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MARCH 2020

# Oregon's Extended School Closure Special Education Guidance

**DISTANCE LEARNING FOR ALL:  
ENSURING CARE, CONNECTION AND  
CONTINUITY OF LEARNING FOR STUDENTS  
WHO EXPERIENCE DISABILITY**



OREGON  
DEPARTMENT OF  
EDUCATION

*Oregon achieves . . . together!*

## Acknowledgement

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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.

Additionally, we wish to thank State Education Agency (SEA) leadership across the nation and the Council of Chief State School Officers. We wish to explicitly acknowledge Washington, whose Office of Superintendent of Public Instruction has served as a key partner and consultant. Additionally Kansas, California and Texas have contributed materials and resources that have influenced our thinking and planning.

## Introduction

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*This document is intended to be used in coordination with “Extended School Closure Guidance” to support Individualized Education Program (IEP) teams during school closure under the Governor’s Executive Order 20-08. The Department’s guidance during school closure centers on **Care, Connection and Continuity of Learning**. We urge school teams to focus first on the health, safety, and well-being of students and to prioritize this before compliance standards. While the IEP team must make considerations and plans to provide for the provision of Free Appropriate Public Education (FAPE), to the extent possible, the Department encourages flexibility and believes services will look significantly different while schools remain closed under the Executive Order.*

## Provision of Free Appropriate Public Education (FAPE)

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For school teams supporting students who experience disability, this is an especially challenging time. The work of the IEP team is to create a strong individual plan based on the unique needs of the student while considering how their disability impacts their ability to access general education curriculum. While schools will be closed, our Extended School Closure Guidance ensures that learning goes on. It will remain true, therefore, that IEP teams should consider the context of the general education setting, as distance learning, when making recommendations for Specially Designed Instruction, supplementary aids and services, and student progress towards goals. In this new learning environment, parents/families/caregivers will play a pivotal role in assisting students with distance learning. It is critical that caregiver capacity, schedules and availability to assist are considered in individual plans. Parents/families/caregivers have always been a required and critical part of the IEP team. Under the current closures, the Department believes parents/families/caregivers with schools and teams will be essential to the success a student experiences. The student’s IEP Team should consider:

- The definition of specially designed instruction, in the context of the district’s Extended School Closure Guidance plan.
  - “Specially Designed Instruction” (SDI) means adapting, as appropriate to the needs of each student, the content, methodology or delivery of instruction for the following purposes:
    - (1) To address the unique needs of the student that result from the student’s disability; and
    - (2) To ensure access of any student experiencing a disability to the general curriculum in this instance, the district’s Extended School Closure Guidance plan, so that the student can meet the educational standards within the jurisdiction of the agency that apply to all children.
- Related services in the context of what specially designed instruction (special education services) means within the district’s Distance Learning for All Plan.
  - Related services are developmental, corrective, and supportive services required to assist a child, who has been identified as a child experiencing a disability, to benefit from special education services.
- Supplementary aids and services, program modifications, and supports for school personnel in the context of “to enable children with disabilities to be educated with

children without disabilities to the maximum extent appropriate” (in this instance to participate in the district’s Continuous Learning Plan with their nondisabled peers).

## **Free Appropriate Public Education (FAPE) and Waivers**

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The Individuals with Disabilities Education Act (IDEA) does not allow for waivers of Free Appropriate Public Education (FAPE) and IEP teams should consider the unique needs of students when planning for distance learning. A district that is providing distance learning must also provide services for students who experience disability. The Oregon Department of Education (ODE) is working with the Office of Special Education Programs (OSEP) to determine what flexibilities or waivers may be issued in light of the extraordinary circumstances. Until and unless OSEP ultimately provides flexibilities under federal law, districts and schools should do their best in adhering to IDEA requirements, including federally mandated timelines, to the extent possible. Districts and schools are encouraged to consider ways to use distance technology and various methods of communication to meet these obligations as they must also continue to adhere to the Governor’s “Stay Home, Save Lives” order prohibiting in-person meetings.

ODE acknowledges the complex, unprecedented challenges districts and schools are experiencing during this time. As such, the ODE is committed to a reasonable approach to compliance monitoring that accounts for the exceptional circumstances facing the state. The Department has formed a workgroup of special education practitioners and other experts to help brainstorm best practices that we plan to share in the coming week for students with complex learning needs in this unique time. 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. Please note, if a topic is included in multiple rounds of guidance, the most current guidance will supersede prior guidance. Our FAQs will be updated frequently to reflect the most current information guidance.

### **Getting Started**

1. Districts and schools must develop distance learning plans to provide educational services to all students under the Governor’s Executive Order 20-08. Distance learning plans should be developed using tenets of a Universal Design Framework<sup>1</sup> to ensure that all students are considered when planning activities and lessons. This should be considered the general education services.
2. Districts and schools should review student IEPs in context of the district’s distance learning plan.
3. To the maximum extent possible, the school team should implement the IEP as written, including Specially Designed Instruction, Related Services, and Supplementary Aids and Services.

“If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with

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<sup>1</sup> Information on Universal Design for Learning can be found at [www.cast.org](http://www.cast.org).

disabilities also have equal access to the same opportunities, including the provision of FAPE.”<sup>2</sup>

4. School Placement can be considered, but the general education move to Distance Plans does not require or constitute a change in placement for the student with an IEP
5. Review Table 1 for recommended next steps, if the school team is unable to provide FAPE while schools remain closed under the Executive Order.
6. Districts should examine the effect of the closure on the student’s progress toward their IEP goals and review the guidance for tracking goals during the closure.

**Table 1**

If during the Extended School Closure and distance learning for all...	Then the IEP Team must ....
<ul style="list-style-type: none"> <li>● An IEP team determines the school/district cannot meet the requirements of the IEP as written</li> </ul>	<ul style="list-style-type: none"> <li>● Convene an IEP meeting, either virtually or on the phone, <b>or</b></li> <li>● Enter into a written agreement with the parent/guardian agreeing to amend the IEP. ODE has developed a <a href="#">parent input form</a> to assist with this process.</li> <li>● Review the IEP goals, SDI, Related Services, and Supplementary Aids and Services               <ul style="list-style-type: none"> <li>○ Amend the IEP for the current setting and context, <b>or</b></li> <li>○ Track and consider compensatory services once school resumes</li> </ul> </li> <li>● Provide the parent/guardian with Prior Written Notice addressing all changes.</li> </ul>

*\* Services described in the IEP that the district/school cannot meet in a distance learning environment can be due to a variety of factors including, but not limited to, lack of internet accessibility or lack of trained professional staff to deliver services.*

## Specific Guidance

### 1. Under the “Distance Learning for All” instructional plan for Oregon students, what is the obligation to implement the IEP 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 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 during the closure.

If the district/school 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

<sup>2</sup> 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](#).

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.

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

When a district/school provides services to students during a school site closure, the district/school 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 districts/schools are providing instruction through a distance learning model to replace what would have been provided in the classroom, districts/schools 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 enable progress appropriate in light of the child's circumstances.

For example, districts/schools may consider the use of accessible distance technology, instructional phone calls, and other curriculum-based activities that have been scaffolded based on student need.

## **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 school 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 are needed for a student. The need for such services can be assessed by, but is not limited to:

- Whether or not the student continued making progress in the general education curriculum during the school site closure;
- Whether progress was made towards the alternative course of study specified in their IEP, or toward meeting their individualized IEP goals, during the school site closure;

- Whether regression occurred during the period of school site closure that will take an inordinate amount of time for the student to recoup; or
- Whether any other extenuating circumstances exist that would require compensatory services to be provided in order to ensure the provision of FAPE.

**4. 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 the Governor’s Executive Order 20-08 to close schools and the inability of districts/schools to meaningfully respond to complaint investigations, the ODE 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 seven days after all relevant staff members have access to the building and are available to participate in the investigation process, the 60-day timeline will recommence and both the complainant and District will be notified. The ODE 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, Oregon’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.

**5. As IEP Teams are meeting during the Governor’s Executive Order to close schools, what should the IEP include for the dates of services?**

34 C.F.R. § 300.320(a)(7) requires that an IEP must include the projected date for the beginning of the special education and related services, and supplementary aids and services for the child, and program modifications or supports for school personnel. The IDEA does not define the term “projected,” however, projected generally means proposed, predicted or estimated. Therefore, because the start date for services is projected and not exact, this regulation has some flexibility. Further, the projected start date does not have to be a specific number, such as March 23, 2020. A projected start date can be a description that can be calculated and is clear to all parties, such as “this service is projected to start on the first day when school resumes and all children are in attendance at school for instructional purposes.” When not using a specific number for the projected date, IEP teams are reminded to include sufficient specificity in the IEP that all team members have the same clear understanding of the services and supports to be provided to the student.

Note that data reporting requirements for SPR&I have different requirements for the contents of an IEP from legal requirements. For the closure period, IEP teams do not need to include a specific date. Once school resumes, reporting and guidance under SPR&I will require the use of specific dates.

**6. Should an IEP Team send a Prior Written Notice for changes resulting from the closure of the Governor’s Executive Order 20-08?**

Prior Written Notice (PWN) has broad application. A PWN must be given to parents whenever a school district proposes any change to any matter related to identification, evaluation, placement, or the provision of a FAPE, or when a school district refuses a parent’s proposal regarding any of these matters (34 C.F.R. § 300.503). The United States Supreme Court has interpreted FAPE to mean an IEP has been reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances (Endrew F. v. Douglas County School Dist. RE–1, 580 U.S. \_\_\_\_ (2017)). In short, any change by a school district to the education program for a child with a disability requires a PWN. In an emergency situation, where all children are to be served virtually for a period of time, serving an exceptional child virtually for that same period of time is not a substantial change in placement or material change in services and does not require consent or a PWN. The district is simply responding to the Governor’s Executive Order to close school buildings and move to distance learning for an extended period of time. This was not a district or IEP Team decision.

This is similar to a contingency plan being created for a student during the time a student is in a juvenile detention center or psychiatric residential treatment facility. The district did not act to place a student in that environment. The district is simply recording within the contingency learning plan the way in which it will provide special education services to the greatest extent possible under the circumstances until the student returns to their typical educational environment. Because the decision to close school buildings was not the district’s decision, any distance learning plan developed for a student does not constitute a material change in services or a substantial change in placement.

**7. If IEP teams meet virtually during the Governor’s Executive Order to close schools, in order to conduct annual IEP reviews on time, how should parent consent be obtained for actions that require consent? Is verbal consent sufficient?**

34 C.F.R. § 300.505 permits a parent to choose to receive PWN and procedural safeguards (parent’s rights) by electronic mail communication if the school makes that option available. 34 C.F.R. § 300.9(b) states that “consent” means in part “...the parent understands and agrees in writing...” Thus, verbal consent is not permitted. However, the IDEA does not specify how written consent must be obtained. Therefore, schools that wish to utilize electronic or digital signatures for consent may do so if they choose. Options for electronic or digital signatures could include but are not limited to the use of applications such as HelloSign, DocuSign, Adobe Sign, or even a parent’s email reply to a PWN stating that they consent to the proposed action in the PWN and provide their printed name as a signature.

The Department provides guidance that parents/guardians may provide consent with an electronic 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)).

To meet condition one, the document must include a statement identifying the person providing the signature. For example, the document could include a statement such as: "I (Name of parent) am the parent of (Name of student), and I consent to:

\_\_\_\_\_." To meet condition two, there must also be something to authenticate that the person sending the signature electronically is the person named in the document. That could be accomplished by requiring that a parent respond to the request for consent using their own e-mail address (where the consent form was sent). Or, a district could send the request for consent to the parent electronically, and protect it with a password known only to the sender and the parent. The fact that the parent is able to open the request for consent and send a response is reliable evidence that it is the named parent who is responding. The third condition would apply to any request for consent, whether hand-written or electronic. The document must describe the action for which consent is being requested and include a statement that the parent's signature means the parent is consenting to that action.

**8. What should a district/school do if it cannot meet the requirement to reevaluate each student with a disability at least once every 3 years due to school closure?**

34 C.F.R. § 300.303(b)(2) requires school districts to ensure that a reevaluation of each child with a disability occurs at least once every 3 years, unless the parent and the school district agree that a reevaluation is unnecessary. There is no provision that allows for an extension of time. Further, it would be inappropriate and inconsistent with the law for the parent and school district to agree not to conduct a 3-year reevaluation because of administrative convenience or lack of time and resources. A school district would not be required to conduct a 3-year reevaluation only if one of the following occur:

- a. the parent refuses to provide consent for the reevaluation, or
- b. the parent and school district agree that the reevaluation is unnecessary

Whether a 3-year reevaluation would be unnecessary is an individualized determination and must be made based on the needs and unique circumstances of the child. Note that, when appropriate, any reevaluation may be conducted based on a review of existing data, if the IEP team determines that no additional data are needed to determine continued eligibility and the child's educational needs. This review of existing data must be done by the IEP team and must include input from the child's parents/guardian (34 C.F.R. § 300.305(a)(2)).

If the IEP team decides that no additional data are needed, parents/guardian must be notified of that determination, the reason for that determination, and the right of the parent to request an assessment to determine whether the child remains eligible and to determine the child's educational needs (34 C.F.R. § 300.305(d)).

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

- 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](#).
- To review federal guidance from the USDOE Office of Civil Rights on how to protect students’ civil rights, visit the [USDOE website](#).
- 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](#).
- 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](#).
- 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](#).
- The Council of Administrators of Special Education (CASE) has developed a [resource page for Special Education Administrators](#).
- The [State Educational Technology Directors Association](#) (SETDA) offers strategies and resources for ensuring that online learning supports students with disabilities.