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Serving Medically Fragile Students During COVID-19

by Cheryl A. Dixon

If your school district has medically fragile students and/or students who may otherwise be considered high risk if they were to contract COVID-19, you and your staff may want to recommend to the parent(s) that the student attend school virtually during this unusual time. I have received several calls from school districts inquiring about whether these students can be required to attend school virtually. The short answer is NO.

Section 504 of the Rehabilitation Act of 1973 prohibits school districts from discriminating against individuals with disabilities. Additionally, the IDEA says that placement decisions for students who qualify for special education services must be made on an individualized basis by a team which includes the student's parents.

If your district is faced with this situation, there are several recommended actions:

Offer opportunities for flexible learning. Many school districts have been surveying parents about their preferences for in-person learning, virtual learning, or a combination of both for the beginning of the upcoming school year. Consider allowing students who are at high risk of contracting COVID-19 the option of choosing where to receive instruction.

Ensure staff is communicating with families. There should be individual conversations happening with families of special education students and/or students with medical challenges to talk about the available learning options, the parent's preferences, the need, if any, for virtual/homebound services. School

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district staff should encourage parents to include the student's health care provider in the dialog and/or request input from the student's doctor for precautions to follow for the student to attend classes on school campuses.

Consider the student's least restrictive environment. IEP teams should consider the least restrictive environment (LRE) placement for special education and/or medically fragile students on an individual basis. If the decision is made for these students to attend school in person, districts will need to consider appropriate modifications and accommodations and have some flexibility to be sure students' health and safety are not threatened. For example, lunch could be served separately to students who are medically fragile.

Of course, a virtual program is a proper accommodation/modification for a medically fragile student if a parent chooses the virtual option for their student or if medical information available suggests that a homebound placement is required. However, school districts cannot require a student receive their education virtually if the parent(s) want their student in the classroom and there is

not medical information supporting that placement.

Students on IEPs and 504 plans should receive FAPE regardless of whether their learning takes place in a school building or virtually from home. Schools must make sure there are no inequities between in-person or remote learning.

Compliance with RAY BAUM's Act and 9-1-1 Dispatchable Locations

by M. Scott Major

In 2018, Congress passed H.R. 4986, RAY BAUM's Act (the "Act"),¹ part of which imposes new requirements on phone systems, including multiline telephone systems ("MLTS") commonly found in public schools. The Act requires certain MLTSs to automatically convey "dispatchable location" information that adequately identifies the location of the calling party with every 9-1-1 call.² Effective February 16, 2020, the Act is prospectively applied and pertains only to a MLTS that is manufactured, imported, offered for first sale or lease, first sold or

districts cannot require a student receive their education virtually if the parent(s) want their student in the classroom and there is not medical information supporting that placement

leased, or installed after February 16, 2020.³ Importantly, that means school districts are not required to upgrade their existing MLTS or acquire a new system to become compliant now if their MLTS was installed before then. However, they must ensure that any newly-installed system after the effective date adequately conveys sufficient dispatchable location information to the Public Safety Answering Point ("PSAP").

Section 506(a) of the Act required the Federal Communications Commission ("FCC") to "conclude a proceeding to consider adopting rules to ensure that a dispatchable location is conveyed with a 911 call, regardless of the technological platform used, including calls from multi-line telephone systems." When adopting its Final Rule concerning the Act, the FCC focused some of its discussion on defining the term "dispatchable location,"⁴ which the Act defined as "the street address of the calling party, and additional information such as room number, floor number, or similar information necessary to adequately identify the location of the calling party."

In doing so, the FCC noted that when a 911 call is placed from a MLTS, the system might convey only the location of a main

entrance, rather than the caller's location, resulting in harmful or deadly delays.⁵ For this reason, Congress signaled its intent that the FCC should focus on ensuring "highly precise location information" was conveyed in connection with MLTS 911 calls whenever feasible.⁶ In considering what level of precision was necessary, the FCC recognized that public safety communications professionals understand "dispatchable location" to mean "information sufficient for guiding first responders to the right door to kick down," but what constitutes "sufficient" information will vary significantly between locations.⁷ For example, first responders typically require floor and room information, not just street address, when responding to calls from multi-story buildings or campus environments.⁸ Aside from requiring that a validated street address be included, the FCC ultimately declined to expand upon the Act's definition by specifying instances in which additional information beyond "street address must be made available, or in identifying specific categories of additional location information beyond floor level or room number."⁹ It settled on the following definition: "A location

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delivered to the PSAP with a 911 call that consists of the validated street address of the calling party, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the calling party”¹⁰ The FCC believes this broad definition provides “participants in the MLTS marketplace flexibility in deciding what level of detail should be included in the location information provided” to 911 dispatchers, “so long as the level of detail [provided] is functionally sufficient to enable first responders to identify the location of a 911 caller in that environment.”¹¹

Therefore, any school district that installs a MLTS after the Act’s effective date should ensure the system automatically conveys dispatchable location information, including the validated street address and additional information like a specific floor and room number, that will sufficiently enable first responders to identify the location of a 911 caller on campus. Those newly-installed systems, if not already compliant, must become so by one of two dates, depending on the type of devices associated with the MLTS. For on-premises, fixed devices, the system must be compliant by January 6, 2021.¹² On-premises, non-fixed devices and off-premises devices associated with an MLTS must be compliant by January 6, 2022.¹³

Fortunately, any manufacturer, lessor, and seller of MLTS or comparable systems with whom school districts deal should already be familiar with the requirements of the Act, comply with it, and offer only compliant systems after the effective date, but MLTS installers, operators, and managers have their own responsibilities for compliance, particularly configuration of the system.¹⁴ Furthermore, “MLTS managers and operators are entitled to rely on enterprise customers to acquire, maintain, and update location information.”¹⁵

If you have any questions regarding compliance with the Act or what information constitutes a dispatchable location, please contact your school’s attorney.

¹“Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018” or “RAY BAUM’S Act of 2018,” H.R. 4986, 115th Congr. (2nd Sess. 2018). This bill required a number of changes concerning 911 services, including the consolidation of 911 statutes. However, the only provisions pertinent to this article are found in Section 506: “ACCURACY OF DISPATCHABLE LOCATION FOR 9–1–1 CALLS.”

²FEDERAL COMMUNICATIONS COMMISSION, DISPATCHABLE LOCATION FOR 911 CALLS FROM FIXED TELEPHONY, INTERCONNECTED VOIP, TRS, AND MOBILE TEXT SERVICE (JULY 23, 2020), <https://www.fcc.gov/911-dispatchable-location>.

³FEDERAL COMMUNICATIONS COMMISSION, MULTI-LINE TELEPHONE SYSTEMS – KARI’S LAW AND RAY BAUM’S ACT 911 DIRECT DIALING, NOTIFICATION, AND DISPATCHABLE LOCATION REQUIREMENTS (APRIL 22, 2020), <https://www.fcc.gov/mlts-911-requirements> [hereinafter *FCC Multi-line*].

⁴Implementing Kari's Law and RAY BAUM'S Act; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service, 84 Fed. Reg. 66716 (Dec. 5, 2019) [hereinafter *FCC*].

⁵*Id.*

⁶*Id.*

⁷*Id.*

⁸*Id.*

⁹*Id.*

¹⁰*Id.* at 66750.

¹¹*Id.* at 66733.

¹²47 C.F.R. § 9.16(b)(3)(i).

¹³47 C.F.R. §§ 916(b)(2)(ii), 913; 916(b)(3)(iii); see also FCC Multi-line, *supra* note 2.

¹⁴FCC, *supra* note 3, at 66736.

¹⁵FCC, *supra* note 3, at 66737.

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