



COVID-19 Q&A

Q: Is the *Endrew F.* standard for appropriateness lessened during the COVID 19 outbreak?

A: No, the Supreme Court case remains valid law that is not superseded by the pandemic. Schools must continue, working under the constraints of the pandemic circumstances, to ensure that students with disabilities are provided with challenging and ambitious goals commensurate with a student's abilities. The US Department of Education has noted: "The Department understands that, during this national emergency, schools may not be able to provide all services in the same manner they are typically provided. While some schools might choose to safely, and in accordance with state law, provide certain IEP services to some students in-person, it may be unfeasible or unsafe for some institutions, during current emergency school closures, to provide hands-on physical therapy, occupational therapy, or tactile sign language educational services. Many disability-related modifications and services may be effectively provided online. These may include, for instance, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing." COPAA expects that school districts will do all they can to provide FAPE to students at this difficult time.

Q: Are states required to hold IEP meetings during closures for COVID 19 prior to providing distance learning to students with disabilities? What if my school district does not offer an IEP meeting prior to providing distance learning?

A: If a school district prepares to offer educational services through electronic means (distance learning) this MAY trigger the need for an IEP meeting as well. Some states, like Connecticut and Massachusetts, do not believe that an IEP meeting is needed before the school can begin to offer students virtual learning opportunities under the current emergency which requires changes in delivery of services for all students. *Check your state policies.* Individual parents may have the right to have IEP meetings to discuss the needs of their individual students. There are many school districts that are offering, or plan to offer, IEP meetings using technology. [A helpful analysis from school district attorneys in Missouri](#)

Q: What services am I entitled to request for my child during the school closure due to COVID 19?

A: In this unprecedented time, you should try and work with your local school district to develop a plan that works for your individual student, considering any constraints imposed by

your state and locality with regarding to social distancing. As you do though, document, document, document: services your child had previously, services that have been offered during the school closure, your child's progress, your child's access to the materials and education are a few examples. [There are many instances of creative ways to educate students.](#)

FL: UCP Charter Schools: Public Charter School UCP will be providing a customized Distance Learning program for its' PreK – 12th grade students. This will include daily live lessons and virtual field trips/performances using Google Meet by teachers, "specials" and guests (i.e. legislators, local celebrities), classroom and individualized lessons using Google Classroom, and remote occupational, physical and speech therapies. Clinical Counselors will be providing virtual therapy and behavior technicians will be doing virtual social skills groups and individualized virtual meetings with parents/students. Family Service Case Managers will be doing a weekly "check in" with families to provide any needed support/resources and the School Nurses will be doing check in with students with health care needs.

IL: Signal Hill 181: Belleville West High School: Parent: "My district is working to keep everything as it was when my daughter left. Related services are being provided through Google classroom and Hangout. Paper documents that my daughter needs (because computer would not be accessible) are being mailed to our home. Her teachers are assigning homework, but only after they have briefly taught and using the actual worksheet as guidance to teach then assigning as homework. Teachers are encouraging Universal Design for Learning (UDL), so not one student is required to submit their assignments a certain way, etc. Example: students can create their own worksheets and/or agendas, take a picture and forward. Teachers are captioning videos. They have an everyday sign-in at a reasonable time of day and asking constantly if students need assistance, even in social work. Her teachers that sponsor clubs are also involving students. Art teachers asked students if they like, should feel free to sketch daily and share."

IL: Evanston/Skokie District 65, Evanston Township High School: Parent "We just tried an [IEP] annual review over conference call with documents emailed. It was not the easiest, but I appreciate the District trying to keep continuity during e-learning and closures in Illinois." OH: State- #EachChildOurFuture One of Ohio's top priorities during the ordered school-building closure period, which seeks to diminish the spread of the coronavirus (COVID-19), is to ensure students with disabilities receive educational services closest to the manners prescribed within their Individualized Education Programs (IEPs). We recognize this might pose some challenges, but we are heartened by how the education community has stepped up to provide educational services during this unexpected and unprecedented time...[the department] encourages school district leaders to consider the following three questions as they think through how best to provide special education services to students with disabilities: 1. Is the activity essential? 2. Can the

activity be done virtually? 3. If there is no other choice, then can the activity be done safely? This means individuals are separated by distance, not congregating in close proximity and the health of participants (students, educators and others) is protected. Consulting the local health department is advisable and encouraged.”

NJ: Berkley Heights: Parent “My child has been provided an emergency/interim IEP meeting, is receiving delivery of education services online and the school is using Facetime/Zoom or other visual conferencing services.” NH: Manchester School District NH's largest school district, Manchester, set up a link to access information regarding home instruction. There's a letter to parents (available in audio in multiple languages), information about food delivery, lessons and materials for elementary school. It appears Manchester is rolling out lesson plans by grade level, starting with elementary school. The letter to parents indicates that the district intends to provide services in students' IEPs and 504 plans, including possibly bringing small cohorts of students into the schools. Teachers will be calling parents. Meals and hard-copy materials are being delivered daily.

TX: Argyle Independent School District: Parent “We are receiving online instruction through Google Classroom. The teachers are making videos or using WebEx to connect with students and have had great communication and availability. They are currently sending out information for "parent-focus speech therapy". I talked to one SPED teacher today and she is modifying all assignments and hand delivering them to each student's home and is available remotely to help and answer questions. So far, we feel the actions have been great. We are only in day three of online instruction and the teachers have really been on their game!”

Q: Am I waiving my rights to challenge the educational services I am offered for my child during this time?

A: In an IEP meeting, parents should state that they are not waiving any rights to challenge the educational services being offered during the closure of schools due to the pandemic. Parents should state they want their concerns noted in the Prior Written Notice (PWN) the school district will send out after the IEP meeting. If the concern is NOT in the PWN, then parents should place their concerns and objections in a written letter to the school. If a parent is asked to consent or sign a PWN then, again, note the concerns, note the discrepancy and state clearly, in writing, that once school resumes, there is an expectation that services previously provided resume.

Q: Are districts obligated to provide FAPE?

A: COPAA expects that school districts will do all they can to provide FAPE to students at this difficult time. The guidance issued by OSEP on March 12, 16 and 21, 2020 states that school districts do not have to provide FAPE to students with disabilities if they are not providing any

education at all to any student in the district. This position is contrary to years of guidance from the US Department of Education. See Office of Special Education and Rehabilitative Services, *Preparing for Infectious Disease: Ebola: Department of Education Questions and Answers on Providing Services to Children with Disabilities During Extended Student Absence or School Dismissal* (December 2014):

"If a child with a disability is absent from school for an extended period of time because ... the school has been dismissed at the request of public health authorities, then school administration officials and the child's IEP Team (or appropriate personnel under Section 504), in collaboration with public health authorities, must determine whether the child is available for instruction and could benefit from homebound services such as instructional telephone calls, homework packets, Internet-based lessons, and other distance-based learning approaches, to the extent available"

Furthermore, the Department has also taken this position regarding charter schools. See:

OSERS, *Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools Under the Individuals with Disabilities Education Act* (Dec. 28, 2016); See also: *Letter to Geary*, 120 LRP 10281 (Department does not have the authority to waive IDEA requirements).

COPAA's position is that school districts are required to provide FAPE for students with disabilities and that creative ways need to be explored to provide FAPE for students during this crisis.

OSEP recognizes that once school districts begin to offer distance learning to students, they must offer equitable access and services to students with disabilities (those with IEPs and those with Section 504 Plans). As noted in the March 21, 2020 Guidance: **"To be clear: ensuring compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance instruction."**(emphasis in the original).

Q: Will my child automatically qualify for compensatory services or Extended School Year (ESY) after schools re-open?

A: Possibly. Some school districts may determine that they will automatically provide compensatory services or ESY to certain students under certain circumstances. Some states may offer additional services after schools reopen without calling the services compensatory services. Also, it is important to recognize that some students may have their needs for special education services met through distance learning, and some high school seniors may decide to accept their high school diplomas and move on to the next stage of their lives without a backward glance at the services they would have gotten without the pandemic. There may be students who prefer distance learning to attending school. Thus, whether compensatory services or ESY services are required will depend on the student's individual circumstances.

If parents think their children may require compensatory services, they should document which services a child may be missing during this time of school closure due to COVID 19. This documentation would be used to qualify for ESY and/or compensatory services. For example, if a student is receiving 15 minutes once a week via video with a speech language pathologist and a student's IEP, prior to the school closing, required that a student receive 45 minutes per week, a parent should document the missing time. A parent should also document a child's skills (sort of like a present level of performance) through video, through data sheets, or another manner of capturing the data to measure whether a student has regressed during the time that school is closed due to COVID 19. Of course, regression is not the only criteria to measure whether a student qualifies for ESY or compensatory services, but it is just one way to measure what a student has lost during this time of school closures.

Parents should make plans to request an IEP meeting to consider compensatory services or additional services once the closure is over as well as ESY services. As noted in the March 21, 2020 Guidance: "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."

Q: What if I switch to home school my child if school is closed for the rest of the year?

A: The decision to homeschool your child is a deeply personal one. In this time of school closure ask whether the school district will be offering any type of education for students. If so, then the school district must ensure that the students with disabilities are able to access education. If the school district will not be offering any educational services for any children, you should consult an attorney in order to ensure you understand your rights and what remedies may be available to you and your child.

Q: What about timelines, do they apply during the closure?

A: According to OSEP, in the March 21, 2020 Guidance: “As a general principle, during this unprecedented national emergency, public agencies are encouraged to work with parents to reach mutually agreeable extensions of time, as appropriate.” In light of the emergency situation created by the pandemic, parents may find it necessary or reasonable to agree to some extensions of time. It may be that it would be impossible, for some period of time, for some evaluations that require in-person observation to take place.

From the March 21, 2020 Guidance:

Part B:

State Complaints

Absent agreement by the parties, a state may be able to extend the 60-day timeline for complaint resolution if exceptional circumstances exist with respect to a particular complaint. 34 C.F.R. § 300.152(b)(1). Although the Department has previously advised that unavailability of staff is not an exceptional circumstance that would warrant an extension of the 60-day complaint resolution timeline, the COVID-19 pandemic could be deemed an exceptional circumstance if a large number of SEA staff are unavailable or absent for an extended period of time.

Due Process Hearings

When a parent files a due process complaint, the LEA must convene a resolution meeting within 15 days of receiving notice of the parent’s complaint, unless the parties agree in writing to waive the meeting or to use mediation. 34 C.F.R. § 300.510(a). While the IDEA specifically mentions circumstances in which the 30-day resolution period can be adjusted in 34 C.F.R. § 300.510(c), it does not prevent the parties from mutually agreeing to extend the timeline because of unavoidable delays caused by the COVID-19 pandemic.

Additionally, although a hearing decision must be issued and mailed to the parties 45 days after the expiration of the 30-day resolution period or an adjusted resolution period, a hearing officer may grant a specific extension of time at the request of either party to the hearing. 34 C.F.R. § 300.515(a) and (c).

Individualized Education Programs (IEPs)

If a child has been found eligible to receive services under the IDEA, the IEP Team must meet and develop an initial IEP within 30 days of a determination that the child needs special education and related services. 34 C.F.R. § 300.323(c)(1).

IEPs also must be reviewed annually. 34 C.F.R. §300.324(b)(1). However, parents and an IEP Team may agree to conduct IEP meetings through alternate means, including videoconferencing or conference telephone calls. 34 C.F.R. §300.328. Again, we encourage school teams and parents to work collaboratively and creatively to meet IEP timeline requirements.

Most importantly, in making changes to a child’s IEP after the annual IEP Team meeting, because of the COVID-19 pandemic, the parent of a child with a disability and the public agency

may agree to not convene an IEP Team meeting for the purposes of making those changes, and instead develop a written document to amend or modify the child’s current IEP. 34 C.F.R. §300.324(a)(4)(i).

Initial Eligibility Determination

An initial evaluation must be conducted within 60 days of receiving parental consent under IDEA, or within the state-established timeline within which the evaluation must be conducted. 34 C.F.R. § 300.301(c). Once the evaluation is completed, IDEA does not contain an explicit timeline for making the eligibility determination but does require that the IEP be developed in accordance with 34 C.F.R. §§ 300.320-300.324 (34 C.F.R. § 300.306(c)(2)).

Reevaluations

A reevaluation of each child with a disability must be conducted at least every three years, unless the parents and the public agency agree that a reevaluation is unnecessary 34 C.F.R. § 300.303(b)(2). However, when appropriate, any reevaluation may be conducted through a review of existing evaluation data, and this review may occur without a meeting and without obtaining parental consent, unless it is determined that additional assessments are needed. 34 C.F.R. §300.305(a).

Part C of IDEA

State Complaints

Under 303.433(b)(1)(i), the lead agency’s state Complaint procedures permit an extension of the 60 day timeline for a written decision if “exceptional circumstances exist with respect to a particular complaint” or the parent or organization and the agency or early intervention services (EIS) provider agree to extend the time for engaging in mediation.

Due Process Hearings

A state may choose to adopt Part B procedures for Due Process resolution under 34 C.F.R. §§303.440 – 303.449 or Part C procedures under 34 C.F.R. §§303.435 – 303.438. Conditions for extending the applicable timelines are similar under both sets of procedures.

Under 34 C.F.R. §303.447(c), the hearing or review officer may grant specific extensions of the Due Process timeline at the request of either party. Under 34 C.F.R. §303.447(d), each hearing and each review involving oral argument must be conducted at a time and place that is reasonably convenient to the parents and child involved.

Section 303.437 (a) and (c) provides similar language regarding scheduling a hearing at a time and place convenient to the parents and hearing officers granting extensions at the request of either party.

Initial eligibility/Individual Family Service Plan (IFSP)

Under 34 C.F.R. §303.310, the initial evaluation and assessments of child and family, as well as the initial IFSP meeting, must be completed within 45 days of the lead agency receiving the referral. However, under 34 C.F.R. §303.310(a), the 45-day timeline does not apply if the family

is unavailable due to “exceptional family circumstances that are documented” in the child’s early intervention (EI) records.

The Department has previously provided guidance to states indicating that weather or natural disasters may constitute “exceptional family circumstances.” The COVID-19 pandemic could be considered an “exceptional family circumstance.”