



CHANGING LIVES THROUGH EDUCATION ADVOCACY

A Guide to Special Education Services in California During COVID-19 April 2020

1. What exactly is the Coronavirus (COVID-19)?

COVID-19 is a new disease caused by a virus that has not previously been seen in humans. It causes mild to severe respiratory illness with fever, cough, and difficulty breathing. Some people have the disease but have no symptoms.

2. Why are schools closed?

Schools are closed because the virus is highly contagious. Children and adults without symptoms can have the disease and spread it to others who may develop very severe symptoms.

3. How long will schools be closed?

The Governor has announced that schools will be closed through the end of the school year. There is a possibility that schools will not re-open until the fall.

4. What about children who have special needs? Does my child have a right to special education services while school campuses are closed?

Yes. Even during national emergencies students with special needs have a right to a Free Appropriate Public Education (FAPE). (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)).

IDEA provides for flexibility during this unprecedented situation. Where there can be no 1:1 contact between teachers/therapists and students, adaptations must be made. The provision of FAPE may include, as appropriate, special education and related services provided through distance instruction including virtually, online, or telephonically. While schools may not be able to provide all services in the same manner that they are typically provided, it's clear that schools must give students with disabilities learning opportunities which are *comparable* to what typical students are getting. Giving the same instruction to typical students as students with disabilities is not *comparable* because our children don't learn the same way. (See OSEP's March 21, 2020 guidance titled "Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities;" OCR Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students (March 16, 2020); OCR Short Webinar on Online Education and Website Accessibility Webinar (Length: 00:07:08) (March 16, 2020); Questions and Answers on Providing Services to Children with Disabilities During the COVID-19 Outbreak (March 12, 2020); Fact Sheet: Impact of COVID-19 on Assessments and Accountability under the Elementary and Secondary Education Act (March 12, 2020); and Letter to Education Leaders on Preventing and Addressing potential discrimination associated with COVID-19).

5. Can the District hold an IEP while schools are physically closed?

Yes, the District can hold the annual, triennial and amendment IEP just as when in-person learning is occurring. (U.S. Department of Education, Office of Civil Rights Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students (March 16, 2020)).

6. Do all IEPs have to be amended in order to provide for alternative/distant learning during school closures?

No, not all IEPs will need to be amended to provide for alternative/distant learning during school closures. The IEP that was in effect at the time of physical school closure remains in effect, and schools should, to the greatest extent possible, continue to provide the services called for in those IEPs in alternative ways. (See California Department of Education Special Education Guidance for COVID-19 at <https://www.cde.ca.gov/ls/he/hn/specialedcovid19guidance.asp>).

However, there may be instances when amending the IEP to reflect the change to distance learning might be necessary and/or appropriate. Schools may convene an IEP team meeting, or propose an IEP amendment where it is deemed necessary to address unique circumstances related to alternative service delivery. (See 20 USC 1414 (d)(4)(A); 20 USC 1414 (d)(3)(D); 34 C.F.R. § 300.324.) Parents too may request an IEP meeting or propose an IEP amendment. (Education Code § 56343, subdivision (c)).

Please note, if an IEP is amended on account of the school closure, the IEP prior to the school closures should remain in effect when school returns. It is recommended to note this on the IEP if you agree with any amendment for distance learning.

7. Is a district precluded from providing services to students with disabilities in-person or in-home during the COVID-19 school closures?

No. In some exceptional situations, schools may need to provide certain supports and services to individual students in-person in order to maintain students' mental/physical health and safety for the purpose of accessing alternative/distance learning options. In such cases, service providers may be considered "Essential Critical Infrastructure Workers" under Executive Order N-33-20. To review the list of "Essential Critical Infrastructure Workers" see the California Coronavirus (COVID-19) Response website at <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>.

Alternative service delivery options should seek to comply with federal, state, and local health official's guidance related to physical distancing, with the goal of keeping students, teachers and service providers safe and healthy as the primary consideration. (See California Department of Education Special Education Guidance for COVID-19 at <https://www.cde.ca.gov/ls/he/hn/specialedcovid19guidance.asp>).

8. I'm a parent of a student with a disability and I have questions about my child's IEP? Where can I go for information and support?

Schools across the state are responding to the COVID-19 pandemic in different ways. Questions about your student's IEP and educational program in light of school site closures and the COVID-19 pandemic should be discussed with your school or district. (See California Department of

Education Special Education Guidance for COVID-19 at <https://www.cde.ca.gov/ls/he/hn/specialedcovid19guidance.asp>).

9. What if my child will be turning three during the school closures due to COVID-19. Does the school still have to develop an IEP if my child is eligible for special education services?

Yes, 34 C.F.R. §§ 300.101(b) and 300.124(b) require that an IEP or IFSP is developed and is being implemented by the child's third birthday. These requirements are not waived due to COVID-19 school closures. To meet this obligation, teams may conduct meetings virtually via telephone, videoconference, or other means.

If IEP teams meet virtually while school sites are closed due to COVID-19, how should parent consent be obtained? Is verbal consent sufficient?

34 C.F.R. § 300.9(b) states that "consent" means in part ". . .the parent understands and agrees in writing. . .". Thus, verbal consent alone is not sufficient. However, the IDEA does not specify how written consent must be obtained. Therefore, districts that wish to utilize electronic or digital signatures for consent may do so if they choose. (See Government Code § 16.5, and Title 2 of the California Code of Regulations, §§ 22000 et seq.).

10. Does my child have a right to evaluations during this crisis?

The district can provide evaluations during school closure but some evaluations will be very difficult to do well remotely. Also, although existing law establishes that districts have 15 days to propose an assessment plan after receiving a referral (EC § 56043(a)), the California Legislature has recently extended the 15 day timeline to account for days the school is closed due to COVID-19. (See CA SB117).

If evaluations were completed prior to distance learning, then IEP's still need to be held to review the results of the evaluations.

11. Will my child get a chance to get the instruction, evaluations and services they lost when school reopens?

When school reopens parents and advocates will be asking the district to make up for the services and instruction students with disabilities lost during this crisis. According to the California Department of Education, schools should plan to make individualized determinations, in collaboration with the IEP team, regarding whether or not compensatory education and services may be needed for a student. Consideration for compensatory services may include the students' progress toward goals and curriculum, as well as regression. (See U.S. Department of Education, Office of Civil Rights Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students (March 16, 2020)).

NOTE: Parents continue to have rights to challenge any decision regarding compensatory services. No changes have been made to the procedural safeguards. (See California Department of Education Special Education Guidance for COVID-19 at <https://www.cde.ca.gov/ls/he/hn/specialedcovid19guidance.asp>; see also <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Resources/SE-Coronavirus-Update/#%40ViewBag.JumpTo>).

12. What can I ask for at the IEP or 504 meeting?

In this unprecedented time, you should try and work with your local school district to develop a plan to implement as much of the current IEP that works for your child, considering any constraints imposed by social distancing. If necessary, the team may agree to make temporary changes for a time limited period during the pandemic, but make sure that the changes are temporary and the IEP returns to its prior state when school resumes.

You should tell the team whether or not your child is getting instruction and services which meet your child's needs. If your child is not learning well, make sure that is put in writing before you approve the IEP or 504 Plan. Many accommodations and modifications can be provided online, such as reading the content aloud (text to speech technology), extensions of time to answer and closed captioning. (Executive Order N-26-20; *See also* California Department of Education Special Education Guidance for COVID-19 at <https://www.cde.ca.gov/ls/he/hn/specialedcovid19guidance.asp>). Don't give your approval unless the plan meets your child's unique educational needs.

13. Does the school district still have 5 days to respond to a Parent's Request for Student records?

The school district must continue to provide parents with the right and opportunity to examine all school records (EC § 56504). However, pursuant to California Senate Bill 117 (SB 117), timelines for providing records are waived during the time a school is closed due to COVID-19 up until the time the school reopens and the regular school session reconvenes. Nevertheless, the California Legislature encourages districts to respond as expeditiously as possible to requests for records from parents or guardians during the closure. Moreover, under current federal law, the District is obligated to provide records no more than forty-five (45) days after the request is made. (See 20 U.S.C. § 1232g).

14. If the school refuses to give my child an IEP or 504 Plan which meets their needs during this crisis, what should I do?

The District is required to provide a Prior Written Notice form explaining why they refuse to give your child instruction and services which meets their unique educational needs. (See 20 U.S.C. § 1415). You should make sure your concerns are written in the Prior Written Notice and ask for a copy of it. If your concerns are NOT in the Prior Written Notice, then you should place your concerns and objections in a written letter or email to the school and save a copy.

15. Is there anything I should particularly watch out for at an IEP meeting?

Yes. Do not allow the school to change your child's classroom placement even if they say it is temporary. Do not allow them to change the placement to Hospital Homebound. Do not let anyone convince you to withdraw your child from public school (unless you want to) and to enroll them in homeschool because that would absolve the district of responsibility to educate your child. (See 20 U.S.C. § 1412).

16. During school closures due to COVID-19, do I still have the right to file a Complaint (under the Uniform Complaint Procedures) if I believe that a school district has violated federal or state laws regarding my child's educational program?

Yes, you still have the right to file a Complaint under the California Uniform Complaint Procedures (UCP). (5 CCR §§ 4600-4687). However, pursuant to California Senate Bill SB 117, the timeline for responding to your Complaint that is imposed upon the district will be extended by the length of time the school is closed due to COVID-19.

17. Is there anything I can do to protect the educational rights of my child? I keep hearing that all my child's rights will be waived.

On April 27, 2020, Secretary of State Betsy DeVos announced that she will NOT recommend that Congress waive the main requirements of special education law, including the Free Appropriate Public Education (FAPE) and Least Restrictive Environment (LRE) requirements of the Individuals with Disabilities Education Act (IDEA). The Secretary determined that during the COVID-19 pandemic, a student's access to FAPE can continue online, through distance education or other alternative strategies.

However, Congress still needs to make a final decision. Here's how you can help:

You can send a letter to your congress-people and the Governor of California explaining you do not want any changes to the law. Please email our U.S. Senators, Representatives and the Governor using the links below. It will only take a few minutes and all you have to say is "**SAY NO IDEA AND 504 WAIVERS FOR STUDENTS WITH DISABILITIES!**"

- Sen Dianne Feinstein: <https://www.feinstein.senate.gov/public/index.cfm/e-mail-me>
- Sen. Kamala Harris: <https://www.harris.senate.gov/contact/email>
- Governor Gavin Newsom: <https://govapps.gov.ca.gov/gov40mail/>
- Find your U.S. Representative's email address: <https://www.house.gov/htbin/findrep>

Learning Rights is a Los Angeles-based nonprofit legal services organization whose vision is for all children to receive a meaningful and equitable public education which empowers them to grow into happy, productive, and independent adults. Learning Rights fights to achieve education equity for underserved families in Los Angeles and surrounding counties by providing free and low-cost legal representation, advice, advocacy and training to children, their families and communities who, as a consequence of disability or discrimination, have been denied equal access to a public education.

If you are experiencing an education access issue and your question was not answered in this FAQ, you can reach out to our Education Rights Clinic at (213) 623-4794. To submit a request to the clinic online, go to www.learningrights.org/erc.