

# CLIENT NEWS BRIEF

## Special Considerations for Students with Exceptional Needs Related to School Closures Due to COVID-19

### Frequently Asked Questions

#### Background

COVID-19 is a novel form of coronavirus which causes respiratory disease that has affected communities worldwide, and cases of COVID-19 recently appeared in California communities, prompting concerns about student wellness, attendance, instruction, and school operations. This Frequently Asked Questions (FAQ) sets out general guidance for K-12 school districts as they respond to the needs of students with disabilities in the wake of COVID-19, in a manner that is legally compliant with the Individuals With Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504).

As of the time of this FAQ, throughout the nation, as well as in California, many school districts, colleges and universities have closed schools. In many cases of school closure, instruction has shifted from in-person instruction, to online instruction. This FAQ is only provided as general guidance, and any specific legal questions should be directed to your legal counsel.

The United States Department of Education very recently published a Questions and Answers on Providing Service to Children with Disabilities During a COVID-19 Outbreak (Questions and Answers Memo) which provides guidance to Local Education Agencies (LEAs) to ensure that students with disabilities continue to receive services required under the IDEA and Section 504 in the event of a school closure due to a COVID-19 outbreak (COVID-19 Advisory). The COVID-19 Advisory is available at [COVID-19 Advisory](#). Prior to this, the United States Department of Education published Non-Regulatory Guidance in 2018, in the wake of Hurricane Florence, regarding educational services challenges during times of federal disasters (USDOE Disaster Guidance) available at [USDOE Disaster Guidance](#)

This FAQ briefly summarizes much of the information contained in the COVID-19 Advisory, as a means of providing general guidance to LEAs regarding IDEA and Section 504 obligations during school closures due to COVID-19.

**Q:** If an alternative mode of education is made available to the general student population during a school closure, such as online instruction, tele-instruction, independent study, or some other form of alternative education that does not require "in-person" school attendance, is the LEA required to make the *same alternative education* available to students with disabilities?

**A:** Yes, if an alternative mode of education is made available to the general student population during a school closure, such as online instruction, tele-

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Marcy Gutierrez  
Partner  
Co-Chair Special Education Practice  
Group  
Sacramento Office  
[mgutierrez@lozanosmith.com](mailto:mgutierrez@lozanosmith.com)



Deniss Escoria Dimas  
Associate  
Sacramento Office  
[descoriadimas@lozanosmith.com](mailto:descoriadimas@lozanosmith.com)



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instruction, independent study, or some other form of alternative education that does not require “in-person” school attendance, the LEA is required to make special education available. The COVID-19 Advisory advises that, if an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with 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).

**Q:** If an alternative mode of education is made available to the general student population during a school closure, such as online instruction, tele-instruction, independent study, or some other form of alternative education that does not require “in-person” school attendance, is the LEA required to make *special education* available?

**A:** Yes, if an alternative mode of education is made available to the general student population, the COVID-19 Advisory provides that LEAs must ensure that, to the greatest extent possible, each student with a disability is provided special education and related services. It is best practice for the provision of special education and related services to be provided in a manner that is as reasonably comparable to that identified in the student’s IEP or Section 504 Plan. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33).

**Q:** What if it is not possible, during a period of extended school closure, to provide the type of special education and related services required by a student’s IEP or Section 504 Plan?

**A:** If a school continues to provide instruction to the general school population during an extended closure, but is not able to provide services to a student with a disability in accordance with the student’s IEP, an LEA may consider the following, which the USDOE advises in the COVID-19 Advisory:

- the IEP team determines which services can be provided to appropriately meet the student’s needs.
- the IEP team may meet by teleconference or other means to determine if some, or all, of the identified services can be provided through alternative or additional methods.
- an IEP addendum (or amendment to the Section 504 Plan) may be developed to document changes in the manner of delivery of all or some of the special education and related services.

With regard to students with Section 504 Plans, appropriate personnel responsible under Section 504 must take similar actions regarding a student who has a Section 504 Plan.

**Q:** Instead of convening an IEP meeting, Section 504 meeting, or making changes to a student’s special education and related services, or Section Plan, via an amendment or addendum, can this be accomplished through a prior written notice (PWN)?

**A:** The COVID-19 Advisory references the use of PWN in connection with a change in placement to homebound instruction. A PWN is required any time there is a dispute between a parent and an LEA regarding identification, evaluation or placement, and any time there is a proposal or refusal to assess, or make changes to, a student’s education program. (34 C.F.R. § 303.421.) While changes in placements are typically made through the IEP process, by way of an IEP meeting or IEP amendment or addendum, if this is not possible for an LEA under the circumstances, it is advisable that an LEA issue a PWN describing any changes.

**Q:** How might an LEA provide services to special education students during an extended period of school closure?

**A:** The COVID-19 Advisory references school closures as “extended” when closure are for more than 10 consecutive school days. Schools should consider ways of ensuring that education activities and services are accessible to

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students with disabilities when they are provided to the general education population. Technology may afford students, including students with disabilities, an opportunity to have access to educational instruction during an extended school closure, especially when continuing education must be provided through distance learning. However, when considering the issue of technology, an LEA should ensure that accessibility considerations are taken into account, so that instructional content is accessible to students with disabilities.

**Q:** Once school resumes, if it appears that a student with an IEP has lost skills, what is the LEA required to do?

**A:** Consistent with the COVID-19 Advisory, once school resumes, the student's IEP team (or appropriate personnel under Section 504) must make an individualized determination as to whether, and to what extent, it may be necessary to provide compensatory education. (34 CFR §§ 300.320-300.324 (IDEA), and 34 CFR §§ 104.33-104.35). Compensatory services may be necessary when there is a decline in the student's skills that occurred as a result of the student not receiving services during an extended closure, and such skills are not regained within a reasonable time.

**Q:** How should schools respond to parent requests for independent study for special education students?

**A:** Any request for independent study should be addressed in a manner that is consistent with board policies (BP) and administrative regulations (AR). Pursuant to Education Code section 51745(c), any decision to place a special a student on independent study is a decision that must be made by the IEP team. While state law provides that such decision should be made by the IEP team, under the IDEA, changes to a student's IEP may be also be made via an IEP amendment, as long as the LEA and parent agree to make such changes without convening an IEP meeting. Thus, it seems reasonable that, should a parent request independent study during a period of school closure, or should a parent make such request while the school remains open, the LEA may consider:

- Processing such request in a manner consistent with the LEA's BPs and ARs.
- Convening an IEP meeting to consider such request, on a case-by-case basis.
- Developing IEP amendments to document the provision of independent study, on a case-by-case basis, where the LEA and parent agree to make such changes without convening an IEP meeting.

**Q:** How should an LEA respond to a doctor's note for excusal from school for a student who is medically fragile?

**A:** The LEA should respond to a doctor's note for excusal from school for any student, medically fragile or otherwise, in a manner consistent with the LEA's BPs and ARs, and state law. Per Education Code sections 48205 and 48260, a student absence must be excused when a student is absent due to: (1) illness; (2) the student cannot attend school due to a quarantine implemented by a county or city health officer; or (3) the student is receiving medical services. A student absence may otherwise be excused at the discretion of school administrators. Specifically, school administrators may excuse absences that they deem to be valid in light of a student's individual circumstances.

**Q:** How should an LEA handle pending Assessment Plans during period of school closure?

**A:** School closures are likely to disrupt special education timelines, including those regarding assessment plans and IEP meetings to review assessments. Timelines affecting assessment plans and IEP meetings to review assessments are paused for school breaks in excess of five schooldays. (Ed. Code, § 56043, subd. (a), (f).) Special education timelines are a procedural requirement, meaning that changes that carry a substantive effect on the student's education may result in a denial of FAPE. We recommend LEAs strive to meet timelines with minimal delay to avoid impacting students' education. If an IEP team changes the offer of FAPE outside of timelines due to school closure-related delays,

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LEAs may consider providing some measure of retroactive compensatory services to the student, in order to place the student in the same position he or she would have been in had the offer of FAPE been changed in a timely manner.

## Related Resources

In our continued effort to equip public agencies with useful insights, we have compiled a suite of links to several resource and guidance documents and webpages available from the federal and state governments regarding COVID-19. Access here: <http://www.lozanosmith.com/covid19.php>.

If you have any questions, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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