
May 11, 2020 (UPDATED)

Oregon's Extended School Closure Special Education Guidance

FREQUENTLY ASKED QUESTIONS:
REGARDING SPECIAL EDUCATION IN LIGHT OF
THE CORONAVIRUS (COVID-19) OUTBREAK



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Acknowledgement

We wish to acknowledge that our guidance has been informed by educators and other leaders in Oregon and across the nation who have been critical thought partners. In the context of shared thinking and problem solving, our own thinking and planning has been enhanced. We appreciate the collective effort, as we rise to the challenge of serving our students and families during school closure. We are stronger together.

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Summary

The purpose of this document is to clarify and provide guidance for special education leaders and other interested parties regarding the requirements of the Individuals with Disabilities Education Act in light of the COVID-19 outbreak. This document is an update to an earlier version that was released on March 18, 2020 and supersedes that version.

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IDEA Part B: School Age Special Education and Early Childhood Special Education Specific Questions

1. Under the “Distance Learning for All” instructional plan for Oregon students, what is the obligation to implement the IEP/IFSP for students with disabilities?

As a result of Governor’s Executive Order 20-08 and the “Stay Home, Save Lives” order, schools will receive funding to continue delivering educational opportunities to all students through distance learning. The district/school/program 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/IFSP process to the extent feasible during the closure. If the district/school/program can continue providing special education and related services as outlined in the IEP/IFSP, or an agreed upon amendment to the existing IEP/IFSP, through a distance learning model, they

should do so. The IEP team can also consider alternative service delivery options during this time. The Department expects reasonable accommodations and approaches to the provision of FAPE, and recognizes SDI may look significantly different while schools remain closed.

These alternative delivery options should seek to comply with federal, state, and local health officials' 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.

SEAs, LEAs, schools, and ECSE programs must ensure that, to the greatest extent possible, each student who experiences a disability can be provided the special education and related services identified in the student's IEP/IFSP developed under *IDEA*, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (*IDEA*), and 34 CFR § 104.33 (Section 504))."

2. What is the district's or ECSE program's responsibility for providing FAPE if the student engages in homeschooling instead of participating in Distance Learning for All?

Home schooling for students who experience disability should be treated the same during Distance Learning for All as when schools are functioning normally. When a district receives notice that a parent intends to home school a child with a disability, the district shall provide written notice to the parent that it stands ready to provide a free appropriate public education if the child enrolls in the district. This notice shall be provided annually as long as (a) the child remains eligible for special education; (b) the child is exempt from compulsory education as a home schooled child; and (c) the child is not receiving special education and related services from the district (OAR 581-021-0029). The district must also offer an opportunity for an IEP meeting to consider providing special education and related services to the child with a disability in conjunction with home schooling. An IEP shall only be developed for a child with a disability if the IEP team determines that a free appropriate public education can be provided in conjunction with home schooling.

3. What if a parent does not want to receive some special education services during this period?

Parents are critical partners in the IEP/IFSP process and must always be afforded the opportunity to be a meaningful participant in the IEP/IFSP development process. Parent input should be intentionally sought and thoroughly considered by the IEP/IFSP team and the LEA responsible for FAPE. Particularly in light of current circumstances which require an unprecedented level of partnership between school and home in order to provide education, school teams are encouraged to partner with parents in determining how FAPE can be provided during Distance Learning for All.

However, for school age and early childhood special education, once the respective teams have reached consensus on the specific set of services and supports required to provide FAPE, the LEA has to provide those services. Because the LEA must provide FAPE, a parent cannot choose to receive some special education services and not others. It should be noted, though, that parents do need to consent to the initial provision of special education services and that their consent is voluntary. Therefore, if a parent does not wish to receive services during this time, they could revoke consent for the provision of all special education services. Such a decision would make the child a general education student eligible for all of the services and supports that any student in general education receives. However, at that point, the child would no longer be afforded any of the rights or protections in place under the IDEA. Parents retain the right to seek an initial evaluation at a subsequent time, but the child would need to meet eligibility criteria based on a current initial evaluation. LEAs should ensure that parents fully understand the implications associated with that decision.

Consistent with OAR 581-015-2730, Early Intervention services are provided only with parental consent. Parents may decline such a service after first accepting it, without jeopardizing other EI services. If the parents do not provide consent for a particular EI service or withdraw consent after first providing it, that service will not be provided. The EI services for which parental consent is obtained must be provided to the extent possible, given social distancing and other safety restrictions in place in response to the COVID-19 outbreak.

4. Is a district required to amend each student IEP/IFSP to reflect the shift to Distance learning for All?

No. Because the general education school setting has moved from our schoolhouse buildings or ECSE placement to a Distance Learning for All environment, it is not considered a change of placement for special education services to also take place at a distance. Under Distance Learning for All, districts must provide Free Appropriate Public Education (FAPE), to the extent possible, for each child with a disability eligible for special education. The work of the IEP/IFSP team is to create an individual plan based on the unique needs of the student while considering how their disability impacts their ability to access general education curriculum. However, IEP/IFSP meetings are not required for all students receiving special education to shift to Distance Learning for All.

General education, for all students -- including those who experience disability -- has fundamentally changed with the shift to Distance Learning for All. Therefore, IEPs and IFSPs will need to be reviewed in light of the district's Distance Learning for All plan to determine how services can be provided to ensure FAPE for each student. Districts and programs will then need to provide those services to the extent possible; these services will look different in this new context of distance learning. Services will not look the same as they do when students attend school. If through the review process, the district or program determines that FAPE cannot be provided per the IEP or IFSP consistent with the changes to general education, then an IEP/IFSP team will need to meet and review the IEP/IFSP and services.

At this time we do not anticipate that a large number of IEPs or IFSPs will need to be rewritten. However, ODE stands ready to work with districts to ensure they are able to meet students where they are in this difficult time.

5. How should the district/ECSE program track services and student progress with the Distance Learning for All Model, including IEP/IFSP services unable to be fulfilled?

School systems and ECSE programs should document modifications, delays, inability of service, and other changes to special education and related services provided to students with disabilities during school building/program closure. At minimum, this documentation should include the following:

- Date(s) provided
- Education/related service minutes (both offered and delivered)
- Service provided to student (both current and modified)
- Staff who provided the service
- Accommodation/modification provided to student, based on updated IEP/IFSP
- Student response to services and accommodations
- Notes

School systems/ECSE programs should record both the education and services offered and the actual services delivered to students who experience disabilities. This documentation will help school systems and ECSE programs navigate reporting requirements and determine appropriate compensatory education, if applicable, when school resumes.

6. How should districts, schools, and EI/ECSE programs address any lapses in required timelines due to the Statewide School Closure announced in response to COVID-19, including evaluation timelines?

If there is a lapse in a timeline, like an annual IEP/IFSP date, the district should 1) immediately provide services for the student upon re-opening of school, 2) provide the parent with Prior Written Notice describing the impact and reason for the situation, and 3) schedule a meeting as soon as possible to ensure the student's needs are met. The timeline for evaluation is 60 School Days from the time consent is obtained. Days when schools, districts, or ECSE programs are closed (e.g., during the Statewide School Closure announced on March 12 with the exception of ECSE programs that continued operations) do **not** count towards the timeline, similar to snow days. If the student is not present during the evaluation window after schools begin Distance Learning for All and special education service delivery on April 13, 2020, the district would note the attempts to conduct the evaluation, the reason for the delay beyond the required 60 days, and complete the evaluation when the student returns. Each district/program can make decisions regarding holding meetings previously scheduled. It will be critical to communicate this information to parents and families.

7. Is it an option to complete initial Individualized Education Programs (IEPs) or Individualized Family Service Plans (IFSPs) over the phone?

Parents must be provided with an opportunity to participate in meetings with respect to the identification, evaluation, IEP/IFSP, and educational placement of the child, and the provision of a free appropriate public education to the child. Districts and programs may offer to hold, and parents may choose to participate in, meetings by alternative means (e.g., phone calls or videoconferencing). Parent participation is outlined in OAR [581-015-2190](#) and OAR [581-015-2195](#).

Pursuant to 34 § CFR 300.324(a)(4) and 34 CFR § 303.342(b)(2), districts and programs are also able to amend IEPs and IFSPs without a meeting if the parent agrees. Such agreement must be appropriately documented. Best practice is for that agreement to be documented in writing and confirmed with the parent/guardian's and district representative's signature. However, OARs do not explicitly require parental signatures in these situations. If a district or program is able to sufficiently document agreement, they have met the requirement to make changes without an IEP or IFSP Team meeting.

8. Is there a consideration for Section 504 services that a school district should be making for students who are diagnosed with COVID-19?

Similar to students with an IEP, students eligible for support under Section 504 are protected under ADA from discrimination and exclusionary practices. If a student is diagnosed with COVID-19, the school team would need to meet to review 504 eligibility criteria to determine if accommodations/modifications are necessary. If determined appropriate, the school team would convene a 504 meeting to develop or revise and implement a plan.

9. Are there FERPA and HIPAA privacy issues that school officials should consider when working with health departments and other agencies?

OAR [581-021-0380](#)(1) permits an educational agency or institution to disclose personally identifiable information from an educational record to "law enforcement, student protective services, and health care professionals and other appropriate parties in connection with a health and safety emergency if the knowledge of the information is necessary to protect the health and safety of the student or other individuals."

10. What will home or hospital instruction for a student with COVID-19 look like within the Distance Learning for All model and how will you coordinate these services? Will these services look different than those offered to other students receiving home or hospital instruction?

There is no one specific way for home or hospital instruction to be provided for any student. The delivery of instruction for a student impacted by a medical condition must be individualized regardless of the underlying cause. The school or ECSE team would need to meet to develop a plan for access to instruction, determine the services that are required,

and implement the plan appropriately. Attention should be paid to coordination of care with community health service providers.

11. For students who may be diagnosed with COVID-19 who also experience a disability, are there FAPE related considerations with bullying that the student may have experienced or may experience after the pandemic is over, and if so, how will these be addressed?

School districts and ECSE programs continue to have an obligation to monitor the individual needs of students and address any issues that stand in the way of the ability of students to receive FAPE. It is important to closely monitor the well-being of students who have previously been bullied and to address the situation through the IEP/IFSP process.

12. If a student with a disability at high risk of severe medical complications is excluded from an ECSE program during an outbreak of COVID-19 after the closure, is the exclusion considered a change in educational placement subject to the protections of 34 CFR §§ 300.115 and 300.116 and 34 CFR §§ 104.35 and 104.36?

If the exclusion is a temporary emergency measure (generally 10 consecutive school days or less), the provision of services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available, is not considered a change in placement. During this time period, a student's parent or other IEP/IFSP team member may request an IEP/IFSP meeting to discuss the potential need for services if the exclusion is likely to be of long duration (generally more than 10 consecutive school days). For long-term exclusions, an LEA or ECSE program must consider placement decisions under the *IDEA's* procedural protections of 34 CFR §§ 300.115 – 300.116, regarding the continuum of alternative placements and the determination of placements. Under 34 CFR § 300.116, a change in placement decision must be made by a group of persons, including the parents and other persons knowledgeable about the student and the placement options. If the placement group determines that the student meets established high-risk criteria and, due to safety and health concerns, the student's needs could be met through homebound instruction, then under 34 CFR §300.503(a)(1), the public agency must issue a prior written notice proposing the change in placement. A parent who disagrees with this prior written notice retains all of the due process rights included in 34 CFR §§ 300.500-300.520.

For students who experience disabilities protected by Section 504 who are dismissed from school during an outbreak of COVID-19 because they are at high risk for health complications, compliance with the procedures described above and completion of any necessary evaluations of the student satisfy the evaluation, placement and procedural requirements of 34 CFR §§ 104.35 and 104.36. The decision to dismiss a student based on his or her high risk for medical complications must be based on the individual needs of the student and not on perceptions of the student's needs based merely on stereotypes or generalizations regarding their disability.

13. What activities other than special education and related services may and may not be provided with *IDEA* Part B funds both prior to and during a COVID-19 outbreak?

IDEA Part B funds may be used for activities that directly relate to providing, and ensuring the continuity of, special education and related services to students who experience disabilities. The same provisions of the Federal Uniform Grant Guidance regarding supplementing and supplanting apply to fund use in the Distance Learning for All model as applies to use of funds in school building settings.

For example, a district or ECSE program may use *IDEA* Part B funds to disseminate health and COVID-19 information that is specifically related to students who experience disabilities, to develop emergency plans for students who experience disabilities, or to provide other information to parties who may need such information, including school or ECSE staff responsible for implementing IEPs/IFSPs, parents of eligible students, and staff in alternate locations where special education and related services may be provided. Districts and ECSE programs, however, may not use *IDEA* Part B funds to develop or distribute general COVID-19 guidance or to carry out activities that are a part of the district's general education Distance Learning for All plan (e.g., general COVID-19 activities or materials for all students and staff). Additionally, districts and ECSE programs may not use *IDEA* Part B funds to administer future COVID-19 vaccinations to any students, including students who experience disabilities.

14. While a school, district, or ECSE site remains closed, but the school, district, or ECSE site has placed a student in a separate setting and the setting opens, must the LEA still provide transportation to the setting for school age or ECSE students and pay the daily rate to setting for services?

Yes, the goal is to establish and maintain continuity of service for students who experience disability. If the setting where the IEP/IFSP Team recommended placement services opens, the district or ECSE program should work to maintain current services. If there is a lapse in service, the team may need to consider compensatory education.

IDEA Part C: Early Intervention (EI) Specific Questions

15. Does the Office of Special Education Programs (OSEP) allow for a pause in EI IFSP services under circumstances such as a major outbreak?

From the Early Childhood Technical Assistance Center (ECTA): "Federal guidance has set the stage for providing continuity of learning, including the provision of Part C and Part B services. While federal guidance is being provided, it is most important to follow decisions made at state and local levels that have taken into account the context of each state, their communities and individual families."

Oregon EI/ECSE programs should continue IFSP services through distance learning. The Oregon Department of Education realizes there will be a small percentage of children whose needs cannot be met through distance learning and will need compensatory services.

“For students who did not receive early intervention services for an extended period of time, once services resume, the service coordinator and EI providers must determine if the student’s service needs have changed, determine whether the IFSP Team should review the student’s IFSP to identify whether any changes are needed, and consider whether compensatory services are needed. (20 U.S.C. 1436; 34 CFR § 303.342(b)).”

16. Families are canceling and rescheduling initial evaluations sometimes for much later dates due to concerns about COVID-19. What options do we have for conducting initial evaluations?

For EI, there are two possible options; 1) enroll the student with an interim IFSP, which allows services to begin immediately, but does not stop the 45-day timeline or 2) use evaluation tools that allow for parent reporting and conduct the evaluation using telephone or videoconference. Programs should make every effort to complete evaluations using distance measures. If an evaluation cannot be completed within the recommended timeline and is due to safety restrictions and the child being unavailable for evaluation, this would fall within the realm of “exceptional family circumstances”.

17. What precautions can be taken prior to home visits?

Staff should work with their supervisors to determine appropriateness of visits based on current state and county health recommendations and case specific circumstances.

18. Is it an option to complete initial Individualized Family Service Plans (IFSPs) over the phone?

Parents must be provided with an opportunity to participate in meetings with respect to the identification, evaluation, IFSP, placement of the child and the provision of appropriate EI services and transition to ECSE or other services. Contractors or subcontractors may offer to hold, and parents may choose to participate in, meetings by alternative means (e.g., phone calls or videoconferencing). Parent participation is outlined in OAR [581-015-2750](#) and OAR [581-015-2755](#). See also question #22.

19. Can providers offer tele-intervention to families who typically have in-person services? Can this switch happen temporarily without an IFSP review, to avoid disruption in service?

Yes. Services should be discussed with parents within a Distance Learning Plan (DLP). Programs have the option to use the DLP on ecWeb or another form of documentation. Send written prior notice to parents.

It is important for staff providing virtual home visits to have experience with this method of service delivery or receive appropriate training. All ODE guidance for related services provided via tele-health should be followed, including consent from parents.

20. Can all IFSP Services be provided via tele-intervention?

Yes. All EI services on the IFSP should continue through a distance learning plan to the extent possible. It is important for staff providing virtual home visits to have experience with this method of service delivery or receive appropriate training. All ODE guidance for related services provided via tele-health should be followed, including consent from parents.

21. Can a shift to virtual services happen temporarily without an IFSP review, to avoid disruption in service?

Yes, programs should discuss this with parents and create a Distance Learning Plan (DLP). Programs have the option to use the DLP on ecWeb or another form of documentation. Send written prior notice to parents.

22. How do we obtain the parent's signature on the IFSP if the meeting is conducted via phone or videoconference?

For parents of children birth to three, their signature indicates their understanding and consent to the IFSP plan and services. Parents/guardians may provide consent with an electronic/digital signature under three conditions:

1. The document identifies a particular person as the source of the electronic consent;
2. The document authenticates a particular person as the source of the consent; and
3. The document indicates such person's approval of the information contained in the electronic consent (34 C.F.R. § 99.30(d)).