Accessing Special Education Services During COVID-19

October 22 and 27, 2020
our mission

Autism Speaks is dedicated to promoting solutions, across the spectrum and throughout the life span, for the needs of individuals with autism and their families. We do this through advocacy and support; increasing understanding and acceptance of people with autism; and advancing research into causes and better interventions for autism spectrum disorder and related conditions.
Autism Speaks does not provide medical or legal advice or services. Rather, Autism Speaks provides general information about autism as a service to the community. The information provided is not a recommendation, referral or endorsement of any resource, therapeutic method or service provider and does not replace the advice of medical, legal or educational professionals. Autism Speaks has not validated and is not responsible for any information or services provided by third parties. You are urged to use independent judgment and request references when considering any resource associated with the provision of services related to autism.
At Autism Speaks, we are committed to advocating for the needs of every person with autism, across the spectrum and throughout the life span. We urge federal, state and local officials to ensure the safe re-opening of community life, accommodations for access to community activities for people with autism and dedicated resources to protect the health and safety amid the COVID-19 pandemic.
Advocacy priorities to support people with autism through re-opening of community life

• Increased federal funding to support states and local school districts in meeting the educational needs of students with autism as well as enhanced funding for home and community-based services.

• Safe and equitable re-opening of schools or other ways to provide in-person learning and support services to meet the needs of all students on the spectrum, to include appropriate staffing, health and safety resources.

• Supporting public health measures to reduce the spread of COVID-19, specifically among people with autism who may be at greater risk for serious illness, such as masks, social distancing and hygiene.

• Supporting accommodations for people with autism who are unable to practice these measures themselves due to their disability.

Click here for a full list of our public policy priorities.
agenda

• Welcome
• Five Questions | Bartholomew Devon, Christa Stevens and Judith Ursitti
• COVID-19 Information and Resources | Andrew Nelson and Arianna Esposito

Due the large number of attendees, participant videos and microphones are muted. Please utilize the Q&A box if you have questions. Materials will be posted at www.autismspeaks.org after the presentation.
Top 5 Questions we’ve been asked about special education during the COVID-19 pandemic
When does FAPE apply during COVID-19?

What is FAPE?

• The Individuals with Disabilities Education Act, or IDEA, requires that public schools provide to qualified students with disabilities a free, appropriate public education in the least restrictive environment – which is, by default, the general education classroom alongside nondisabled students. This is a fundamental civil right for students with disabilities.

Does IDEA apply to all schools?

• As a general rule, IDEA does not apply to schools that don’t receive federal funds, such as private schools.
When does FAPE apply during COVID-19?

How has COVID-19 changed IDEA?

- IDEA is a federal law and can only be changed by an Act of Congress – in other words, the passage of a law. Congress has not amended IDEA since 2004 – including during this pandemic. **All IDEA rights, including FAPE, are intact and unchanged.**

But how can that be true when everything is so different?

- That disconnect is an example of the difference between policy and implementation: The law itself hasn’t changed, but the way it’s being carried out day-to-day has.
  - Example: The right to vote hasn’t changed. Before the pandemic, that generally meant going to your local polling place and voting in person. But now millions are voting by mail – likely including you. The right to vote hasn’t changed, but the way we vote can be quite different.
Introduction
During the 2020-21 school year, local education agencies (LEAs) must be flexible and employ a variety of service delivery options as they make reasonable efforts to provide quality services to students, including students with disabilities. Above all, districts should prioritize the health and safety of students, staff, and communities by consistently following Centers for Disease Control and Prevention (CDC) recommendations and state requirements. Districts are encouraged to follow all recommendations in the Oklahoma State Department of Education (OSDE) Return to Learn Oklahoma Framework as well as the Oklahoma School Safety Guidelines.

The requirements under the Individuals with Disabilities Education Act (IDEA) have NOT been waived by the Office of Special Education Programs (OSEP). LEAs continue to be required to provide a free appropriate public education (FAPE) to students receiving special education and related services in the Least Restrictive Environment (LRE).
What are the states saying about FAPE during the pandemic?

Districts are required to provide FAPE to students with disabilities eligible for special education services regardless if the plan for return to school is in person, blended, or remote. A parent who has concerns that the district is not providing FAPE, including provision of related services or other IEP support, is encouraged to first address the concerns at the local level by contacting the child’s special education teacher, building administrators, or the district’s special education administrator or director of special education. The parent may also request an IEP meeting to discuss their concerns. If the issue is not resolved at the local level, the parent is encouraged to access additionally available resources, such as the Parent Training and Information Center for their region.

If this issue remains unresolved following these steps, the parent of a student eligible for special education services may choose to pursue any right under state or federal law, which may include one of the following dispute resolution options: 1) request an IEP facilitation, 2) file a written state complaint, 3) request a mediation, or 4) request a due process hearing.
What’s the difference between homebound instruction and homeschooling?

Homebound instruction is not defined in federal law and will vary state by state.

• Basically, homebound instruction consists of resources and curriculum provided by and through a public school when a student is unable to attend in person due to medical fragility, as documented by a physician, probably for a limited amount of time. No change to enrollment.
  • Example: Recovering from major surgery – the homebound student would receive school supports at home until able to return to school.

Homeschooling is also not defined in federal law and will vary state by state.

• Basically, homeschooling is an alternative method of education where a parent or caregiver elects to instruct a youth at home – indefinitely – separate and apart from the public school, in line with the state’s legal requirements.
  • Think of it in the same vein as public school or private school or parochial school or charter school.
What’s the difference between homebound instruction and homeschooling?

Which one is Zoom school?

• Probably neither. Most likely your situation is just “distance learning” or a hybrid of distance learning and in-person school.

Why does it matter?

• It matters because homeschooling, homebound instruction, and distance learning don’t have the same legal requirements – or protections – for schools or for families.

  • Homebound instruction is run and supported by a public school and must comply with IDEA requirements as well as the state laws that define and govern it.
  
  • Homeschooling is a form of opting out of traditional public school services – including IDEA protections and services.
  
  • Distance learning is legally closest to normal, in-person instruction. But this is where the uniqueness of a pandemic creates uncertainty since we’ve never been in this situation before.
HOMEBOUND: Definition is different by state.

**Florida – F.A.C. Rule 6A-6.03020(1)**

A homebound or hospitalized student . . . has a medically diagnosed physical or psychiatric condition which is acute or catastrophic in nature, or a chronic illness, or a repeated intermittent illness due to a persisting medical problem and that confines the student to home or hospital, and restricts activities for an extended period of time.


Homebound Instruction describes the instruction a local educational agency (LEA) may provide when a student has been excused from compulsory attendance . . . due to temporary mental or physical illness or other urgent reasons.

**Arizona – A.R.S. § 15-901(13)**

“Homebound” or “hospitalized” means a student who is . . . unable to attend school due to illness, disease, accident, pregnancy or handicapped conditions, who has been examined by a competent medical doctor and is certified by the doctor as being unable to attend regular classes for a period of not less than three school months.
HOMEBOUND: Definition is different by state.

What do they have in common?

1) For students with a mental or physical illness

2) Time period is temporary but indefinite

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HOMESCHOOL:

• “Interest in homeschooling has 'exploded' amid COVID-19 pandemic”
  • Homeschooling is surging in states like NE, applications are up 21%, and VT, up 75%. Reportedly demand strongest in states that moved aggressively to reopen, including TX, GA, FL, AZ.
  • Homeschooling occurs when a parent or guardian takes primary responsibility of a student’s education as opposed to an institution like a private, public, charter or parochial school.
    • Definition, as an example, from Texas:
      Texas Education Code 29.916 (a)
      *A home schooled student predominantly receives instruction in a general, elementary or secondary education program that is provided by the parent—or a person standing in parental authority—in or through the child’s home.*
  • Homeschooling is legal in all 50 states.
  • Homeschooling is regulated differently depending on the state.
    • Some states have few or no requirements; others require an approved curriculum, a review of student portfolios to evaluate progress or standardized testing at certain intervals.
When does FAPE apply during COVID-19?

What’s the difference between homeschooled and homebound?

How do IEP meetings and evaluations work during COVID-19?

What’s the difference between remote and virtual learning?

How do compensatory services work?
IDEA Timelines for IEPs are unchanged.

**Initial Evaluations**

“If a child has been found eligible for services, the IEP Team must meet and develop an initial IEP within 30 days of the determination that the child needs special education and related services.”

34 CFR §300.323

**Initial IEPs**

“If a child has been found eligible for services, the IEP Team must meet and develop an initial IEP within 30 days of the determination that the child needs special education and related services.”

34 CFR §300.301
IDEA Timelines for IEPs are unchanged.

**Annual IEPs**

“Each public agency must ensure that...the IEP Team reviews the child’s IEP...not less than annually, to determine whether the annual goals for the child are being achieved...and revises the IEP as appropriate.”

34 CFR §300.324

**Revising IEPs**

“In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting...and instead may develop a written document to amend or modify the child's current IEP.”

34 CFR §300.324
Do IEP teams have to meet in person?

No. IDEA permits alternative ways to hold IEP meetings:

- “When conducting IEP team meetings and placement meetings...and carrying out administrative matters...such as scheduling, exchange of witness lists, and status conferences...the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.” 20 USC § 1414(f).

- If it’s unsafe for IEP team members to meet face-to-face, you can use video conferencing or calling services like Zoom, Google Duo, FaceTime or Skype. Or you can meet over the phone.

- If you need help setting up the technical component of how you would like to participate in the meeting, ask the school for assistance.

Bottom line: Assume you will participate in IEP meetings, as scheduled, and communicate with your school to make sure everyone knows how and when.
Help for virtual meetings:

There are nearly 100 Parent Training and Information Centers (PTIs) and Community Parent Resource Centers (CPRCs) in the US and Territories.

These Centers are available to:

• Work with families of infants, toddlers, children, and youth with disabilities, birth to 26

• Help parents participate effectively in their children’s education and development

Find your parent center at [www.parentcenterhub.org/find-your-center/](http://www.parentcenterhub.org/find-your-center/)
RECENT NEWS & UPCOMING EVENTS

Register for Virtual Fundraising Breakfast

Online Learning Series / New Sibshops Schedule / Become a Support Parent / Covid Resources

Our offices are closed and our staff is working remotely. Please contact us by phone or email. Join our network by signing up for our E-Newsletter or following us on Facebook. We're better together!

Advocacy Alert! Submit Public Comments or Testify about Special Education Rules

Mitigating the Long-Term Effects of the Pandemic 10/19

October E-News

Disability in Vermont - Online Focus Groups

View All News / View All Events
2. How can parents plan for and participate in virtual IEP (Individualized Education Program) meetings?

Because of coronavirus, school closures, and social distancing, IEP teams are now meeting virtually, either in conference calls or via the Internet using web-based meeting platforms such as Zoom and Skype. While video and screen sharing can enhance engagement, they are not required. IEP meetings can be conducted using a conference line, which is accessible through a traditional phone line or through most virtual meeting platforms. Parents can ask that all documents are shared via e-mail or U.S. mail before the meeting. This new 6-page Virtual IEP Meeting Tip Sheet addresses these topics:

- Technology Tips for Participants
- Hosting Virtual IEP Meetings: Tips for Success (before, during, and after meeting suggestions)
- Common Questions and Answers About Hosting Virtual IEP Meetings
- Participating in Virtual IEP Meetings: Tips for IEP Team Members (before, during, and after meeting suggestions)
- Common Questions and Answers About Participating in Virtual IEP Meetings
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<td><img src="https://via.placeholder.com/500x500" alt="Clock" /></td>
<td>Be patient—technology may not work as intended. Assume that everyone is doing their best.</td>
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<td>Test out technology in advance, and make sure all devices are charged.</td>
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<td>Have a back-up plan ready in the event technology issues arise.</td>
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<td>Join the meeting about 10–15 minutes in advance to troubleshoot any technology issues.</td>
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<td>Actively listen and participate in the meeting.</td>
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<td>Set up a meeting space that reduces potential distractions to minimize background noise as much as possible.</td>
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<td>Ensure the security of confidential information before, during, and after the meeting.</td>
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<td>Turn off any notifications on your computer—they may show up on others’ screens.</td>
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<td>Use headphones or a headset with built-in microphone, when possible.</td>
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Evaluations & reevaluations

Specifics will vary by state, but generally similar to this information from Colorado

Timelines for initial evaluations when in person learning is suspended

• There are no waivers for initial evaluation timelines.

• School districts are encouraged to complete evaluations that do not require face-to-face assessment in a timely manner.

• Schools and parents may also work together to reach mutually agreeable extensions of time to allow for the completion of a sufficiently comprehensive initial evaluation for which a face-to-face assessment is necessary.

• Any agreement to extend the timeline for the completion of the initial evaluation should be well documented by the district and shared with the parent.
Evaluations & reevaluations

Specifics will vary by state, but generally similar to this information from Colorado

Timelines for initial evaluations when in person learning is suspended

- There are no waivers for reevaluation timelines.
- A reevaluation for 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.
- Districts should work with parents to reach mutually agreeable extensions of time.
- Any agreement to extend the timeline for the completion of the three-year reevaluation should be well documented by the district and shared with the parent.
- A reevaluation may be conducted through a review of existing data, and this review may occur without a meeting and without obtaining parental consent, unless it is determined additional assessments are needed.
- Reevaluations that require additional assessments but do not require face-to-face assessments or observations may take place during the suspension of in-person learning, if the parents consent.
Evaluations, reevaluations . . . and a note about Dismissals

**Dismissals from special education**

- Decisions to dismiss a student from special education services should not be determined due to an inability to complete a comprehensive reevaluation.

- If a comprehensive evaluation is not possible due to the suspension of in person learning, the school district should continue to provide special education and related services to the greatest extent possible until the necessary assessments can safely be completed and eligibility can be properly determined.

- The school district **should not** determine that a student is no longer eligible based on a reevaluation that is not sufficiently comprehensive.

Specifics will vary by state, but generally similar to this information from Colorado.
When using virtual learning, students enroll in a course that will be taught with an online platform. The students work completely online with their teachers providing content, instruction and feedback.

REMOTE versus VIRTUAL LEARNING

Remote learning (or distance learning) occurs when in-person learning cannot take place for a temporary period. The teachers shift their lessons to an online learning platform like Canvas or Google Classroom.
When a school/class switches to REMOTE . . .

there may be new rules that affect a student’s IEP.

Distance Learning

Are there new requirements related to Individualized Education Programs (IEP) and distance learning?

Yes. On June 29, 2020, Governor Newsom signed the 2020 Budget Act and accompanying budget-implementing legislation, including Senate Bill (SB) 98 (Chapter 24, Statutes of 2020). SB 98 included notable changes related to special education and distance learning. The CDE posted related guidance on the CDE website at https://www.cde.ca.gov/sp/se/ir/om071520.asp.

SB 98, Section 66, amended Section 56345 of the Education Code (EC) to require that Individualized Education Programs (IEP) include a description of the means by which the IEP will be provided under emergency conditions, in which instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than 10 school days. This description must be included in the development of each initial IEP or addressed during the regularly scheduled revision of an IEP (e.g., annual IEP), and must take public health orders into account.
How do compensatory services work?

What are they?

- Also called compensatory education, compensatory services are a legal remedy meant to compensate a student for lost services due to the failure of the school to provide a FAPE as determined in a judicial proceeding.
  - The key concept here is squaring up – not exceeding what was due or punishing a school.
- Students are not entitled to compensatory services as a matter of course; they have to be awarded by a court.
- The pandemic has disrupted everyone’s education. What a school decides to do, on its own, to catch students up for lost in-person class time is not an example of compensatory services.
  - Similarly, if parents lobby a school directly to offer “make-up” or “catch-up” or “recovery” services, those are not compensatory services.
- There is legal precedent for compensatory services to be provided to a student past the IDEA age-out point (age 21 in most states), but there is no guarantee.
How do compensatory services work?

The source of confusion about compensatory services is the label.

- There is no federal definition because education hearings are handled state-by-state, and compensatory services are inherently linked to those legal proceedings.
  - The outcomes of those cases don’t legally bind the whole country – just regions.
- Because COVID-19 is like nothing the education system has ever had to face, everyone has tried (and is still trying) to provide solutions to families as quickly as possible. And that means public officials, school personnel, and families are using terms interchangeably that aren’t necessarily the same thing. Even the U.S. Department of Education has done this with compensatory services.

The take-home message here is to be careful. It’s important for families to know that compensatory services exist and, very generally, how they work. There is a risk associated with how you speak about them because the person you’re speaking with might misunderstand your intentions.
How do compensatory services work? Examples from the states

Massachusetts Department of Elementary and Secondary Education is asking schools and districts to prioritize specific students when determining the need for compensatory services. These specific groups of students are:

- Students with complex and significant needs:
  - students already identified as “high needs” through the IEP process on the form entitled “Primary Disability/Level of Need-PL 3.”
  - students who could not engage in remote learning due to their disability-related needs or lack of technology;
  - students who primarily use aided and augmentative communication (AAC);
  - students who are homeless;
  - students in foster care or congregate care; and
  - students dually identified as English Learners;
How do compensatory services work?
Examples from the states

(Continued)

• Preschool-aged children whose eligibility evaluations or start of preschool special education services have been delayed or interrupted; and

• Students who turned 22 during the suspension of in-person education or who will turn 22 during the first three months of the 2020-21 school year, and whose transition programs were interrupted or suspended before they aged out.

The Department has recommended that parents and the IEP Team work together to make decisions about COVID-19 Compensatory Services for students in these high priority groups by December 15, 2020.
How do compensatory services work?
Examples from the states

Q1: What are COVID-19 Recovery Services?

COVID-19 Recovery Services are services that are provided in addition to services and supports identified in an eligible individual’s IEP or IFSP. They are designed to address skills and content that was not taught, as well as the compounding effects of those skills not being taught due to closures related to COVID-19. Provision of COVID-19 Recovery Services is not an admission or concession that a public agency violated the IDEA. Recovery Services are intended to recoup lost skills or regain progress.

Q2: How do COVID-19 Recovery Services differ from compensatory education services?

Compensatory services are awarded based on a violation of IDEA and must be provided within a year of the violation. COVID-19 Recovery Services are determined on a “no fault” basis because the pandemic was not the fault of any of Iowa’s school districts or AEAs. Provision of COVID-19 Recovery Services is not an admission or concession that a public agency violated the IDEA.
COVID-19 information and resources
COVID-19 Information and Resources

Autism Speaks is closely monitoring developments around COVID-19 (coronavirus). Click here for resources for the autism community.

Enhancing lives today and accelerating a spectrum of solutions for tomorrow

Get to know the new Autism Speaks
Access to Reliable Information

www.AutismSpeaks.org
Autism Response Team
Frequent Accommodations and Supports: Remote Learning

• Learning the new e-learning vocabulary
• Listen to your child and conduct a self-assessment compared to the school plan
• Peer mentor or school mentor supports delivered online
• Modified supports to help students decode complex instructions
• Increasing engagement and attention through student preferences
• Getting the social and sensory support needed virtually
COVID-19 Information and Resources

The Autism Response Team responds emails and phone calls
Call ART at 888-AUTISM2 (English) or 888-772-9050 (Español)
Help@AutismSpeaks.org

Autism Cares Grants specifically to help families with financial needs
Contact Autism Response Team to apply for a grant.

COVID-19 pages
• We have general resources, resources for families, healthcare providers, educators, and people with autism.
• Resources are updated weekly and posted on social channels as well as our website

www.autismspeaks.org/covid-19-information-and-resources
Autism Response Team

The Autism Response Team (ART) is an information line for the autism community. Our team members are specially trained to provide personalized information and resources to people with autism and their families.

How to contact ART
Call our toll-free number or send us an email – we’re available Monday through Friday between 9 a.m. and 5 p.m. in all time zones. Live chat is also available between 9 a.m. and 5 p.m. ET.

Your call will be routed to the team member for your region. We also have a dedicated Spanish language toll-free number.

Toll-free: 1-888-AUTISM2 (1-888-288-4762)
En Español: 1-888-772-9050
Email: help@autismspeaks.org
Autism Speaks is enhancing lives today and accelerating a spectrum of solutions for tomorrow.

Thank You