

COVID-19 and Serving Students with Disabilities: Parent Information

Below, you will find a Q & A adapted from a resource document at the US Department of Education regarding schools' responsibility in serving our special populations:

1: Is an LEA required to continue to provide a free appropriate public education (FAPE) to my child during a school closure caused by a COVID-19 outbreak?

Answer: If an LEA closes its schools to slow or stop the spread of COVID-19, *and does not provide any educational services to the general student population*, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's individualized education program (IEP) or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504. The Department understands there may be exceptional circumstances that could affect how a particular service is provided. In addition, an IEP Team and, as appropriate to an individual student with a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements. 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 (State Education Agency) , LEAs (Local Education Agency), 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)).

2: Must an LEA provide special education and related services to my child with a disability who is absent for an extended period of time because he/she is infected with COVID-19, while the schools remain open?

Answer: Yes. It has long been the Department's position that when a child with a disability is classified as needing homebound instruction because of a medical problem, as ordered by a physician, and is home for an extended period of time (generally more than 10 consecutive school days), an individualized education program (IEP) meeting is necessary to change the child's placement and the contents of the child's IEP, if warranted. Further, if the IEP goals will remain the same and only the time in special education will change, then the IEP Team may add an amendment to the IEP stating specifically the amount of time to be spent in special education.

If a child with a disability is absent for an extended period of time because of a COVID-19 infection and the school remains open, then the IEP Team must determine whether the child is available for instruction and could benefit from homebound services such as online or virtual instruction,

instructional telephone calls, and other curriculum-based instructional activities, to the extent available.

In so doing, school personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services. The Department understands there may be exceptional circumstances that could affect how a particular service is provided. If a child does not receive services after an extended period of time, a school must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

3: What services must an LEA provide my child if a public school for children with disabilities is selectively closed due to the possibility of severe complications from a COVID-19 outbreak?

Answer: If a public school for children with disabilities is closed solely because the children are at high risk of severe illness and death, the LEA must determine whether each dismissed child could benefit from online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. In so doing school personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services. *The Department understands there may be exceptional circumstances that could affect how a particular service is provided.* If a child does not receive services during a closure, a child's IEP team (or appropriate personnel under Section 504) must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

4: If my child with a disability at high risk of severe medical complications is excluded from school during an outbreak of COVID-19 and the child's school remains open, is the exclusion considered a change in educational placement subject to the protections of 34 CFR §§ 300.115 and 300.116 and 34 CFR §§ 104.35 and 104.36.

Answer: If the exclusion is a temporary emergency measure (generally 10 consecutive school days or less), the provision of services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available, is not considered a change in placement. During this time period, a child's parent or other IEP team member may request an IEP meeting to discuss the potential need for services if the exclusion is likely to be of long duration (generally more than 10 consecutive school days). For long-term exclusions, an LEA must consider placement decisions under the IDEA's procedural protections of 34 CFR §§ 300.115 – 300.116, regarding the continuum of alternative placements and the determination of placements. Under 34 CFR § 300.116, a change in placement decision must be made by a group of persons, including the parents and other persons knowledgeable about the child and the placement options. If the placement group determines that the child meets established high-risk criteria and, due to safety and health concerns, the child's needs could be met through homebound instruction, then under 34 CFR §300.503(a)(1), the public agency must issue a prior written notice proposing the change in placement. A parent who disagrees with this prior written notice retains all of the due process rights included in 34 CFR §§ 300.500-300.520. For children with disabilities protected by Section 504 who are dismissed from school during an outbreak of

COVID-19 because they are at high risk for health complications, compliance with the procedures described above and completion of any necessary evaluations of the child satisfy the evaluation, placement and procedural requirements of 34 CFR §§ 104.35 and 104.36. The decision to dismiss a child based on his or her high risk for medical complications must be based on the individual needs of the child and not on perceptions of the child's needs based merely on stereotypes or generalizations regarding his or her disability.

5: May an IEP Team consider a distance learning plan in my child's IEP as a contingency plan in the event of a COVID-19 outbreak that requires the school's closure?

Answer: Yes. IEP teams may, but are not required to, include distance learning plans in a child's IEP that could be triggered and implemented during a selective closure due to a COVID-19 outbreak. *Such contingent provisions may include the provision of special education and related services at an alternate location or the provision of online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, and may identify which special education and related services, if any, could be provided at the child's home.* Creating a contingency plan before a COVID-19 outbreak occurs gives the child's service providers and the child's parents an opportunity to reach agreement as to what circumstances would trigger the use of the child's distance learning plan and the services that would be provided during the dismissal.

For further questions please call Jen Hulse at 851-1178; jhulse@insd.org