

Pennsylvania Coalition of Public Charter Schools

Insurance & Legal Considerations for Charter & Cyber Charter Schools in light of the Coronavirus Pandemic



Learn More at
mckennalawllc.com

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INTRODUCTION

- Thank you to Brandie and PCPCS for inviting us today to discuss Liability and insurance related to COVID-19.
- We are honored to support PA charter schools as risk managers and business partners.

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Topics we will cover

- Ways to avoid a lawsuit & risk management
- What's not covered by insurance?
- This is not a substitute for direct communications with your school's insurance broker or agent and is not intended as legal advice relevant to a specific matter or policy.

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Let's start with the good news...

- Legislation may protect businesses from a surge of liability cases by passing a law preventing consumers(students and families) from suing their schools. Workers Compensation would not be covered by this law. This is a political topic that is currently being discussed.
- Louisiana just implemented a new law protecting schools from COVID-19 related lawsuits.
- Businesses would have to comply with CDC guidelines and laws in order to be protected. It would not give organizations immunity if they were grossly negligent.

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Top 3 Risk Management Activities

- PREVENT- masks (tips on next slide for younger children), social distancing, hand-washing, environmental cleaning and disinfecting, signs and messages, ventilation, modified layouts, physical barriers and guides,
- REDUCE- small class sizes, groups of students stay together and with same teacher throughout school days and don't mix groups. Students remain 6 feet apart and don't share objects. Designate staff person to be safety officer. Follow most up to date CDC guidelines
- TRANSFER: Transfer the risk to an Insurance company- make sure you don't have communicable disease exclusion on your General Liability policy



Preparing for re-opening and risk avoidance

The most important thing you can do now is to prepare. Schools need to be ready if COVID-19 does appear in their communities.

Questions to ask yourself:

- How are our emergency operations plans? Do we need to revise them?
- How are we going to share information and systems with key players & partners?
- Do we need to teach better health hygiene practices?
- Have we intensified cleaning and disinfection efforts?
- How are we going to plan for absenteeism?
- How are we going to handle group gatherings and events
- Have we cancelled non-critical gatherings and events?

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Preparing for re-opening and risk avoidance

- Have you established a requirement for sick students and staff to stay home?
- Have you established procedures for students and staff who are sick at school?
- Have you created and tested communications plans for use with the school community?

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Preparing for re-opening and risk avoidance

- Have you reviewed CDC's guidance for business and employers and schools?
 - <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/index.html>

Masks/ Face coverings new order

- The recent [Universal Face Coverings Order](#) issued recently is mandating face coverings for students over the age of 2. Per the new guidelines schools will be requiring face masks, but only in high risk situations such as hallways where mixing of groups may occur and when physical distancing cannot be maintained. Your goal should be to reduce the amount of time students will be wearing face masks while still maintaining the safety measures from the Department of Health. It may be difficult for students to keep a mask on safely so instead focus your energy on other safety measures such as physical distancing, hand washing and sanitation. However, since students may spend part of their day wearing masks, it is important to communicate to parents to get their kids comfortable with the idea of it before they come to school.
- Nemours Children's Health System presents ways to help your child /student get more comfortable with masks in [this article](#). Feel free to circulate this in an email to your parents. I'm sure any helpful tips you can provide them about mask wearing will be welcome 😊
- Additionally, if you are interested, I have a social story I can send to you for younger students about wearing masks that reads like a children's book. Reading books to your students is a great way to learn something new and become familiarized with a new topic!



Things to be aware of as a policyholder...

- Ask your broker questions. COVID-19, pandemics, riots, floods, hurricanes - what is covered?? Have them show you in the policy where to look for exclusions and endorsements. You don't have to become an insurance expert, but it's a contract like any other that you need to understand.
- Each insurance carrier is different in their interpretation of liability due to COVID-19



General Liability coverage

- We are living in unprecedented times. Lawsuits related to children getting sick at school due to a virus have been very few. Claims will likely be raised in light of COVID-19. The plaintiff's bar is preparing so we should too.
- A Commercial General Liability policy does cover, subject to terms, conditions and exclusions of the coverage, claims of "Bodily injury" meaning "Bodily injury, sickness, or disease sustained by a person, including death resulting from any of these at a time."
- If a suit is brought against the organization alleging that the insured was negligent in its operations, which allowed an individual to contract COVID-19 at the school, coverage may potentially apply to defend and indemnify the school against such claims provided no exclusions.



General Liability Exclusion (CG 21 32)

- With respect to COVID -19, there is an exclusion – (CG 21 32) that some insurance carriers are applying to the General Liability coverage that excludes claims for bodily injury arising out of a communicable disease. Some carriers are removing the exclusion at the request of the broker. Sovereign has successfully removed this exclusion on a few of our school's policies.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMUNICABLE DISEASE EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**

2. Exclusions

This insurance does not apply to:

Communicable Disease

"Bodily injury" or "property damage" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;
- b. Testing for a communicable disease;
- c. Failure to prevent the spread of the disease; or
- d. Failure to report the disease to authorities.

- B. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

2. Exclusions

This insurance does not apply to:

Communicable Disease

"Personal and advertising injury" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;
- b. Testing for a communicable disease;
- c. Failure to prevent the spread of the disease; or
- d. Failure to report the disease to authorities.

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COVID-19 & Workers Compensation

- Workers Compensation protects employees under state laws. It provides medical care, death, disability, and rehabilitation benefits for workers who are injured while on the job. Premiums are based on school's payroll and the type of duties performed by employees.
- A Workers Compensation policy would be triggered if there is **EVIDENCE** it was contracted at work
- There are some insurance carriers that are placing a moratorium on writing new Workers Compensation policies because they are trying to avoid severe and frequent lawsuits



Sovereign's Resources for Charter Schools

- “Think HR” (Sovereign clients only) is a Risk management solution to help organizations address all potential people risks.
There are 4 main components:
 - (1) Online learning
 - (2) Compliance help (whitepapers, checklists, articles, Q&A database)
 - (3) Access to real, live HR people to answer your questions
 - (4) Handbook builder
- Sample Welcome Back Letter
- Employee notice – face coverings



Questions?

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Waivers

- Businesses and schools are increasingly turning to coronavirus waivers to guard against potential lawsuits in the absence of a federal liability shield.
- However, there are issues with enforceability against signatory and family members that affect immunity.
- Acknowledgments of Compliance with Policies
- Acknowledgments of Compliance with CDC Guidelines & Health & Safety Plans
- Federal Waivers
- PDE Waivers
 - Identify the specific state statute or regulation impacting staffing needs or instructional programming and operations.
 - Secure approval by the local governing body of the school entity (i.e., school board, board of trustees, etc.) for each request.
 - Attach a copy of the board resolution showing approval for each individual request and the date of board approval.
 - Complete the PDE Waiver Request Form and submit to PDE.
 - Note: Waiver requests must be submitted in a form and manner prescribed by the Secretary; requests must adhere to the following form and must be complete upon submission to PDE.
 - PDE will review each request and issue a decision to the school entity within 30 days of receipt of the request. The Secretary's determination related to a waiver request is not appealable.

Waivers of Liability

- May not be enforceable if school is not following CDC and PDE guidance.
- Tort Immunity, 42 Pa. C.S. § 8542 (b), may protect charter schools from general negligence claims for COVID-related exposure, but not gross negligence or intentional torts.

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CORONAVIRUS (COVID-19)

COVID-19 GUIDANCE FOR CHARTER SCHOOLS & CYBER CHARTER SCHOOLS

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Phased Reopening of Pre-K to 12 Schools

- PDE issued Preliminary Guidance for Phased Reopening of Schools June 3, 2020
- Each school must create a Health and Safety Plan which will serve as the local guidelines for all school reopening activities.
- Preliminary Guidance:
<https://www.education.pa.gov/Documents/K-12/Safe%20Schools/COVID/GuidanceDocuments/Pre-K%20to%2012%20Reopening%20Guidance.pdf>

Health and Safety Plan

Schools may provide in-person instruction after developing a written Health and Safety Plan, securing approval by each school entity's governing body (i.e., board of trustees) and posting the plan on the school or district's publicly available website.

The plan must include the following:

- Identification of a “pandemic coordinator” and/or “pandemic team” with defined roles and responsibilities for health and safety preparedness and response planning;

Health and Safety Plan

The plan must include the following (cont.):

- Steps to protect children and staff at higher risk for severe illness;
- Steps to take in relation to isolation or quarantine when a staff member, child or visitor becomes sick or demonstrates a history of exposure;
- Expectations for the posting of signs in highly visible locations, that promote everyday protective measures and how to stop the spread of germs;



Health and Safety Plan

The plan must include the following (cont.):

- Procedures for cleaning, sanitizing, disinfecting, and ventilating learning spaces;
- Procedures for the safe use of cafeterias and other congregate settings;
- Protocols for sporting activities consistent with the CDC Considerations for Youth Sports for recess and physical education classes (guidance for organized school sports will be published separately);

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Health and Safety Plan

The plan must include the following (cont.):

- Schedules for training all faculty and staff on the implementation of the Health and Safety Plan.
- System for ensuring ongoing communication with families around the elements of the local Health and Safety Plan including ways that families can practice safe hygiene in the home.



Health and Safety Plan

- Schools must submit their Board approved Health and Safety Plans (and any questions) to PDE at RA-EDContinuityofED@pa.gov
- The Health and Safety Plans must be posted on the school's website.
- Our Firm is available to assist with review of your School's plan or specific questions.

Health and Safety Plan

- In preparation for the reopening of your school, we also recommend that you review with your broker the charter school's insurance coverage related to potential claims from parents, students or non-employees for any potential exposure to COVID-19.
- This will require a review of current policies and exclusions

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Actions to Limit Liability

- Have employees sign verifications that they have not been traveling or have had exposure with a person who was COVID-19 confirmed positive in the past 14 days?
- Have employees verify that they have not experienced typical COVID-19 symptoms in the last 72 hours – fever, cough, shortness of breath, etc.?
- Have employees verify that if they feel any of these symptoms they will stay home or if they come on during the day, leave immediately?



Accommodating High Risk Employees

- PDE Guidance states:
 - Establish and maintain communication with local and state authorities to determine current mitigation levels in your community.
 - Adopt flexible attendance policies for students and staff.

Accommodating High Risk Employees

- PDE Guidance states:
 - Protect employees at higher risk for severe illness by supporting and encouraging options to telework.
 - Explore offering duties that minimize higher risk individuals' contact with others.
 - Limit or cancel all non-essential travel as necessary.

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Accommodating High Risk Employees

- CDC Guidance:
 - [I]t is particularly important to keep in mind that some workers are at higher risk for severe illness from COVID-19. These workers include individuals over age 65 and those with underlying medical conditions.
 - Such underlying conditions include, but are not limited to, chronic lung disease, moderate to severe asthma, hypertension, severe heart conditions, weakened immunity, severe obesity, diabetes, liver disease, and chronic kidney disease that requires dialysis.



Accommodating High Risk Employees

- CDC Guidance:
 - Workers at higher risk for severe illness should be encouraged to self-identify, and employers should avoid making unnecessary medical inquiries.
 - Employers should take particular care to reduce workers' risk of exposure to COVID-19, while making sure to be compliant with relevant Americans with Disabilities Act (ADA) and Age Discrimination in Employment Act (ADEA) regulations.

How to Accommodate High Risk Employees?

- Give employees a chance to self-identify as “high risk” by a certain date and determine whether those employees are requesting an accommodation.
- If telework is feasible, employee should be given option to continue to work from home.
- If telework is not feasible, accommodations should be made to limit employee’s contact with individuals in the building.



GUIDANCE TO ENSURE THE SAFETY AND HEALTH OF EMPLOYEES AND THE PUBLIC

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Protecting Working Employees

- All businesses (including schools) conducting in-person operations as permitted must do the following:
 - Clean and disinfect high-touch areas frequently and continue to regularly clean all other areas of the building(s);

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Protecting Working Employees

- Identify employees who were in close contact (within about 6 feet for 10 minutes or more) with a person with a probable or confirmed case of COVID-19 from the period 48 hours before symptom onset to the time at which the patient isolated.
 - If any employee who was in close contact remain asymptomatic, the employees should adhere to the practices set out by the CDC in its [April 8, 2020 Interim Guidance for Implementing Safety Practice for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19;](#)



Protecting Working Employees

- If the affected employee becomes sick during the workday, the person should be sent home immediately.
- Surfaces in the employee's workspace should be cleaned and disinfected. Information on other employees who had contact with the ill employee during the time the employee had symptoms and 48 hours prior to symptoms should be compiled.
- Others at the workplace with close contact within 6 feet of the employee during this time are considered exposed;

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Protecting Working Employees

- Promptly notify employees who were close contacts of any known exposure to COVID19 at the business premises, consistent with applicable confidentiality laws.
- Taking each employee's temperature before they enter the business and sending home those who have a temperature of 100.4 degrees Fahrenheit, or higher.
- Ensure employees practice social distancing while waiting to have temperatures screened;



Protecting Working Employees

- Informing employees that if they have symptoms (i.e., fever, cough, or shortness of breath), they should notify their supervisor and stay home;
- Advising sick employees to follow CDC-recommended steps, including not returning to work until the CDC criteria to discontinue home isolation are met, in consultation with health care providers and state and local health departments;
- Employers are encouraged to implement liberal paid time off for employees who do not return to work.

Protecting Working Employees

- Prevent large groups from entering or leaving the building by staggering work start and stop times;
- Limit the number of people in employee common areas, like locker rooms or break rooms, and ensure these areas are cleaned frequently;
- Conduct meetings and trainings virtually. If a meeting needs to be held in person, limit the number of employees to 10 in the Red Phase, 25 in the Yellow phase, and 250 in the Green Phase, while maintaining a social distance of six feet;

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Protecting Working Employees

- Make sure employees have access to soap and water to wash their hands, hand sanitizer and disinfectant wipes;
- Provide non-medical masks for employees to wear at all times and make it mandatory to wear masks while on the work site. Employers may approve masks obtained or made by employees according to [Department of Health policies](#);



Protecting Working Employees

- Make sure the facility has enough employees as applicable to follow these protocols and conduct business effectively and safely;
- Discourage non-essential visitors from entering the business premises;
- Communicate these procedures to all employees to ensure that everyone knows how to be safe.



2020 Act 13 / SB 751 - IEP

- Each school entity shall provide **written notice** to the parent or guardian of each student who receives services under an Individualized Education Program of the school entity's plans for ensuring the student receives a free and appropriate public education as required under IDEA.

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Cleaning and Disinfection - Coronavirus Disease 2019 (COVID-19)

- According to current Center for Disease Control (CDC) guidelines, person-to-person transmission of COVID-19 occurs via respiratory droplets and cleaning of visibly dirty surfaces followed by disinfection is a best practice measure for prevention of COVID-19 and other viral respiratory illnesses in community settings.

Cleaning and Disinfection - Coronavirus Disease 2019 (COVID-19)

- We recommend a policy aimed to limit the survival of novel coronavirus in key environments in Charter School facilities.
- These recommendations will be updated if additional information becomes available via the CDC's website:
<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html>

Definitions

- Cleaning refers to the removal of dirt and impurities, including germs, from surfaces.
- Cleaning alone does not kill germs.
- But by removing the germs, it decreases their number and therefore any risk of spreading infection.



Definitions

- Disinfecting works by using chemicals to kill germs on surfaces.
- This process does not necessarily clean dirty surfaces or remove germs.
- But killing germs remaining on a surface after cleaning further reduces risks of spreading infection.

Personal Protective Equipment (PPE) and Hand Hygiene for Charter School staff and vendors

- Charter School staff and vendors charged with cleaning Charter School facilities should wear disposable gloves and gowns for all tasks in the cleaning process, including handling trash.
- Gloves and gowns should be compatible with the disinfectant products being used.



Personal Protective Equipment (PPE) and Hand Hygiene for Charter School staff and vendors

- Additional PPE might be required based on the cleaning/disinfectant products being used and whether there is a risk of splash.
- Gloves and gowns should be removed carefully to avoid contamination of the wearer and the surrounding area.



Personal Protective Equipment (PPE) and Hand Hygiene for Charter School staff and vendors

- If the risk of bodily fluid exposure is low or minimal, the CDC recommends gloves and gowns that follow the American National Standard PB70 Level 1 or 2.
- Please use the following link for more information:
http://my.aami.org/aamiresources/previewfiles/pb70_1206_preview.pdf



Personal Protective Equipment (PPE) and Hand Hygiene for Charter School staff and vendors

- After removing their gloves, each Charter School cleaner should follow the CDC's protocol on washing hands, posted here: <https://www.cdc.gov/handwashing/when-how-handwashing.html>
- It is recommended these handwashing guidelines be posted throughout Charter School facilities.



Personal Protective Equipment (PPE) and Hand Hygiene for Charter School staff and vendors

- Charter School cleaners should immediately report breaches in PPE (e.g., tear in gloves) or any potential exposures to their supervisor.
- It is recommended that all members of the Charter School community should clean their hands often, including immediately after removing gloves and after contact with an ill person, by washing hands with soap and water for 20 seconds.



Personal Protective Equipment (PPE) and Hand Hygiene for Charter School staff and vendors

- If soap and water are not available and hands are not visibly dirty, an alcohol-based hand sanitizer that contains 60%-95% alcohol may be used.
- However, if hands are visibly dirty, always wash hands with soap and water.



Personal Protective Equipment (PPE) and Hand Hygiene for Charter School staff and vendors

- The Charter School's CEO or his/her designee will develop policies for worker protection and provide training to all cleaning staff on site prior to providing cleaning tasks.
- Training should include when to use PPE, what PPE is necessary, how to properly don (put on), use, and doff (take off) PPE, and how to properly dispose of PPE.



Personal Protective Equipment (PPE) and Hand Hygiene for Charter School staff and vendors

- It is recommended that the following chart from the CDC be posted at Charter School facilities regarding PPE use:
<https://www.cdc.gov/hai/pdfs/ppe/PPE-Sequence.pdf>



SEQUENCE FOR PUTTING ON PERSONAL PROTECTIVE EQUIPMENT (PPE)

The type of PPE used will vary based on the level of precautions required, such as standard and contact, droplet or airborne infection isolation precautions. The procedure for putting on and removing PPE should be tailored to the specific type of PPE.

1. GOWN

- Fully cover torso from neck to knees, arms to end of wrists, and wrap around the back
- Fasten in back of neck and waist



2. MASK OR RESPIRATOR

- Secure ties or elastic bands at middle of head and neck
- Fit flexible band to nose bridge
- Fit snug to face and below chin
- Fit-check respirator



3. GOGGLES OR FACE SHIELD

- Place over face and eyes and adjust to fit



4. GLOVES

- Extend to cover wrist of isolation gown



USE SAFE WORK PRACTICES TO PROTECT YOURSELF AND LIMIT THE SPREAD OF CONTAMINATION

- Keep hands away from face
- Limit surfaces touched
- Change gloves when torn or heavily contaminated
- Perform hand hygiene



Occupational Safety and Health Act's (OSHA)

- The Charter School's CEO or his/her designee must ensure Charter School staff and vendors are trained on the hazards of the cleaning chemicals used in the workplace in accordance with Occupational Safety and Health Act's (OSHA) Hazard Communication standard (29 CFR 1910.1200).



Occupational Safety and Health Act's (OSHA)

- The Charter School is also required to comply with OSHA's standards on Bloodborne Pathogens (29 CFR 1910.1030), including proper disposal of regulated waste, and PPE (29 CFR 1910.132).
- Please review the Charter School's Bloodborne Policy for additional information.



Face Coverings

- <https://www.governor.pa.gov/wp-content/uploads/2020/07/20200701-SOH-Universal-Face-Coverings-Order.pdf>

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SPECIAL EDUCATION:

COVID-19 UPDATE

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US Education Department Secretary Betsy DeVos did not recommend any additional waiver authority concerning FAPE and LRE requirements under the IDEA.

April 27, 2020 Report to Congress.

- DeVos examined federal education laws regarding additional “flexibilities” for SEAs and LEAs and what may be needed during this unprecedented health pandemic and the long-term school closure that affects charter and cyber charter schools.
- “Secretary DeVos Reiterates Learning Must Continue for All Students, Declines to Seek Congressional Waivers to FAPE, LRE Requirements of IDEA” <https://www.ed.gov/news/press-releases/secretary-devos-reiterates-learning-must-continue-all-students-declines-seek-congressional-waivers-fape-lre-requirements-idea>



Background

Recognizing that implementation of the IDEA and the Rehabilitation Act can present difficult challenges during the COVID-19 pandemic, the Department has consistently emphasized (and will continue to do so) that schools and other recipients can and should find solutions for their students. Indeed, the Department is heartened to see many positive examples across the nation of teachers, schools, LEAs, States, as well as Vocational Rehabilitation (VR) agencies, rising to meet the needs of those who rely on them. The Department is not requesting waiver authority for any of the core tenets of the IDEA or Section 504 of the Rehabilitation Act of 1973, most notably a free appropriate public education (FAPE) in the least restrictive environment (LRE).

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Background

In general, the following recommendations regarding the IDEA and the Rehabilitation Act acknowledge that students, individuals, families, and States are having to adapt to novel circumstances due to the pandemic national emergency. These recommended flexibilities are rooted in the need to minimize barriers to learning and issues arising from the use of funds in an extraordinary time. To that end, this report includes recommendations concerning the IDEA (Part C (Infants and Toddlers with Disabilities) to Part B (Assistance for Education of all Children with Disabilities) Transition, and Personnel Development Scholarships), as well as several provisions of the Rehabilitation Act relating to VR programs and funds.

Department's Position

The Department is not requesting waiver authority for any of the core tenets of the IDEA or Section 504 of the Rehabilitation Act of 1973, most notably a free appropriate public education (FAPE) in the least restrictive environment (LRE).

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Department's Position

The Department's position is based on the principles that:

- Schools can, and must, provide education to all students, including children with disabilities;*
- The health and safety of children, students, educators, and service providers must be the first consideration;*
- The needs and best interests of the individual student, not any system, should guide decisions and expenditures;*
- Parents or recipients of services must be informed of, and involved in, decisions relating to the provision of services; and*
- Services typically provided in person may now need to be provided through alternative methods, requiring creative and innovative approaches.*

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No Discrimination

COVID-19 Information and Resources for
Schools and School Personnel:

<https://www.ed.gov/coronavirus>

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OCR Revises its Pandemic Health Care Triage Policies to Protect Against Disability Discrimination

Office for Civil Rights (OCR) at the U.S Department of Health and Human Services (HHS) is announcing that it has resolved a complaint filed against the Pennsylvania Department of Health (PDH) after PDH revised its Interim Pennsylvania Crisis Standards of Care for Pandemic Guidelines (CSC Guidelines) to ensure that persons will not be discriminated against based on disability if providers in the state were to begin triaging life-saving health care services. This is the second enforcement action OCR has taken since OCR issued a Bulletin reminding covered entities of the continued applicability of civil rights laws during the COVID-19 public health emergency.

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USDOE Supplemental Fact Sheet

UNITED STATES DEPARTMENT OF EDUCATION
Office for Civil Rights Office of Special Education
and Rehabilitative Services March 21, 2020
Supplemental Fact Sheet Addressing the Risk of
COVID-19 in Preschool, Elementary and Secondary
Schools While Serving Children with Disabilities
<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

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Office of Special Education and Rehabilitative Services' (OSERS)

The Office of Special Education and Rehabilitative Services' (OSERS) document answers questions schools might have about students with disabilities and the Individuals with Disabilities Education Act (IDEA) as related to the COVID-19, also known as the coronavirus, outbreak.

"In order to ensure that students with disabilities continue to receive the services guaranteed by IDEA and Section 504, the Department has published a Q&A document for state and local educational authorities," the department said in a press release. "This information answers the most common questions schools have about when and how they must provide instruction, including when to consider use of online or virtual instruction and other curriculum-based instructional activities."

<https://sites.ed.gov/idea/departments-releases-covid-19-idea-related-q/>

OSEP Guidance

- On June 30, 2020 OSEP issued a Question and Answer (Q & A) document in response to inquiries concerning implementation of the Individuals with Disabilities Education Act (IDEA) Part B procedural safeguards in the current COVID-19 environment:
 - <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-procedural-safeguards-idea-part-b-06-30-2020.pdf>
- On June 25, 2020, OSEP issued a Q & A document in response to inquiries concerning implementation of IDEA Part B use of funds in the current COVID-19 environment:
 - <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-part-b-use-of-funds-06-25-2020.pdf>

PDE recognizes the physical and psychological well-being of students, families, educators and communities are the immediate and overriding priority. There are concerns about conducting evaluations during this turbulent time of crisis and the inherent difficulty in ethically, validly, and reliably administering certain types of measures virtually.

BSE Guidance on COVID-19

<https://www.education.pa.gov/K-12/Special%20Education/FAQContact/Pages/Act13Guidance.aspx>

<https://www.education.pa.gov/Schools/safeschools/emergencyplanning/COVID-19/Pages/AnswersToFAQs.aspx>

COVID-19 Guidance from BSE

- Once school resumes under typical circumstances, a child's IEP Team must make an individualized determination whether and to what extent appropriate compensatory education or other future services may be needed, within a reasonable timeframe and consistent with applicable requirements, including to make up for any skills that may have been lost during the closure.

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Compensatory Services/ Compensatory Education

<https://www.education.pa.gov/K-12/Special%20Education/FAQContact/Pages/COVID-19-Compensatory-Services.aspx>

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PDE on Compensatory Services

- In this guidance document, the term "COVID-19 Compensatory Services (CCS)" refers to services as determined by an IEP team needed to remedy a student's skill and/or behavior loss and/or lack of progress that resulted from an LEA's inability to provide FAPE during the extended school closure. CCS should be considered only after the student receives services to recover the lost skills or behavior or to make progress to the level(s) determined appropriate prior to the extended school closure ("recoupment services").
- What is the process to determine if a student eligible under the Individuals with Disabilities Education Act (IDEA) needs CCS?
- As soon as in-person instruction restarts, LEAs should resume implementation of each student's current IEP.

PDE on Compensatory Services

Within the first few weeks of in-person instruction resuming, LEAs should:

- Gather baseline data on each student's current present educational levels;
- Compare Fall 2020 baseline data to 2019-20 school year progress monitoring data for each student to determine if there is a regression in skills and/or behavior patterns and/or a lack of progress;

PDE on Compensatory Services

Within the first few weeks of in-person instruction resuming, LEAs should:

- Initiate recoupment services for a student if comparison data evidences the student's regression in skills and/or behaviors and/or failure to make progress as a result of the extended school closure; and
- Track progress of each student receiving recoupment services associated with the COVID-19 pandemic.

Insurance & Liability Implications

- Think about areas of potential claims
- Discuss with Broker or Agent coverage available for claims that may arise related not only to contracting COVID-19, but also in other areas of operations at your school that may be impacted in a causal way.
- Think about special education, equitable access, contractual relationships, facilities, employment, etc.

Questions?

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