

COVID-19 School Closures and Services to Students with Disabilities

The United States is currently experiencing a pandemic emergency due to the threat of novel coronavirus (COVID-19). On March 13, 2020, Governor Newsom signed Executive Order N-26-20 ensuring State funding for Local Educational Agencies (LEA) in the event of physical closure due to the threat of COVID-19. The Executive Order requires the California Department of Education (CDE) to issue guidance on several topics, including ensuring students with disabilities (SWD) receive a free appropriate public education (FAPE) consistent with their individualized education program (IEP) and meeting other procedural requirements under the Individuals with Disabilities Education Act (IDEA) and California law.

At this time, the federal government has not waived the federal requirements under the Individuals with Disabilities Education Act (IDEA). To review guidance from the USDOE titled "*Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak*," visit the USDOE website at <https://www2.ed.gov/policy/speced/guid/idea/memosdcitrs/qa-covid-19-03-12-2020.pdf>. The CDE and the California State Board of Education (SBE) are working with the United States Department of Education (USDOE) to determine what flexibilities or waivers may be issued in light of the extraordinary circumstances. Until and unless USDOE ultimately provides flexibilities under federal law, LEAs should do their best in adhering to IDEA requirements, including federally mandated timelines, to the maximum extent possible. LEAs are encouraged to consider ways to use distance technology to meet these obligations. However, the CDE acknowledges the complex, unprecedented challenges LEAs are experiencing from the threat of COVID-19. As such, the CDE is committed to a reasonable approach to compliance monitoring that accounts for the exceptional circumstances facing the state.

The CDE appreciates the difficult decisions that LEAs and families are faced with as we grapple with this unprecedented crisis. The CDE has formed a workgroup of special education practitioners and other experts to help brainstorm best practices that we plan to share in the coming weeks. In addition, resources for addressing the needs of students with disabilities are provided in this guidance and in the CDE's guidance on distance learning at <https://www.cde.ca.gov/ls/he/hn/guidance.asp>. We will update this guidance as necessary in response to any guidance from the U.S. Department of Education or waivers of any laws or regulations pertaining to special education services.

The following answers to frequently asked questions received by the CDE provides guidance on topics relevant to serving students with disabilities.

1. If an LEA offers distance learning for instructional delivery in lieu of regular classroom instruction during a school site closure for students, what is the obligation to implement the IEP for students with disabilities?

As a result of Governor Newsom's Executive Order N-26-20, schools will receive funding to continue delivering educational opportunities to students to the extent feasible through, among other options, distance learning and/or independent study. When an LEA continues to provide educational opportunities to the general student population during physical school site closures, the LEA must ensure that students with disabilities have equitable access to comparable opportunities, appropriately tailored to the individualized need of a student to ensure meaningful access, as determined through the IEP process to the extent feasible.

If the LEA can continue providing special education and related services as outlined in the IEP, or an agreed upon amendment to the existing IEP, through a distance learning model, they should do so. The LEA can also consider alternative service delivery options such as in-home service delivery, meeting with individual students at school sites, or other appropriate locations to deliver services. Further, LEAs are encouraged to work collaboratively with Nonpublic Schools and Agencies (NPS/As) to ensure continuity of services, including moving to virtual platforms for service delivery to the extent feasible and appropriate.

These alternative delivery options should seek to comply with federal, state, and local health official's guidance related to social distancing, with the goal of keeping students, teachers and service providers safe and healthy. Teachers and specialists should work collaboratively to ensure instruction is accessible for the student based on the student's individualized needs. Given the unprecedented situation created by the threat of COVID-19, exceptional circumstances may affect how a particular service is provided under a student's IEP. In such a situation, the IEP team will need to make individualized decisions regarding whether compensatory services are required when the regular provision of services resumes.

Further guidance on distance learning, including considerations for students with disabilities, can be accessed on the CDE website at <https://www.cde.ca.gov/ls/he/hn/guidance.asp>.

2. What is considered equitable access for students with disabilities?

When an LEA provides services to students during a school site closure, the LEA must provide equitable access to those services for students with disabilities, with services appropriately tailored to the individualized needs of students, to the greatest extent possible. When LEAs are providing instruction through a distance learning model to replace what would have been provided in the classroom, LEAs

must create access to the instruction for students with disabilities, including planning for appropriate modifications or accommodations based on the individualized needs of each student and the differences created by the change in modality (e.g. virtual vs. classroom-based). Educational and support services provided should be commensurate with those identified in the IEP for each student to ensure educational benefit.

For example, LEAs may consider the use of accessible distance technology, instructional phone calls, and other curriculum-based activities that have been scaffolded based on student need. More information on accessibility and distance learning can be accessed on the CDE website

at <https://www.cde.ca.gov/ls/he/hn/appendix2.asp>.

In some cases, it may be appropriate for LEAs to consider providing classroom-based instruction to small groups of students with disabilities that have extensive support needs, despite the fact that the school site has closed, consistent with federal, state, and local health directives related to COVID-19. Alternative service delivery options should seek to comply with federal, state, and local health official's guidance related to social distancing, with the goal of keeping students, teachers and service providers safe and healthy. There is no single service delivery method that will meet the needs of every student. Therefore, LEAs should consider employing a variety of service delivery options. The CDE has convened a work group of special educators to develop more specific guidance for operationalizing such strategies, including examples from California LEAs.

3. If distance learning is provided in some capacity but does not mirror the offer of FAPE in the IEP, will compensatory services be required once an LEA resumes the regular school session?

Once the regular school session resumes, LEAs 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. Educational need can be measured by assessing whether or not the student continued making progress in the general education curriculum, or alternative course of study specified in their IEP, or toward meeting their individualized IEP goals and/or if any regression occurred during the period of school site closure.

4. Is the CDE encouraging continued utilization of and payment to Nonpublic Schools and Agencies (NPS/As)?

Yes. California NPS/As provide critical programs and related services to students with disabilities. LEAs should work collaboratively with NPS/As to ensure continuity of services, including moving to virtual platforms for service delivery to the extent feasible and appropriate. In an effort to ensure that the full continuum of placements and service delivery options remains available to students and LEAs subsequent to these unprecedented school site closures, CDE encourages LEAs to

continue to use the services of NPS/As during school site closures, including distance learning options made available by NPS/As, so that NPS/As may continue to receive payment in accordance with pupils IEPs and the Master Contracts/Individual Service Agreements between LEAs and NPS/As.

5. When school sites are closed and no services or instruction are being provided for a period of time, can LEAs consider providing some special education services to some students? How should LEAs determine what services can or should be provided?

Yes. To be clear, CDE is not recommending this as an option. Consistent with Executive Order N-26-20, LEAs are continuing to receive ADA funding during school site closures so they will continue to provide services to all students, including students with disabilities. Should services be discontinued for a period of time, LEAs and IEP teams would be required to make an individualized determination as to whether compensatory services are needed once services resume.

At this uncertain time, it is imperative to keep the safety of students as the primary consideration for every decision made. As LEAs strive for equitable supports and services for students, in some exceptional situations, LEAs may need to provide certain supports and services to individual students with extensive support needs in order to maintain their mental/physical health and safety. The LEA may provide such services, even if the services are not available to all students with disabilities during a school site closure. As such, LEAs should make individualized determinations about the need to provide services to ensure the mental/physical health and safety of a student with a disability, even during a school site closure, if those services are able to be provided consistent with federal, state, and local health directives.

6. How will state and federal grants be impacted by school site closures (e.g. Alternative Dispute Resolution, Workability, Supporting Inclusive Practices, etc.)?

Federal and state grants already funded should continue with their program deliverables. In cases where grant deliverables cannot be provided, grantees should work with their CDE program and fiscal contact to determine next steps. If grants have scheduled in-person conferences, institutes, training, or workshops they should be rescheduled or delivered virtually. Any grant amendments or change in due date for expenditure reports will need to be done on a case by case basis due to the specific requirements of funding sources.

7. What is the impact of school site closures on special education monitoring timelines and processes?

At this time, the federal government has not waived the federal requirements under

the IDEA. The CDE and SBE are working with the USDOE to determine what flexibilities or waivers may be issued in light of the extraordinary circumstances. Until and unless USDOE ultimately provides flexibilities under federal law, LEAs should do their best in adhering to IDEA requirements, including federally mandated timelines, to the maximum extent possible. LEAs are encouraged to consider ways to use distance technology to meet these obligations. However, the CDE acknowledges the complex, unprecedented challenges LEAs are experiencing from the threat of COVID-19. As such, the CDE is committed to a reasonable approach to compliance monitoring that accounts for the exceptional circumstances facing the state.

In general, for purposes of determining LEA compliance with special education timelines, the CDE will consider the days of school site closure as days between the pupil's regular school session, similar to school breaks in excess of five days planned in the instructional calendar (e.g. Thanksgiving break). For annual or triennial IEP reviews that fall on a day when the LEA is closed due to COVID-19, the CDE will take the exceptional circumstances causing the delay into consideration for purposes of LEA compliance monitoring.

In addition, due dates issued by the CDE for Special Education Division monitoring activities, including Targeted Monitoring, Intensive Monitoring, and Significant Disproportionality have been extended for a minimum of two months from the date of this notice. The CDE will continue to evaluate the need for further extensions and will work with LEAs to be reasonable and accommodating given these exceptional circumstances. At this time, the USDOE has not extended the allowable Comprehensive Coordinated Early Intervening Services budget period of 27 months. If an LEA is having difficulty meeting timelines or has questions related to timelines, please contact your regional Intensive Monitoring Consultant. A list of regional consultants is available at <https://www.cde.ca.gov/sp/se/qa/fmtacncnt.asp>.

8. What is the impact of school site closures on state complaints and due process hearings under the IDEA?

Regarding the state complaint process, in light of widespread school site closures and the inability of LEAs to meaningfully respond to complaint investigations, the CDE will be extending current complaint investigation timelines for good cause by the length of any school site closure during the stated emergency. It is anticipated that once LEAs reopen and are available to participate in the investigation process, the 60-day timeline will recommence and both the complainant and LEA will be notified. The CDE will continue to receive complaints that allege violations of the IDEA and complainants will be notified of any delay that may impact the investigation.

Currently, California's system for due process hearings and mediation through the Office of Administrative Hearings (OAH) remains operational, although some processes and/or timelines may be impacted by widespread school site closures

and in order to maintain compliance with federal, state, and local health directives related to COVID-19. Updated information on the impact of COVID-19 on special education due process hearings can be accessed on the OAH's website at <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Resources/SE-Coronavirus-Update/#@ViewBag.JumpTo>.

9. What is the impact on services to students with disabilities served by Part C of the IDEA?

For information related to the impact of the COVID-19 response on services to students with disabilities, ages 0 to 3, served under Part C of the IDEA, please visit the California Department of Developmental Services website at <https://www.dds.ca.gov/corona-virus-information-and-resources/>

In addition, IDEA Part C and COVID-19 are addressed in guidance from the USDOE's Office of Special Education Programs, which can be accessed on the USDOE website at <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>.

10. Where can I find more guidance and resources related to serving students with disabilities, distance learning, and online accessibility?

- To review previous guidance related to COVID-19 and services to students with disabilities, issued by the CDE on March 13, 2020, visit the CDE website at <https://www.cde.ca.gov/sp/se/lr/om031320.asp>.
- For updated information and resources from the CDE related to the COVID-19 response, visit the CDE website at <https://www.cde.ca.gov/ls/he/hn/coronavirus.asp>.
- To review federal guidance from the USDOE titled "*Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak*," visit the USDOE website at <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>.
- To review federal guidance from the USDOE Office of Civil Rights on how to protect students' civil rights, visit the USDOE website at https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=go_vdelivery&utm_term.
- Guidance issued by the CDE on distance learning, including considerations for students with disabilities, can be accessed on the CDE website

at <https://www.cde.ca.gov/ls/he/hn/guidance.asp>.

- For research on how online learning can be made more accessible, engaging, and effective for K-12 learners with disabilities, visit the Center on Online Learning and Students with Disabilities webpage at <http://www.centerononlinelearning.res.ku.edu/>.
- Common Sense Media has curated a list of the Best Special Education Applications and Websites based on recommendations by educators who work with students with disabilities, which can be accessed on the Common Sense Media website at <https://www.commonsense.org/education/top-picks/best-special-education-apps-and-websites>.
- The Council for Exceptional Children (CEC) has developed COVID-19 Information for Special Educators, including a forum for members on how to adapt IEP services during school closures, which can be accessed on the CEC website at <https://www.cec.sped.org/~media/Files/News/A%20Message%20on%20COVID19%20Supporting%20Students%20with%20Exceptionalities.pdf>.
- The Council of Administrators of Special Education (CASE) has developed a resource page for Special Education Administrators, which can be accessed at <https://docs.google.com/document/d/1zEH-ggchSI7sRQy5lpPEC0FaP4Vw5Wm0uUooruNFmrl/preview>.
- The [State Educational Technology Directors Association](#) (SETDA) offers strategies and resources for ensuring that online learning supports students with disabilities, which can be accessed on the SETDA website at <https://www.setda.org/main-coalitions/elearning/accessibility/>.