

Continuing Challenges- COVID 19 and the IDEA

UT School Law Conference
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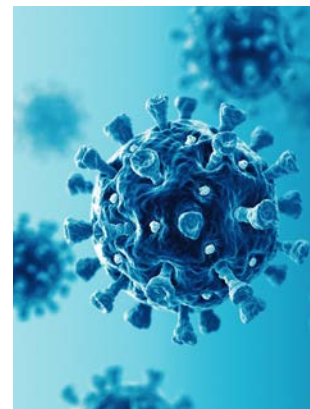
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March 2020 – COVID-19 Pandemic

- The world as we know it changed:
- March 13, 2020 – Governor declared all Texas counties to be in a state of disaster.
- Late March 2020 – Governor ordered schools statewide to close until at least May 4.
- April 2020 – Governor ordered schools to remain closed the rest of the school year.



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Schools Switched to Remote Instruction



- Computers to students
- Hot spots to students
- Food to students
- What should remote instruction look like – how to implement it

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No COVID Relief from IDEA Requirement

- IDEA and Part B regulations remained in full force.
- If district provided educational services to any students, obligation to provide FAPE was in place.
- Was remote instruction a change of placement requiring ARD action?

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Historical Precedent regarding System-wide Changes

- *N.D. v. Hawaii Dept. of Educ.* – When school system closed on Fridays, due to fiscal problems, court held that Congress did not intend IDEA to apply to system-wide administrative decisions.
- *Weil v. Bd. of Elem. and Second. Educ.* (5th Cir.) – Change of campus for student due to closure of a campus for reasons beyond control of the public agency did not trigger stay put (BUT – student received same services at new facility).

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Early Cases Challenging Remote Instruction

- *Hernandez v. Lujan Grisham*, 120 LRP 40165 (D.N.M. Dec. 18, 2020) The court held there is no general right to an in-person education under the Constitution.
- *Verona Borough Bd. of Educ.*, 121 LRP 7005 (SEA NJ Jan. 28, 2021) In a January 2021 order, the hearing officer ordered the district to implement the May 2020 IEP as written pending the outcome of the due process hearing, even while acknowledging there was no way it could have been implemented in May 2020. The decision was issued when the district was opening up for in-person instruction.

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