



Special Education During COVID – What You Need to Know

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COVID has turned our world upside down. Rules, recommendations and statistics are sometimes modified daily and leave us feeling very uncertain about our new, evolving “normal.” We’ve seen huge, unprecedented change in the way our children are being educated. Never in their lifetimes, or in ours, have we experienced a situation where schools were shut down by the government, as a matter of public health safety, or for any reason, really. All school age children are being adversely affected, but children with disabilities have additional hurdles that need attention.

So what’s different about special ed during COVID? The key point to remember is this: school districts *are* still required to provide a Free Appropriate Public Education (FAPE) to all children with disabilities, *even during a pandemic*. All of the procedural requirements and timelines *still apply*, as dictated by [IDEA](#) and [Section 504 of the Rehabilitation Act](#). The federal government has not waived any of these obligations. Given the pandemic-related restrictions, school districts must assess the needs of each individual child and, based on their unique needs, make a good faith effort to determine how a FAPE will be provided to that child.

If the governor or health department has required school buildings to close down, it is simply not possible to provide the student with in-person learning and a one-on-one aide, even if their Individualized Education Program (IEP) says that’s what they should get. We have to put health and safety first and work together to find creative solutions to deliver a FAPE to each student, within the constraints of this pandemic.

The important part is for the IEP team to meet and *discuss* the needs of *this* child. *Discuss* ways to meet the child’s needs and allow the child to make progress in light of his unique circumstances. The team may need to discuss how the instruction and services will look in each of several scenarios: remote, hybrid, and in-person learning. Think outside of the box, consider the child’s individual needs and abilities, and make a plan A, B and C.

The meetings and process may look a little different, and that’s ok. For example, meetings can be conducted remotely, via ZOOM, or mostly in person with some attending remotely. They just have to take place and they have to include the parent/guardian and

other required team members. Timelines must be adhered to unless both the school and parent agree to waive or extend them. Similarly, the parties can agree, together, to waive the presence of essential IEP team members if circumstances prohibit their participation. And when it comes to approving documents, that can be accomplished electronically, orally, by mailing the document to each person for signature, etc.

School districts are still obligated to evaluate students whom they suspect of having a disability, and they must do so within 30 days of a parental request. However, it may be difficult to complete evaluations where face-to-face assessments are required and cannot be administered due to safety recommendations or requirements. If in-person assessments can't be done, the team should consider alternate means to gather multi-factored assessment information on the student, such as remote observation, timelines, remotely-administered testing, checklists, work samples, prior outside evaluations submitted by the parents, state standardized testing results, etc. Or, the school and parents can agree to waive timelines and postpone the evaluation until such time as in-person assessment is permissible. In the case of a re-evaluation, the team can (as always) agree to do a record review instead of conducting new testing, as long as the record review gives a clear, current picture as to whether the student continues to qualify as a student with a disability under IDEA. If a record review is not ideal due to the student's changed needs, the team could conduct a record review now, to maintain eligibility and services, but then agree to reevaluate the student when in-person assessments are once again available.

There are some circumstances where, despite best efforts of the school team and parents, a student with high-level needs may not be able to make adequate progress in a remote setting. In these unique situations, a school may be required to provide recovery services. "Recovery services" is a new term that was developed as a result of the pandemic. Recovery services are warranted if the IEP team determines that a student suffered an educational gap due to COVID-related school closures. It is not awarded minute-for-minute, rather, the team determines what types of services are needed in order to close the gap. The services can be delivered before school, on breaks, during the day, over the summer – whenever the team decides the student needs them. For example, if the IEP says a student should get 40 minutes of one-on-one speech language therapy but, due to COVID restrictions, the speech was provided remotely and it just didn't work for the student. If the student suffers a gap as a result, the team may find recovery services appropriate. If, however, with the same student and same IEP, the school didn't deliver any speech services, not even remotely, then the student may be entitled to compensatory education for the same number of minutes that were called for on the IEP. Compensatory services are also warranted where a school refuses services to a student with disabilities

while providing general ed students with an education or didn't make a good faith effort to provide a FAPE in light of the child's individual needs. The difference between recovery services and compensatory services seems to be based upon the reasonableness of the attempt to provide a FAPE within COVID-related restrictions and the lack of progress. If a child is not making adequate progress and the school isn't working with the family to fix that, the family should consider getting the assistance of an advocate or attorney to advise them.

Another issue that often concerns families is the mask requirement. Some students with disabilities simply cannot tolerate wearing a mask, due to physical limitations, sensory intolerance, or behavioral concerns. Enforcing a mask requirement could interfere with their ability to receive a FAPE. Therefore, school districts are being told to make reasonable modifications to their policies, where possible. Schools can consider alternate methods of protection such as face shields, plexiglass dividers, increased distancing between students and staff within a room, smaller class sizes, etc. In addition, IEP teams may consider adding a goal for increased mask tolerance and, until that goal is achieved, adding an accommodation so that the student will enter the hallways (changing classes/entering and exiting the building) a few minutes either before or after large masses of students do so, to limit unmasked exposure, by and to the unmasked student.

Times are tough. It's hard on educators and it's hard on students and their families. All of the laws protecting students with disabilities still apply and must be adhered to. Schools have to do their best to collaborate with families, think outside of the box, consider each child's individual needs, and do their best to meet those needs in this current environment. And when best efforts don't work, they need to circle back and fill in the gaps when it's safe to resume in person learning.

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