

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

Education for K-12 Students with Disabilities During the COVID-19 Pandemic

The coronavirus disease 2019 (COVID-19) is a global health pandemic affecting the education of students with disabilities around the world and including Nebraska. Students, families, educators, and other stakeholders are currently living with the day-to-day uncertainty of how to meet these new disruptions and changes in a safe, effective, and equitable manner. Through factual information sharing, flexibility, and working together we must, to the greatest extent possible, ensure that the rights of students with disabilities are protected and they continue to receive a free appropriate public education (FAPE) in the least restrictive environment (LRE).

What is a pandemic? Epidemics are defined as a sudden increase in the level of a disease within a certain community or area. When an epidemic is spread across several countries or continents it is called a pandemic.

Source: <https://www.cdc.gov/csels/dsepd/ss1978/lesson1/section11.html>

What is special education? Special education means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a verified disability, including classroom instruction; home instruction; instruction in hospitals, institutions and other settings; and instruction in physical education.

Source: <https://sites.ed.gov/idea/regs/b/a/300.39>

What are related services? Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. Source: <https://sites.ed.gov/idea/regs/b/a/300.34>

What is an individualized education program (IEP)? An IEP is a written document for a child with a disability, age 3 through 21. An IEP is developed, reviewed, and revised according to the child's specific needs. An IEP must specify the special education and related services necessary to ensure that the child receives a "free appropriate public

education” (FAPE). Source: <https://sites.ed.gov/idea/regs/b/a/300.23>. For more information, see: https://www.disabilityrightsnebraska.org/file_download/f61612e2-ea66-4739-8c26-ef8ebe72abe9

What is a 504 plan? A Section 504 plan is a written document that ensures that students who have a disability will receive reasonable accommodations from their school district for accessing a free appropriate public education. For more information, see: https://www.disabilityrightsnebraska.org/file_download/inline/3dbbef7f-a93b-4d41-9761-b3058b0c4b3a

I am worried about sending my child to school during the COVID-19 pandemic. What learning options are being used by school districts?

In-Person Instruction. Generally, in-person instruction takes place within your child’s regular school building. Many schools are planning to open fully or partially and hold at least some in-person instruction. Some schools will be limiting how many students are in each classroom, creating “hybrid” schedules where students are learning in person some days but remotely other days, or they may also be operating with other precautions to keep students safe. Each district is able to create their own plan. Reopening plans are generally posted to the school district’s website.

Remote Learning. Generally, remote learning means that your child will learn from your home through technology and/or materials delivered by the school to your child. Some school districts in Nebraska have made the decision to be fully remote and other school districts may change to remote if COVID-19 conditions worsen in their area. These school districts may use a combination of asynchronous instruction (recordings that are not live), synchronous instruction (live sessions on Zoom or Skype, for instance), educational packets and worksheets, and many other possible educational materials.

Home Instruction (Special Education). Home Instruction is a placement on the Least Restrictive Environment (LRE) continuum. The individualized education program team (IEP team) may only place a student on home instruction if the student with a disability cannot receive a FAPE in its least restrictive setting. IDEA rights apply when a student with a disability is receiving home instruction pursuant to their IEP.

Homebound Instruction (Special Education) Homebound Instruction is a placement made for students that have a severe, documented need for educational services to be provided within the student’s home environment. It is considered to be the most restrictive environment. Generally, these services are intended to be temporary. The IEP team determines what those services will be, and how to provide the services for the student.

Home School (Exempt School). Home Schooling is independent, parent-directed, and parent-funded education, in which the parents or guardians are responsible for the education of their child. Parents/guardians may educate their child at home by electing not to meet State approval or accreditation requirements. By filing for and receiving

exempt status from the Nebraska Department of Education, parents are electing not to have their child attend a school that meets State approval and accreditation requirements while also complying with the mandatory school attendance law. Home School status does not apply to students who are receiving their education at home due to a school closure, or through remote learning if they are still enrolled in an approved or accredited school.

Source: <https://www.education.ne.gov/fos/exempt-schools/>

Can my child still receive assistive technology services and devices in any of these learning options?

School districts are required to provide a free appropriate public education to students with disabilities based on their individualized educational needs. A child's individualized educational needs may include related services, including assistive technology services, devices, and training.

An assistive technology device is any item, piece of equipment, or system that is used to increase, maintain, or improve the functional capabilities of a child with a disability. An assistive technology service is any service that helps a child with a disability in finding, buying, or using an assistive technology device.

Source: <https://sites.ed.gov/idea/regs/b/a/300.5>.

As long as your child is enrolled in an approved or accredited school, which does not include Home (Exempt) School, then your child would still be eligible for assistive technology, if determined to be appropriate. Due to the potential changes in how your child will attend school (in-person vs. remote) as COVID-19 conditions change, you should discuss any assistive technology devices or services your child may need with your child's IEP team.

How should I make decisions about sending my child back to school?

There are many different questions that you can ask yourself to help with making the appropriate choices for your child. Below, we have listed some general questions that you may want to consider:

- Is my child at high risk of contracting the COVID-19 virus or at a higher risk of complications if they do contact the virus?
- How will my child's IEP or Section 504 plan be affected?
- How high is the risk level in my area/school? How quickly will I be informed about changes in the risk level?
- What are the health statuses of others in my household? Are there others in my home who are vulnerable to the virus if my child becomes infected with the virus?

- What are the steps the school district is taking to keep my child safe?
- Am I able to provide an appropriate learning environment for my child from home? Are they able to stay home with or without an adult present?
- Can I financially afford to keep my child home for schooling? Will I have to stop working at my job in order to keep my child home?
- Will my school district allow me to change my decision on whether my child attends in-person classes or remote learning when situations may change?

You may feel overwhelmed with making this decision. If you are not sure how to decide, or want another opinion, we recommend talking to your doctor, pediatrician, or other trusted medical professional who knows the needs of your child and family. If your child has an IEP or 504 plan, it would be appropriate to discuss your concerns with your child's IEP team or 504 plan team.

Additionally, the COVID-19 pandemic has increased the importance of parents keeping a journal or other method of documentation regarding their child's educational programming, services, and/or any questions or concerns that may arise. Whenever possible, parents should communicate in writing when they have questions, concerns and/or requests regarding their child's education. Asking for a written follow-up letter or email may be useful when an in-person conversation occurs. Doing so can serve as documentation, should any future needs or conflicts arise regarding the provision of services and implementation of appropriate educational procedures by the school.

Nebraska Reopening Plans

The Nebraska Department of Education (NDE) created a website called [Launch Nebraska](#), which provides school reopening guidance that is specific to COVID-19. The NDE guidance offers protocols and strategies, which vary depending on the current level of risk related to COVID-19 spreading in a school's community or area. Launch Nebraska also gives recommendations on how schools can prepare for and implement safety measures, depending on the current level of risk.

While NDE decisions may guide the general format of the transition back to school, it will be the responsibility of local educational agencies and school districts, with additional guidance from their local health authorities and the Nebraska Department of Health and Human Services, to develop individualized reopening plans. Reopening plans may include areas such as:

- school operating modes (in-person, remote, hybrid);
- food security and nutrition;
- mental health;

- social-emotional health;
- level of risk;
- spacing and movement;
- physical or social distancing;
- health screenings;
- athletics and extracurricular activities;
- dining and gathering;
- learning model options;
- cleaning protocols;
- health and hygiene;
- personal protective equipment;
- busing and student transportation; and
- medically vulnerable students and adults.

What is a COVID-19 risk dial and how does it affect my child's school reopening plan?

Generally, a risk dial is a graphic illustration that shows the level of risk for COVID-19 spread in a community or area and is updated weekly. The current level of risk is based on ever-changing data from local health departments, using state and federal guidance. Every county in Nebraska is served by a local health department. A Risk Dial looks at five key measures to determine the position of the dial: Case Numbers, Testing Capacity, Positivity Rate, Contact Tracing, and Hospital Capacity. Different styles of graphic illustrations may be used to communicate level of risk information with the public in a given community or area. Typically, the graphic illustrations use different colors and written descriptions for each level of risk, for example:

- Green = low or no spread/least risk.
- Yellow = minimal spread/minimal risk.
- Orange = moderate spread/moderate risk.
- Red = substantial spread/high risk.

Some school districts and schools have incorporated the use of a Risk Dial to help determine the appropriate school operating mode for their current circumstances.

Not all counties and school districts are using a Risk Dial, but they still consider many of the same measures to determine the appropriate school operating mode. Please check with your school administration or your school district's website for information about their Reopening Plan and current operating mode.

Source: <https://www.lincoln.ne.gov/city/covid19/>

Safety Measures and Accommodations

Is my child's school district allowed to make me sign a liability waiver before sending my child back to school?

There have been reports that some school districts in Nebraska have been putting forward "General Liability Waiver and Hold Harmless" agreements to parents concerning "facility" usage, in regard to COVID-19. The Nebraska Department of Education - Office of Special Education has come out stating that neither state nor federal law allow for school districts to require a student or parent to waive any rights that a student would otherwise have to participate in special education services at school.

What should I do if my child cannot wear a mask?

Face covering/mask wearing requirements vary between school districts. Each school district's reopening plan should include a face covering/mask wearing policy which clearly explains the use of face coverings/masks in the school setting. In some school districts, face coverings/masks are required for certain activities, but not for others. For example, in some school buildings students must wear a face covering/mask only when they cannot stay 6 feet away from each other.

Currently, some cities in Nebraska have mandates that require anyone age 5 and older to wear a face covering/mask when inside a place that is open to the general public, including schools. The mandates include an exception for a person with a medical health, mental health, and/or disability that prevents the person from wearing a face covering/mask due to various factors.

Accommodations and Modifications

In the educational setting, there are individualized reasons why students may require an exception, modification, or accommodation to a school district's face covering/mask policy, and school districts may have a specific request procedure that parents are asked to follow. Medical, mental, emotional, and physical health factors can all play a role in the reason a student may not be able to wear a face covering or mask. Some students may require a face covering/mask exception, modification, or accommodation when the following factors are involved:

- deaf or hard of hearing;
- medically fragile;

- body structure;
- respiratory/breathing;
- sensory;
- emotional;
- mental health; and,
- other factors.

A parent with a concern about their child's ability to wear a mask should contact their school district, IEP team, or 504 plan team to discuss the alternatives and options that match their child's needs. You may also want to obtain written documentation from your child's healthcare provider that describes your child's individualized needs related to wearing a face covering/mask. If a student has an IEP or 504 plan, any exception, modification, or accommodation the IEP team or 504 plan team makes should be written into the student's plan.

Potential modifications or accommodations could include:

- clear face shields;
- clear masks;
- plexiglass partitions;
- extra breaks to remove a face covering/mask; and,
- many other possibilities.

Discipline Regarding Mask Wearing or Social Distancing

Most Nebraska school districts said they will not use discipline to address face covering/mask wearing and social distancing requirements. Instead, students will be educated on the importance and necessity of the requirements. School districts may have different approaches and guidelines. For example, some school districts have written face covering/mask requirements into the student dress code. It is best to talk with school administration or your child's IEP team or 504 plan team if you have questions or concerns about their policies.

What type of services will students with disabilities receive if they are absent due to illness or a health vulnerability?

If a student with a disability is too ill to attend school, they may be too ill to receive educational services. If the student is home for an extended period of time, the school district, IEP team, or 504 plan team should work with the family to determine an appropriate plan, which may include homebound instruction, if appropriate for the student.

In some situations, a student may not be ill, but cannot attend school in-person because they are at high risk of health complications if exposed to COVID-19. The student's team must determine whether the child could benefit from homebound services such as qualified educators providing services in the student's home, online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. School personnel should follow appropriate health guidelines to assess and address the risk of COVID-19 virus transmission while providing services.

How will the implementation of my child's IEP or Section 504 plan be affected by COVID-19?

Under the IDEA and Section 504, parents are viewed as essential members of a child's IEP and Section 504 Plan. Therefore, districts and schools should:

- Provide clear and consistent guidance to parents/guardians about school re-opening options.
- Provide clear and consistent guidance about how IDEA/Section 504 services will be provided for the different learning options, including any proposed changes to the type, location, and frequency of education and related services, or the manner in which they are provided, so that parents can address any concerns.
- Provide clear and consistent guidance about safety precautions provided by schools for in-person learning of all types.

What will special education and related services look like during COVID-19 and possible school closures?

If a school district continues providing general educational opportunities to students during a school closure, then they must also provide special education and related services. If the district is not providing educational services to any students during a school closure, then there is generally not a requirement to provide special education services or related services.

If special education services are being provided, the school should consider the use of accessible distance technology, the use of small groups of students with disabilities, access to nondisabled peers, instructional phone calls, and other curriculum-based activities. School district resources and the ability to provide different methods of special education and related services may vary greatly from school to school. The student's IEP team should match services to the individual needs of the student, rather than a one-size-fits-all plan for all students receiving special education. There may be exceptional circumstances that could affect how a particular service is provided, which may result in the need to provide compensatory education at a later time.

When a school district reopens after a period of closure due to COVID-19, the district should collaborate with IEP teams, including the parents, to address student-specific needs resulting from the closure. This may include discussions of compensatory education and extended school year (ESY) services, which are made on a case-by-case basis.

Extended School Year (ESY) may be considered in order to prevent or slow severe skill regression and recoupment issues caused by interruptions in your child's services. ESY services are special education and related services that are provided to a child with a disability beyond the normal school year at no cost to you. This can occur over summer and winter breaks, long weekends, or other prolonged periods where a student may not receive education or other services.

What if my child's school was unable to, or did not provide special education services to my child because of COVID-19?

While some students thrive from remote learning, for other students, remote learning has made certain Individualized Education Program (IEP) services impossible, difficult, or ineffective. For many students, but especially students with disabilities, distance learning resulted in a loss of educational progress and even regression. The Nebraska Department of Education calls this loss of progress or regression, "unfinished learning."

If a school district is unable to provide IEP services due to COVID-19, then once school resumes, a child's IEP team or 504 plan team, must determine what loss of progress or regression may exist. The team will also need to make an individualized determination whether, and to what extent, compensatory education may be necessary.

The goal of compensatory education is to put the student in the place they would have been had a free appropriate public education (FAPE) been provided and the student had not been deprived of special education and related services. The U.S. Department of Education has made clear that students may be entitled to compensatory education due to COVID-19 related school closures.

A student's IEP team may determine the student is eligible for compensatory education if the following barriers to educational access due to COVID-19 were involved:

- cognitive;
- behavioral;
- language;
- technology;
- school district did not implement any of the IEP;

- school district did not implement related services; and
- other barriers to educational access.

If my child qualifies for compensatory education, what is required from the school?

The student's IEP team will need to meet and determine the student's current level of performance before creating an appropriate program. Parents have a significant say in determining their child's current level of performance. If their performance is below where it was when schools closed for the COVID-19 pandemic, or if the achievement gap has widened due to the closure, the IEP team must consider the provision of services that will assist with the student's progress. Additionally, if schools close again due to COVID-19, or they are otherwise unable to provide adequate services, your child's educational progress may need to be reassessed. Compensatory education does not necessarily have to be an exact replacement to the services that the student should have received had their school provided a FAPE. Services that can be provided through compensatory education can include special education services, tutoring, occupational therapy, speech-language therapy, counseling or other related services.

Which laws and regulations protect my child's educational rights during COVID-19?

The U.S. Department of Education (USDOE) has been clear that schools must provide students served under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act of 1990 (Title II) with educational opportunities, which include access to a free appropriate public education (FAPE) during the COVID-19 pandemic.

Individuals with Disabilities Education Act (IDEA): The purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 4100(d)(1)(A). Under IDEA, if a child has a disability that negatively affects educational performance, the child is entitled to an education that is designed to meet their unique needs and provide an educational benefit.

Section 504 of the Rehabilitation Act of 1973 (Section 504): The purpose of Section 504 is to protect individuals with disabilities from discrimination for reasons related to their disabilities. Under Section 504 regulations, a free appropriate public education (FAPE) is defined as "the provision of regular or special education and related aids and services that . . . are designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and . . . are based upon adherence to specified procedures." 34 C.F.R. § 104.33(b)(1).

Title II of the Americans with Disabilities Act of 1990 (Title II): Title II of the Americans with Disabilities Act is a federal law that prohibits state and local governments (such as public school districts, public colleges and universities, and public libraries) from discriminating against persons with disabilities.
Source: <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/disability.html>

What does a free appropriate public education (FAPE) look like during COVID-19?

While the provision of a FAPE may look different during the time of COVID-19, state educational agencies (SEAs), local educational agencies (LEAs), the Bureau of Indian Education (BIE), and school districts must ensure that, to the greatest extent possible, each student with a disability has equal access to the same opportunities as their peers, and is provided with the appropriate services, evaluations, supports, programs, and reasonable accommodations, as developed under the relevant laws and regulations.

In addition, if education is being provided to the general population of students, then students with disabilities must also receive appropriate individualized education. Generally, if education is stopped for all students in a school district, then the school district does not have to provide individualized education for students with disabilities until education is resumed for the general student population.

What can I do if I feel my child's educational rights are being violated?

If you feel your child's educational rights are being violated, or denied, and you want to resolve your concern, there are informal and formal methods of resolving concerns that you may want to consider.

Informal Methods

Under the IDEA, a school is responsible for ensuring that an IEP meeting is held at least one time each year, at which time the student's IEP team reviews the student's IEP and progress towards goals. If appropriate, the IEP is revised to address the student's needs. In addition, parents have the right to request an IEP meeting at any time. Therefore, if you have concerns about your child's education, requesting an IEP meeting, preferably in writing, is an informal method of discussing your concerns. At the meeting, you and the IEP team can discuss your concerns and hopefully work toward a solution that is agreeable to the team.

A facilitated IEP meeting is one that includes an impartial facilitator. The facilitator is not a member of the IEP team but, rather, is there to keep the IEP team focused on developing your child's program while addressing conflicts if they arise. The facilitator can help promote communication among IEP team members and work toward resolving differences of opinion that may occur. The facilitator helps keep the IEP team on task so that the meeting can successfully accomplish what is necessary. Facilitated

IEP meetings are not required or addressed under the IDEA and may not be available in your school district, so you should check with your school district to see if this an option for you.

If a parent has brought a concern about their child's educational programming and services to their school or school district, and the school and/or school district is not addressing the concern in an effective, appropriate, or timely manner, they could contact the Nebraska Department of Education – Office of Special Education to discuss their concern.

Nebraska Department of Education
Office of Special Education
301 Centennial Mall South
P.O. Box 94987
Lincoln, NE 68509-4987
Phone: 402-471-2471
Website: <https://www.education.ne.gov/sped>

Formal Methods

State Complaint: A written state complaint can be filed by an organization or individual (parent, teacher, other people, school district, etc.). A complaint alleges that the school district has not followed special education law.

Mediation: Mediation is a facilitated negotiation between the parents and the school. It is a voluntary, free process by which a neutral party helps both the parents and the school resolve their disputes in a meeting. A mediator does not make a decision for the parties, but rather helps the parties identify issues, discuss viewpoints, generate options, and create solutions agreeable to everyone involved. When the parties resolve all or some of the issues, they work together to sign a legally binding agreement. If an agreement is not reached, a due process hearing may still be requested, or mediation may be tried at another time.

Due Process Hearing: A special education due process hearing can be used for problems with evaluations, IEPs, educational placement decisions, and the provision of a free appropriate public education (FAPE). It is a legal process used by parents and districts to decide issues. Within 15 days of receiving notice of a parent's due process complaint, and prior to the initiation of a due process hearing, the school district must convene a meeting with the parent and IEP team to discuss the complaint so that the district has the opportunity to resolve the dispute. If the school district has not resolved the due process complaint within 30 days of receipt of the complaint, a due process hearing may occur.

For more information on Nebraska dispute resolution systems, see: <https://www.education.ne.gov/wp-content/uploads/2017/07/Resolution-Options-doc.pdf>.

Sources:

United States of America Department of Education: Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak, March 2020

<https://sites.ed.gov/idea/files/ga-covid-19-03-12-2020.pdf>

Nebraska Department of Education – Launch Nebraska Website

<https://www.launchne.com/>

Nebraska Department of Education – Title 92, Chapter 51: Special Education Program Standards

<https://www.education.ne.gov/nderule/special-education-program-standards/>

For additional information, please refer to our website, which includes our law-in-brief series, blog, information, resources, videos, and links to our social media pages.

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