



Q&A: Advocating for Students with Disabilities during the COVID-19 Pandemic
June 11, 2020

This Q&A provides additional information and links to helpful documents to address topics raised during The Arc@School's online roundtable with chapters of The Arc on April 30, 2020. For more information, contact Shawn Ullman at ullman@thearc.org.

1. Schools providing no services for any students

[US Department of Education guidance](#) makes it clear that schools cannot avoid their responsibility to educate students with disabilities by not providing any educational services to any students.

2. Generic "prior written notice"

When schools closed because of the pandemic, many schools sent all students with IEPs the same, generic prior written notice changing all in-person instruction to remote learning. If a school is required to close again in the future for more than a few days, they are likely to send these generic notices again. While a prior written notice that does not include an individualized determination of a student's services based on recent evaluation data does not meet the letter of the law and is likely a procedural violation of the IDEA, it is also unlikely that schools will be held accountable for such a notice because of the circumstances requiring schools to act quickly for the safety of all students and staff in circumstances like the current pandemic.

If parents are asked to sign anything "consenting" to the change in services to distance learning, they should very clearly indicate that they are consenting to distance learning only while schools are closed related to COVID, and the IEP in effect prior to school closure must be implemented as soon as schools reopen. Parents should also note that they reserve the right to request compensatory services needed to address any regression their children exhibit when schools reopen.

3. Virtual IEP meetings and parent participation

Federal technical assistance centers have created [several tip sheets](#) for holding and participating in virtual IEP meetings, which have a lot of good suggestions on how to ensure parent participation and convene an effective meeting. If a parent or school requests an IEP meeting to discuss the child's eligibility or services during school closure, schools should take at least the same measures to ensure parent participation that they do for in-person IEP meetings. They should make multiple attempts to provide notice in writing, by letter, email, or text, as well as phone calls.

While parents may not be able to physically sign any agreement that the parent and schools reach at the time of the meeting, schools should find a way to document the parent's consent. For example, they can have the parent confirm by email or text message. They can also mail final forms to the parent with a self-addressed, stamped return envelope for them to return with their signature.

4. IEP Amendments

Agreeing to an IEP Amendment that reduces services during this time creates an administrative burden for parents and schools, requiring IEP teams to meet and agree to amend the IEP again once schools reopen. IEP Amendments with reduced services could also make it more difficult for parents to request compensatory services for regression that is identified when schools reopen. Therefore, it is not recommended that IEP teams address changes in services to provide distance learning and needed accommodations through an IEP Amendment.

Many schools are creating "interim service plans" or "distance learning plans" or documents with similar titles. These kinds of temporary plans, so long as they are created with input from an individual student's teachers and parents, may be more appropriate. The plans should clearly indicate that the parent agrees to these services only during the time that school is closed, that services in the IEP prior to school closure must be implemented as soon as schools reopen, and that the parent reserves the right to request compensatory services for any regression their child exhibits when schools reopen.

5. Evaluations

This is a huge area of concern for schools and parents alike. Parents want their children to receive a comprehensive evaluation that clearly describes the student's strengths, needs, and recommended services when seeking special education supports. A comprehensive evaluation nearly always requires an in-person, in-school observation so that the evaluator can understand the people, places, and environment that impact a student's academic, behavioral, and adaptive performance. Schools are rightly concerned about exposing their staff to safety issues by requiring an in-person observation, and do not want to be held liable for failing to complete an appropriate evaluation or delays in appropriate evaluations occurring. However, parents should also not be asked to forego any services or supports for their child for weeks or months, because the evaluation was in progress, or the need was unknown, before schools closed.

It is recommended that parents and schools be flexible and creative during this time. Parents can agree to extensions of time for however many more days were in the evaluation time period required in their state after schools reopen (schools shouldn't get the full 60 or more days if there were only 10 more days before the period expired prior to school closing), but also ask that schools complete as much of the evaluation as they can remotely. Are there questionnaires that can be filled out and analyzed? Are there interviews with school staff and parents that can be completed by phone? Are there one-on-one assessments that could be completed by phone or over Zoom? Could the evaluator provide the parent an academic or communication or behavioral task to complete and then have the parent video the student completing the task and analyze what they are

able to observe? Based on this partial evaluation, the school and parent could meet virtually and agree to a temporary set of services or accommodations to provide a student until a comprehensive evaluation can be completed upon return to school.

6. Waiver forms

While parents should be flexible during this time and may need to agree to short delays for certain timelines, e.g. evaluations, meetings, or due process hearings, they should not be asked to sign, and they should not sign, anything that “waives” their rights during this time. Their children still have the right to FAPE, and they still have the right to disagree about what constitutes FAPE for their child under these circumstances, and certainly the circumstances that existed prior to the school closure.

7. Behavioral needs

Now, as much as ever, students should be receiving some sort of services to address their social-emotional needs, especially if their IEP addressed social-emotional needs before schools closed. If any related services professionals were providing services prior to the school closure, those professionals should still be reaching out to connect with the students and their parents through phone or online meetings and providing parents with strategies and suggestions for helping their children handle this disruption to their education. If teachers had behavior plans, classroom or individual token systems, prompting phrases, or other strategies they used in class to help a student stay on task, calm down, or cope with frustration, they should share these strategies and tools with parents. They can also provide physical materials by dropping them at the family’s home or making them available for pick up with school meals.

8. Dedicated aides

This is a particularly challenging issue. Some schools may not continue to employ or contract with dedicated aides during this time, because they cannot really provide the supports that they are employed to provide when they cannot physically be with the student, especially if the reason for their support is physical in nature - transferring the student, helping feed the student, or helping the student toilet. In those cases, the family or an existing community-based provider will likely need to provide those services. However, for those aides that are still available and who provided attention or social-emotional supports, they can and should be making themselves available to the student just like the student’s teacher and providing those supports remotely, as best they can.

In addition, students with this intense level of support needs may be more likely to struggle with distance learning and may be more likely to need compensatory services when schools reopen.

9. Access to technology

Assistive technology is defined in the IDEA as “any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.” If a student had assistive technology in their IEP that was being provided at school prior to

the school closure and which is needed for them to benefit from their education while at home, then the student needs to have access to the assistive technology at home.

If schools are providing access to tablets, computers, or other technology for students, they need to provide the same access to technology for students with disabilities. Schools also need to ensure that they provide digital instruction and instructional materials in accessible formats for students who need accommodations, such as large print, screen readers, or closed captioning. If students with disabilities need training on how to use the technology or any accessibility features, then that training should be part of the student's "interim service plan" or "distance learning plan," and a teacher or related services provider should provide that training to the student, and his or her parents if necessary.

If schools are not providing devices to students generally and a device is not required as assistive technology for the student to "improve functional capabilities," then a school may not be required to purchase the student a device to use at home. However, schools at least need to make sure they are providing educational materials in multiple formats so that students can access their learning whether or not they have access to a computer, tablet, or other electronic device at home.

Many local internet providers are providing free access to homes while school is closed, and many schools and cities are finding creative ways to make *WiFi* hot spots available in their communities. Advocates should help make families aware of these opportunities, when available, in their communities.

10. Private services in the IEP

Many public schools are continuing to fund private providers who are providing distance learning to the students they served prior to being required to close. However, some public schools may attempt to provide remote services themselves to students who were formerly receiving services from private providers and refuse to continue funding the private providers identified in a student's IEP. These issues will need to be addressed just like a school's failure to provide appropriate services when schools are typically open. If the public school's remote services are inappropriate for their child and the private school's remote services would have been appropriate, parents may need to file a complaint to reinstate the private school's services, even in remote form, or request compensatory services (private or otherwise) when schools reopen. Either way, parents will need to document as best they can how the public school's remote services did not meet their child's needs.

11. Tracking progress and regression/compensatory education and services

For many students, those with and without disabilities, distance learning cannot adequately replace the learning that occurs with in-person instruction from teachers and peers who are readily available for questions and discussion. While students with disabilities are more likely to fall behind their peers without disabilities when they don't receive the services and supports they need, not all students with disabilities will struggle with distance learning. Many will learn, progress, and regress no different than their peers without disabilities, particularly when schools and parents work together to individualize the supports that students with disabilities receive at home.

There will also be students who, for many different reasons, accessed the educational supports that schools were providing minimally or not at all during distance learning. Their parents may have still been working full-time and unable to help the child connect and engage, or the child may have been responsible for caring for other siblings. Families with multiple children with multiple needs may not have been able to juggle all of the demands of caring for a child or children with disabilities at home as well as work or education.

Regardless of a student's personal situation, it will be critical when schools reopen for parents and schools to work together to figure out how much an individual student has progressed or regressed during the school closure so that they can identify the services and supports the student needs to make up for the progress they would have made if schools hadn't closed.

Legal Aid of North Carolina's Advocates for Children Services project created a very helpful form in [English](#) and [Spanish](#) that parents can use to help document the supports that their student did or did not receive during distance learning.

An important consideration, though, is how many additional services an individual student can handle at any given time. For students who regressed significantly and who need a significant amount of compensatory services, particularly if they already receive a significant number of services, it is likely that parents and advocates will need to seek extra services and supports for a lengthy period of time, possibly including services during the summer of 2021 and into the 2021-2022 school year.

12. Legal timelines

While there is nothing in the IDEA that allows evaluation, meeting, or hearing deadlines to be extended for school closings or global pandemics, hearing officers and courts are or have likely been closed as well and will likely be sympathetic to school's arguments or requests that delays are or were necessary for the safety of school staff and the student.

As discussed earlier, it is important for both parents and schools to be flexible and creative during this time. Meetings should still be held, by phone or video, whenever possible. Evaluations should be completed to the extent possible, and services discussed and agreed to, until comprehensive evaluations can be completed when schools reopen. Many hearing offices and courts are now holding virtual hearings, so parents, schools, and their attorneys need to determine what procedures will be utilized, how information will be kept confidential, and how attorneys will be able to speak with their clients during the hearings.

13. Parent training

"Parent training and counseling" is defined as a related service in the IDEA to "[assist] parents in understanding the special needs of their child; [provide] parents with information about child development; and [help] parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP." Now more than ever, parents should request this vastly underutilized related service to request help from teachers and school staff on how to support their child during distance learning.

14. Communication with non-English speaking parents

The IDEA requires schools to provide notifications regarding student's IEP services to parents in their native language. This has not changed because of COVID. Many schools have a translator or translation service available to them, so parents should request a translator if they need help understanding the information the school is providing or if they need help communicating with their child's teacher. Advocates can also help connect parents to community-based organizations that serve and support ethnic communities and who may have staff who are able to participate in calls or virtual meetings and help parents understand information being provided by schools.

15. Extended school year (ESY) services

A school's decision of whether to offer ESY services and what those services look like during the pandemic will depend very much on when states determine that schools can reopen and what restrictions are in place for schools. Many schools are likely to continue offering remote learning opportunities over the summer, and ESY should be part of those services. It is likely that teams that included ESY in student's IEPs prior to the epidemic will need to meet again to determine if the goals and services already in the IEP are still appropriate in the current circumstances.

If schools determine that students not previously identified for ESY services should receive ESY services because of missed school days, the IEP team will need to meet to discuss what the goals, services, and accommodations will be during ESY.

If a significantly larger number of students require ESY services this summer or next, advocates should anticipate challenges related to the number of teachers and amount of space available during the summer months. For chapters who advocate for policy changes at the local or state level, working with school and other parent advocacy organizations in your state to ensure that your state identifies some federally approved COVID relief funds to pay teachers for extra hours or to hire private providers could be critical.

16. Looking forward to 2020-2021

The CDC has released guidelines for schools to reopen, with a helpful [visual tool](#) and a more lengthy [guidance document](#). Many states are creating task forces to create standards and guidelines for schools to reopen in their states, so advocates should be aware of what their state decides and participate in the task force planning process, if possible.

In addition, schools should be planning now and over the summer for how they are going to make sure that distance learning is more effective and more equitable for all students, no matter their family's resources or the student's abilities, in the future. While we were all taken by surprise by COVID this spring, most experts are saying that there is likely to be a resurgence in the fall or winter and that COVID may be with us for the foreseeable future. Therefore, it's imperative that schools figure out what worked and what didn't and make plans for ensuring all students have access to technology and other learning materials and students with disabilities have access to the staff, curriculum, and accommodations that they need to make progress, even from home.

When schools do reopen, there are likely to be many restrictions on student's schedules, routines, and activities. Advocates need to be mindful of discriminatory restrictions that more negatively impact students with disabilities and advocate for equal access and necessary accommodations to these new school policies.

The suggestions in this document are for informational purposes only and should not be construed as legal advice. Please consult an attorney in your state if you have questions about the legal requirements for special education services where you live.