



# Special Education COVID-19 Q&A

## Special Education Director's Webinar - September 22, 2021

- 1 Our district has a large number of staff sick with COVID-19 symptoms and we have been unable to find substitutes to staff classrooms, including special education classrooms. How should we provide educational services to students with disabilities when there is no staff available? Can services cease for 10 school days due to the unavailability of staff? Can a change in placement occur due to lack of staffing?**

The lack of available staff is an issue that is plaguing school districts around the nation. Districts must be creative in determining how educational services will be provided to all students, including students with disabilities, when staff is unavailable. Various options that might be available to districts include providing compensatory services; contracting with a neighboring district, charter school, or private entity; providing remote services; placing administrators in the classrooms; etc.

Services cannot cease for 10 days due to the unavailability of staff. The disciplinary provision that educational services need not be provided to a child with disabilities who is suspended for up to 10 school days in a school year is not applicable in a situation where a student is not receiving the educational services identified on an IEP due to staffing shortages.

When determining whether a change in placement is necessary for a student to receive FAPE, the IEP team must look at the needs of the student. A change in placement decision should not be made based on the needs of the district, such as lack of staffing or for administrative convenience.

[IDEA Quick Guide \(idaho.gov\)](https://www.idaho.gov)

- 2 Is a school district allowed to manage special populations (ERR and PK) differently than general education when it comes to notification of possible exposure to COVID-19? Is it required to be in the district's plan? For example in a school plan, it states that a general notification will be posted on the school website that includes the grade level and the school when there are positive cases of COVID-19; however, parents of students who are more fragile (such as in our self-contained classrooms) may want a letter notification also due to the nature of the program and how medically fragile the students are.**

While districts may not treat students with disabilities differently than nondisabled peers, when dealing with health or safety issues, it may be appropriate to provide parents of students with disabilities, especially those with health issues, with additional information. In the scenario presented, it will be important to determine if the school plan in any way prohibits providing parents additional information, in which case the school plan may need to be amended. It will

also be important to maintain student confidentiality, which can be a factor, especially in those classrooms with smaller student populations.

**3 How to respond when parents request that any staff who work with their child be vaccinated?**

Currently there is no state or federal requirement that employees be vaccinated or submit to weekly testing, although this is subject to change and districts must stay current on the requirements.

At this time, unless a district has adopted a requirement that staff receive the COVID vaccine as a condition of employment, parents who request that staff working with their child be vaccinated should be informed that their request is denied through a PWN.

**4 How to respond when parents request that any staff/students who are in direct contact with their child wear a mask? Physician letter prescribing masks for staff and students who are in contact with the student who has health issues. Current school district plan for COVID does not require masking for any staff or students while the district/school is in green and yellow levels.**

Disability discrimination lawsuits challenging bans on mask mandates in public schools are currently being litigated around the nation. Parents argue that a ban on mask mandates forces medically vulnerable students to choose between attending school and potentially exposing themselves to severe illness and receiving subpar instruction through remote learning, which causes irreparable harm to the students. At least one judge has held that a ban on mask mandates prevents districts from making a reasonable modification for medically vulnerable students and from delivering their programs, services, and activities in the most integrated setting appropriate. In reviewing whether a temporary restraining order should be granted, the court held “[d]epriving these children of their education when a safe in-person learning option is available, i.e., in-person learning with universal masking, most certainly constitutes an irreparable harm.” *ARC of Iowa v. Reynolds*, 121 LRP 31473 (S.D. Iowa 9/13/21).

Although a district plan may provide that mask wearing by staff or students is not required, the specific needs of a student must be considered on a case-by-case basis and the least restrictive environment for the student may be at issue. As discussed in the case above, the refusal to mandate face coverings may result in discrimination against a student with disabilities due to the exclusion from school because of the COVID-19 exposure risk. As with any request made by a parent, it may be appropriate to convene the IEP team to discuss the request, review the information provided by the parent, and review the needs of the student. Based on the needs and health issues of the student, the IEP team could determine that masks must be worn when social distancing is not possible, or may determine that masks must be worn continuously throughout the school day with the student.

**5 There are some IEP team decisions being made to exempt a special education student from wearing a mask in a school or district that has enacted a mask mandate. Can you describe**

**some examples of how these decisions might be made and what teams may consider as evidence to make this decision?**

Similar to making team decisions regarding the educational services and needs of a specific student, when reviewing whether a student will be exempt from wearing a mask, the IEP team must consider the needs of the student, any evaluation or assessment data, and any additional information provided by the parent. The IEP team may also determine whether it is appropriate to include a goal or objective for increased student compliance with district policy regarding face coverings.

[Face Coverings Quick Guide \(idaho.gov\)](#)

**6 I have special education teachers asking if the Individualized Distance Learning Plans (IDLPs) are required/recommended again this year.**

Students must not experience gaps in educational services. Each LEA must be able to provide evidence that planning for foreseeable transitions has been addressed at the individual student level. While it is recommended that IEP teams use the IDLP form template provided, IEP teams may also opt to embed the components of the IDLP into the IEP in another way.

[Individualized Distance Learning Plan \(idaho.gov\)](#)

[Individualized Distance Learning Plan Quick Guide \(idaho.gov\)](#)

**7 What do we do when parents ask for us to write accommodations into IEPs indicating that their child will not be quarantined from school if determined to be a close contact to a COVID-19 positive case?**

A district's board of trustees may adopt quarantine requirements and those requirements may change based on community spread and as the local health department's guidance changes. It is paramount that district staff follows the most recent board requirements. The health and safety of all students is of utmost importance and the board may require that students exposed to COVID, including students with disabilities, quarantine. The IDLP is an appropriate instrument for the IEP team to use to determine how instruction will be provided in those situations where a student is quarantined due to COVID exposure.

**8 IDLPs are not specified or required in IDEA. How can districts be required to include an IDLP in the IEP?**

The IDEA requires districts to have an IEP in place for each student with a disability at the start of the school year to ensure they receive FAPE. The COVID-19 pandemic has not altered this obligation. The Office of Special Education Programs (OSEP) has provided guidance that IEP teams should consider alternate methodologies and methods of delivering special education and related service. "For example, IEP Teams can discuss how a child's IEP will be implemented with traditional in-person instruction and how services also could be provided through remote/distance instruction if circumstances require a change to distance learning or a hybrid

model.” *COVID-19 Questions & Answers: Implementation of IDEA Part B Provision of Services*, 77 IDELR 138, (OSEP 9/28/20).

IDLPs provide a means for IEP teams to discuss and document how services will be provided to individual students if/when circumstances due to the pandemic require a change in how educational services will be provided and assist IEP teams in ensuring that no gap in services occurs due to changing circumstances.

## **9 What impact does the August 24, 2021 OSERS letter have on the GSFR Process?**

The SDE is tasked with general supervisory, accountability, and oversight responsibilities to ensure that districts meet IDEA requirements, including during the Covid-19 pandemic. The Office of Special Education and Rehabilitative Services (OSERS) issued a letter on August 24, 2021 emphasizing the importance that children with disabilities receive special education and related services in accordance with the IDEA. Regarding the SDE’s responsibilities, OSERS specifically stated:

SEAs [State Education Agencies] and LAs [State Lead Agencies] continue to have a reasonable degree of flexibility in how, but not whether, they monitor their LEAs [Local Education Agencies] and EIS [Early Intervention Service] programs and providers, using multiple components of the State’s general supervision system. The Department will monitor States’ implementation under Parts B and C of the IDEA, which includes reviewing whether States used alternative methods of exercising the general supervisory, accountability, and oversight responsibilities.

OSERS emphasized the need to ensure full implementation of IDEA occurs during the 2021-2022 school year. Requiring evidence of IDLP documentation in the GSFR process is an alternative method of exercising supervisory, accountability, and oversight responsibilities.

## **OTHER RESOURCES**

[Attendance Quick Guide \(idaho.gov\)](https://www.idaho.gov/education/attendance-quick-guide)

[SLD Eligibility Quick Guide \(idaho.gov\)](https://www.idaho.gov/education/sld-eligibility-quick-guide)

[Individualized Distance Learning Plan Home/Hospital \(idaho.gov\)](https://www.idaho.gov/education/individualized-distance-learning-plan-home-hospital)