

What your district is legally required to do right now!

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Disclaimer

- Covid-19 information is consistently changing and this presentation is only current as of today, November 2, 2020
- This presentation is for information purposes only and does not create an attorney client relationship

OSEP QA 20-01

- OSEP reminds SEAs and LEAs that no matter what primary instructional delivery approach is chosen, SEAs, LEAs, and individualized education program (IEP) **Teams remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities.**
- If State and local decisions require schools to limit or not provide in-person instruction due to health and safety concerns, SEAs, LEAs, and IEP Teams are not relieved of their obligation to provide FAPE to each child with a disability under IDEA.

OSEP QA 20-01- Question 1- What steps can an LEA take to ensure each child with a disability has an IEP in effect at the start of the 2020-2021 school year?

- Under 34 C.F.R. § 300.323(a), at the beginning of each school year, each public agency, which includes LEAs, must have an IEP in effect for each child with a disability within its jurisdiction. To ensure that an appropriate IEP is in place for each child, the LEA may need to convene a meeting of the child's IEP Team, which includes the individuals described in Q2, to determine whether any revisions to the IEP are needed. 34 C.F.R. § 300.324(b)(1).

OSEP QA 20-01- Question 4- If extended school year (ESY) services were unable to be provided during the summer due to the COVID-19 pandemic, what additional steps can public agencies take to make FAPE available to children with disabilities who require such services?

- We understand that some ESY services, particularly those that require direct, in-person contact, may not have been able to be delivered this past summer. In such instances, public agencies should consider providing ESY services to the child during the normal school year, during school breaks or vacations where appropriate to the child's needs and consistent with applicable standards.

OSEP QA 20-01- Question 6- What exceptions are available to an LEA in meeting the timeline requirement for conducting initial evaluations and IEP Team meetings when access to school buildings is limited or current health restrictions prevent face-to-face meetings?

- Under 34 C.F.R. § 300.301(c)(1), the initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation, or if the State has established a timeframe within which the evaluation must be conducted, within that timeframe.

OSEP QA 20-01- Question 7. How can LEAs conduct reevaluations to determine a child's continued eligibility for IDEA Part B when staff cannot conduct in-person meetings or evaluations due to the pandemic?

- Under Part B of IDEA, a reevaluation must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303(b)(2).

- Districts should investigate all appropriate tests and investigate that can do them remotely without impacting validity
- The assessments must be valid

Face Coverings

- Enforcement of face covering requirements could be a violation of FAPE if the child's disability or medical condition makes wearing a face mask impossible.
- Districts should make reasonable modifications to face covering policies, practices and procedures

Federal Guidance Procedural Safeguards

- Electronic Signature is Ok
- Must provide prior written notice
- Student records might be delayed

California on School Re-Opening

- Over the course of the pandemic, most schools will likely face physical closure at some point due to COVID-19. The Legislature and Governor Newsom enacted a budget that provided \$5.3 billion in additional funding to support learning, and set requirements to ensure schools provide rigorous and grade-appropriate instruction. Under newly enacted state law, school districts are required to provide:
- Devices and connectivity so that every child can participate in distance learning.
- Daily live interaction for every child with teachers and other students.
- Class assignments that are challenging and equivalent to in-person instruction.
- Targeted supports and interventions for **English learners and special education students**.

California Department of Education

- When an District continues to provide educational opportunities to the general student population during school closures, the District 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.

DOE- Covid-19 Guidance

- Must continue to provide special education services outlined in the IEP, but can do it with alternative delivery options. Need to be "commensurate" with IEP
- Not all IEPs need to be amended
- The district provide in-person support in certain exceptional situations. In-person support in order to maintain students' mental/physical safety for the purpose of supporting the student in distance learning. Behavioral health workers are included as essential workers as well as workers who provide support to vulnerable populations to ensure health and well-being include family care providers.

Distance Learning Laws

- June 29, 2020, Governor signed SB 98, which sets forth new distance learning requirements for both general and special education.
- SB 98 makes clear that Districts must offer in-person instruction to the greatest extent possible
- Distance learning may include: Interaction, instruction, and check-ins between teachers and students through the use of a computer or communications technology; Video or audio instruction in which the primary mode of communication is online interaction, instructional television, video, telecourses, or similar technology; and the use of print materials incorporating assignments that are the subject of written or oral feedback. (Educ. Code § 43500.)

Grades

- Grading is a local decision

- Districts can implement alternative grading systems
- Students with disabilities, any changes to learning strategies or grading policies should be appropriate and done with IPE

DOE- Covid-19 Guidance- Transition for 3 year old's

- Question: What should a district do if it has closed school sites due to COVID-19 and is unable to meet the obligation to have an IEP in effect for a child transitioning from Part C to Part B no later than the child's third birthday?
- Answer: "34 C.F.R. §§ 300.101(b) and 300.124(b) require that an IEP ...is developed and is being implemented [sic] by the third birthday of a child participating in Part C programs and who will participate in Part B preschool programs. The U.S. Department of Education has not waived or exempted this requirement. Either an IEP or IFSP must be developed and implemented by the child's third birthday. To meet this obligation, teams may conduct meetings virtually via telephone, videoconference, or other means."
- Districts must conduct IEP by third birthday. It is not as clear how to do assessments

LA County Guidance

- Schools can offer in-school services for small cohorts of students with Individualized Education Plans (IEPs) and children who are English Learners (EL) needing assessments and/or specialized in-school services starting September 14, 2020,
- Students on campus must be less than 10% of the total student body, and provided schools fully implement this protocol.
- Can do in-person assessments

Assessments

- Previously, SB 117, Section 8, tolled the timeline for Districts to issue assessments plans in response to a request for special education assessments until school reopened.
- It also tolled the timelines to respond to student records
- Unclear how long the tolling would last
- SB 820, signed on September 18, 2020, said the tolling in SB 117 are no longer extended for COVID-19 school closures after June 20, 2020
- Districts should be conducting assessments now

Assessments Questions Remain

- What was the district's responsibility where there was an assessment plan signed, and assessments started (or didn't start)
- When assessments will actually start
- What order districts will do assessments and how long will it take to make up all the assessments
- Will the district review files and actually send assessment plans

IEPs- Distance Learning

- SB 98, signed on June 20, 2020 adds new emergency distance learning component to IEPs
- IEP must include a description of the means by which the IEP will be provided under "emergency conditions" "in which instruction or services, or both, cannot be provided at the school or in person for more than 10 school days." (Educ. Code § 56345(a)(9).)
- The description must include: Special education and related services; Supplementary aids and services;
- Transition services; and Extended school year services.

Overview

- No waivers of the IDEA requirements
- Must conduct evaluations and reevaluations

- Develop IEPs in accordance with timelines
- Have IEP meetings
- If didn't not get ESY services, should get during RSY or other time
- Face covering policies need to be non-discriminatory
- Emergency Conditions in IEP

What We Should Be Doing

- Learning about how your child learns or doesn't learn and what your child knows or doesn't know
- Document, document, document- make a log of what receive during distance learning.
<https://docs.google.com/spreadsheets/d/e/2PACX-1vT-YpTXCTCoVBAZagWazZI3KkL2iWG5YYfSPGt6PYvRXzuQYWN1Oh-Bkj6hFYzcBamfjXoqQoof8je/pubhtml>
- Request an IEP and make specific request. Request curriculum and how to use it, request regular communication with special education teachers.
- Don't sign any waivers

Compensation Education

- DOE says that once regular school sessions resumes, District should make an individual determination, with the IEP whether or not compensatory education and services are need for a student
- Difficult to ask for comp ed now because don't know how long it will last and what exactly the child needs
- There have been OAH decisions granting compensation education and in person supports to children in special education

Compensation Education- How To

- Must demonstrate regression or the loss of learned skills
- Will want to look at the present levels of performance prior to school closing, compared to current present levels
- Regression must be related to the deficits in the IEP
- Are there services that were not provided during distance learning
- What was the degree and impact of regression
- Must document

LAUSD Opening

- Schools will increase one-on-one efforts
- Special education professional will conduct assessments, as well as in-person instruction in small groups- November 9
- Coaches will lead athletic conditioning outside for small cohorts- November 9
- Schools will provide extra supports for students experience homelessness and students part of foster care system- November 9
- School will expand supervision of children from high-needs family- Nov. 2 TK-8, Nov. 9 9-12

Questions

- If a child cannot learn effectively with the online platform what are my rights as a parent?
- I am puzzled how grades can be given during this time and threats if having to repeat classes.
- The teachers aim they can assess the children for various things, for example classroom participation. How is that a measure when there is no classroom?

Sources and More Information

- <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-procedural-safeguards-idea-part-b-06-30-2020.pdf>

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Legal Resources

- Amster Law Firm <http://www.amsterlawfirm.com/blog> and <http://www.amsterlawfirm.com/resources.html>
- Disability Rights California <http://www.disabilityrightsca.org/pubs/PublicationsIndex.htm>