

Special Education Rights during COVID-19

By

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ELARC consumers, their families, and all of us who help them continue trying to keep up with the myriad changes wrought by COVID-19. To that end, this article updates the ELARC community on how special education rights have changed (or not) due to COVID-19.

The foundation for special ed rights remains the federal Individuals with Disabilities Education Act (IDEA). Congress did not waive IDEA's provisions, in line with U.S. Education Secretary Betsy DeVos' [recommendations](#) in April 2020. However, [3/21/20 guidance](#) from the U.S. Department of Education (USDOE) had already made clear that "the Department understands that, during this national emergency, schools may not be able to provide all services in the same manner they are typically provided" and that "school districts must provide [a free and appropriate public education](#) (FAPE) consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students."

USDOE reiterated this priority on health and safety in its [9/28/20 guidance](#), stating "ultimately, the health and safety of children, families, and the school community is most important." Yet this same guidance also emphasizes that no matter how health and safety concerns may modify or eliminate in-person instruction, states, school districts, and Individualized Education Plan (IEP) teams "are not relieved of their obligation to provide FAPE to each child with a disability under IDEA."

States, school districts, and IEP teams continue to explore what this balancing act between FAPE and health/safety looks like in practice. April 2020 guidance from the CA Department of Education (CDE) is a good example. It states that while "in some exceptional situations, LEAs may need to provide certain supports and services to individual students in person in order to maintain students' mental/physical health and safety for the purpose of supporting the student in accessing the alternative options for learning being offered (e.g., distance learning)," the "primary consideration" remains "keeping students, teachers, and service providers

safe and healthy.” CDE’s [9/30/20 guidance](#) still cites its April guidance on this issue.

For the most part, the CA Department of Public Health (CDPH) and local county health departments determine what is considered safe and healthy and therefore what FAPE may look like for kids with disabilities. CDPH took [a step](#) in favor of this subpopulation: it permitted –but did not require – school districts to provide small-group, in-person specialized services (such as OT, ST, behavioral services, and assessments) and to prioritize students with disabilities. In early September, Los Angeles County’s public health department released [its own guidance](#) allowing – again, not requiring – districts to provide specialized services to students with IEPs in person in small groups so long as no more than 10% of the student body is on campus at any one time.

Given such noble yet non-committal guidance, it can be hard for parents to know what exactly school districts are still legally obligated to do under state and federal law despite COVID-19. Below is a tiny fraction of the many legal obligations that remain intact:

- IDEA requires states to identify, locate, and evaluate all children with disabilities residing in the state, per [34 CFR 300.111](#). Parents can also refer for an assessment per [CA Education Code Sections 56029 and 56302](#).
- Districts must provide parents an assessment plan within 15 days of the referral per [CA Ed Code Section 56321](#). California temporarily extended this timeline along with several others under [Senate Bill 117](#) until schools reopened. But the signing of [Senate Bill 820](#) on 9/18/20 (see Section 55) reinstated all those timelines retroactive to 7/1/20.
- School districts must conduct the initial evaluation within 60 days of receiving parental consent for the evaluation per [34 CFR 300.301](#).
- An IEP must be developed by a child’s 3rd birthday per [34 CFR 300.101\(b\)](#) and [300.124\(b\)](#), and within 60 days of parental written consent for assessment per [CA Ed Code Section 56344](#).
- An IEP must be in effect at the beginning of each school year per [34 CFR 300.323](#).
- As of 6/29/20, the initial IEP or the next regularly scheduled IEP must include a description of the means by which IEP services like special ed instruction and related services (e.g., OT, ST) will be provided under emergency conditions, taking public health orders into account per [CA Ed Code 56345\(9\)\(A\)](#).

- An IEP meeting must be held within 30 days of the district's receipt of a parent's written request for one per [CA Ed Code 56343.5](#).

Although public health orders may modify how school districts implement these and other special ed laws, implement them they must. When they don't, state due process hearings and CDE complaints remain legally viable options for parents to pursue compensatory services or reimbursement. Parents are also strongly encouraged to contact OCRA to discuss case specifics and any assistance we can provide.