




OFFICE OF SPECIAL EDUCATION
ASSISTANT COMMISSIONER
89 Washington Avenue, Room 301M EB • Albany, NY 12234
www.p12.nysed.gov/specialed/

Telephone: (518) 402-3353
Fax: (518) 402-3534

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TO: BOCES District Superintendents
School District Superintendents
Superintendents, Special Act School Districts
Superintendents, State-Operated Schools
Superintendents, State-Supported Schools
School Principals
School District Business Officers
Charter School Leaders
Special Education Directors
Directors of Pupil Personnel Services
Chairpersons of Committees on Special Education
Chairpersons of Committees on Preschool Special Education
Administrators of Nonpublic Schools with Approved Special Education Programs
Organizations, Parents and Individuals Concerned with Special Education
Preschool Providers of Special Education Programs and Services

FROM: Christopher Suriano 

RE: Frequently Asked Questions and Answers Regarding the Provision of Services to Students with Disabilities During the 2020-21 School Year

The New York State Education Department (NYSED) Office of Special Education has compiled the following answers to questions collected from the field regarding NYSED's July 2020 [Recovering, Rebuilding, and Renewing the Spirit of New York State Schools Guidance](#). Additionally, the United States Department of Education Office of Special Education Programs and Office for Civil Rights have issued two separate relevant guidance documents regarding the provision of services to students with disabilities: [Question and Answer \(Q & A\) Document in Response to Inquiries Concerning Implementation of the Individuals with Disabilities Education Act \(IDEA\) Part B Provision of Services in the Current COVID-19 Environment](#) and [Questions and Answers for K-12 Public Schools In the Current COVID-19 Environment](#).

For your reference, some additional resources relating to students with disabilities during 2019-20 school closures and the 2020-21 school year have been published as Guidance from NYSED's Office of Special Education: [Provision of Services to Students with Disabilities During Statewide School Closures Due to Novel Coronavirus \(COVID-19\) Outbreak in New York State.](#)

Classroom Settings

- 1) To promote social distancing and adhere to health and safety requirements, can a school divide a special class into physically separate spaces to provide in-person instruction?**

Yes. Per NYSED's [Recovering, Rebuilding, and Renewing the Spirit of New York State Schools Guidance](#) (see *Summary of the Guidance Document's Provisions* and *Facilities* sections), schools and school districts should promote social distancing while maintaining existing safety requirements designed to protect students.

Section 200.6(h)(4) of the Commissioner's regulations establishes the maximum class size for students in special classes. To promote social distancing and adhere to health and safety requirements, nothing would prohibit a school from having less students than the maximum number of students in a special class while maintaining the student to staff ratio (e.g., six students with disabilities in a 12:1+1 special class). However, in situations when COVID-19 health and safety conditions create a shortage in available staff to maintain a special class student to staff ratio, the resulting instructional groups must minimally be assigned either a certified special education teacher or a teaching assistant. In addition, regular, substantive in-person interaction between the special education teacher and the students in both instructional groups must occur throughout the school day. While a teaching assistant, under the general supervision of the special education teacher, can assist in the delivery of the special education services, he or she cannot serve in place of a special education teacher. It would not be permissible to divide the group and assign a teacher aide to work separately with an instructional group in a separate space.

- 2) To promote social distancing and adhere to health and safety requirements, can a school divide an integrated co-teaching class into physically separate spaces to provide in-person instruction?**

Yes, provided there is either a certified general education teacher or a certified special education teacher assigned to each instructional group. These teachers must also continue collaborative planning and have regular, substantive in-person interaction with both instructional groups throughout the school day. If an integrated co-teaching (ICT) class is divided into two instructional groups, the

number of nondisabled students should be more than or equal to the number of students with disabilities in the class in order to ensure the level of integration intended by this program option. A teaching assistant can be used to enhance but cannot replace one of the required, certified teachers.

- 3) Must schools seek a variance to increase the number of students in a resource room instructional group, integrated, co-teaching classroom and preschool and school-age special classes whether school is in person or remote?**

Yes, schools must follow the variance procedures in sections 200.6 and 200.16 of the Commissioner's regulations to increase the size of a resource room instructional group, the maximum number of students with disabilities in an integrated co-teaching class, preschool and school-age special class sizes, and a variance from the special class chronological age ranges. Additional guidance regarding the different variance procedures can be found on the Office of Special Education's [Frequently Used Special Education Applications webpage](#) under "Variance Applications."

Students Who are Homeschooled or Parentally Placed in a Nonpublic School

- 4) In light of COVID-19, if parents decide to homeschool or place their child with a disability in a nonpublic elementary or secondary school, what is the deadline for requesting special education services for the 2020-21 school year?**

Under New York State (NYS) Education Law section 3602-c, parents of NYS students with disabilities who are parentally placed in nonpublic elementary and secondary schools or are homeschooled, must request special education services in writing to the board of education of the school district of location by June 1 preceding the school year for which the request for services is made. If a student is first identified as a student with a disability after June 1 and before April 1 of the current school year, the parent must submit the written request for services within 30 days after the student was first identified. Additionally, if a homeschooled student with a disability moves to a new school district within NYS, a request may also be submitted within 30 days of a change in the student's school district of residence. However, if a parent does not file a written request by June 1, nothing would prohibit a school district from exercising its discretion to provide special education services subsequently requested for a student, provided that such discretion is exercised equally among all students with disabilities who file after the June 1 deadline. For the 2020-21 school year, school districts are encouraged to honor parent requests for special education services for parentally placed and homeschooled students with disabilities who may be impacted by COVID-19.

Providing Technology for Preschool Students

- 5) Are school districts responsible for providing technology to their district preschool students who do not have access to a computer or high-speed internet if preschool special education programming goes remote?**

Yes. In accordance with NYSED's [*Recovering, Rebuilding, and Renewing the Spirit of New York State Schools Guidance*](#) schools should seek to provide students and teachers, for use in their places of residence, with access, to the extent practicable, to a computing device and consistent, reliable access to high-speed internet at a sufficient level to fully participate in remote/online learning (see *Technology and Connectivity* section). Preschool students with disabilities must have equal access to the same educational opportunities provided to all students in the district. Therefore, the school district must work with preschool providers to ensure that resident preschool students with disabilities are, to the extent practicable, receiving the same access to technology and connectivity as their school age peers.

Individualized Educational Program Start Dates

- 6) Due to COVID-19, if a school will not open for the 2020-21 school year on its originally scheduled start date, do students' individualized education programs (IEP) have to be amended to indicate a projected start date for the initiation of the recommended special education programs and services consistent with the new school start date?**

No. Section 200.4(d)(2)(v)(b)(9) of Commissioner's regulations requires an IEP to identify the projected date for each of the services, supports, program modifications and accommodations recommended in students' IEPs. Federal and State law and regulations do not define the term "projected;" however, this term generally means proposed, predicted or estimated. Therefore, because the initiation date for services is projected this regulation has some flexibility. If the projected dates for initiation of the recommended special education programs and services on students' IEPs was based on a school's originally anticipated start date for the 2020-21 school year, such IEPs do not have to be amended to reflect the school's new start date. Nothing in this answer should be construed to impact or alter applicable 180-session day requirements per statute, regulations or relevant Governor Executive Order.

Students Who Are Quarantined

- 7) What programs and services should a student with a disability receive when home, temporarily, because he or she is under quarantine?**

If the student was receiving in-person services, and the student has a contingency plan in place, that plan should be implemented for the student. If the

student does not have a contingency plan, the school district must still ensure the provision of a free appropriate public education (FAPE) as the student transitions, temporarily, to a remote environment.

Approved Programs Serving Students with Disabilities

- 8) When does the period of enrollment begin for tuition billing for the 2020-21 school year for nonpublic schools with approved special education programs, State-supported Schools, State-operated Schools, Special Act School Districts, preschool special class and special class in an integrated setting programs?**

For purposes of the tuition to be charged for nonpublic schools with approved special education programs, State-supported Schools, State-operated Schools, Special Act School Districts, preschool special class and special class in an integrated setting programs (hereinafter referred to as approved programs serving students with disabilities), pursuant to section 175.6 of Commissioner's regulations, a student with a disability is deemed to be in attendance during the period of enrollment. The full-time equivalent (FTE) enrollment starts on the first day students are physically present or legally absent from the approved program. Student absences due to school closure per Governor Executive Order due to the COVID-19 outbreak are considered legal absences per section 175.6. Billing can occur the first week of the student's enrollment (physical presence or legal absence) after three consecutive days.

As with the 2019-20 school year, Executive Orders issued by the Governor pursuant to a State of Emergency for COVID-19 will prevail if different from the Department's interpretation of section 175.6 of Commissioner's regulations and the circumstances for which a student may be considered legally absent from in-person instruction for the 2020-21 school year for tuition billing purposes. Until such time, during the time period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis and pursuant to section 175.6 of Commissioner's regulations, for tuition billing purposes for the 2020-21 school year, if a student is not physically present at the program then the period of enrollment may commence beginning with the first day specialized instruction is offered either in-person, remotely, or a combination hybrid model, to the student; provided that, during a student's absence, the approved program is offering regular substantive interaction between the student and the student's educator and related service provider, as applicable. The period of enrollment does not commence prior to in-person, remote, or hybrid model instruction being offered to students, even if the school begins the school year with conference/staff development days.

Furthermore, although tuition for approved programs serving students with disabilities is billed based on enrollment, and not attendance, as stated in the NYSED's [*Recovering, Rebuilding, and Renewing the Spirit of New York State*](#)

[Schools Guidance](#), attendance must be recorded for instructional purposes and schools must determine how documentation will be maintained on the instruction and services that were provided to each student so that it may be communicated to the committee on special education or committee on preschool special education for consideration when making any individualized determinations of subsequent student need.

9) How will the 180-day requirement be calculated for approved programs serving students with disabilities?

As with the 2019-20 school year, Executive Orders issued by the Governor pursuant to a State of Emergency for COVID-19 will prevail if different from the Department's interpretation of the 180-session day requirement. Until such time, during the time period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, and pursuant to Commissioner's regulations sections 200.7(b)(5) and 200.20(6)(a), days where programs and services are provided in person, or via a hybrid model or remote model count toward the 180-session day requirement for tuition rate-setting purposes provided that no more than four conference/staff development days may be counted toward the 180-session day requirement.

For those days where in-person instruction does not meet the length of school day requirements in sections 200.1(p),(q),(u), or (v) of Commissioner's regulations, as applicable, the duration of the in-person day may differ from what is on the IEP; however, the difference in time must be supplemented with remote instruction (this arrangement reflects a hybrid model where the school day is comprised of part-time in-person and part-time remote instruction).

10) If a student is absent due to a school district or county failure to provide transportation, is this considered a legal absence pursuant to Commissioner's regulations section 175.6 so that the approved special education program may bill tuition for those days where it offered in-person or hybrid instruction?

School districts are expected to fulfill existing mandates in federal and State law regarding the safe and effective transportation of students who are homeless (McKinney-Vento), in foster care, have disabilities and attend non-public schools and charter schools. Counties are expected to fulfill existing mandates regarding the safe and effective transportation of preschool students with disabilities in accordance with New York State Education Law section 4410. NYSED's [Recovering, Rebuilding, and Renewing the Spirit of New York State Schools Guidance](#) states the following, "all students are entitled to transportation by the district to the extent required by law...[i]f the school district is in session remotely or otherwise, pupil transportation must be provided to nonpublic, parochial, private, charter schools or students whose Individualized Education Plans have placed them out of district whose schools are meeting in in-person

sessions when/ if the district is not.” See also NYSED’s [Guidance on Pupil Transportation for Resident Students Attending Non-District Instruction During Periods of Remote Instruction for District Students](#).

In the event that transportation is not provided by the school district or county as required by law, the absence would be considered a legal absence solely for tuition billing purposes to establish the period of student enrollment pursuant to section 175.6 of Commissioner’s regulations so that the approved program serving students with disabilities may bill for this time.

Documentation must be maintained on the instruction and services that were missed due to lack of transportation so that these activities may be communicated to the CPSE or CSE for consideration when making an individualized determination as to whether and to what extent compensatory services may be needed.

Additional Resources

Guidance from the United States Department of Education

- [IDEA Part B Procedural Safeguards in the COVID-19 Environment](#) - June 30, 2020
- [IDEA Part B Dispute Resolution in the COVID-19 Environment](#) - June 22, 2020
- [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#) - March 21, 2020
- [Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#) - March 16, 2020
- [Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak](#) - March 12, 2020
- [Webinar: Providing Services to Students with Disabilities During the 2019 Coronavirus Outbreak](#) - March 12, 2020