

## COVID-19 and Students with Disabilities Frequently Asked Questions (FAQs)

The closure of school buildings due to the COVID-19 pandemic has caused a particular hardship for many students with disabilities and their parents. Even though school buildings are closed through at least the end of the 2019-20 school year, public schools (including all New Jersey school districts, charter schools, renaissance schools, and approved private schools for students with disabilities ) are still required to provide educational services through virtual or remote means. The following are answers to questions regarding your child with a disability's educational rights during this time.

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### 1. Question: Is my child's Individualized Education Program (IEP) still in effect while schools are closed?

**Answer:** Yes. The core requirement of the Individuals with Disabilities Education Act (IDEA) -- for schools to provide a free appropriate public education (FAPE) in the least restrictive environment (LRE) -- has not been modified.<sup>1</sup> Unless an IEP is changed by parental agreement or in accordance with IDEA, the IEP in place at time of the Covid-19 school closure remains in effect.

If your child has an IEP, your child has the right to receive the special education

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<sup>1</sup> United States Secretary of Education Betsy DeVos notified Congress in a [report](#) dated April 27, 2020 that her Department was not asking to waive "any of the core tenets of the IDEA..." (p. 11).

and related services required by that IEP, as appropriate and to the greatest extent practicable, during the COVID-19 school closure. This includes specialized instruction, related services such as speech and language therapy, counseling, and occupational therapy, and accommodations (such as extra time to complete assignments) that are spelled out in the IEP.

## **2. Question: How will my child’s IEP be implemented during the Covid-19 School Closure?**

**Answer:** While school facilities are closed during the Covid-19 pandemic, New Jersey schools are required under [N.J.A.C. 6A:14-1.1\(d\)\(5\)](#) to provide special education and related services through electronic communications, virtual, or other online platforms, as appropriate and as required by your child’s IEP. These temporary modifications to the state’s special education regulations were adopted by the State Board of Education on April 1, 2020.

In [guidance](#) issued on March 5, New Jersey Department of Education (NJDOE) established its [regulations](#) for home instruction due to a temporary or chronic health condition (N.J.A.C. 6A:16-10.1) as a guidepost for districts in developing remote instruction plans. In [New Jersey Specific Guidance for Schools and Districts](#) on its website, NJDOE directs school districts to consult with parents to explore how students with disabilities have the necessary supports in place and can gain equitable access to home instruction. Educational services are to be consistent with the child’s IEP “to the most appropriate extent possible.” According to this guidance, IEP teams might “need to consider compensatory services when students return to school and IEPs may need to be adjusted accordingly.” See Answer to Question 7, below.

On April 14, 2020, New Jersey enacted [legislation](#) to establish that a day of virtual or remote instruction under a program approved by the Commissioner of Education shall be equivalent to a full day of school attendance for meeting graduation requirements and earning course credits. The law requires the Commissioner to define virtual and remote instruction and establish guidance for its use, including the required length of the instruction day, but that definition and guidance have not been issued to date. The law also recognizes speech-language therapy, counseling services, physical therapy, occupational therapy, and behavioral services as related services that may be delivered “through the use of electronic communication or a virtual or online platform.”

On May 5, 2020, the Commissioner of Education issued [guidance](#) requiring all New Jersey school districts, charter schools, renaissance schools, and approved private schools for students with disabilities to submit updated Public Health-Related School Closure Plans to their County Office of Education by no later than May 22, 2020. Those plans must detail how remote/virtual instruction meets the needs of students with disabilities “to the greatest extent possible, including accessible materials and platforms” and must be posted to each district or school’s website. NJDOE will use a [checklist](#) of required plan components to determine plan approval.

The United State Department of Education (USED) recommends, in [Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak \(March 2020\)](#), that IEP teams consider establishing a “distance learning plan” within a child’s IEP (Question & Answer A-5). This section of the IEP – which is also referred to as a temporary learning plan -- will describe the contingency plan that will be implemented during school closure. As of now, NJDOE has not required school districts to create distance learning plans for students with IEPs, although some may do so.

It may not be appropriate or possible to implement all portions of your child’s IEP through online instruction at home. In those cases, your child’s eligibility for compensatory education services should be considered by the IEP team, including you, when schools reopen. See Answer to Question 7, below.

### **3. Question: How much and what type of instruction is my child entitled to?**

**Answer:** The Commissioner of Education has not established a uniform requirement for the length or composition of a virtual or remote school day. The minimum standards established by the home instruction [regulations](#) that, according to the Commissioner, serve as a guidepost for instruction while school buildings are closed are: a written plan for the delivery of instruction; instruction by a certified teacher; instruction “for the number of days and length of time sufficient to continue the student’s academic progress and dependent upon the student’s ability to participate”; and for a student with a disability, instruction consistent with the IEP to the extent appropriate and that meets the New Jersey Student Learning Standards.

The [checklist](#) for the May 22 school closure plan for remote learning further requires the plan to be “designed to maximize student growth and learning to the greatest extent possible” and to “[d]ifferentiate instructional time, class assignments, independent work, and measures of student learning by grade band.”

**4. Question: What if my child does not have a computer (or other device) or internet service at home?**

**Answer:** If your child does not have access to the internet or a device such as a computer, please reach out first to your child’s school. Many schools are providing Chromebook laptops or other devices and establishing WiFi hot spots for their students. Some internet service providers are offering free months of internet access. If your child’s school is not responsive, you can contact the New Jersey Department of Education’s Special Education Ombudsman, Cynthia Hoenes-Saindon at 609-376-9060 or [specedombsman@doe.nj.gov](mailto:specedombsman@doe.nj.gov). If this does not resolve the problem, please contact Education Law Center at 973-624-1815, ext. 10 or [elc@edlawcenter.org](mailto:elc@edlawcenter.org).

According to [COVID-19 Updates and Frequently Asked Questions guidance](#) last updated by the Commissioner of Education on March 23, 2020, “If students with disabilities do not have access to internet connectivity to participate in remote or online home instruction, the IEP team will need to determine what compensatory education a student may require when their school district reopens” (p. 6). See Answer to Question 7, below.

**5. Question: Can I be required by my child’s school to sign a document waiving my child’s legal rights or releasing the school from any legal obligations in order for my child to receive educational services during the COVID-19 school closure?**

**Answer:** No. NJDOE released guidance on April 30, 2020, titled [Parental Waivers for the Delivery of Remote or Virtual Special Education and Related Services](#) to inform all school administrators that requiring the signing of a waiver or release of any claims as a condition to receiving services during the COVID-19 closure is prohibited. NJDOE states that this practice violates both IDEA and its own regulations in that “a key right guaranteed by both the IDEA and the state’s

regulation is the right to disagree with a school district's determination or action...utilizing various dispute resolution options."

If you signed such a waiver or release in order to obtain services for your child and your school district attempts to hold you to it, we suggest sending the school district a copy of NJDOE's April 30, 2020 guidance. You can also contact the New Jersey Department of Education's Special Education Ombudsman, Cynthia Hoenes-Saindon at 609-376-9060 or [specedombudsman@doe.nj.gov](mailto:specedombudsman@doe.nj.gov). If this does not resolve the problem, please contact Education Law Center at 973-624-1815, ext. 10 or [elc@edlawcenter.org](mailto:elc@edlawcenter.org).

**6. Question: What if my school district developed a distance or temporary learning plan for implementing my child's IEP during school closure and I disagree with it?**

**Answer:** If you disagree with the temporary learning plan, you should first raise your concerns with your child's IEP team by writing a letter or requesting a meeting. If your concerns are not resolved, you are free to use any of the dispute resolution procedures normally available under IDEA, such as requesting mediation, due process, or a state complaint investigation. However, you may be unable to pursue dispute resolution during the pandemic or you may decide that your concern can wait until normal operations resume.

According to NJDOE's April 30, 2020 [guidance](#), "school districts may not require additional parental consent prior to implementing a student's IEP through remote, virtual, or online platforms during COVID-19." Thus, you are not required to sign the temporary learning plan.

If you choose to sign the plan, you can let your school district know that you are preserving your child's rights, by including the following language in the temporary learning plan:

*" I agree to these services only until schools reopen after the COVID-19 pandemic. I do not waive my right to challenge the appropriateness of services being offered to my child and do not agree that these services constitute a free appropriate public education. I reserve my right to seek compensatory services for my child when school reopens."*

**7. Question: What if my child is not offered all of the services required by his/her IEP, or is not making progress on IEP goals or has lost skills?**

**Answer:** Bring the problem to your school district's attention to determine whether the problem can be corrected while schools are still closed. For students who cannot benefit from virtual related services, you may be able to ask your school district to contract with a provider who is offering in-home services. In addition, under [Governor Murphy's Executive Order 104](#), which closed the State's schools, there appears to be some discretion for school districts to provide in-person, 1:1 services on a case-by-case basis.<sup>2</sup> The Executive Order states:

Local school districts, charter schools, and renaissance schools, in consultation with the Commissioner of DOE, shall have the authority and discretion to determine home instruction arrangements as appropriate on a case-by-case basis to ensure all students are provided with appropriate home instruction, taking into account all relevant constitutional and statutory obligations.

Whether or not you have brought the problem to your school district's attention, when schools reopen, your child may be entitled to receive additional educational services called "compensatory education" to make up for IEP services that were not provided at all or because your child either did not make progress on IEP goals with the services offered, or even lost skills.

Federal [guidance](#) has made it clear that the inevitable delay in providing educational services or making decisions about how to provide those services, resulting from the global pandemic and school closure, requires IEP teams to "make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations."

In its April 30 [guidance](#), NJDOE similarly stated that the need for compensatory

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<sup>2</sup> As New Jersey slowly reopens, new Executive Orders are issued regularly by the Governor. Although child care services and youth summer camps will be resuming under [Executive Order 149](#), to date ELC is unaware of any Executive Orders that address the reopening of schools during the summer or fall.

education services “is an individual determination made by the student’s IEP team, including the student’s parent(s)/ guardian(s).” Courts in New Jersey’s judicial circuit have generally required lost hours to be made up on a 1:1 basis. NJDOE has recommended that school districts start to consider now whether student progress toward IEP goals has been affected by extended school closure, to determine whether compensatory services are needed.

This means that if your child’s IEP cannot be fully implemented, or if the remote learning services provided are not effective, your child’s IEP team should meet to decide what compensatory education is needed when schools reopen. If your school does not reach out to you by the time school buildings reopen, you should request an IEP meeting at your earliest opportunity to discuss compensatory education.

Note that your school district cannot use your failure to have provided written consent to virtual services as the basis for denying your child compensatory education. NJDOE’s April 30 [guidance](#) instructs school districts that they “may not require additional parental consent prior to implementing a student’s IEP through remote, virtual, or online platforms during COVID-19.”

#### **8. Question: What additional steps should I take during this Covid- 19 pandemic?**

**Answer:** Let your school district know, preferably in writing, if the services being provided are not working for your child. This could include asking for additional direct instruction by your child’s teacher. Document everything and ask for the help you believe your child needs or that you need to support your child’s learning. You should keep a log of which IEP services are being provided to your child and which are not, including the date each service began, its frequency, and duration. (To help you do this, **a sample log sheet is attached on p. 12.**) You should also keep a written record of: all communications received from your child’s school, school district or IEP team; what special education services were offered and were not offered to your child; and all of your efforts to communicate with school staff to address your child’s particular issues. You also want to keep copies of assignments completed by your child and indicate what level of support was required to complete each assignment.

Finally, as discussed below in the Answer to Question 9, we recommend that you try to measure any progress on your child's IEP goals and objectives or regression in your child's skills that you observe during the Covid-19 closure. All of these records could be extremely helpful to determine whether your child is entitled to receive compensatory education when school buildings reopen.

**9. Question: How do I document my child's progress on his IEP goals and objectives or regression in skills?**

**Answer:** Your child's IEP is supposed to have measurable goals and objectives, so we suggest that you try to track your child's ability to fulfill each goal and objective on a weekly basis. We recommend that you ask your child's teacher or Child Study Team case manager for any rubrics that the school uses to measure progress so that you can try to implement them at home. It would not be unreasonable to request parent training in data collection to assist you in doing so. Parent training is a recognized related service that can be included in an IEP when it is necessary for a child to achieve FAPE, as it may be when you are overseeing your child's program at home during the school closure.

Note that you can also videotape your child performing activities or schoolwork required by the child's IEP. Weekly videos of a particular activity may be a good way to demonstrate that a child's skills are not improving or have regressed.

Remember that your school district is still required to provide IEP progress reports. Progress reports from before the shut-down, which may show that your child was progressing satisfactorily and expected to achieve his or her goals and objectives, should be compared to more recent progress reports and your own data.

**10. Question: Are timelines still in effect during Covid-19?**

**Answer:** All timelines regarding IEPs are still in effect (such as the 60-day time requirement to complete evaluations and reevaluations and the annual requirement to have IEP meetings).

The US Secretary of Education has recommended that Congress grant a relatively narrow [timeline waiver](#) under IDEA that would extend the evaluation timeline for

children making the transition from early intervention services for infants and toddlers to special education services for school-aged children. Under this waiver, children receiving early intervention services will continue to receive services until health and safety factors allow the child to be evaluated face-to-face. This limited waiver provides that a toddler with a disability will not lose access to services once he or she turns 3 years old until an evaluation is completed and an eligibility determination made. As of now, Congress has not acted on the waiver request and NJDOE has not issued any guidance on children making the transition from early intervention services to special education for preschool children.

If your child has turned or will turn 3 while school buildings are closed, and a waiver for the continuation of early intervention services has not yet been granted, he or she should be referred to your public school district for an initial evaluation for special education and related services. See Answer to Question 12, below.

**11.Question: Will my child receive an Extended School Year (ESY) or a summer program?**

**Answer:** If your child’s IEP requires an ESY, your school district is obligated to provide one. Unless schools are determined safe to reopen, you should expect to be offered ESY services remotely.

A student whose IEP does not require an ESY may still be eligible to receive a summer program under two circumstances. First, if your child is entitled to compensatory education services (see Answer to Question 7), those services can be requested and provided when school is otherwise not in session, including during summer break. Second, your school district will be receiving federal funds that can be used to create remediation programs for students with disabilities and other vulnerable students. You should ask your school district whether it will be using Coronavirus AID, Relief, and Economic Security (CARES) Act fund to offer remediation programs over the summer.

**12. Question: What if my child needs to be evaluated during school closure?**

**Answer:** You may continue to make written requests (if possible, and if permitted

by your school district's policy, by email) for a initial evaluation, re-evaluation, or independent educational evaluation (IEE) for your child with a disability, if those are needed while school buildings remain closed. Those requests should go to the school district's Director of Special Education and/or your child's case manager. If your child has been receiving early intervention services, your child should be referred to your school district for an initial evaluation for special education and related services at least 120 days before your child's third birthday.

With regard to initial evaluation requests, a meeting should be scheduled with 20 days, by telephone or video conference, to determine whether an evaluation is warranted. If evaluations cannot be conducted remotely, sufficient information may still be available to make a determination of eligibility, pending testing when schools reopen. If a determination of eligibility is delayed, the student may be entitled to compensatory education if eventually found eligible for special education.

**13. Question: Are mediations and due process hearings still being done during the Covid-19 pandemic?**

**Answer:** Yes. Mediation and due process hearings are being conducted remotely using telephone and video conferences. However, to date, only a small number of due process hearings have been conducted remotely, and there is a question about whether hearings will proceed in this manner if one party objects. In ELC's view, a parent has the right to ask that a hearing be postponed until it can be conducted in person, but a school district does not, since school districts do not have the same rights under IDEA as parents.

**14. Question: Who is responsible for providing education to students with disabilities attending schools outside of the school district?**

**Answer:** It is the responsibility of the sending district to ensure students with disabilities attending out-of-district placements are provided with instruction during school closures consistent with the student's IEP to the greatest extent possible. This includes in-state and out-of-state approved private schools for students with disabilities, county educational services commissions, special services school districts, Naples placements, regional day schools, and other school districts. School districts should collaborate with the student's school of attendance regarding the nature and delivery of instruction.

**15. Question: I have been calling and emailing my case manager regarding my child's IEP services and not getting any response.**

**Answer:** If your child's school is not responsive, contact your school district's Director of Special Education. If there is still no response, you can contact the New Jersey Department of Education's Special Education Ombudsman, Cynthia Hoenes-Saindon at 609-376-9060 or [specedombudsman@doe.nj.gov](mailto:specedombudsman@doe.nj.gov). If this does not resolve the problem, please contact Education Law Center at 973-624-1815, ext. 10 or [elc@edlawcenter.org](mailto:elc@edlawcenter.org).

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**Tracking Your Student's Special Education Service Delivery Every Week**

Date	How was your student taught?	Who provided instruction and for how long?	What subjects did the Special Ed teacher teach?	What other services did your student get?	Did your student get their accommodations?	Notes (e.g., what went well or didn't go well?)
<b>Monday</b> ___/___/20	Online/Video (Google Classroom, ZOOM, etc.) By phone Work packets Not at all Other _____	Special Ed Teacher ____hrs ____min Regular Ed Teacher ____hrs ____min No one	Reading Writing Math Social/Emotional Other _____ None	Speech/Language Occupational Therapy Counseling Other _____ None	All Some None <i>If some, list:</i>	
<b>Tuesday</b> ___/___/20	Online/Video (Google Classroom, ZOOM, etc.) By phone Work packets Not at all Other _____	Special Ed Teacher ____hrs ____min Regular Ed Teacher ____hrs ____min No one	Reading Writing Math Social/Emotional Other _____ None	Speech/Language Occupational Therapy Counseling Other _____ None	All Some None <i>If some, list:</i>	
<b>Wednesday</b> ___/___/20	Online/Video (Google Classroom, ZOOM, etc.) By phone Work packets Not at all Other _____	Special Ed Teacher ____hrs ____min Regular Ed Teacher ____hrs ____min No one	Reading Writing Math Social/Emotional Other _____ None	Speech/Language Occupational Therapy Counseling Other _____ None	All Some None <i>If some, list:</i>	
<b>Thursday</b> ___/___/20	Online/Video (Google Classroom, ZOOM, etc.) By phone Work packets Not at all Other _____	Special Ed Teacher ____hrs ____min Regular Ed Teacher ____hrs ____min No one	Reading Writing Math Social/Emotional Other _____ None	Speech/Language Occupational Therapy Counseling Other _____ None	All Some None <i>If some, list:</i>	
<b>Friday</b> ___/___/20	Online/Video (Google Classroom, ZOOM, etc.) By phone Work packets Not at all Other _____	Special Ed Teacher ____hrs ____min Regular Ed Teacher ____hrs ____min No one	Reading Writing Math Social/Emotional Other _____ None	Speech/Language Occupational Therapy Counseling Other _____ None	All Some None <i>If some, list:</i>	