

COVID-19

UPDATES FOR SCHOOL BOARDS



May 4, 2020

Members,

FRIDAY Live this week

will focus on **your** questions on how to meet IDEA mandates, as requested. With us to answer your questions is attorney Terry Harmon from Sniffen and Spellman, P.A. Mr. Harmon has lectured at the national and state level on special education/exceptional student education, Title IX, and other legal issues impacting school employees.

Please get your questions about IDEA to gay@fsba.org by 5 p.m. Thursday. Call in information below.

National School Safety and Services

is offering a free webinar on Wednesday, May 6th at 1pm EST on [COVID-19 Safe School Operational Reentry Planning](#)

How can we help you? What questions do you want us to discuss on future calls?:

What is working in your district? What isn't? What questions would you like to see addressed in our next Friday LIVE webinar? Let us know! messina@fsba.org

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Annual Summer Conference has been *CANCELLED*.

FSBA leadership has made the difficult decision to CANCEL the FSBA/FADSS Annual Summer Conference scheduled for June. [Read the full announcement.](#)



Florida School Boards Association
ANDREA MESSINA
Executive Director

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203 S. Monroe Street
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Federal Advocacy & Public Policy Update

May 1, 2020

NSBA Weekly Update

Congressional Update

Senate Returns to the Capitol

The Senate is scheduled to reconvene on Monday, May 4, while the House does not plan to return to Washington, D.C. until the week of May 11 at the earliest. Once back in session, the Senate is anticipated to balance its regular work – including returning to confirming judicial and Executive Branch nominees – with beginning discussions around additional COVID-19 stimulus measures. In the last week, Senate Majority Leader Mitch McConnell (R-KY) has begun staking out his negotiating position for any future stimulus package, in addition to sounding concerns over unprecedented deficit spending. NSBA is continuing to call on Congress to provide additional emergency relief for school districts, including dedicated funding to help schools connect their students and teachers to broadband.

House Speaker Established COVID-19 Oversight Panel

House Speaker Nancy Pelosi (D-CA) announced the creation of a COVID-19 response oversight panel. The panel will be chaired by Majority Whip Jim Clyburn (D-SC). In addition to Rep. Clyburn, the Speaker tapped the following members to serv on the panel: Oversight Committee Chairwoman Carolyn Maloney (D-NY), Financial Services Committee Chairwoman Maxine Waters (D-CA) Small Business Committee Chairwoman Nydia Velázquez (D-NY), Rep. Jamie Raskin (D-MD), Rep. Bill Foster (D-IL) and Rep. Andy Kim (D-NJ.). House Republicans have not yet indicated if they will participate in the oversight panel.

House Labor, HHS, Education Appropriations Subcommittee Plans COVID-19 Hearing

In recent weeks, Congress has set-aside work on the fiscal year 2021 appropriations process to focus attention on responding to the COVID-19 emergency. The Senate and House spending committees are eager to turn their attention back to the annual budget, but COVID-19 remains their top priority. Next week, the House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies is holding a hearing on “The COVID-19 Response”. The hearing is scheduled for Wednesday, May 6 at 10:00 AM (EDT). Witnesses have not yet been announced. The livestream will be available [here](#).

Administration Update

Department of Education Sends Waiver Authority Report to Congress

The Department of Education released a [report](#) to Congress titled “Recommended Waiver Authority Under Section 3511(d)(4) of Division A of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)”. The CARES Act (H.R.748) required the Secretary to report on whether the agency needed additional waiver authority, including IDEA authority, to help states and school districts navigate the pandemic. NSBA recently wrote the Department urging the Secretary to provide temporary limited and narrowly tailored waiver authority over IDEA to help school districts serve their students during the pandemic. The report to Congress asks for additional waiver authority from the Carl D. Perkins Career and Technical Education Act’s provisions on unexpended funds and professional development, and from certain provisions of the Adult Education and Family Literacy Act. The request seeks only two waivers from IDEA; allowing a delay of Part B initial evaluations and a continuation of Part C services until that time, and a waiver from the service or repayment obligations from IDEA personnel preparation grants if a recipient’s employment was interrupted because of the health crisis.

Department of Education Releases FAQs Around Equitable Services in Non-Public Schools

The Department of Education released FAQs titled, *Providing Equitable Services to Students and Teachers in Non-Public Schools under CARES Act Programs*. The document provides information about delivery of equitable services for non-public school students and teachers under the CARES Act. The Governor’s emergency relief fund and the elementary and secondary relief fund require school districts to provide equitable services. The information is available [here](#).

Massachusetts Innovative Assessment Demonstration Authority Application Approved

[Massachusetts](#) gained approval from the U.S. Department of Education to take part in the Innovative Assessment Demonstration Authority for the 2020-2021 school year. According to the Department, the “objective of Massachusetts’ new innovative science assessment is to build a new form of assessment incorporating technology-enhanced performance tasks that are more engaging for students and signal the state’s focus on deeper learning in classrooms.” The state’s new science assessments will be for grades 5 and 8 and will combine a streamlined version of the current state science assessment with interactive, engaging, and authentic science performance tasks. Note that Georgia and North Carolina were granted this flexibility in 2019 and Louisiana and New Hampshire were granted this flexibility in 2018.

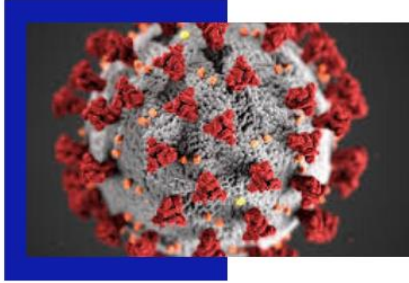
Department of Education Announces Discretionary Grant for Creation of Innovative Learning Opportunities

Secretary of Education DeVos has [announced](#) more than \$300 million in discretionary grant funds that states can use to “create adaptable, innovative learning opportunities for K-12 and postsecondary learners in response to the COVID-19 national emergency.” This grant will be funded through the Education Stabilization Fund authorized under the CARES Act; \$180 million will be used for the [Rethink K-12 School Models Grant](#) and \$127.5 million for the [Reimagining Workforce Preparation Grant](#). The Rethink K-12 Schools Models Grant is designed to open new, innovative ways for students to access education and will allow for students’ needs to be met. State education agencies can apply for funds in one of three categories:

- Microgrants for families, so that states can ensure they have access to the technology and educational services they need to advance their learning;
- Statewide virtual learning and course access programs so that students will always be able to access a full range of subjects, even those not taught in the traditional or assigned setting;
- New, field-initiated models for providing remote education not yet imagined, to ensure that every child is learning and preparing for successful careers and lives.

NSBA Updates

NSBA is planning to join with more than fifty other national organizations next week in a special call to action urging Congress to support of \$4 billion in funding for the homework gap that would flow through the E-Rate program. The day is tentatively scheduled for Thursday, May 7, 2020. NSBA will be providing further details on the planned campaign next week.



COVID-19

UPDATES FOR SCHOOL BOARDS



May 5, 2020

Members,

ICYMI

This afternoon, FSBA submitted the [Florida School Boards Association's Recommendations for Re-opening Florida's Public Schools](#), to Governor DeSantis, as well as to Commissioner Corcoran. The recommendations were guided by the FSBA Executive Officers, written by FSBA staff, and reviewed by the FSBA Board of Directors prior to sending. The [Governor's cover letter](#) and [recommendations](#) were sent in an email to all members earlier today but are also available using the links provided.

Strategies for effectively engaging your community in the time of COVID-19

K12 Insight has launched a weekly live webinar series for school leaders on this topic. For more information, click [here](#).

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Andy Tuck, *Chair*
Marva Johnson, *Vice Chair*
Members
Ben Gibson
Tom Grady
Michael Olenick
Ryan Petty
Joe York

MEMORANDUM

TO: School District Superintendents

FROM: Jacob Oliva

DATE: May 5, 2020

SUBJECT: **Mental and Behavioral Health and Telehealth Services for Florida Students**

In recent years, we have made significant strides in improving students' access to school-based health services, particularly mental health services, and many students rely heavily on these supports. While the serious and highly contagious nature of COVID-19 necessitated the closure of school campuses throughout the State of Florida, students' needs remain and their stress levels are likely amplified due to the sudden changes in their routines, concerns for their loved ones, and fear of the virus itself.

We have received outstanding reports from school districts regarding the successful implementation of distance learning, and it is imperative that health, including mental health, be a mainstay in each district's continuity of instruction plan. Increased state and local funding has enabled schools to bolster teams and resources dedicated to students' mental wellbeing, which include school counselors, school social workers, and school psychologists. We must build on this momentum to ensure there is infrastructure that enables school-based health providers to remotely serve all of their students' needs.

It is important now more than ever, that student services professionals and other licensed mental health providers continue to collaborate with parents, educators, and administrators to meet students' needs when face-to-face interaction is not feasible. Previous [guidance](#) from the Florida Department of Education (FDOE) allows districts to redirect unspent 2019-2020 funds from the Safe Schools and Mental Health allocations to virtual and telephonic mental health counseling services for students who need support due to COVID-19.

Here are some ways your student services professionals (school counselors, school social workers, school psychologists and school nurses) are trained to support students and families:

- Identify students who are in need of mental health supports.
- Provide and/or coordinate the delivery of virtual mental health services.
- Create and deliver virtual social emotional supports and character education lessons for students and families.
- Complete pending, social history evaluations and re-evaluations. This includes writing reports and conducting interviews with parents using the telehealth model (phone or computer contact).
- Collaborate with community agency stakeholders to assist in providing services and support to families in need.
- Conduct components of initial evaluations and reevaluations that can be completed.

JACOB OLIVA
CHANCELLOR OF PUBLIC SCHOOLS

- Provide virtual services as it relates to the individual education plans, 504 plans and health care plans.

For additional information and resources please see the following links:

- [Helping Children Cope with Changes Resulting from COVID-19](#)
- [Virtual Service Delivery in Response to COVID-19 Disruptions](#)
- [Talking With Children About Coronavirus Disease 2019](#)
- [Parent/Caregiver Guide to Helping Families Cope With the Coronavirus Disease 2019 \(COVID-19\)](#)
- [Planning for Virtual/Distance School Counseling During an Emergency Shutdown](#)
- [American Occupational Therapy Association \(AOTA\): Telehealth Resources](#)
- [American Speech-Language-Hearing Association \(ASHA\): Telepractice](#)

FDOE urges districts to consider using web-based, online platforms to provide counseling and other telehealth services, facilitate meetings on digital platforms or phone conferencing, connect with students and families by phone, and leverage social messaging platforms to provide information. Please refer to guidance issued by the U.S. Department of Health & Human Services (HHS), which applies to students and is available online at [Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency](#). This guidance should be used in conjunction with joint guidance issued by the U.S. Department of Education and HHS that addresses the application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule to records maintained on students. This guidance is available online at [Joint Guidance on the Application of FERPA and HIPAA to Student Health Records](#).

Additionally, because some of the services provided by schools and school districts are Medicaid-reimbursable the Agency for Health Care Administration (AHCA) has issued [guidance](#) to school districts including private and public charter schools on Florida Medicaid coverage of school-based services (therapies, behavioral health) via telemedicine during the 2019 novel coronavirus (COVID-19) state of emergency.

Telemedicine Definition

Telemedicine is the practice of health care delivery by a practitioner who is off-site, using interactive telecommunications equipment that minimally includes real time, two-way interactive communication between a recipient and a practitioner using audio and video equipment. The AHCA's [current telemedicine policy in the fee-for-service delivery system is available on the AHCA website](#).

Telemedicine Flexibilities During the State of Emergency

It is imperative that services specified on a child's Individual Educational Plan (IEP) or Individual Family Support Plan (IFSP) continue. To ensure that Florida Medicaid school-based providers (school districts and private/charter schools) can maintain continuity of care during the state of emergency, AHCA is granting the temporary use of telemedicine for key medical services.

These flexibilities apply to services when they cannot be delivered face-to-face or in-person due to school closures.

Therapy Services

Florida Medicaid will reimburse for the delivery of occupational, physical, and speech therapy services included on the Medicaid Certified School Match [fee schedule](#) when provided via telemedicine. Services must be delivered in a manner that is consistent with the child's existing plan of care/IEP or IFSP and standards of care. All service components designated in the American Medical Association's Current Procedural Terminology and the Florida Medicaid [coverage policy](#) must be provided.

Behavioral Health Services

Florida Medicaid will reimburse for the delivery of certain school-based behavioral health evaluation and counseling services via telemedicine when performed by an eligible school-based provider in a manner consistent with the Florida Medicaid coverage policy. Florida Medicaid does not cover group services via telemedicine for school-based providers.

Provider Telemedicine Requirements

School-based providers using telemedicine to deliver services must comply with the following:

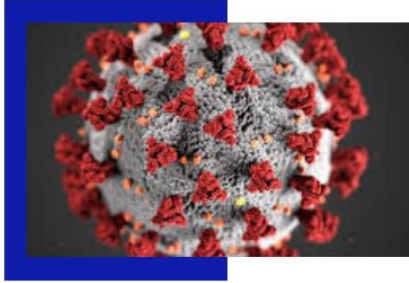
- Ensure services are medically necessary and performed in accordance with the [service specific policy](#) and [fee schedule](#).
- The recipient (and their legal guardian) must be present for the duration of the service provided using telemedicine.
- Telemedicine should not be used by a provider if it may result in any reduction to the quality of care or if the service delivered through this modality could adversely impact the recipient.
- Documentation regarding the use of telemedicine must be included in the progress notes for each encounter with a recipient. All other documentation requirements for the service must be met as described in the coverage policy.
- Providers must comply with the HIPAA when providing services; all equipment and means of communication transmission must be HIPAA compliant.
- Providers must assure that the recipient has compatible equipment and the necessary connectivity in order to send and receive uninterrupted video. Telephone or electronic-based contact with a Florida Medicaid recipient without a video component is not permitted to be billed.

Reimbursement

In the fee-for-service delivery system, Florida Medicaid reimburses at the same rate detailed on the school-based [fee schedule](#). Florida Medicaid does not reimburse for the acquisition, installation, and maintenance of telecommunication devices or systems. Providers must append the GT modifier to the procedure codes when filing claims.

To view all of AHCA's COVID-19 alerts, [visit the AHCA website](#).

For assistance, please contact Monica Verra-Tirado at Monica.Verra-Tirado@fldoe.org or Andrew Weatherill at Andrew.Weatherill@fldoe.org, in the FDOE Bureau of Exceptional Education and Student Services.



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May 6, 2020

Members,

Congressional Update

A bill number has been assigned to the legislation that was introduced in the House last week to extend payroll tax credits to school districts and other units of state and local government as part of coronavirus recovery efforts: [H.R. 6643 -- "The Supporting State and Local Leaders Act."](#)

ICYMI

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Marva Johnson, *Vice Chair*
Members
Ben Gibson
Tom Grady
Michael Olenick
Rvan Pettv

MEMORANDUM

DATE: May 6, 2020
TO: School District Superintendents
FROM: Richard Corcoran
SUBJECT: **Instructional Hours**

The Florida Department of Education (FDOE) has received many questions about instructional hours in the wake of campus closures due to COVID-19. As authorized in section 1011.60(2), Florida Statutes, schools must operate for 180 actual teaching days or the equivalent on an hourly basis to participate in the Florida Education Finance Program. Rule 6A-1.045111, Florida Administrative Code, specifies the hourly equivalent as not less than 720 net instructional hours for kindergarten through grade 3 and not less than 900 hours for grades 4 through 12. Provided that this statutory requirement is met, school boards have the authority to adopt an alternative calendar without authorization or approval by FDOE. This will not affect the district's funding through the Florida Education Finance Program, nor will it affect the survey count of full-time equivalent students.

Florida law gives the Commissioner of Education and the State Board of Education the authority to alter the instructional hours requirement when the loss of instructional hours is caused by a bona fide emergency and when it is not feasible to make up the lost days or hours. As the commissioner, I am authorizing the waiver of up to five days of instructional time as a result of the extended week of spring break for students at the beginning of campus closures due to COVID-19.

In the event that a district seeks to waive any additional time, a request must be submitted to Chancellor Jacob Oliva by May 15, 2020.

Please see the most relevant portion of Section 1011.60(2), Florida Statutes:

The State Board of Education may prescribe procedures for altering, and, upon written application, may alter, this requirement during a national, state, or local emergency as it may apply to an individual school or schools in any district or districts if, in the opinion of the board, it is not feasible to make up lost days or hours, and the apportionment may, at the discretion of the Commissioner of Education and if the board determines that the reduction of school days or hours is caused by the existence of a bona fide emergency, be reduced for such district or districts in proportion to the decrease in the length of term in any such school or schools.

Instructional Hours
May 6, 2020
Page Two

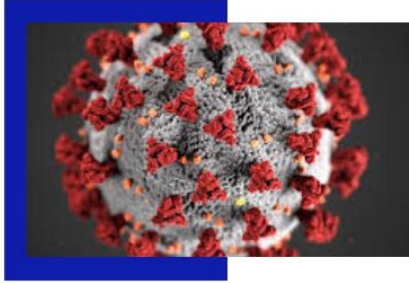
Rule 6A-1.09533, Florida Administrative Code, provides that the Commissioner will consider requests from district school boards to reduce the length of the school term only if:

no teacher planning days, excluding a maximum of three (3) planning days at the end of the school year, remain in the official school year calendar as approved by the district school board, and no school holidays, other than authorized national or state holidays, remain in the official school year calendar as approved by the district school board.

For all districts that are able to make up the lost instructional time caused by campus closures due to COVID-19, with the benefit of the waiver of five instructional days authorized by this memorandum, no authorization or approval from FDOE is needed. This will be the case for many districts as there was generally a smooth transition to remote learning, which remains ongoing.

Thank you for your steadfast service to Florida's students during this unprecedented time. If you need assistance, please contact Chancellor Jacob Oliva.

RC/jo



COVID-19

UPDATES FOR SCHOOL BOARDS



May 7, 2020

Members,

National Association of State Boards of Education

Released [Preparing Facilities for Students' Return in the Wake of COVID-19.](#)

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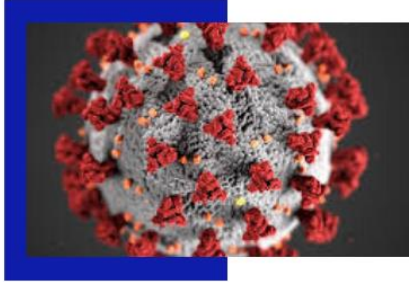
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Members,

Governor Ron DeSantis issued Executive Order 20-114, which extends the COVID-19 Public Health State of Emergency declared in Executive Order 20-52 for 60 days. See all [2020 Executive Orders](#).

ICYMI

Today's FRIDAY Live Member Call (topic: Meeting IDEA Requirements in a COVID-19 Reality) can be heard by clicking [this link](#). The slides are attached to this email so you can easily print them for the links contained within.

Planning for the future

Organizations who are able to operate and run projects with more agility, through responsive team practices are better positioned to plan for next year. EdElements gives districts' teams structures and protocols for doing the planning work: [How to Design a Responsive Return Plan](#).

Conversations with State Chiefs: Equity in Accountability and Learning May 12, 2020 at 2:00pm ET (The Hunt Institute)

Dr. Eric Hall, Florida's Senior Chancellor for Innovation, Commissioner Mike Morath of Texas, Commissioner Penny Schwinn of Tennessee, and former US Secretary of Education John B. King, Jr will discuss how accountability measures have shifted drastically as a result of school closures. The conversation will focus on how to rethink accountability during this unprecedented time for our schools and how to ensure that all students are being measured equitably. [Register](#)

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UPDATE and Q&A with FSBA

May 8, 2020



RECORD





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(Osceola),
President



Jane Goodwin
(Sarasota),
President-elect

FSBA Executive Officers



Chris Patricca,
(Lee), Vice
President



Cindy Stuart
(Hillsborough),
Treasurer



Jerry Taylor
(Suwannee),
Immediate Past President



Andrea Messina
Executive Director



Leslie Dunlap, CPA
Director of Finance
& Administration



BillieAnne Gay, DPL
Legislative Affairs &
Communications
Manager

ASSOCIATION STAFF

Providing member services to support our mission.



Patricia Peterson
Member Services
Specialist



Tina Pinkoson
Director of
Leadership Services



Carolyn Sanders
Member Services
Associate

Mission

Florida School



Boards Association

**...to increase student
achievement**

**through the
development of
effective**

**School Board
leadership and
advocacy for public
education.**



Terry Harmon

**Sniffen and
Spellman**



The IDEA and COVID-19

Terry J. Harmon, Esq.
Shareholder

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tharmon@sniffenlaw.com



SNIFFEN & SPELLMAN, P.A.

Federal Guidance

- [Supplemental Fact Sheet Addressing Serving Children with Disabilities during COVID-19 national emergency \(March 21, 2020\)](#)
- [Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students \[PDF, 385KB\] \(March 16, 2020\)](#)
- [Protecting Student Privacy: FERPA and the Coronavirus \(March 12, 2020\)](#)
- [Questions and Answers on Providing Services to Children with Disabilities During the COVID-19 Outbreak \(March 12, 2020\)](#)

Federal Guidance

“The Department understands that, during this national emergency, schools may not be able to provide all services in the same manner they are typically provided. While some schools might choose to safely, and in accordance with state law, provide certain IEP services to some students in-person, it may be unfeasible or unsafe for some institutions, during current emergency school closures, to provide hands-on physical therapy, occupational therapy, or tactile sign language educational services. Many disability-related modifications and services may be effectively provided online. These may include, for instance, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing.”

Federal Guidance

Question A-1: Is an LEA required to continue to provide a free appropriate public education (FAPE) to students with disabilities during a school closure caused by a COVID-19 outbreak?

- Answer: The IDEA, Section 504, and Title II of the ADA do not specifically address a situation in which elementary and secondary schools are closed for an extended period of time (generally more than 10 consecutive days) because of exceptional circumstances, such as an outbreak of a particular disease....
- 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. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). SEAs, 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. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504)).

Practical Issues

- Student Privacy through Distance Learning
- Evaluations and Reevaluations
 - “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.”
- Resumption of Classes
 - What issues can we expect?
 - Infected students and FAPE? Safety of others?
- What others?

IDEA Waivers

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>

Compensatory Education

From US DOE:

- “Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services – or even making decisions about how to provide services - IEP teams (as noted in the March 12, 2020 guidance) must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.”
- “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.”

Compensatory Education

- “Under the theory of ‘compensatory education,’ courts and hearing officers may award ‘educational services ... to be provided prospectively to compensate for a past deficient program.”
- “[C]ompensatory education is not a contractual remedy, but an equitable remedy, part of the court's resources in crafting ‘appropriate relief.’”
- “[C]ompensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a student.”

Sammons v. Polk County Sch. Bd., 804CV2657T24EAJ, 2005 WL 2484640, at *7 (M.D. Fla. Oct. 7, 2005), opinion clarified, 8:04CV2657T24EAJ, 2005 WL 2850076 (M.D. Fla. Oct. 28, 2005)



What is compensatory education?

Compensatory Education

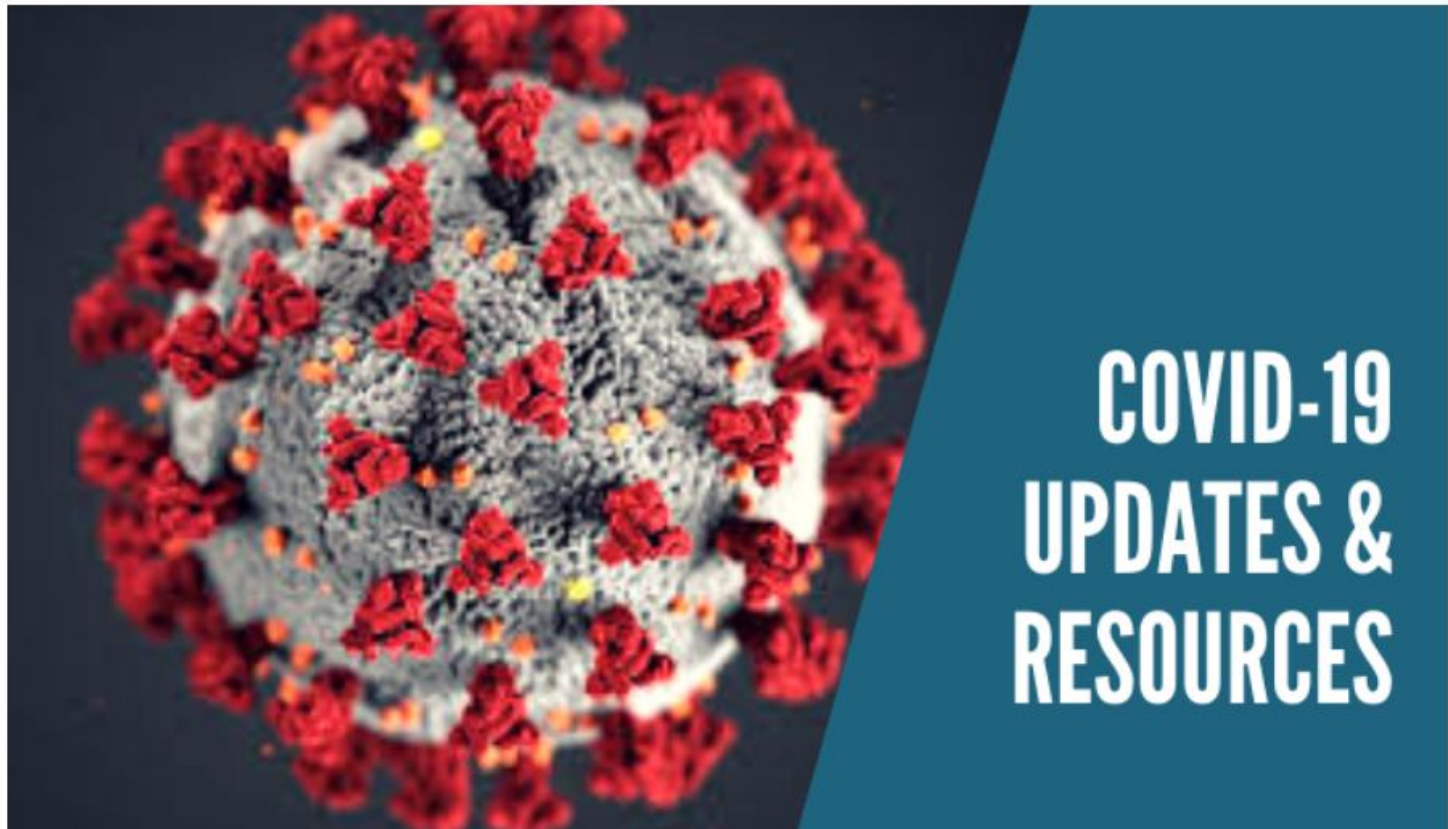
So how do we address this when school resumes?

Conclusion



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Questions



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Something I hope will
be a silver lining from
what we're going
through right now is...



Next steps

Continue to monitor changing landscape

Continue to aggregate information to support FSBA members

Continue to engage with key stakeholders

Continue to provide regular communication

weekly conference calls/updates

Email messina@fsba.org with other suggestions or needs





Tim Weisheyer
(Osceola),
President



Jane Goodwin
(Sarasota),
President-elect

Stay calm.

Be smart.

Be safe.



Chris Patricca,
(Lee), Vice
President



Cindy Stuart
(Hillsborough),
Treasurer



Jerry Taylor
(Suwannee),
Immediate Past President