRY ZIRKEL

In these trying times, school district special education leaders need to apply **common-sense proactive measures**, as is their admirable norm...

Rather than fixating on perceived mixed messages, focusing on overly nuanced questions, or confusing well-intended guidance with binding legal requirements, local special education leaders should continue to use their particular forte in being **creative, constructive, and collaborative, with due consultation** with local legal counsel where needed

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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IN OTHER WORDS:

## Compassion over Compliance!



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QUESTIONS/SUPPORT?

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