

FREQUENTLY ASKED QUESTIONS FOR DISTRICTS AND SCHOOLS REGARDING SPECIAL EDUCATION

SCHOOL YEAR 2021-2022

Revised February 2022

The Department of Elementary and Secondary Education (DESE) is committed to assisting schools and Local Education Agencies (hereafter “districts”) with ensuring that students with disabilities receive the special education and related services to which they are entitled under the Individuals with Disabilities Education Act (IDEA) and Massachusetts state law (M.G.L. c. 71B), as well as the special education regulations (34 C.F.R. Part 300 and 603 CMR 28.00). Notwithstanding the challenges associated with the COVID-19 pandemic, students with disabilities are entitled to a free appropriate public education (FAPE) under both federal and state law.¹

DESE provides this updated Frequently Asked Questions document (FAQ) to address questions regarding the provision of special education and related services in light of the ongoing COVID-19 pandemic.

This FAQ is organized to provide information on special education topics including child find, referral and evaluation procedures, IEP team meetings, compensatory services, and other topics to help schools and districts ensure full implementation of special education requirements including providing a comprehensive range of special education and related services to ensure FAPE.

For additional information specific to special education and the COVID-19 pandemic in Massachusetts, please see DESE’s [COVID-19 Information and Resources for Special Educators](#), as well as DESE’s [main COVID-19 website](#).

Additionally, the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS) and the Office for Civil Rights, have released the following documents related to students with disabilities and IDEA:

- [Long COVID under Section 504 and the IDEA \(July 26, 2021\)](#)
- [Return to School Roadmap under IDEA \(August 24, 2021\)](#)
- [Return to School Roadmap – Child Find Under Part B of the Individuals with Disabilities Education Act \(August 24, 2021\)](#)
- [Return to School Roadmap: Development and Implementation of Individualized Education Programs \(September 30, 2021\)](#)
- [Return to School Roadmap: Child Find, Referral, and Eligibility Under Part C of the Individuals with Disabilities Education Act \(October 29, 2021\)](#)
- [Return to School Roadmap: Provision of Early Intervention Services \(October 29, 2021\)](#)

¹ [OSERS Return to School Roadmap: Development and Implementation of Individualized Education Programs \(September 30, 2021\)](#).

Part A. CHILD FIND

Question A-1: Given the continued challenges with COVID-19, are there any flexibilities with Child Find obligations?

Answer: No, school districts must continue to conduct child find as required by federal and state law. For information regarding Child Find, please see [OSERS Return to School Roadmap: Child Find Under Part B of the Individuals with Disabilities Education Act](#) (Aug. 24, 2021) and DESE's [Child Find Resources](#) page.

Question A-2: Do school districts have to continue to conduct Child Find for children who are parentally-placed in private schools or who are homeschooled?

Answer: Yes. Please see DESE's [website](#), which includes [Administrative Advisory SPED 2018-1](#) and [sample Child Find notices](#) for privately enrolled students.

Question A-3: Given the challenges that continue to exist with COVID-19, what strategies can districts use to improve Child Find?

Answer: Please see [Question C-2](#) from [OSERS Return to School Roadmap: Child Find Under Part B of the Individuals with Disabilities Education Act](#) (Aug. 24, 2021).

Part B. REFERRAL AND EVALUATION

Question B-1: When a parent shares that their child contracted COVID-19, has long COVID, or has other post-COVID conditions, and the symptoms of the child's condition (such as fatigue, mood changes, or difficulty concentrating) are adversely impacting the child's ability to participate and learn in the general curriculum, must the child be referred for special education and related services?

Answer: Yes. Please see [Question C-4](#) from [OSERS Return to School Roadmap: Child Find Under Part B of the Individuals with Disabilities Education Act](#) (Aug. 24, 2021). For more information please also see USED's [Long COVID under Section 504 and the IDEA: A Resource to Support Children, Students, Educators, Schools, Service Providers, and Families](#) (July 26, 2021).

Question B-2: Are evaluation timelines still in effect if a student or staff member is required to quarantine?

Answer: Yes, evaluation timelines remain in effect. DESE strongly encourages districts to identify staff roles essential for meeting evaluation timelines and establish contingency plans for these roles during required COVID-19 quarantine. DESE also encourages schools and districts to communicate openly with families if they foresee any need to extend those timelines due to COVID-19 quarantine.

Question B-3: Where can I find information about screening, evaluation, eligibility, and transition for young children?

Answer: Please see DESE's [*Technical Assistance Advisory SPED 2019-1: Transition from Early Intervention Programs to Early Childhood Special Education - Special Education*](#).

Part C. IEP TEAM MEETING

Question C1: Can districts continue to hold virtual and/or telephonic IEP meetings?

Answer: Yes. It is important to build strong relationships with families and continue meaningful family engagement initiatives that may facilitate family participation.

IDEA permits IEP meetings to be held via telephone and/or video conference. Districts can continue to hold IEP Team meetings using these alternative means of meeting participation if the parent² agrees to participate in this way.

The school or district should contact the parent to ask if the parent agrees to participate in a Team meeting virtually or telephonically. If the parent agrees, the school or district should issue the Team Meeting Invitation ([N3](#)) and Attendance Sheet ([N3A](#)) by mail, email, or other electronic means (utilizing the parent's preferred method of communication) and should include the telephone or virtual platform's dial-in information. The school or district must provide meeting interpreters for parents with limited English proficiency and must also translate documents that will be discussed, as appropriate. The attendance sheet should reflect that participation was virtual or telephonic.

In circumstances where the meeting will occur in-person, but a specific Team member will attend virtually or telephonically, the IEP Team chair should notify the parent before the meeting that the specific Team member will be attending virtually or telephonically.

Question C2: Can an electronic or digital signature be accepted to indicate parental consent for an initial evaluation, reevaluation, or the provision of special education and related services?

Answer: Yes, electronic or digital signatures may be accepted as long as the school district ensures that there are appropriate safeguards in place to protect the integrity of the process. An electronic or digital signature can be used as long as the parent has been fully informed, and the parent has received written notice of the activity for which the consent is being requested. Additionally, written notice must be in the parent's primary language and in language that is understandable to the general public. The parent must agree in writing to the activity and the signature must authenticate a particular person as the source of the consent. For further explanation, see Q.1 of USED's [Q&A on IDEA Part B, Procedural](#)

² Parent shall mean father or mother. For purposes of special educational decision-making, parent shall mean father, mother, legal guardian, person acting as a parent of the child, foster parent, or an educational surrogate parent appointed in accordance with federal law. Legal authority of the parent shall transfer to the student when the student reaches 18 years of age. [603 CMR 28:02\(15\)](#).

[Safeguards](#) (June 30, 2020).

Question C3: What can a school district do if one of the required IEP Team members is unable to attend the IEP meeting?

If [required members of the IEP Team](#) are unable to attend, IDEA regulations provide that Team members can be excused with agreement from the parent, if:

1. The district and the parent agree, in writing, that the attendance of the Team member is not necessary because the member's area of the curriculum or related services is not being modified or discussed; or
2. The district and the parent agree, in writing, to excuse a required Team member's participation and the excused member provides written input into the development of the IEP to the parent and the IEP Team prior to the meeting.

Part D. CONSIDERATION OF SPECIAL FACTORS AND ASSISTIVE TECHNOLOGY NEEDS

Question D-1: What special factors should IEP Teams consider when developing, reviewing, or revising a child's IEP?

Answer: The IEP Team must consider the special factors listed in [34 C.F.R. §300.324\(a\)\(2\)](#), including the following:

- [\(i\)](#) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
- [\(ii\)](#) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
- [\(iii\)](#) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
- [\(iv\)](#) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
- [\(v\)](#) Consider whether the child needs assistive technology devices and services.

For more information, see [OSERS Return to School Roadmap: Development and Implementation of Individualized Education Programs](#) (September 30, 2021).

Question D-2: Have the regulations changed regarding assistive technology?

Answer: No. Under IDEA, an assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. 34 C.F.R. § 300.5. Augmentative and Alternative Communication (AAC) is a form of assistive technology that should be considered for students who cannot communicate effectively through oral speech, including students with autism, cerebral palsy, intellectual disabilities, sensory impairments, traumatic brain injury, congenital disabilities, and selective mutism. Districts should be prepared to promptly refer such students for an AAC evaluation, ensure the provision of AAC aids, devices, and services appropriate to the student's needs, and arrange for students, family members, relevant school staff, or others substantially involved in the major life functions of the child receive needed AAC training, if needed.

For more information about assistive technology, including information on AAC and how you can implement *low- to high-tech supports*, please see DESE's [Technical Assistance Advisory SPED 2018-3](#), [Access to Learning](#) guide, and [Accessibility and Accommodations Manual for the 2021–2022 MCAS Tests/Retests](#).

For additional information on how IEP Teams should consider the student's need for assistive technology, see [Questions C1 and C2](#) of [OSERS Return to School Roadmap: Development and Implementation of Individualized Education Programs](#) (September 30, 2021).

Question D-3: What factors should be considered to determine if a student qualifies as having an emotional impairment?

Answer: DESE recognizes that many students have experienced trauma and stress during the COVID-19 pandemic that has negatively affected their mental health. DESE recommends that schools and districts review their existing school- and class-wide positive behavioral interventions, supports, and other strategies to determine if modifications to these practices need to be made. For further guidance regarding this topic, please see DESE's [Promoting Student Engagement, Learning, Wellbeing and Safety – School Year 2021-2022](#) guidance document.

Under the state special education regulations at 603 CMR 28.02(7)(f) to qualify as having an emotional impairment, a student must exhibit one or more of the following characteristics **over a long period of time** and to a marked degree that adversely affects the student's educational performance. These characteristics include:

1. Inability to learn that cannot be explained by intellectual, sensory, or health factors;

2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. Inappropriate types of behaviors or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems.

The determination of a disability shall not be made solely because the student's behavior violates the school's discipline code, because the student is involved with a state court or social service agency, or because the student is socially maladjusted, unless the Team determines that the student has a serious emotional disturbance.

For additional information on how IEP Teams should address the social, emotional, behavioral, and mental health needs of students with disabilities, see [Questions C3 – C6 of *OSERS Return to School Roadmap: Development and Implementation of Individualized Education Programs*](#) (September 30, 2021).

Question D-4: How can early childhood special educators better support the social, emotional, and behavioral needs of preschool children with disabilities?

Answer: Districts have the opportunity to participate in the [Preschool Positive Behavior Supports \(PBS\) through Pyramid Strategies](#), a research-based tiered approach to providing targeted social emotional skills and supporting children with challenging behaviors. Districts interested in participating in Preschool PBS through Pyramid Strategies should email: specialeducation@doe.mass.edu. Additional information about supporting students can also be found in DESE's [Promoting Student Engagement, Learning, Wellbeing and Safety – School Year 2021-2022](#).

Question D-5: How should districts and schools provide services to students with disabilities who cannot return to school in-person during the 2021-2022 school year due to a medical condition?

Answer: Some students with disabilities might have health or medical conditions that prevent them from returning to in-person learning. DESE's special education regulations provide that if, in the opinion of a student's physician, "an eligible student is likely to remain at home, in a hospital, or in a pediatric nursing home for medical reasons and for more than 60 school days in any school year, the Administrator of Special Education shall, without undue delay, convene a Team to consider evaluation needs and, if appropriate, to amend the existing IEP or develop a new IEP suited to the student's unique circumstances" [603 CMR 28.04(4)]. DESE has prepared a [physician's affirmation form](#) that may be used by districts and schools to share with families of students with disabilities to whom this might apply to obtain the necessary information from the student's physician.

For additional information, please see DESE's [*Question and Answer Guide on the Implementation of Educational Services in the Home or Hospital*](#).

Question D-6: How should districts or schools provide services to students with disabilities who cannot return to school in-person due to a medical condition and must remain at home or in a hospital for a period of more than fourteen days but less than sixty days during the 2021-2022 school year?

Answer: Massachusetts regulations provide that, upon receipt of a physician's written order verifying that any student enrolled in a public school or placed by the public school in a private setting must remain at home or in a hospital on a day or overnight basis, or any combination of both, for medical reasons and for a period of not less than fourteen school days in any school year, the principal shall arrange for provision of educational services in the home or hospital. The principal shall coordinate such services with the Administrator of Special Education for eligible students (603 CMR 28.03(3)(c)). DESE's [*Physician Affirmation of Need for Temporary Home or Hospital Education for Medically Necessary Reasons*](#) form may be used by districts and schools to share with families to obtain the necessary information from the student's personal physician (for example, a pediatrician, internist, medical specialist, psychiatrist or nurse practitioner).

For additional information about this regulation and providing these services, please see [*Question and Answer Guide on the Implementation of Educational Services in the Home or Hospital*](#).

For additional information on how districts or schools should address the school-related health needs of children with disabilities with underlying medical conditions, see [*Questions C7 – C11*](#) of [*OSERS Return to School Roadmap: Development and Implementation of Individualized Education Programs*](#) (September 30, 2021) and [*DESE/DPH Protocols for Responding to COVID-19 Scenarios – SY 2021-2022*](#).

Part E. COMPENSATORY SERVICES

Question E-1: Under what circumstances should an IEP Team consider compensatory services for a student?

Answer: If a student's IEP was not fully implemented or if other extenuating circumstances arose that impacted the student's ability to access FAPE during either the 2020-2021 or the 2021-2022 school years, the Team should seek to address any need for compensatory services as necessary and appropriate. A discussion about compensatory services can occur during the annual Team meeting, during any other Team meeting, or when parents and the district agree, in writing, to meet in-person, via phone, or virtually without convening the full IEP Team and document decisions accordingly.

Parents also have procedural rights to request an IEP Team meeting, file a complaint with DESE's Problem Resolution Systems Office, or pursue a due process hearing at the Bureau of Special Education Appeals.

Question E-2: What should we do if our school district was not able to complete all of the IEP meetings regarding COVID-19 Compensatory Services (CCS) as described in [Technical Assistance Advisory 2021-1](#)?

Answer: In the event that the IEP Team has not yet convened to address a student's individual need for CCS consistent with DESE's guidance, it is very important that the district convene the IEP Team meeting as soon as possible.

For more information on Covid Compensatory Services (CCS), see Coronavirus (COVID-19) Special Education Technical Assistance Advisory 2021-1: COVID-19 Compensatory Services and Recovery Support for Students with IEPs.

Part F: OTHER CONSIDERATIONS FOR ENSURING FAPE DURING THE COVID-19 PANDEMIC

Question F-1: What should IEP Teams consider regarding extended school year (ESY) services?

Answer: In Massachusetts, the IEP Team may determine that a student needs an extended year program if the student has demonstrated or is likely to demonstrate substantial regression in their learning skills and/or substantial difficulty in relearning such skills if an extended program is not provided. The Team's determination must be based on the individual needs of the student and not on the category of the student's disability. In some cases, interruptions in learning resulting from the COVID-19 pandemic may have exacerbated individual students' needs for ESY.

Additional information pertaining to Massachusetts requirements for ESY can be found in [603 CMR 28.05\(4\)\(d\)](#).

Question F-2: What are the preschool ratio requirements for inclusionary and substantially separate programs?

Answer: Under [603 CMR 28.06\(7\)\(e\)](#), inclusionary programs need to be located in a setting that includes students with and without disabilities. For public school programs, class size should not exceed 20 children, with one teacher and one aide, and no more than five students with disabilities. If the number of students with disabilities is six or seven, then the class size should not exceed 15 students with one teacher and one aide.

Programs with more than 50% of students with disabilities are considered substantially separate under [603 CMR 28.06\(7\)\(f\)](#). Substantially separate programs should limit class size to nine students with one teacher and one aide.

Question F-3: Why were the placement forms revised (PL 1 & 2)? When must LEAs begin using the new forms?

Answer: DESE revised the placement forms to align with recent changes to OSEP data requirements and to update the Other Authority – Required Placements section. These changes distinguish between five-year-olds attending early childhood programs or receiving services at home and five-year-olds enrolled in kindergarten. IEP Teams should use the revised [PL 1](#) and [PL 2](#) forms for five-year-olds in kindergarten and all 6-21-year-olds, at each student’s next annual IEP meeting.

Contact Information

For questions pertaining to special education, please visit DESE’s [Special Education webpage](#).