

U.S. DEPARTMENT OF EDUCATION AFFIRMS STATE AND DISTRICT OBLIGATION TO PROVIDE SPECIAL EDUCATION DURING SCHOOL CLOSURES

The United States Department of Education (USED) has issued [supplemental guidance](#) to clear up the “serious misunderstanding” that federal disability laws prevent schools from offering educational programs through distance or remote instruction. The new guidance affirms that the provision of a free appropriate public education (FAPE) to students with disabilities “may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.”

In prior [pronouncements](#), the USED had linked the right of students with disabilities to receive FAPE to the provision of instruction to general education students during school closure. Some school districts then decided not to provide educational services to any students on the mistaken belief that they could not serve students with disabilities through remote instruction.

To correct this misinterpretation, recently issued supplemental guidance encourages school districts not “to close or decline distance instruction” because it can also be used to serve students with disabilities.

While recognizing that it may be “unfeasible or unsafe” to provide services, such as “hands-on physical therapy” during school closure, the USED notes that “many disability-related modifications and services may be provided effectively online, including “many speech or language services through video conferencing.”

The USED further states that “how FAPE is to be provided may need to be different in this time of unprecedented national emergency,” encouraging creative collaboration among parents, educators, and administrators and offering “flexibility where possible.” However, the USED also acknowledges that, when school closure leads to delays in providing services or in making decisions about how to provide services, individualized education program (IEP) teams “must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.”

Notably, prior agency and judicial interpretations of the Individuals with Disabilities Education Act (IDEA), the federal special education law, have required districts to comply with the IDEA’s requirements even when schools are closed for reasons such as a teacher’s strike.

In response to New Jersey's decision to close schools and continue to provide education through remote instruction, the State Legislature has passed [Assembly Bill 3813](#) giving special education students the same educational opportunities to virtual or remote instruction "to the extent appropriate and practicable." The bill also specifically authorizes speech language and counseling services to be delivered "through the use of electronic communication or a virtual or online platform, as appropriate." The legislation is now on Governor Phil Murphy's desk.

"The touchstone of the IDEA law is providing individualized services to students with disabilities based on their unique needs," said Elizabeth Athos, Education Law Center Senior Attorney. "As districts move to remote instruction, it is critical to ensure IEP teams, including parents and teachers, can hold virtual meetings to plan and determine how to appropriately deliver to students with disabilities the special education and related services required by law."

ELC and New Jersey's leading advocacy groups have also recommended Governor Murphy establish a Coronavirus Education Task Force to address the short- and long-term needs of all New Jersey students resulting from the closure of the state's public schools.

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