



Dear Clients and Friends:

We hope you are doing well and staying healthy in this challenging time. As clients and friends of Belkowitz Law, PLLC, we want to provide you updated information regarding the educational rights of students with disabilities as we all deal with the COVID-19 crisis.

School districts are contacting the parents of children with disabilities about the special education services that will, or will not, be provided to their child with a disability while the Governor's Executive Order requiring the cessation of in-person instruction remains in place (the Order itself does not "close" schools). Some school districts are asking parents to sign approval to a "Distance Learning Plan" or other similarly named document. Some school divisions are using words that may imply (or actually state) that the document is not an IEP Amendment. These documents, regardless of what they are called and what the school might contend, may effectively operate to amend the student's Individualized Education Program ("IEP").

Schools are justifying their action by asserting that they "cannot implement your child's current IEP as the program is functionally unavailable" or making similar arguments. In most situations, the school's assertion is incorrect or misleading.

These communications by schools are inconsistent with federal laws and applicable guidance on the Individuals with Disabilities Act (the "IDEA") and potentially may deny the student from receiving a free appropriate public education ("FAPE"). According to the Virginia Department of Education:

If a school division does begin to offer general education instructional services by alternative means (e.g., e-learning, distance learning), the division will remain responsible for the provision of FAPE of its students eligible for special education services with an individualized education program (IEP).

VDOE Special Education and Student Services (SESS) Frequently Asked Questions, April 20, 2020. Moreover, "To the greatest extent possible, the school division must provide the student with the services required by the student's IEP." *Id.* If your school district is providing instructional services by alternative means (however that instruction may look) to students in general, then it is required to provide a child with disabilities FAPE per his or her IEP.

The IDEA remains in full force and effect. Parents have right to request

remain entitled, if they wish, to be represented by counsel or a Special Education Advocate at the IEP meeting. In addition, parents continue to have the right to deny consent to the school's proposed changes.

In addition, government guidance makes clear that students may be entitled to receive compensatory education services to the extent that their last agreed-upon IEP is not fully implemented during this time. This could include reimbursement for private services the parents obtain due to the school's refusal. The determination of compensatory education services must be made by a properly convened IEP team. If a parent does sign consent to a change in special education services during the current situation, he or she should take steps to ensure that non-waiver of any potential rights to compensatory education services or reimbursement.

Please [contact us](#) if you have any questions about special education rights or if you would like our office to provide assistance regarding these issues..

The information provided in this email is for general information purposes only and should not be taken as legal advice for any individual case or situation.

Sincerely,

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