



# HOME PROGRAMS AND IDEA Q & A

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*In an effort to provide parents with more choice, school districts may consider contracting with private on-line home programs in order to offer choice to parents residing within and outside of the district boundaries. Before entering into contracts with private organizations, it is important that Idaho school districts investigate the services provided, particularly the special education services provided to students with disabilities and ensure that the Individuals with Disabilities Education Act (IDEA) mandates can be met.*

*This Q & A provides an overview for Idaho school districts regarding their obligations under the IDEA to provide appropriate educational services to students with disabilities and the possible problems that can occur when contracting with private organizations to provide the educational services that the district would otherwise provide.*

*In a joint letter, the Office for Special Education Programs and the Office for Special Education and Rehabilitative Programs clarified the responsibilities of public schools when students are enrolled in a virtual school:*

*The Requirements of IDEA apply to SEAs [State Education Agencies] and LEAs [Local Education Agencies] regardless of whether a child is enrolled in a virtual school that is a public school of the LEA or a public school that is constituted as an LEA by the State. . . . If a virtual school is a public school of an LEA, the LEA is the entity that would generally be responsible for ensuring that the requirements of Part B are met by that virtual school for children with disabilities participating in the virtual school’s program. <sup>1</sup>*

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## Definitions

For the purposes of this Q & A, the following definitions apply:

Term	Definition
Curricular materials	Textbook and instructional media, including software, audio/visual media and internet resources. <sup>2</sup>
Enrollment	Those students attending an Idaho school district by following the enrollment process established by its board.
Free Appropriate Public Education (FAPE)	The provision of special education and related services that are: 1) provided at public expense without charge to the parent and provided under public supervision and direction; 2) meet the standards of the Idaho State Department of Education (SDE); 3) include an appropriate preschool, elementary school or

<sup>2</sup> Idaho Code 33-118A.

	secondary school education in Idaho; and 4) are provided in conformity with an IEP. <sup>3</sup>
General education curriculum	The curriculum that is designed for all students, usually consisting of a common core of subjects and curriculum areas adopted by an Idaho school district that are aligned to the Idaho Achievement Standards or district standards. The general education curriculum is defined by either the Idaho Achievement Standards or the district content standards if they are as rigorous. <sup>4</sup>
Home Program	A public school district program offered in the home through an on-line program.
Homebound placement	An educational setting determined to be the least restrictive environment by a student's IEP team, often provided in the home setting. <sup>5</sup>
Homeschooled student	A student not attending a public or private school and receiving educational instruction in a home school setting under the direction of the student's parent. <sup>6</sup>
Idaho school district	A traditional school district or a public charter school in Idaho authorized by state law to provide educational services to public elementary or secondary students. A school district is also defined as a local educational agency (LEA). <sup>7</sup>
Idaho Special Education Manual	A manual developed by the Idaho State Department of Education and approved by the Idaho State Board of Education which Idaho school districts have adopted as policy. <sup>8</sup>

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<sup>3</sup> 34 CFR 300.17; *Idaho Special Education Manual 2018*, Glossary at xix.

<sup>4</sup> *Idaho Special Education Manual 2018*, Glossary at xx.

<sup>5</sup> *Idaho Special Education Manual 2018*, Glossary at xx.

<sup>6</sup> IDAPA 08.02.03.118; Idaho Code 33-202.

<sup>7</sup> 34 CFR 300.28; Idaho Code 33-301 *et seq.*

<sup>8</sup> [Idaho Special Education Manual](#)

Individuals with Disabilities Education Act (IDEA)	A federal law ensuring services to children with disabilities. <sup>9</sup>
Parent	A biological or adoptive parent, a foster parent, a guardian authorized to act as a child’s parent, an individual acting in the place of the biological or adoptive parent with whom the child lives or is legally responsible for the child’s welfare, or an appointed surrogate parent. <sup>10</sup>
Public school student	An individual who meets the definition of school age, is attending preschool through grade twelve, and is enrolled in an Idaho public school district. <sup>11</sup>

## Public School Students

**1 Are the students enrolled in a district’s Home Program considered public school students?**

Yes. Students enrolled in an Idaho school district, regardless of the educational program they attend, are Idaho public school students.

**2 Can the students enrolled in a district’s Home Program be considered homeschooled students?**

No. Since the students attending a district’s Home Program are enrolled in the district’s Home Program, those students are Idaho public school students.

## Child Find Requirements

**1 Does the district have a child find obligation for students attending a district’s Home Program?**

Yes. Because students attending a district’s Home Program are public school students, all of the IDEA requirements apply to those students, including the child find obligation. A district must

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<sup>9</sup> *Idaho Special Education Manual 2018*, Glossary at xxii.

<sup>10</sup> 34 CFR 300.30.

<sup>11</sup> Idaho Code 33-201.

have child find policies and procedures in effect to ensure that all children with disabilities, including those who attend virtual schools, who are in need of special education and related services, regardless of the severity of their disability, are identified, located, and evaluated.<sup>12</sup>

**2 Can a district rely on a parent’s referral for special education services and meet its child find obligation?**

No. Reliance on referrals by parents that their child might have a disability should not be the primary vehicle for meeting IDEA’s child find requirements.<sup>13</sup>

## Evaluations and Reevaluations

**1 Is an Idaho school district obligated to evaluate and/or reevaluate a student with a disability who is enrolled in its Home Program?**

Yes. The district’s responsibilities include implementing the evaluation and reevaluation requirements.<sup>14</sup>

## Eligibility Determination

**1 Is an Idaho school district obligated to determine whether a student with a disability enrolled in its Home Program is eligible for special education services?**

Yes. Upon completion of the administration of assessments and other evaluation measures, the district’s responsibilities include ensuring that a group of qualified professionals and the parent of the child determine whether the child is a child with a disability.<sup>15</sup>

**2 How should eligibility for special education be determined if a student enrolling in an Idaho school district’s Home Program was homeschooled prior to enrollment?**

In determining eligibility, the evaluation team must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher

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<sup>12</sup> 34 CFR 300.200-300.201.

<sup>13</sup> *Dear Colleague Letter*, 68 IDELR 108 (OSERS/OSEP 2016).

<sup>14</sup> 34 CFR 300-301-300.305.

<sup>15</sup> 34 CFR 300.301-300.305.

recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior.<sup>16</sup>

## IEP Team Membership

### 1 Can the IEP team membership change when a student enrolls in a district's Home Program?

It depends on what change occurs. The individuals who attend IEP meetings can change, but the team membership must contain the appropriate positions within the district as listed below.

The IDEA requires that a student's IEP team consist of the following:

- The parents;
- Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- A representative of the district who:
  - Is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
  - Is knowledgeable about the general education curriculum; and
  - Is knowledgeable about the availability of resources of the district.
- An individual who can interpret the instructional implications of evaluation results;
- At the discretion of the parent or district, other individuals who have knowledge or special expertise regarding the child; and
- Whenever appropriate, the child with a disability.<sup>17</sup>

Additional IEP team members must also be included in certain circumstances, including: when determining whether a student suspected of having a specific learning disability or autism is a child with a disability;<sup>18</sup> when the purpose of an IEP meeting will include consideration of postsecondary transition services<sup>19</sup> when a student who previously received IDEA Part C

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<sup>16</sup> 34 CFR 300.306(c)(i).

<sup>17</sup> 34 CFR 300.321.

<sup>18</sup> 34 CFR 300.308; *Idaho Special Education Manual 2018* at 46.

<sup>19</sup> 34 CFR 300.321(b)(1).

services becomes eligible for Part B services at age 3;<sup>20</sup> and when a district considers placing a student in a private school or facility.<sup>21</sup>

## **2 Can a parent act as the general education or special education teacher in an IEP meeting?**

No. A parent's role in an IEP team meeting is to participate meaningfully as a member of the child's IEP team.<sup>22</sup> General education and special education teachers participating in IEP team meetings are district employees or contracted individuals and have specific responsibilities as IEP team members.<sup>23</sup>

## **IEP Requirements**

### **1 Must an Idaho school district ensure that all IEP requirements are met for a student with a disability enrolled in its Home Program?**

Yes. A district's responsibilities include ensuring that all IEP requirements are met, including those governing IEP content, IEP team participants, parent participation, when IEPs must be in effect, consideration of special factors, the development, review, and revision of IEPs, secondary transition services and participation in State and districtwide assessment programs.<sup>24</sup>

## **Least Restrictive Environment (LRE)**

### **1 What obligation does an Idaho district have to ensure LRE is met, since the Home Program is only offered on-line?**

An Idaho school district offering a Home Program is obligated to implement the requirements regarding education in the LRE, including ensuring the availability of a continuum of alternative placements to provide special education and related services.<sup>25</sup> Each student's IEP must also

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<sup>20</sup> 34 CFR 300.321(f).

<sup>21</sup> 34 CFR 300.325(a).

<sup>22</sup> 34 CFR 300.501(b).

<sup>23</sup> 71 Fed. Reg. 46,669-70 (2006); 34 CFR 300.324(a)(3).

<sup>24</sup> 34 CFR 300.320-300.324; *Dear Colleague Letter*, 68 IDELR 108 (OSERS/OSEP 2016).

<sup>25</sup> 34 CFR 300.114-300.117.

include an explanation of the extent to which the student will not participate with nondisabled students in the regular class and not participate in extracurricular and nonacademic activities.<sup>26</sup>

**2 What must occur if a student’s IEP team determines that the district’s Home Program does not provide the student with FAPE?**

In the event a student’s IEP team determines that the district’s Home Program does not provide FAPE, the IEP must identify the educational services and placement that does provide FAPE and provide the parents with Prior Written Notice regarding the IEP team’s determination. In such a case, the parent may choose to have the student’s IEP implemented in the placement determined by the IEP team or may choose to withdraw the student from special education and enroll the student in the Home Program.

## Transfer Students

**1 What obligation does an Idaho school district have to a student who transfers to its Home Program from another Idaho school district with an existing IEP?**

When a student with an IEP transfers within the same school year from another Idaho school district and enrolls in a district’s Home Program, the receiving district, in consultation with the student’s parents, must provide FAPE, including services comparable to those described in the student’s interim IEP until the district: 1) adopts the student’s IEP from the previous Idaho school district; or 2) develops, adopts, and implements a new IEP.<sup>27</sup> Further, specific timelines must be followed.

**2 What obligation does an Idaho school district have to a student who transfers to its Home Program from an out-of-state school district with an existing IEP?**

If a student with an existing IEP transfers from out-of-state to an Idaho school district’s Home Program within the same school year, the Idaho school district, in consultation with the student’s parents, must provide FAPE to the student, including services comparable to those described in the student’s interim IEP, until the district: 1) conducts an evaluation if determined to be necessary; and 2) develops, adopts and implements a new IEP, if appropriate.<sup>28</sup> Further, specific timelines must be followed.

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<sup>26</sup> 34 CFR 300.320(a)(4).

<sup>27</sup> 34 CFR 300.323(e); *Idaho Special Education Manual* (2018) at 90.

<sup>28</sup> 34 CFR 300.323(f); *Idaho Special Education Manual* (2018) at 91.

## Teacher Requirements

- 1 Can the parent of a student with a disability attending an Idaho school district's Home Program serve as the student's general education or special education teacher or as a service provider?**

No, unless the parent is certified in Idaho as a teacher or a service provider and is an employee of the school district or is contracted to provide appropriate educational services. Every person who serves in any Idaho elementary or secondary school in the capacity of a teacher must hold a teaching certificate issued under the authority of the Idaho State Board of Education.<sup>29</sup>

Additionally, the IDEA requires that personnel providing special education are appropriately and adequately prepared and trained, and must have the content, knowledge, and skills to serve students with disabilities.<sup>30</sup>

## Educational Programs

- 1 Is a student enrolled in an Idaho school district's Home Program the same as a homebound student?**

No. A student enrolled in an Idaho school district's Home Program is enrolled in that setting at parent choice. On the other hand, a student's IEP team makes the determination as to whether a student should receive homebound instruction; it must be the LRE for the student and may occur in the home or another setting other than school based on the student's needs.

- 2 What obligation does an Idaho school district have to provide positive behavioral interventions and supports in the Home Program setting?**

Whenever a student's behavior impedes the student's learning or the learning of others, the IEP team is required to consider the use of positive behavioral interventions and supports and other strategies to address the behavior, regardless of the setting.<sup>31</sup>

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<sup>29</sup> Idaho Code 33-1201.

<sup>30</sup> 34 CFR 300.156.

<sup>31</sup> 34 CFR 300.324(a)(2)(i).

**3 Can parents of a student attending an Idaho school district’s Home Program choose different general education curriculum materials than what has been adopted by the Idaho State Board of Education and the school district?**

No. The Idaho State Board of Education approves the curricular materials that can be adopted by Idaho school districts. In those instances where materials are not covered by curriculum materials approved by the Idaho State Board of Education, school districts follow their own policies for adoption in subject areas offered by the district.<sup>32</sup>

**4 Can an Idaho school district’s Home Program require the students in attendance to meet different standards than other students in the district?**

No. All schools and programs within an Idaho school district are required to deliver a core of instruction and advisement programs for each student. Students are required to meet standards established locally (at a minimum, the standards of the State of Idaho) through rigorous accountability, which includes challenging examinations, demonstrations of achievement, and other appropriate tests and measures.<sup>33</sup>

## **Provision of a Free Appropriate Public Education (FAPE)**

**1 Is an Idaho school district obligated to provide a FAPE to a student with a disability who enrolls in its Home Program?**

Yes. An Idaho school district is required to ensure that each eligible child with a disability has FAPE available, including those students attending its Home Program.<sup>34</sup>

## **Related Services**

**1 Can an Idaho school district’s Home Program only provide related services on each enrolled student’s IEP virtually?**

No. The needs of each particular student, as determined by the IEP team, will determine whether related services can be provided virtually, or whether the related services need to be provided in-person.

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<sup>32</sup> IDAPA 08.02.03.128.

<sup>33</sup> IDAPA 08.02.03.

<sup>34</sup> 34 CFR 300.101 and 300.17.

## Student Assessment

### 1 Can a student attending a Home Program be assessed by different means than other students enrolled in the district?

No. Students attending a district's Home Program must be included in all general State and district-wide assessment programs, including assessments described in the Elementary and Secondary Education Act, with appropriate accommodations and alternate assessments where necessary and as indicated on each student's respective IEP.<sup>35</sup>

## Contracted Services

### 1 Can an Idaho school district contract with related service providers or agencies to provide related services to students enrolled in its Home Program?

Yes. A district may contract with a private provider or agency to provide related services to enrolled students so long as the individual providing the related services is properly licensed in Idaho.

## District Oversight

### 1 If an Idaho school district contracts with another entity to provide special education services to students enrolled in the district's Home Program, what obligation does the district have to ensure the services are provided?

The ultimate responsibility to provide the special education services outlined on a student's IEP rests with the school district. Even if the district contracts with another entity to provide some or all of the services, the district must ensure that the IDEA mandates are met.<sup>36</sup> The educational rights and protections afforded to children with disabilities and their parents must not be diminished or compromised when attending virtual schools operated by Idaho school districts.<sup>37</sup>

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<sup>35</sup> *Dear Colleague Letter*, 68 IDELR 108 (OSERS/OSEP 2016).

<sup>36</sup> *Dear Colleague Letter*, 68 IDELR 108 (OSERS/OSEP 2016).

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