



Frequently Asked Questions about Essential Educational Services for Students with Disabilities during COVID-19

1. Do schools have to provide services detailed in my student's Individualized Education Program (IEP) while school buildings are closed?

The laws protecting the rights of special education students, the Individuals with Disabilities Act (IDEA), Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), and Article 7 of the Indiana Administrative Code, all still apply during this time. In general, schools should provide educational and related services under an IEP to a student with a disability on days that they hold remote learning for the general school population.¹ Based on previous guidance from the United States Department of Education, in some limited circumstances, schools might have an obligation to provide these services even if schools are completely closed.² However, relative to this COVID-19 outbreak, both the Indiana and federal Departments of Education have indicated that services are only required during remote learning days.

2. Are schools held to a lesser standard of Free Appropriate Public Education (FAPE)?

No. School districts are still required to provide students with a free appropriate public education (FAPE) under these new circumstances. There needs to be a plan in place for the school district to do as much as possible to ensure that appropriate services are being provided. While there may be times when the implementation of services looks different than what it would typically look like, it does not change a school system's duty to either implement a new plan through remote learning or provide Extended School Year or compensatory education when school buildings reopen.

3. Are there educational services that cannot be provided during this time?

The COVID-19 outbreak and resulting physical distancing and closures have obviously created unusual and unique circumstances. However, during this period, providing FAPE to students with disabilities must still be individualized to each student and could look different from one student to another. It can include access to written materials, instruction or related services provided online, through video conferencing or by telephone.

¹ Questions and Answers on Providing Services to Children with Disabilities during the Coronavirus Disease 2019 Outbreak, United States Department of Education, March 12, 2020, <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>.

² During the 2009 H1N1 outbreak, the U.S. Department of Education advised that if schools with a high concentration of medically fragile children decided to close, the school district and case conference committee needed to decide if the student could benefit from distance learning or required compensatory education. *See* Questions and Answers on Providing Services to Children with Disabilities during an H1N1 Outbreak, United States Department of Education, December 2009, <https://www2.ed.gov/policy/speced/guid/idea/h1n1-idea-qa.pdf>.



Many accommodations and modifications can still be provided during distance learning and it is important to consider whether a school system can provide the services remotely. The school's special education teachers, along with the Occupational Therapist, Physical Therapist, Speech and Language Pathologist, and other school personnel who provide related services under an IEP are likely working remotely. Schools should determine if these services can be provided through video conferencing or other means. The United States Department of Education encourages schools to attempt remote learning strategies: "The Department encourages parents, educators, and administrators to collaborate creatively to continue to meet the needs of students with disabilities. Consider practices such as distance instruction, teletherapy and tele-intervention, meetings held on digital platforms, online options for data tracking, and documentation. In addition, there are lowtech strategies that can provide for an exchange of curriculum-based resources, instructional packets, projects, and written assignments."³ If services cannot be provided, we recommend documenting how much time is lost for services under the IEP and requesting compensatory services or extended school year services to help your student catch up.

4. What about behavioral supports?

Students that receive behavior supports should have the student's provider or assigned school staff check in with the students' parents, and perhaps provide parent training. However, remember flexibility is permissible, and it may not be feasible to safely provide certain services. Parents and school districts need to work together during this time.

5. What if my family does not have access to a computer or laptop?

Contact your local school district. Several school districts are arranging ways to drop off loaner laptops for students to access work that is being provided online.

6. What if my family does not have access to internet?

Contact your local internet provider. Several providers are offering free services for school-aged children during school closures and distance learning.

7. Can schools hold case conferences remotely?

Yes and they should, though the case conference might need to occur on one of the school corporation's remote learning days. Federal regulations require that schools districts hold

³ Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities, United States Department of Education, March 21, 2020, <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>.



meetings in a manner that enables parents to meaningfully participate.⁴ Additionally, according to a recently-released Indiana Department of Education memorandum: “Schools have the option to conduct CCC meetings teleconference, videoconference, or through a Webex if an in-person meeting is not possible.”⁵

8. Can I request a case conference?

Yes, and this may be a good idea depending on how different your student’s services are in remote learning.

9. What about annual case conferences?

Schools are still required to hold annual case conferences. According to the Indiana Department of Education, they should not wait until the 2020-21 school year to hold annual case conferences that were scheduled for spring 2020.⁶ As discussed earlier, the case conferences can be held remotely. The same participants are required as a face-to-face case conference. If your student’s school does not schedule an annual case conference, you have the right to request a case conference on your own.

10. What should I be documenting during this time?

At a minimum, you should review your student’s IEP or 504 plan and related documents, like a Behavior Improvement Plan. If you cannot find your copy, request that the school e-mail or mail you a new one. If your student is not receiving any of the listed IEP or 504 services (e.g., the student is part of a social group that is not meeting during this time), note when those services stopped and how many days or weeks were remaining in the scheduled school year. It is also recommended that you consider and document the areas your student might be regressing.

11. What are compensatory time and Extended School Year (ESY) services?

Compensatory services are provided to students to make up for services lost while a student was in an inappropriate placement. Typically, these are services awarded when there was the failure by

⁴ “If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with § 300.328 (related to alternative means of meeting participation).” 34 C.F.R. § 300.322(c).

⁵ Meeting IDEA /Article 7 Timelines during eLearning Days, Expanded Learning Opportunities, or School Closures Due to COVID-19 Concerns Memorandum, Indiana Department of Education, March 11, 2020, <https://www.doe.in.gov/sites/default/files/news/march-13-covid-191-jmccomms-edits.pdf>.

⁶ Special Education / Service Delivery during COVID-19, Closures and eLearning Days Frequently Asked Questions, Indiana Department of Education, April 6, 2020. https://docs.google.com/document/d/1AM9PUuWsTxMG2LG0pQV_x8E9_rw9jXhpgISlc8xtA/edit.



the school system to provide appropriate services. In the case of closures due to COVID-19, the school's failure to provide services may be out of the school's control; however, the need to make up for lost services likely still exists. ESY services are services beyond the typical school year that the case conference committee determines are necessary for a student to receive FAPE.

In the case of your student falling behind or missing services during the COVID-19 related school closures, one or both of these may be appropriate. The standard is what is necessary for your student to catch up to where they would be without the school closures. Compensatory time is explicitly mentioned in guidance sent out by the United States Department of Education: "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."⁷

12. How are special education evaluations being handled?

There is nothing in existing federal or state laws that lesson the general time frames for required education evaluations. Most timelines are based on instructional days, so if the school has 50 days to complete an evaluation, only remote learning days are likely to count towards those days.⁸ While signing of consents and other parts of the evaluation may be able to proceed remotely, there are likely some evaluations that cannot take place until school returns. For example, if an evaluation requires an in-school observation or a test that cannot be completed remotely, it would make sense to wait on the evaluation until the school building reopens.

13. Can I still request a Department of Education Complaint, Mediation, or Due Process Hearing?

Yes. If needed, case-specific extensions may be granted on a case-by-case basis.

14. What should I do if I am concerned about my student re-adjusting to school when it returns?

Document your concerns and either call a case conference prior to the end of this year to discuss or schedule one at the beginning of the next school year.

⁷ Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities, United States Department of Education, March 21, 2020, <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>.

⁸ Meeting IDEA /Article 7 Timelines during eLearning Days, Expanded Learning Opportunities, or School Closures Due to COVID-19 Concerns Memorandum, Indiana Department of Education, March 11, 2020, <https://www.doe.in.gov/sites/default/files/news/march-13-covid-191-jmccomms-edits.pdf>.



15. Who should I contact if I have questions?

Parents should first contact their child’s school district for questions specific to their child. This could be their teacher, principal, school psychologist, or special education director. You can also contact the Indiana Department of Education. General questions can be sent to IDOECOVID-19@doe.in.gov and special education questions can be sent to specialeducation@doe.in.gov. Your child’s school district’s website may have additional contact information or instructions specific to your district.

16. What if my student’s school is not attempting to provide any educational services during this time or is refusing to hold a case conference?

Depending on the facts of your situation, Indiana Disability Rights may be able to assist you with your issue. If you think you need assistance, please contact us as follows:

Phone, 1-800-622-4845

Email, info@indianadisabilityrights.org

Or online 24/7, at <https://www.in.gov/idr/2524.htm>

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