

Supplemental Guidance on Community and Health Responsibilities Regarding FAPE in Relation to IDEA During CDL and Hybrid



Background

The COVID-19 pandemic has forced a shift in the delivery of education services into student homes. This shift has resulted in a situation where multiple agencies may be providing active supports to students and families experiencing disability. This has led to confusion in regards to the roles and responsibilities of agencies that provide in-home services. In particular, the responsibility of the local education agency (e.g., school district) versus the responsibility of attendant care providers (e.g., personal support workers and direct support professionals) funded through the Office of Developmental Disability Services (ODDS). To provide clarity, the ODDS published [guidance](#) to help families and the professionals that support them understand the role of ODDS-funded services during the 2020-21 school year. Similarly, this document provides clarity on when a school district has the responsibility to provide in-home services and is meant to ensure that districts are considering in-home services for low-incidence students who have historically been assigned more direct support either at school or at home. This guidance is designed to be used in conjunction with other previously released guidance documents, including [Ready Schools, Safe Learners Guidance 2020-21 \(RSSL\)](#), [Ensuring Equity and Access: Companion Guidance to RSSL](#), and [Comprehensive Distance Learning \(CDL\)](#), as well as the Planning for COVID-19 Scenarios in Schools toolkit. It is also issued in accordance with Governor Brown's Executive Order 20-29.

This guidance is meant to provide clarity related to a school district's responsibility to provide in-person services in a student's home environment. School districts employ a variety of staffing models to provide services to students. A district may utilize district staff or contract with an external community provider. This consideration may include contracting directly with a provider who is already working with the family and/or a parent or guardian themselves. The school district and each provider's agency(ies) may need to develop agreements specifying funding responsibilities for specific tasks being completed by the provider(s). School districts are encouraged to seek legal counsel for support in this process as needed. The school district remains responsible for the provision and oversight of all required services and supports identified in a student's Individualized Education Program (IEP) regardless of the staffing model utilized.

Role of School District In-Home Services

School districts are responsible for meeting the needs of all students and ensuring access to Free Appropriate Public Education (FAPE) for all students experiencing disability. The district responsibility for supporting student needs under IDEA during CDL must include a review of the applicability of a student's IEP during Comprehensive Distance Learning (CDL) or Hybrid Learning models. The review process must include family and/or student input.

In order to ensure FAPE, a district may need to consider providing in-home instruction services, related services, and/or accommodations.

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During the time for which a student is scheduled to participate in CDL or Hybrid Learning Model, the school district is responsible for all educational instruction, services, and resources. Per federal Medicaid regulations, ODDS-funded services are prohibited from providing these services (see below for more detail). These responsibilities may include the provision of:

- General Education
- Title Services
- Transportation
- Nutritional Services
- Providing technology for online learning
- Delivering instruction
- Delivering IEP Services
 - FAPE
 - Specially Designed Instruction
 - Accommodations/Modifications
 - Related Services (e.g., RN, SLP, OT, PT, MH...)
 - Progress Monitoring

Role of Office of Developmental Disability Services (ODDS)

ODDS-funded services, including attendant care, can only be used to support desired outcomes identified in a youth's Individual Support Plan (ISP). **ODDS-funded services cannot be used for educational assistance including instruction or any other services identified in the student's Individualized Education Program (IEP), whether at home or at the school.** This is a federal restriction on Medicaid services provided through ODDS, not a state or ODDS regulation.

- Attendant care includes monitoring, cueing, reminding, standby assistance, reassurance, redirection, hands-on assistance, and/or set-up assistance for a child to complete various activities throughout the day. These are called "activities of daily living" or "ADLs" such as dressing and eating and "instrumental activities of daily living" or "IADLs" such as meal preparation. In addition, attendant care can help with health-related tasks and positive behavior interventions. All these tasks are described in a child's Individual Support Plan (ISP). During a typical school year, attendant care cannot be provided during the school day. But this year looks different. In some circumstances, attendant care can be provided while a child is engaged in comprehensive distance learning through their local school district. See above list for clarification.
- An ODDS-funded provider cannot provide tutoring, home schooling, childcare, or instructional services. Their role in the home is limited to assisting with the ADL, IADL, health and behavior-related tasks that occur throughout the day and as indicated in the child's ISP.
- ODDS has [temporarily updated their rules](#) to allow for parents of eligible students to become a PSW for their child and receive ODDS reimbursement. This change does not

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impact the ability of a district to contract with a parent or otherwise staff in-home services and support.

The following scenarios have been provided by ODDS provide additional clarity related to the extent their services may support education programming:

- ❖ Rosa is 11 years old. She needs support with medication management, tube feeding, positioning, transferring, feeding and hydration support throughout the day. She is in school from 9 a.m. until 1 p.m., three days per week with several breaks in between. She needs near-constant supervision due to medical risks and has a highly trained Personal Support Worker (PSW). This PSW support can be delivered any time, even during her school day, due to the nature of Rosa’s medical and ADL/IADL needs. Rosa’s PSW’s schedule is determined by Rosa’s family and changes throughout the year as needed. ***Rosa’s PSW cannot assist Rosa with her math test, help her write an essay, provide hand-over-hand support to complete school assignments, or provide any other academic services. Those are the responsibility of the school district and may require parent/family support to be successful.***
 - The school district is responsible for the provision of services required for Rosa to continue to access FAPE during CDL. The school district must conduct a comprehensive review of Rosa’s IEP and/or other support plans to determine need for specific services in light of their current instructional model. Services may include in-person or virtual support including school instructional staff, nursing, OT, PT, SLP and other services. The school district is responsible for ensuring provision of all educational services that are required for the child to receive FAPE.
 - It is the school district’s responsibility to ensure all special education and related services required by Rosa’s IEP are provided (e.g., tube feeding). Districts can provide services directly, in coordination with other agencies, or through contract(s) with other personnel (e.g., the PSW who is already working within Rosa’s home to support ADL/IADL through ODDS funding). Funding for and the provision of all educational services that are required for the child to receive FAPE services is the obligation of the school district.

- ❖ Christopher is 17 years old. He is very independent and needs occasional reminders to brush his teeth, change his clothes, complete his chores, and wash his hands. He sometimes needs support with communication, such as understanding context and knowing how to respond appropriately. Christopher has an agency Direct Support Professional (DSP). Christopher is in a hybrid program, where he attends school in person two days per week, attends online two days per week, and has Fridays off. On the days where he is home and attending school online, Christopher’s DSP helps him get ready for the day by providing reminders and preparing his breakfast. **Then the DSP**

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clocks out, and Christopher navigates his online program independently, with a few challenges here and there needing additional help from his teacher. Christopher's dad works from home and is available in case of emergency. After online school time, Christopher's DSP returns and assists with chores and preparations. On Fridays, the DSP is with Christopher most of the day.

- The school district is responsible for the provision of all services required for Christopher to continue to access FAPE during CDL. The school district should conduct a review of Christopher's IEP and/or other support plans to determine need for services while receiving CDL. Services may include in-person or virtual support, including school instructional staff, or other services.

- ❖ Abby is nine years old. She has a positive behavior support plan, and needs frequent sensory breaks, opportunities for physical activity, reassurance, and reminders to keep herself safe throughout the day. She requires line-of-sight supervision at all times due to a history of self-injurious behaviors and property destruction. Abby is attending an online program, customized for her unique needs, for two hours per day. During online schooling, Abby's trained PSW offers redirection, reassurance, and notices when Abby starts to escalate and needs to take a quick break to move around and then come back to her computer. **Abby's PSW does not provide curriculum modifications, participate in educational decision making or act as an instructional assistant for Abby or her teacher. Abby's grandma is home during the day and provides educational support and homework help as needed.**
 - The School District is responsible for the provision of services required for Abby to continue to access FAPE during CDL. The school district should consider conducting a review of Abby's IEP and/or other support plans to determine need for services. Services may include in-person or virtual support including school instructional staff, or other services.
 - If Abby is unable to access FAPE with her current supports, the IEP team would need to meet to review Abby's current circumstances, the services and supports required by her IEP, and consider what changes may be needed to enable FAPE. Among other possibilities, the IEP team should consider whether in-home services are required.