

Date: November 13, 2018

To: To Interested Parties

From: Heather M. Edwards

Re: **Providing Special Education in a Time of Disaster**

The Individuals with Disabilities Education Act (“IDEA”), Section 504 of the Rehabilitation Act (“Section 504”), and the Americans with Disabilities Act (“ADA”) do not specifically address a situation in which schools are closed for an extended period because of exceptional circumstances, such as a disaster. However, in September 2018, the U.S. Department of Education issued “[Non-Regulatory Guidance on Flexibility and Waivers for Grantees and Program Participants Impacted by Federally Declared Disasters](#)” which addresses best practices for local educational agencies and schools when addressing extended school closures as a result of a disaster.

Here are some of the key points from that guidance document:

1. If an LEA closes its schools because the functioning or delivery of educational services is disrupted and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period.
2. If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. LEAs and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP developed under IDEA, or a plan developed under Section 504.
3. Consider ways to ensure that continuing education activities (i.e., services provided during a school closure) are accessible to students with disabilities when they are provided to the general education population. Technology may afford students, including students with disabilities, an opportunity to have access to high-quality educational

4. instruction during an extended school closure, especially when continuing education must be provided through distance learning. If schools are providing educational opportunities to the general student population, LEAs must provide the services and accommodations needed for students with disabilities to have an equal opportunity to participate in a distance-learning program.
5. If a school continues to provide instruction to the general school population during an extended closure due to a disaster but is not able to provide services to a student with a disability in accordance with the student's IEP, the student's IEP team should determine which services can be provided to appropriately meet the student's needs. The IEP team may meet by teleconference or other means to determine if some, or all, of the identified services can be provided through alternate or additional methods.
6. IEP teams are not required to meet in person while schools are closed.
7. If there is a pending evaluation of a student with a disability which requires a face-to-face meeting or observation, the evaluation may be delayed until school reopens. Evaluations and reevaluations that do not require face-to-face assessments or observations may take place while schools are closed, if the parent consents.
8. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's IEP or Section 504 Plan. In addition, IEP teams should make an individualized determination as to whether compensatory services are needed to make up for any skills that may have been lost because of an extended school closure. IEP teams should also review the student's IEP and determine whether any other changes to the IEP are needed as a result of the extended absence from school. An IEP Team may consider using informal assessments to determine whether there have been changes in a student's performance.
9. Consistent with federal and state law governing services to students who have transferred during the same academic year, local educational agencies that enroll displaced students must provide services comparable to those in the student's IEP until the LEA can develop and adopt a new IEP.

In addition, students now living in another district with family members because of the loss of or damage to their own home may meet the definition of "homeless" under the McKinney-Vento Act. Homeless students who are also students identified with a disability under the IDEA are entitled to FAPE in their new district. In 2008, the U.S. Department of Education issued *Questions and Answers on Special Education and Homelessness*, 110 LRP 212 (OSERS 02/01/08). In this publication, the USDOE noted that "homeless children with disabilities and their parents are subject to the same IDEA protections and requirements as children with disabilities and their parents who are not homeless." *Id.*, p. 5. Indeed, the student's "ability to participate in special education programs cannot be hindered by homelessness." *Id.*

Also, IDEA regulations require the new school district and the previous school district to take steps to facilitate the transition for a child who transfers to a new public agency and enrolls in a new school in the same school year. (34 C.F.R. 300.323.) This includes taking reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled (34 CFR § 99.31(a)(2). 34 CFR § 300.323(g)(1).) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency. 34 CFR § 300.323(g)(2). Similarly, the McKinney-Vento Act requires children experiencing homelessness to be able to immediately enroll in school, even if they are unable to produce records normally required for enrollment, such as previous academic records, which include IEPs.

If, after taking these reasonable steps, the new public agency is not able to obtain the IEP from the previous public agency or from the parent, the new public agency is not required to provide services to the child (34 CFR § 300.323(f)(2).) This is because the new public agency, in consultation with the parents, would be unable to determine what constitutes comparable services for the child, since that determination must be based on the services contained in the child's IEP from the previous public agency. However, the new public agency must place the child in the regular school program and conduct an evaluation and eligibility determination if determined to be necessary by the new public agency. (34 CFR § 300.323(f)(1).) If there is a dispute between the parent and the new public agency regarding whether an evaluation is necessary or regarding what special education and related services are needed to provide FAPE to the child, the dispute could be resolved through the mediation procedures or, as appropriate, the due process procedures

In summary, while compliance with federal and state regulations is critical for all children with disabilities, implementation of best practices, common sense, and compassion will help support the transition for all students and families following a disaster.