



LEGAL AID JUSTICE CENTER

Special Education & COVID-19 Guide August 2020

My child has an Individualized Education Program (IEP). What should I know as schools prepare to reopen?

Student and parent rights regarding special education services under federal and state law and regulations have not changed, but the *way* those services are provided may be different.

Each local school division is deciding whether to reopen in-person or virtually. However, parents should note that some children with IEPs may not be able to receive a Free and Appropriate Public Education (FAPE) virtually, and may require in-person services. The decision about whether a child requires in-person services to receive FAPE remains a decision of Individualized Education Program (IEP) teams. The state education agency, the Virginia Department of Education (VDOE), has issued [guidance](#) to divisions on phased reopening, but what this will look like will vary widely across the state. Currently, under Virginia's phased reopening, every school division is allowed by the state to serve students with disabilities in person. You should also know that some divisions may be phasing in some students with disabilities earlier to ensure access to needed services. Be sure to review your division's website to find out your school's reopening plans and what you can expect for your child.

The U.S. Secretary of Education has [reiterated](#) that learning must continue for all students during the COVID-19 emergency, including students with disabilities. Secretary DeVos declined to seek waivers to the requirement that school provide students with a Free and Appropriate Public Education (FAPE) and Least Restrictive Environment (LRE) requirements of the Individuals with Disabilities Education Act (IDEA), **determining that there is no reason a student's access to FAPE cannot continue through distance instruction**. Additionally, Virginia's [regulations regarding special education services](#) remain in place.

If my school is opening virtually, are they required to hold an IEP meeting?

No. There is no requirement that schools hold an IEP meeting if they are opening virtually. However, you have a right to request an IEP meeting to determine how your child's IEP will be implemented and what additional services you might need if your child's IEP will be implemented virtually. Again, the IEP team must decide on how your child's IEP will be implemented, regardless of how your district has chosen to provide instruction to general education students. **Remember, it is best to put requests to the school in writing so you can keep track of them later.**

Schools should initiate an IEP meeting when a student is failing to make progress on their goals or when a school can anticipate that a child will need recovery services due to the school closure. Finally, remember that schools continue to have an obligation to provide FAPE.

What are some things I could ask for to ensure the IEP meets my child's needs if my child is participating in virtual learning?

If your child needs **assistive technology** to access services, such as a computer, a wifi hotspot, or read aloud portions, the school must provide that technology to you for free.

- If you don't have access to a computer or printer, ask that teachers either **mail** or drop off assignments.
- Remember that any some related services, such as behavioral therapy or occupational therapy, may be provided **virtually, depending on the individualized needs of the child.**
- Request that guidance counselor conduct virtual **social skills groups.**
- If your child has health needs, request that the **school nurse check in** once a week to discuss any concerns.
- Be **open** with the school about what your child needs right now.

What are things I can ask for to help me at home with my child?

There has always been something called **parent counseling** available under the law for parents. This is more important than ever right now. You can ask for this in your IEP meeting. Here's some things to consider:

- Would **phone or FaceTime interactions with a teacher** help you to explain concepts to your child?
- Would talking with the **school psychologist or behavioral specialist** help you set up a behavioral plan at home to help your child stay on task or target one troubling behavior?
- Be **creative** in thinking about what might help get you through this time with your child and what supports the school could give you.
- Ask what **other supports** your school has set up for children with disabilities. Is there a special education teacher available to answer questions or special materials on the district's website?

My child fell behind when schools were closed and now needs additional help. How do I advocate for this help for my child?

- If you kept track of the services your child missed when schools were closed, you can ask that these services be made up now. For example, if your child was supposed to receive two days of speech therapy, but only received one day a week in the spring, ask for additional speech sessions for when schools reopen to make up those sessions that were missed.

- VDOE has indicated that services a child might need to make up for regression that occurred during the COVID-19 school closures should be called “recovery services,” not compensatory education services. Many special education advocates disagree with this designation. Regardless, parents should ask for additional services if you believe your child needs them to recover lost progress on IEP goals.
- Your school division may say it needs more time to gather data on your child’s lack of progress before providing additional services. If you have evidence that your child lost skills during the school closure, you can provide that to the school during the IEP meeting.

Remember your rights as a parent during this time! These have not gone away.

- You have the right to consent to any changes to your child’s IEP. **Schools must not make any changes to your child’s IEP without your consent.** Remember that you do not have to sign the IEP right away and can take it home and think about it.
- Remember to keep track of everything you ask for and what the school is agreeing to. Make sure to get your copy of the **Prior Written Notice** from the school. This is the document that states what the school is agreeing to provide or not and explains why. You should receive a Prior Written Notice for every IEP meeting that makes any changes to your child’s IEP.
- Ask that a copy of your child’s IEP be mailed or emailed to you.
- Remember that **education records must be kept private.**

Where can I find more resources?

- PEATC (Parent Educational Advocacy Training Center) has put out two great resources on returning to school for Virginia students with disabilities, [here](#) and [here](#).
- disAbility Law Center of Virginia (dLCV) has several special education resources on their [website](#).
- VDOE’s [website](#) has lots of information and resources for divisions. Go to their FAQs for special education or their COVID page for more.

Remember you are your child’s best advocate. Speak up, be persistent, and stay focused on your child’s needs during this time.

This information is legal information, not legal advice. For advice on your specific situation, you should contact an attorney. For more information about the Legal Aid Justice Center, including how to contact us, please visit www.justice4all.org. Cassie Powell is the attorney responsible for this material. Updated August 2020.