



State of Arizona  
Department of Education



July 2020

### **Alert to Special Education Directors and Program Administrators: In-Person Special Education Services Under the Governor's Executive Orders**

The Arizona Department of Education, Exceptional Student Services (ADE/ESS), has been asked a variety of questions by public education agencies (PEAs) about in-person special education services under the recent Executive Orders (EOs) provided by the Governor (EO 2020-41, EO 2020-44, and EO 2020-51). In accordance with the Executive Order 2020-44 (June 29, 2020), PEAs have the opportunity to start school, following their school calendars and utilizing online instruction, before August 17, 2020 upon submission of a Distance Learning Plan (DLP). Additionally, in accordance with the Executive Order 2020-51 (July 23, 2020), students with disabilities whose free appropriate public education (FAPE) needs, as determined by individualized education program (IEP) teams, require in-person support must be provided specially designed instruction as soon as the student has started school, in accordance with the attending school calendar, but beginning no later than August 17, 2020. Services must be provided in accordance with the CDC and DHS public health recommendations. It is important to note that IEP teams determine whether FAPE requires in-person support. FAPE is determined based on the student's needs as outlined in the IEP and not by the model of preferred instruction, either by the school or the parent.

NOTE: If a PEA receives a waiver of the in-person instruction requirement from ADE under EO 2020-51, the responsibility to provide FAPE has not been waived and compensatory educational services may be necessary.

For additional information, please visit the [ESS COVID SY 2020 – 2021 Reentry webpage](#) and/or [email the ESS Inbox](#).



March 16, 2020

**Fact Sheet:**  
**Addressing the Risk of COVID-19 in Schools**  
**While Protecting the Civil Rights of Students**

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The U.S. Department of Education (Department) has established a working group to provide information and resources to parents, students, teachers, schools, and school personnel related to the possible outbreak of COVID-19 (“coronavirus”) in school districts and postsecondary schools. Schools play an important role in disseminating information about and limiting the spread of the coronavirus. In addressing the possible risk of an outbreak of coronavirus in school districts and postsecondary schools, school officials must keep students safe and secure. In doing so, school officials should keep in mind federal civil rights requirements and respond appropriately to allegations of discrimination on the basis of race, color, national origin, sex, or disability. Additional information is available at: [www.ed.gov/coronavirus](http://www.ed.gov/coronavirus).

Schools and school administrators should use guidance from the Centers for Disease Control and Prevention (CDC) to determine, in close consultation with public health authorities, what actions to take to further reduce the potential risk of coronavirus transmission in schools, and should check the CDC website at “Coronavirus Disease 2019 (COVID-19)” (<https://www.cdc.gov/coronavirus/2019-nCoV/index.html>) periodically for any updated guidance.

Compliance with CDC’s recommendations should not create civil rights concerns. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits disability discrimination by schools receiving federal financial assistance. Title II of the Americans with Disabilities Act of 1990 (Title II) prohibits disability discrimination by public entities, including schools. Title VI of the Civil Rights Act of 1964 (Title VI) prohibits race, color, and national origin discrimination by schools receiving federal funds.

This document provides information representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented here and is not legally binding. The information in this document is not intended to be a replacement for the careful study of Section 504, Title II, or Title VI and their implementing regulations. Information regarding these federal civil rights laws and regulations and other important documents can be found at <https://www2.ed.gov/about/offices/list/ocr/index.html>.

School districts and postsecondary schools have significant latitude and authority to take necessary actions to protect the health, safety, and welfare of students and school staff. School officials have discretion to make educational decisions based on local health needs and concerns, and OCR recognizes this decision-making authority. As school leaders respond to evolving conditions related to coronavirus, they should be mindful of the requirements of Section 504, Title II, and Title VI, to ensure that all students are able to study and learn in an environment that is safe and free from discrimination.



## **Responding to Discrimination in Schools**

### *Bullying or Harassment*

Both Section 504 and Title VI require that every postsecondary, secondary, or elementary school that receives federal funds take appropriate action to investigate or otherwise determine what occurred when responding to reports of bullying and harassment of students based on actual or perceived disability, race, color, or national origin. If a school's investigation reveals that bullying or harassment based on actual or perceived disability, race, color, or national origin limited or denied a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school, then the school must take prompt and effective steps reasonably calculated to end the bullying or harassment, and restore access to the educational program. The failure to do so could be a violation of Section 504 or Title VI.

### *Denial of Access on the Basis of Race, Color, or National Origin*

In addressing the possible risk of an outbreak of coronavirus in school districts and postsecondary schools, school officials must keep students safe and secure. At that same time, school officials have an obligation to avoid discrimination on the basis of race, color, or national origin while cooperating with public health authorities to ensure that individuals are assessed and treated appropriately based on their actual risk status. School officials may not rely on assumptions or stereotypes related to race, color, or national origin in identifying students who may have recently traveled to a country with widespread transmission of coronavirus or who may otherwise be at risk of coronavirus infection. For example, a practice of only inquiring about the recent travel of students or family members of a particular race or national origin, rather than screening students based on recent travel, could raise civil rights concerns. For information that schools can share to protect against any misinformation that might lead to discriminatory behavior, please see the CDC's "Share Facts About COVID-19," at <https://www.cdc.gov/coronavirus/2019-ncov/about/share-facts.html>.

### *Students with Disabilities at Elementary and Secondary Schools*

School officials have an obligation to avoid discrimination on the basis of disability under Title II and Section 504, while cooperating with public health authorities to ensure that students with disabilities have access to the school's education program. School officials should acknowledge the expertise and role of public health authorities, as well as parental concerns, to determine whether students should stay home.

If a student who has an individualized education program (IEP) through the Individuals with Disabilities Education Act, or is receiving services under Section 504, is required or advised to stay home by public health authorities or school officials for an extended period of time because of COVID-19, provision should be made to maintain education services. This also applies if the student is absent from school as advised by the student's treating physician, consistent with school policy and documentation requirements. During such absences, if the school is open and serving other students, the school must ensure that the student continues to receive a free appropriate public education (FAPE), consistent with protecting the health and safety of the student and those providing that education to the student. If feasible, the student's IEP Team, or the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, can be utilized to assist with the effort to determine if some, or all, of the identified services can be provided through alternate or additional methods. Accessible technology may afford students, including students with disabilities, an opportunity to have access to high-quality educational instruction during an extended school closure, especially when continuing education must be provided through distance learning.



If a school district closes its schools and does not provide any educational services to the general student population, then a school would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the school must return to providing special education and related services to students with disabilities in accordance with the student's IEP or, for students entitled to FAPE under Section 504, consistent with any plan developed to meet the requirements of Section 504.

The Department understands that there may be exceptional circumstances that could affect how a particular service is provided. If a student does not receive services after an extended period of time, the student's IEP Team, or appropriate personnel under Section 504, must make an individualized determination whether and to what extent compensatory services are needed consistent with the respective applicable requirements, including to make up for any skills that may have been lost.

Additionally, IEP 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. These same principles apply to similar activities conducted by appropriate personnel for a student with a disability who has a plan developed under Section 504, or who is being evaluated under Section 504.

For more information on providing services to students with disabilities during the coronavirus outbreak, see: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>

#### *Students with Disabilities at Postsecondary Schools*

Officials at postsecondary schools should consult with public health officials in determining how to respond when there are cases of coronavirus in the community. Whatever decisions are made by the school (such as decisions to temporarily suspend classes), schools must continue to comply with their non-discrimination obligations under federal civil rights laws, including Section 504 and Title II.



## **Resources for Communicating about Coronavirus**

Accurate information is an important tool in protecting the civil rights of students while addressing the risk of coronavirus.

- Assistant Secretary Kenneth L. Marcus' letter concerning reports of stereotyping, harassment, and bullying specifically related to coronavirus is available at <https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/20200304-covid-19-outbreak-statement.pdf>.
- The Department of Education's Readiness and Emergency Management for Schools (REMS) Technical Assistance Center offers a variety of resources related to infectious disease planning, available at [rems.ed.gov/Resources\\_Hazards\\_Threats\\_Biological\\_Hazards.aspx](https://rems.ed.gov/Resources_Hazards_Threats_Biological_Hazards.aspx).
- The CDC's coronavirus general information page can be found at [https://www.cdc.gov/coronavirus/2019-ncov/community/index.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fpreparing-individuals-communities.html](https://www.cdc.gov/coronavirus/2019-ncov/community/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fpreparing-individuals-communities.html).

**Effective Communication and Language Assistance:** When school officials provide information to students, parents, and the community about any aspect of coronavirus or actions the schools are taking in response to coronavirus, they generally need to provide meaningful access to such information to English learner students and adults with limited English proficiency. School officials also must ensure equally effective communications with persons with disabilities (such as persons who are deaf, deaf-blind, or blind). Thus, the information and materials must be provided, as appropriate, in alternate formats to facilitate effective communication for individuals with disabilities.

**Privacy Concerns:** For information about the federal law that protects the confidentiality of students' records maintained by public elementary and secondary schools and institutions of higher education, you may visit the website of the Department of Education's Student Privacy Policy Office (SPPO) which administers the Family Educational Rights and Privacy Act (FERPA), at [www.ed.gov/policy/gen/guid/fpco/index.html](http://www.ed.gov/policy/gen/guid/fpco/index.html), contact SPPO at 1-855-249-3072, or submit questions at <https://studentprivacy.ed.gov/contact>.

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If you have questions, need additional information or technical assistance, or believe that a school is violating federal civil rights law, you may visit the website of the Department of Education's OCR at [www.ed.gov/ocr](http://www.ed.gov/ocr), contact OCR at (800) 421-3481 (TDD: 800-877-8339) or at [ocr@ed.gov](mailto:ocr@ed.gov), or contact OCR's Outreach, Prevention, Education and Non-discrimination (OPEN) Center at [OPEN@ed.gov](mailto:OPEN@ed.gov). You may also fill out a complaint form online at [www.ed.gov/ocr/complaintintro.html](http://www.ed.gov/ocr/complaintintro.html).