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Parent Guide to School Re opening and the IDEA/Section 504

What the Federal Law Requires

The answer to many of the questions below will depend on the state law as well as federal. However, we will try to give guidelines based on the federal law.

What process should take place before a decision is made regarding the learning model for a student with a disability in the new school year (e.g. home instruction, distance learning, in-school or a hybrid model)?

The answer to this question will depend largely on the options available. Students with disabilities must have the same options available to them as every other student. Even when schools are fully open, school plans should allow for an opt-out option for all students, including those with disabilities who require home instruction. If there is a disagreement about where a student with a disability should be educated, or the services to be provided, in whatever setting, those decisions should go to the IEP/504 Team as always. IEP/504 meetings can be held virtually and should occur on the regular schedule and as needed.

NASDSE has provided an excellent statement, with specific examples, of what a FAPE in the LRE would look like. [LRE in the Wake of COVID-19](#).

What role do the parents have in the decision to provide homebound instruction?

Parents of IDEA/504 students have the same rights as any other to take advantage of all of the options offered by the school district. If there is a disagreement, the issue will be addressed by

the IEP/054 team. As with any other placement decision, the decision is made by the placement team at an IEP meeting, and can be appealed through the due process procedures.

What is the distinction between the terms “homeschool” and “home instruction”?

“Homeschool” refers to parents who have chosen knowingly to exit their children from public education, and take responsibility for their education. IDEA rights do not apply except as they apply to private school students

“Home instruction” is the legal term used in the IDEA for students who are unable to attend school in-person. IDEA rights apply.

During discussions of IDEA/504 eligible students learning at home in Fall 2020, it is important that it be clear whether it is “Homeschool” or “Home instruction.”

What are the legal implications under IDEA if parents decide to homeschool their child for part or all of the 2020-21 school year, and what happens when it is safe for the child to return to school? Does the student lose legal rights to FAPE while being home-schooled?

It will be up to state law to determine what rights, if any, a home-schooled student will receive. A state could give the student full IDEA rights. A state could give the student no IDEA rights. A state could consider the student as parentally placed private school students, in which case they would receive very few IDEA protections—no right to a FAPE, no IEP and no due process. If a parent decides it is safe to return to school then the parent can simply re-enroll the student in the public school.

If parents do not believe it is safe for their student to attend school, particularly if they believe the student’s disability makes him or her more susceptible to infection, the best option is home instruction, which is specifically listed as a special education service and for which full IDEA rights would apply, including instruction in the LRE. This would be an IEP Team decision.

For a child who uses home instruction in the fall, what happens under IDEA once it is safe for him/her to return to the school building?

The student returns to school along with the others. It would probably be advisable to have an IEP Team meeting before this happens to consider what if any supports the student might need to ease the transition back, and to catch the student up to where he or she should be on

progress in the general curriculum and toward IEP goals. This is what could be referred to as compensatory education, but it is not critical to use that term.

What should schools be doing to determine whether additional services are needed to address student regression?

Schools must take steps to make sure that students are able to make up the work missed during the 2019-20 school year because of the school disruptions caused by COVID-19. Ideally, schools should use a system of multi-tiered supports (MTSS). A general plan must be developed and implemented for all students.

It is likely it could take all of the 2020-21 school year to accomplish, but needs to begin as soon as possible after the start of the school year. For students requiring additional supports, whether or not due to a disability, those supports will have to be provided. Finally, for students with disabilities an additional, individualized assessment must be undertaken to determine what, if any, additional services they may need. The need for such services will need to be discussed at an IEP Team meeting and included in the IEP.

What should a parent do if the school says the student cannot return to school because it is assumed he/she cannot follow COVID protocols because of a disability?

Students with disabilities are protected by the ADA and Section 504. These laws prohibit making assumptions or making decisions based on stereotypes. Additionally, under the IDEA students have a right to attend school in the least restrictive environment or LRE. They must be provided the supplementary services and supports they need to do so. For example, if a student requires additional adult support to keep a mask on during the day, that support must be provided. The student may not be placed on home instruction if they can remain in school with that support.

What are the criteria for determining whether a student qualifies for home instruction?

The best way to think of this is as it was for students, pre-COVID, with extremely weak immune systems who would be at risk of serious illness if they were in school. These students were not currently sick, but the risk was great for them if they were to attend. The standard that applies there is for “home instruction” See, 34 C.F.R. 300.39(a)(1)(i).

Home instruction is specifically listed as a special education service. These students are entitled to full IDEA rights, including FAPE, an IEP and LRE once determined eligible.

If the student is found to need home instruction what can he/she can expect to get?

Supplementary aids and services are to be provided to ensure a student can be educated in the LRE to the maximum extent appropriate. 34 C.F.R. 300.114(a)(2)(ii). Assistive technology must be provided as either special education, a related service or as a supplementary aid and service to meet LRE requirements. 34 C.F.R. 300.105(a). The use of AT is the best option to ensure a student on home instruction can participate with nondisabled peers. If the school has opened, a computer connection can be made for the student to participate in the regular classroom virtually. This has been successfully accomplished pre-COVID. All the needed hardware, software and IT support is the responsibility of the school district to ensure FAPE in the LRE. Some districts have even used a robot for the student to move throughout the day—this is probably beyond what would be required for FAPE, but is a novel approach.

What is required in terms of ensuring that a student with a disability who is being instructed from home under IDEA receives: accessible technology that promotes independence and engagement; appropriately modified work; and any needed related services?

Full FAPE rights apply, so all of this should be addressed through the IEP process. Through AT, they should be able to have full access to their non-disabled peers.

With regard to assistive technology or other equipment, how will they have access to it?

This is a very important consideration for all students with disabilities not just during COVID-19, because school districts do not fully consider AT to meet the needs of students. During COVID, AT will be even more important, particularly for students being educated in the home. Technically, if the student uses technology to access the school district's curriculum, that could be considered AT and be the obligation of the district. This is particularly true if they will be accessing special education or related services remotely—the computer, software and internet connection could all be considered AT and be the responsibility of the school district. This would need to be discussed at an IEP meeting and included in the IEP.

Additionally, if students are attending school on campus and a student with a disability needs to remain home for safety/health reasons, the student will be entitled to FAPE in the least restrictive environment. The use of AT will make it possible for the student to engage with non-disabled peers throughout the day, as discussed above.

What can parents do if sending siblings back to the classroom will put their child with a disability at increased risk?

As noted above, the simplest option would be if districts had opt-out policies so that parents would have a lot of discretion about whether to send their children to school. In such circumstances, the school should have a hook up to the classroom so the students may participate remotely. This is essentially what should be happening in school districts that adopt the hybrid model for when students are not attending live.

If the school does not have that option, the ADA and Section 504 require school district to make reasonable modifications to their policies and procedures. They should allow for a modification to their in-school only option to allow for the safety of the student with a disability.