

**Questions and Answers from the Education During COVID19 Webinar help on
Friday May 15th**

Please consider these responses as general guidance, not specific legal advice. Each school district is responding to changing federal and state guidance differently. As the presenters note several times, communication with your child's school district is critical. If you have questions or concerns, please contact an educational advocate in your area.

Note: Some questions were answered during the 'live' webinar and others were answered by the presenters in writing following the webinar.

Who in a school district should be contacted regarding a student's need to access education? Most districts have information regarding technology on the district website, usually under a banner labelled COVID-19. For issues related to special education services contact the CSE (Committee on Special Education) chairperson.

Is there any discussion underway about standardizing distance learning? This is on the agenda of every school district. Parents should weigh in regarding what works for them. Parents should take note of what has been working or not working for their child. If a child has an IEP, it is recommended to include a remote learning plan into their IEP so that both in-person and remote learning options are planned for.

Can you address the continuity of learning during Extended School Year (ESY)? Some Districts are not approving ESY for our out-of-district school? There is no official specific guidance yet, but ESY is provided in anticipation of regression or because the program is a 12-month program. If ESY is on your IEP and your district is not providing ESY services, contact your regional associate. Also gather data to advocate for compensatory education. Document the loss so the district can be compelled to make up lost summer time.

How does this look for a second grader who needs an aide to support them in school and whose parent is unable to sit with the child? This is an example of when a remote learning plan doesn't work for a child which limits their access to an education. The district may need to provide additional remote teacher or aide support to enable the child to access the curriculum. The plan should be individualized based on the needs of the child. Cases such as this may end up in a hearing for denial of FAPE. Communication with the District is critical.

If a child is not getting the services on their IEP how long should the parent wait to contact the school? Communicate any need that is not being met immediately and in writing. Even if the school cannot provide the service at this time, you have documented it. Keep a copy of anything you have submitted.

School is asking the parent to withdraw the request for services. Is this ok? School cannot take away special education services without an evaluation. It is not ok to simply not provide special education services simply because school is closed. Also, if this question is related to a parent's initial request/referral for an evaluation, do not withdraw that. Schools are still held to a 60-day timeline, but any day school is closed due to COVID does not count toward the timeline, but it is important to still submit the referral and document it in writing.

If a child with a disability maintains skills, but does not make additional progress during COVID, is the child entitled to compensatory education? The school district is required to give services to allow them to make progress, so given this, make a claim for compensatory services. This is a very gray area and may be litigated as we move forward. Make the argument with whatever evaluative information you have. Again, we recommend that you work closely with the school district.

What if, despite not getting sufficient services, the child is making good progress but the model isn't sustainable because the parent needs to go back to work and can't spend all day doing therapy and homeschooling? In general, the parent should always communicate the child's needs to the district and ask for more direct services, keeping in mind that the remote learning plan must work for all children. As a child's needs change, the school should be advised so they can provide access to the curriculum. If this child has an IEP, the parent should communicate with the CSE team as well.

It was my understanding that teleconferencing can be used for face-to-face evaluations/assessment. Not of course assessment by observation such as an FBA (Functional Behavior Assessment). Can you speak to this? Teleconferencing can be used for evaluations or assessments which typically require face-to-face or in-person interactions, however, school districts are not required to do them. In addition, if a district would like to conduct an evaluation/assessment via teleconferencing, the district must have consent from the parent to conduct that evaluation in that manner. Parents have the right to say no to a virtual evaluation/assessment in which case, the evaluation will need to wait until in-person or face-to-face evaluations are permitted. Generally speaking, school districts have been following "best practice" guidance issued by the companies who developed the evaluations/assessments and also by the organizations for the professionals who administer them.

If IDEA rights are still in effect, can a parent seek an IEE if the school district declines to conduct a requested evaluation during the school closures? (Independent Education Evaluation) School districts are not required to conduct evaluations during school closures that they believe cannot be conducted virtually; therefore, they're not in violation of IDEA if the reason they decline to conduct an evaluation is due to school closures. If the parent requests a specific evaluation is made during school closure, and the district says the reason they will not conduct the requested evaluation is because they do not feel it is necessary, then the parent has the right to request an IEE. Similarly, if the district has already conducted an evaluation that the parent disagrees with, the parent may request an IEE. The IEE request can be made during school closure and the timeline for school to respond with a decision to the IEE request remains the same (30 days). Please note: this does not mean the IEE needs to be conducted in any amount of time, just that the school district needs to respond to the parent's request, in writing, within 30 days of receiving it.

Some parents may not have the skills, language, and/or resources to advocate effectively for their children, particularly if they must document concerns about their children with disabilities. Where can they seek help? Each area or region of NY should seek the help of their local advocacy program, Bar Association, Protection and Advocacy Program or Regional

Associate. They can also contact a Family Peer Advocate who can assist them to reach out to these experts and provide support as they work through solutions with their school district.

Does the Regents exemption affect students' GPA? The Regents Exemption itself does not directly affect a student's GPA. Generally, a student's score on a Regents Exam is used, in part, to determine a student's final grade for the course. Example: Many districts will average the student's marking period grade for the 1st quarter, 2nd quarter, 3rd quarter, 4th quarter, and their Regents score to determine a student's final grade for a course. Since Regents exams are canceled, students' final grades will not have that additional score/grade factored into it. A student's GPA or cumulative grade for a particular course will not be penalized due to exemptions; the effect of the exemptions is that more "weight" might be given to each marking period grade when determining the final grade for the course.

What is CDOS? (Career Development and Occupational Studies Diploma) The NYS CDOS Commencement Credential is a credential recognized by the NYS Board of Regents as a certificate that the student has met the high school learning standards necessary for work success and that the student has learned the appropriate knowledge and skills necessary, in a particular area of interest, for entry level employment.

CDOS is not a diploma; it is a commencement credential which students can earn as a "stand alone" to show they "completed" high school with specific knowledge and skills required for post-secondary school work. Students can also earn the CDOS credential in conjunction with a NYS diploma. CDOS was initially only for students with disabilities, however, NYS has since extended the CDOS commencement credential as an option for all students and can be used as one of the pathways to graduation. Please visit the NYS Education Department website for more information: <http://www.nysed.gov/curriculum-instruction/cdos-pathway-regents-or-local-diploma>

Can you provide guidance on younger transitioning children? For example, a child at 3yrs old, coming out of Early Intervention, going into CPSE, and needing evaluations to establish placement and IEP, but evaluations cannot be completed. Can anything else be used in place of the evaluations to determine placement? Generally speaking, a school district can use data they have for that child from prior evaluations, course work, progress reports, teacher/provider observations etc. to make recommendations for the CPSE meeting. A parent can explore with the district which evaluations can be done remotely and request to have those completed. If new evaluations cannot be done because they need to be done face to face, the CPSE team may use the existing information available to them to determine eligibility and fashion an IEP. A parent may still request the face-to-face evaluations be done when it is feasible to do them and then hold a new CPSE meeting to review the evaluations and update the IEP, as appropriate.

I have a mom that works full time however her son receives a lot of schoolwork during the day and she does not get a chance to work with him until late at night. Is there anything that the school can do to maybe virtually to assist? In general, a parent should communicate the needs of the student and ask for assistance so that the child can access the curriculum. Each district will address this differently. If the child has an IEP and cannot make

progress using the remote learning plan provided, there may be a claim for compensatory education services.

What about special needs children that receive a 12 month school year; with the schools being closed throughout the summer who would be providing those services? Schools will still be required to provide any student with a disability, who receives 12 months of education/Extended School Year (ESY) services, with their education over the summer months, although remotely, if school closures exist. If a student receives their education in their home district, the district will be responsible for providing the education and related services. If a student attends an alternative placement, that is, any school setting outside of their home district through the Committee on Special Education, the home district is still responsible for the writing the IEP and dictating the student's program and services, however, the implementation and actual provision of education and services may be done by the alternative school staff or by the home district.

In rural areas internet service is either non-existent or unstable. Our districts have sent a list of hotspots. But is it a realistic expectation to access virtual classrooms in your car IF you have one? Generally speaking, parents can communicate their needs to the District and request a solution that allows the child full access to the curriculum. If it is not plausible to go to a place that has a hotspot to access the curriculum, the parent may ask for another method to provide the remote learning.

What happens if the student is left back and needs to go to a summer program? There is not going to be summer class. Generally, summer school is not an entitlement and districts do not have to provide a summer program. (Unless the student has an IEP with extended school year services). NYSED may come out with guidance regarding this due to COVID-19 but if they do not, it is not clear that there will be any additional rights for students who are left back. If a student has an IEP, there may be a claim for compensatory education and an appeal of the retention. Each district will have their own policies regarding this.

In a situation where a student has been placed in a residential facility just at the onset of COVID-19, the child was sick and the parent brought the child home. He is now at home, and not receiving any educational services. Who is responsible for his education at this time? The home district is responsible for making sure a student with a disability receives their education as dictated by their IEP.

Are schools only responsible through the official end of the current school year? School districts are responsible for continuity of learning for students as long as school is not open to students. This means that if schools are still not open in the fall, continuity of learning would continue. However, they are not responsible for educating students once the school year has ended, unless a student has an IEP which provides for extended school year services. In addition, while not required to provide summer school services, if a district chooses to do so, they must make it accessible to all their students.

Is there any guidance on retention? Can a school force the child to be retained when the parents are against it? Do you think this is specific to COVID? The decision whether to retain a student is usually made by the principal. The district should have written policies about when and how a student can be retained. There should also be a policy about how a parent can contest a decision to retain a student. Parents are advised to consult their own district's policies and to request a meeting with the principal if they have questions and/or concerns.

I have had to suspend my child's teletherapy as of 3 weeks ago. Do I still have the ability to argue comp ed going forward? As it stood in March her IEP was not being met for PT and we were receiving 1 x PT outpatient but now our outpatient office is closed and we can not do PT at home. My daughter has started self-harming so I had to suspend services. This is a very specific question that we cannot answer in this type of forum. You should seek individual guidance from a local advocacy group or education attorney.

Do you have any recommendations for virtual Psychological tests? Our psychologists are reluctant to do cognitive testing virtually. Any suggestions would be appreciated. LIAC has no specific knowledge or expertise in the validity of any virtual evaluations or assessments and cannot make recommendations for them. Many assessment/evaluation companies have released guidance regarding the conduction of their assessment via teleconferencing/virtual means. It's been our general experience thus far that school districts are not conducting psychological evaluations virtually based on best practice guidance issued by these companies and professional associations. Remember, during school closure, school districts are not required to conduct evaluations, even virtually. Guidance on this can be found at www.nyasp.org (NY Association of School Psychologists).