Frequently Asked Questions
Regarding Special Education in Light of the Coronavirus (COVID-19) Outbreak

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.

Contact:
Candace Pelt, Ed.D., Assistant Superintendent
Office of Enhancing Student Opportunities
(503) 947-5702
candace.pelt@ode.state.or.us
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IDEA Part B: School Age and Early Childhood Special Education (ECSE) Questions

1. Is a district and/or school or ECSE program required to continue to provide FAPE to students who experience disabilities during a school closure caused by COVID-19?

During closures for schools, districts, and programs due to the COVID-19, where there are no other educational programs or educational services offered to the general student population (or in the case of ECSE, to all students in the program), schools, districts, and programs are not required to provide services to students who experience disability during that period of time, unless such services are specifically required by the student’s IFSP or IEP (e.g., Extended School Year services).

Once the school or ECSE program resumes, the district and/or school or ECSE program must make every effort to provide special education and related services to the student in accordance with the student’s Individualized Education Program (IEP), Individualized Family Service Plan (IFSP) or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504. The Department understands there may be exceptional circumstances that could affect how a particular service is provided.

In addition, an IEP/IFSP Team and, as appropriate to an individual student who experiences a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to make an individualized determination as to whether compensatory services are needed to make up for any skills that may have been lost because of an extended school closure.

If a district and/or school or ECSE program continues to provide educational opportunities to the general student population during a school closure (or in the case of ECSE, to some students in the program), the school or ECSE program must ensure that students who experience disabilities also have equal access to the same opportunities, including the provision of FAPE. (34 CFR§§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). 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. Must a district and/or school or ECSE program provide special education and related services to a student with a disability who is absent for an extended period of time because the student is infected with COVID-19, while the schools or ECSE programs remain open?

Yes. When a student who experiences a disability is classified as needing homebound instruction because of a medical problem, as ordered by a physician, and is home for an extended period of time (generally more than 10 consecutive school days), an Individualized Education Program (IEP) meeting or Individualized Family Service Plan (IFSP) meeting is
necessary to change the student’s placement and the contents of the student’s IEP/IFSP, if warranted.

Further, if the IEP/IFSP goals will remain the same and only the time in special education will change, then the IEP/IFSP Team may add an amendment to the IEP/IFSP stating specifically the amount of time to be spent in special education.

If a student with a disability is absent for an extended period of time because of a COVID-19 infection and the school or ECSE program remains open, then the IEP/IFSP Team must determine whether the student is available for instruction and requires homebound services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. In so doing, school and ECSE personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services.

The Department understands there may be exceptional circumstances that could affect how a particular service is provided.

If a student does not receive services after an extended period of time, a school or ECSE Program must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

3. Will students who miss school due to absences beyond school closure (whether they have been identified with the virus or not) require additional services or extended school year services?

These determinations will need to be made on an individual basis based upon the needs of the student. See Question 2 above.

4. May an IEP/IFSP Team consider a distance learning plan in a student’s IEP/IFSP as a contingency plan during the closure and after district, schools, and EI/ECSE providers reopen?

Yes. IEP/IFSP teams may, but are generally not required to, include distance learning plans in a student’s IEP/IFSP that could be triggered and implemented during any unexpected closures, including those due to a COVID-19 outbreak. Such plans would only be required if the IEP or IFSP team determined it was necessary in order to provide the student with FAPE. These plans give the student’s service providers and the student’s parents an opportunity to reach consensus as to what circumstances would trigger the use of the student’s distance learning plan and the services that would be provided during the closure. If developed, such plans may include the provision of special education and related services at an alternate location or the provision of online or virtual instruction, instructional telephone calls, and other developmental or curriculum-based instructional activities, and may identify which special education and related services, if any, could be provided at the student’s home. Districts, schools, and programs are not required to create a distance learning plan during the Statewide School Closure announced on March 12, but should implement any such plans that already exist.
5. **How will IEP/IFSP goals be measured if a student is out of school for an extended period of time after schools reopen?**

   The IEP/IFSP Team must meet to review the goals set for each student. If the student was not present to make adequate gains towards a goal, the team could consider modifying the goal, adjusting the timeline for goal attainment, or keeping the current goal while adjusting for services and instruction.

6. **How will evaluations be handled within legal timelines if schools or ECSE programs were to be cancelled or closed?**

   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) do not count towards the timeline, similar to snow days. If the student is not present during the evaluation window after schools reopen, 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.

7. **Should districts, schools, or EI/ECSE programs hold IEP or IFSP meetings during the school closure period?**

   Each district can make decisions regarding holding meetings previously scheduled. The IDEA does not require meetings during school closures. Any IEP or IFSP meetings scheduled while schools and programs are closed due to COVID-19, if cancelled, should be rescheduled once schools and programs re-open. It will be critical to communicate this information to parents and families.

8. **Is it an option to complete initial Individualized Education Programs (IEPs) over the phone?**

   Parents must be provided with an opportunity to participate in meetings with respect to the identification, evaluation, IEP, 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.

9. **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?**

   If there is a lapse in a timeline, like an annual IEP 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.

10. **For students who experience disabilities who already have compromised immune systems, are there additional precautions that should be taken in the school or ECSE setting?**
The Department recommends working closely with parents and health care providers, and using guidance from OHA to support students in classrooms. See the Department’s Communicable Disease Guidance for additional information.

When schools, districts, and ECSE programs are open, they should continue to offer a full day of services (or in the case of ECSE programs, the services offered) and provide the support needed for the student to continue to access educational services during this time.

11. 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.

12. 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.”

13. Will home or hospital instruction for a student with COVID-19 look different than it does for other students who receive home or hospital instruction and how will you coordinate these services?

There is no one specific way for home or hospital instruction to be provided for any student. The delivery of this instruction 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.

14. 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.
15. If a student with a disability at high risk of severe medical complications is excluded from school or 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.

16. 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. 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 (e.g., guidance on coordination of the provision of services in alternate locations as described in Question A-5) 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 not specific to students who experience disabilities (e.g., general COVID-19 activities 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.

17. If 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

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

OSEP’s Disaster Response Guidance includes health related disasters.

“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)).”

19. 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?

There are two possible options. The first is to enroll the student with an interim IFSP, which allows services to begin immediately, but does not stop the 45-day timeline. The second option is to use evaluation tools that allow for parent reporting and conduct the evaluation using telephone or videoconference.

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

EI staff are strongly encouraged to conduct a simple assessment prior to making home visits or having visits into the offices. In the assessment, ask:

- If anyone in the household is currently sick;
- Has anyone in the household been in contact with anyone known to have COVID-19;
- Does anyone in the household have underlying health conditions?
Staff will then work with their supervisors to determine appropriateness of visits based on these responses, the current county health department recommendations, and case specific circumstances.

21. 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.

22. 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, there is no need to change the IFSP if some visits will be offered via tele-practice. It is advisable to discuss this with the parents and document in meeting notes the reason for change and share those notes with the parent.

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

Yes. EI Providers are encouraged to find creative ways to provide continuity of services in relation to the COVID-19 virus. It is important for staff providing virtual home visits to have experience with this method of service delivery or receive appropriate training. If this option is offered to one family, it must be offered consistently to all families. However, please note that, unless the IFSP specifically requires it, EI services are not required during the Statewide School Closure announced on March 12.

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

Yes. This would not require a change to the IFSP. It would be important to discuss with parents, document this in notes, and share those notes with the parents.

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

During this state of emergency service providers may obtain verbal consent, document the consent and date obtained. Parents can then sign and date the IFSP at the next face-to-face visit.