

SPECIAL EDUCATION DURING COVID-19 PANDEMIC **FREQUENTLY ASKED QUESTIONS**

The COVID-19 pandemic has created a hardship on many parents and students with disabilities. This was created to answer the primary questions about special education that have arisen during the pandemic. The information provided below is for educational and information purposes only and thus should not be considered legal advice.

EDUCATIONAL AND RELATED SERVICES

IS MY CHILD ENTITLED TO SPECIAL EDUCATION WHILE SCHOOLS ARE CLOSED?

Yes. The Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act remain in full force during the COVID-19 pandemic. School districts are required to make sure the student's IEP or Section 504 Plan is followed so that the student can receive a free, appropriate public education (FAPE). For high school students, FAPE involves academic instruction plus transition planning and services to help prepare the student for life after graduation.

WHAT TYPE OF SPECIAL EDUCATION, RELATED SERVICES AND ACCOMMODATIONS IS MY CHILD ENTITLED TO DURING THE PANDEMIC?

Because of the State of New Jersey's social distancing requirements, IEPs and 504 Plans cannot be implemented in the same way as before the pandemic. School districts are temporarily replacing classroom instruction with online and other forms of remote instruction. Related services are also being provided remotely instead of in-person. Related services include speech therapy, occupational therapy, physical therapy, and counseling.

FAPE needs to be determined on an individual basis. While the delivery of services in a certain way might work for one student, it might not work for others. The parent and the district must work together. The team should come up with creative ways to educate the student. Here are some examples:

- American Sign Language interpreters or captioning provided for deaf and hard of hearing students
- The teacher, working from home, reading out loud classroom material inaccessible for a blind student
- Online access to school library database
- Modification of curriculum to allow student to complete assignments and projects at home

WHAT IF MY FAMILY CANNOT ACCESS SPECIAL EDUCATION SERVICES ONLINE?

The parent should reach out to the school district because many districts have or recently acquired laptops and other assistive technology devices. These devices can be loaned to families to allow for the students to access schoolwork provided online. Many districts have subscribed to online learning resources and can provide the password for access to those resources.

If you do not have Internet access at home, families should check with the local Internet provider because some of them are offering free or discounted Internet services for students during the pandemic.

CAN IEP MEETINGS STILL TAKE PLACE DURING THE PANDEMIC?

Yes. IEPs must be reviewed at least annually, or more often if necessary. IEP meetings can take place during the pandemic. The parent and the school district should work together to schedule IEP meetings either by telephone or through video conferencing. If the parent does not have the technology to video conference, the parent should let the district know. The district must find another way to hold the meeting so the parent can fully participate.

WHAT SHOULD HAPPEN DURING THE IEP MEETING?

It is strongly recommended that the student's IEP be kept as it is because it was already in place before the pandemic hit. That is the same IEP the parent and the school district would want to get back to once school returns to session. However, if the IEP that was in effect before the pandemic hit has expired or will expire shortly, then the new IEP needs to be written as if the pandemic never happened.

The IEP team should come up with some plan separate from the IEP to specifically address how the instruction, related services, and accommodations are to be given to achieve FAPE during the pandemic. The IEP team should also establish a way to keep track of educational services provided. The information should include:

- Date
- What therapist or teacher worked with the student?
- Was it a live session or recorded for the student to watch on their own?
- How long did the session last?
- What did they work on?

The IEP team should also have a plan to keep track of the amount of progress made toward the IEP goals and objectives. The way to keep track of the goals should be simple and clear for the parent to measure the educational progress at home. The parent might be asked to fill in a graph and/or a checklist to reflect the frequency (how many) and duration (how long) of the services provided by teachers and therapists online.

Some of the subscribed online learning resources already have a system of tracking assignment completions and test results. **Keeping track of progress or lack of progress made toward the goals is very important for the purposes of seeking necessary compensatory education once**

school reopens. Contact the school immediately if you are struggling with keeping track of the goals/objectives of the student.

IS MY CHILD ENTITLED TO COMPENSATORY EDUCATION ONCE SCHOOL RETURNS TO SESSION?

It depends on whether the student has received the necessary educational and transitional services and has made adequate progress toward the IEP goals and objectives during school closure. Compensatory education is determined on a case-by-case basis. This determination should not be made until all students return to school.

The whole idea behind compensatory education is to replace the educational services the student should have received. The goal is to place the student in the same position he or she would have been in, had the school district not failed to provide FAPE. **That is why it cannot be emphasized enough how important it is for the parent to document the services provided and how much the student has progressed during the pandemic.** A strong and organized record would help the parent's argument for compensatory education down the road.

IS MY CHILD ENTITLED TO EXTENDED SCHOOL YEAR SERVICES?

The decision for Extended School Year (ESY) services is made by the IEP team at the annual review meeting that usually takes place at the end of the school year. If the student qualifies for ESY, then he or she is entitled to receive that service during the pandemic.

ESY services are provided to students when school is typically not in session. This is often during the summer. The purpose of ESY is to maintain the student's skills and not lose the progress already made toward his or her IEP goals. The IEP team makes the decision to enroll a student in ESY if he or she would lose the skills learned throughout the school year (academic, behavioral, social) and it would be really difficult to gain those skills again.

If the social distancing requirements remain in effect, ESY services cannot be provided in the same way as they were prior to the pandemic. Parents need to work with the school district and come up with creative ways to provide ESY services. Accurate progress tracking during ESY is also crucial. (See the IEP meeting question above for tips!)

ESY should not be confused with compensatory education because ESY is about maintaining the student's progress while compensatory services enable the student to catch up because of the denial of FAPE. If the student did not receive appropriate services during ESY, then the student is entitled to compensatory education to address the failure to receive necessary services during ESY.

IS IT POSSIBLE FOR ESY TO BE OFFERED IN-PERSON THIS SUMMER?

It is possible that services for ESY will be in-person this summer. The new guidelines from New Jersey Department of Education (NJDOE) recognized the value of returning to in-person instruction. A school district can decide to offer ESY in-person **on or after July 6, 2020.**

Evaluations, re-evaluations, small group interventions, or related services might be conducted in-person. Districts who decide to resume in-person ESY must follow the standards for summer camp operations written by the New Jersey Department of Health. The districts have been asked to follow the standards from the Department of Health as closely as possible.

If a district decides that it would not be possible to meet summer program goals through in-person summer programming, the district may conduct ESY remotely or with a combination of remote services and in-person services

WHAT IF I DISAGREE WITH THE ESY DETERMINATION OF THE IEP TEAM?

Remember, you are a member of the IEP team. If a parent disagrees with the IEP team's proposal of the **type** of ESY services (in-person, remote, academic, transition skills, related services) or the **frequency** (how long, how many hours), the parent should put his or her disagreement in writing. Mediation or due process proceedings might be needed to resolve the dispute.

More information about mediation, due process, and complaint investigations can be found in the New Jersey Parental Rights in Special Education packet that is also available at [https://www.nj.gov/education/specialed/form/prise/RevisedParentalRights\(PRISE\).pdf](https://www.nj.gov/education/specialed/form/prise/RevisedParentalRights(PRISE).pdf).

WHAT CAN I DO TO PREPARE FOR THE CONVERSATION OF COMPENSATORY EDUCATION WITH MY CHILD'S IEP TEAM?

- **Make all requests in writing.**
- **Provide** the director of special education **notice** if you incurred costs to provide alternative academic or related services during the time school was closed.
- **Keep a record** of any skills your child seems to be losing or interventions you used to prevent a loss of skills.
- **Request a team meeting** once the school reopens to discuss changes to the IEP, home-based services, any evaluations that might need to be completed, or to review notes and progress from private providers.

WHAT HAPPENS TO MY RIGHT TO SEEK COMPENSATORY EDUCATION IF I MOVE TO A NEW SCHOOL DISTRICT?

The parent does not lose the right to seek compensatory education from the old school district for its failure to provide FAPE during the pandemic if the student moves to a new school district. To seek compensatory education, the parent needs to do one of two things:

- File for **mediation or due process** with the NJDOE to seek compensatory education → up to **two** years from the date of the old district's failure to provide FAPE; or
- File a **complaint investigation request** with NJDOE → up to **one** year from the date of the old district's failure to provide FAPE.

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WHOM SHOULD I CALL FOR ASSISTANCE REGARDING MY CHILD’S SPECIAL EDUCATION SERVICES?

You can contact Disability Rights New Jersey’s Intake Office anytime by way of telephone at 800-922-7233. If you are calling from either your cell phone or outside of New Jersey, you can only reach DRNJ at 609-292-9742. You may also send an e-mail to advocate@drnj.org.