



Novel Coronavirus (COVID-19) Outbreak: Protecting the Rights of Students with Disabilities in Public Schools

The Novel Coronavirus (COVID-19) has impacted the day-to-day activities of all Arizonans. On Sunday, March 15, 2020, Arizona Governor Doug Ducey and Arizona Superintendent of Public Instruction Kathy Hoffman announced a statewide closure of Arizona schools from Monday, March 16, 2020 to Friday March 27, 2020, at which time the state will reassess the need for school closures. This measure will impact all Arizona students, including students with disabilities.

This situation is both unprecedented and rapidly evolving. The information below reflects the perspective of the Arizona Center for Disability Law (ACDL) as of the date of the publication of this guidance. ACDL will endeavor to provide updated resources to the community as we acquire new information.

1. Are students with IEPs/504 plans entitled to receive special education services during an extended school closure?

Authorities differ on the answer to this question.

The United States Department of Education (US DOE) issued [guidance](#) on March 12, 2020, stating that if a public school district or charter closes its schools to slow or stop the spread of COVID-19, *and does not provide any educational services to the general student population*, then the district/charter would not be required to provide services to students with disabilities during that same period of time. However, the district/charter may be required to provide compensatory services to students with disabilities once schools reopen, depending on the length and severity of the school closure.

US DOE's Office for Civil Rights has also issued [guidance](#) entitled "Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students." The guidance states that school compliance with public health recommendations should not create civil rights concerns, and schools must continue to comply with federal civil rights laws (Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, and Title VI of the Civil Rights Act) during this crisis. The guidance reflects the same position regarding special education services during school closures as the other US DOE document—when school districts close completely and are

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not providing any services to the general population, schools are not required to provide services to students with disabilities. However, students with disabilities may be entitled to compensatory services once schools reopen.

Similarly, the Arizona Department of Education (ADE) issued a new [Pandemic Preparedness Guide](#). The Guide states: “Special education and related services for children with disabilities are outlined in an Individualized Education Program (IEP) and each student’s IEP team should consider if/how special education and related services will be provided during a closure. Schools should take into consideration alternate methods for providing educational services to children with disabilities, such as home visits, teleservices, homework packets, or Internet-based lessons.” The ADE uses the term, *should*, not *must* provide special education and related services to students with disabilities during a closure. But it does require each student’s IEP team to determine if services will be provided during a closure.

On the other hand, the Council of Parent Attorneys and Advocates (COPAA) has released a [statement](#) arguing that students with disabilities are entitled to a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA), and school closures do not relieve districts and charters of the obligation to provide FAPE. COPAA recommends that if schools close for an extended period of time (generally more than 10 consecutive school days), then school administration officials and the child’s IEP team should determine if the child can benefit from home-based services, and if so, implement those services. ACDL agrees with COPAA’s analysis and believes students with disabilities are entitled to FAPE whether or not a school is providing services to non-disabled students.

While there is not consensus on whether students with IEPs are entitled to receive special education services when schools are closed and all educational services are suspended, there is a consensus that if educational services are provided to students, students with disabilities must be provided an equal opportunity to participate in those educational activities. See Question #3 below.

2. If schools are closed for an extended period of time and my child receives no special education or related services during that period, can my child receive compensatory education upon returning to school?

Yes—all sources agree that it may be necessary for students who qualify for special education and related services under IDEA to be provided compensatory services once schools reopen. The decision about whether a child is entitled to compensatory services and what type/how much compensatory services are needed is an IEP team decision.

If you believe your child will need compensatory services upon returning to school, ACDL recommends submitting a request for an IEP meeting, in writing, to your child’s school as quickly as possible. From the time a school receives a parent request for an IEP meeting, the school must schedule and hold the meeting within 45 school days (A.A.C. R7-2-401(G)(7)). Note that “school days” may not be considered to include days when schools are closed as a result of COVID-19. The purpose of the IEP meeting would be to determine whether your child needs compensatory services and if so, how many minutes of special education instruction and/or related services must be provided.

The standard for determining how much compensatory education is required is not necessarily a minute-for-minute standard (see ACDL's [blog post on remedies](#) for more information about compensatory education), but tracking how much special education your child has missed during a school closure will still be useful in determining how much compensatory education your child should be provided. Therefore, we recommend keeping a log of what services your child is being provided during a school closure, and comparing that to what services your child should be receiving per school day according to his or her IEP. That way, when you meet with your child's IEP team once schools reopen, you will be able to show how much special education and related services your child was denied during a school closure. This should help inform the discussion of how much compensatory education your child needs.

ACDL also recommends, to the extent appropriate/possible, that parents try to get a baseline measurement for their child's abilities at the start of these school closures to help calculate regression. A baseline measurement can be gleaned from recent homework or schoolwork your child has completed, or from observations or measures at home based on your child's grade-level standards or IEP goals. A similar measure can then be made when your child returns to school. The difference between the two will provide data on how much your child has regressed while out of school, and will help direct the conversation about compensatory education.

If you do not agree with decisions made by your child's IEP team regarding compensatory education services, you may pursue [dispute resolution](#).

3. My child's school is providing educational opportunities to the general student population during a school closure. What must the school provide to my child with an IEP?

If a school is providing educational opportunities to the general education population (such as online learning, homework packets, online or video lessons, etc.) the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. This means if the school is providing opportunities to other students, it must ensure that, to the maximum extent possible, it is providing your child with the services and accommodations in your child's IEP. Additionally, schools must ensure that any remote learning opportunities being provided to students are accessible to students with a variety of disabilities. For example, if students are given access to an online learning platform, that platform should be accessible to students with limited mobility, limited sight, limited hearing, etc.

If your child is not being provided equal access to the same opportunities as his or her non-disabled peers during a school closure, ACDL recommends first reaching out to the school district or charter special education director to discuss your concerns. If you are unable to reach a resolution, you may engage in [dispute resolution](#), including the option to file a complaint with the US DOE's [Office for Civil Rights](#) and the option to file a complaint with the [Arizona Department of Education](#). For more information about each dispute resolution option, please refer to ACDL's Special Education Tips of the Day on our [website](#).

4. Will my child's IEP team be able to meet during school closures?

According to [guidance](#) from US DOE's Office for Civil Rights, IEP teams are not required to meet in person while schools are closed. However, the guidance does not state whether schools should be required to hold remote or telephonic IEP meetings. Your child's school may approach you with a plan for updating your child's IEP if their annual review is coming due. To the extent possible, ACDL recommends your participation in this process, as you are a valuable member of your child's IEP team. Ask if the meeting can take place over the phone or via a video conferencing service. Remember that you are able to invite anyone with knowledge or expertise regarding your child to participate in the IEP meeting, even when such a meeting is taking place remotely.

The guidance from US DOE's Office for Civil Rights also discusses what will happen if a student is in need of or in the middle of an evaluation for special education during a school closure. If an evaluation requires a face-to-face assessment or observation, the evaluation may need to be delayed until school reopens. However, evaluations and re-evaluations that do not require face-to-face assessments or observations may take place while schools are closed (with parental consent). ACDL recommends reaching out to your child's school/special education team to discuss how evaluations will be conducted during this time. If you are in disagreement with any decisions your child's school makes, including a decision to delay or deny an evaluation, you may exercise your [dispute resolution](#) options.

5. If my child with an IEP is infected with COVID-19 and must stay home from school when school is open, is my child entitled to receive the special education and related services in his/her IEP?

Students with chronic health problems in Arizona are entitled to certain protections and services. A.R.S. § 15-346 defines students with chronic health problems as including students who are not homebound, but who are unable to attend regular classes for intermittent periods of one or more consecutive days because of illness, disease, pregnancy complications or accident as certified by a health professional. For such qualifying students, districts/charters are required to have policies that are designed to provide continuing learning for students with chronic health problems while they are absent from school. You can find out more about your child's school district's/charter's policy on chronic illness by requesting a copy of the policy, or you may be able to find the policy online on the Arizona School Board Association [website](#).

For students with IEPs who become infected with COVID-19, it may be appropriate to change the child's IEP placement to home-based instruction. The decision to change a child's placement requires an IEP meeting. If the placement in your child's IEP is changed to home-based instruction, your child is entitled to receive the services described in his or her IEP in a home setting. A change in IEP placement is usually not appropriate for a short period of absences, but may be appropriate for an extended period of absences.

6. My child has behavioral struggles and receives behavior support as part of his IEP. How can I support my child's behavior at home during school closures and what can I do to help ease the transition when schools reopen?

If your child has a behavior support plan/behavior intervention plan at school, reach out to the school to make sure you have a copy of the current plan. While your child is at home, parents and caregivers can refer to this plan to help address the child's behavior at home and to ensure continuity of expectations and consequences/rewards for the student during school closures. Parents can also ask school-based behavior support providers to engage in check-ins (telephonic or online), both with students and with families who may need support with managing student behaviors.

As schools prepare to reopen, families should ask for support around transitioning students back to the school environment. This might mean an IEP meeting or a less formal meeting between students, parents, and school staff to talk through the logistics of returning to school, and to address any student anxiety or trauma around the pandemic or the transition back to a classroom setting. These meetings can take place virtually or over-the-phone.

7. Will Arizona schools add instructional days at the end of the school year to make up for the time schools have been closed due to COVID-19?

It is not clear at this time. The Arizona Department of Education's new [Pandemic Preparedness Guide](#) states: "[School districts and charter schools] should make every effort possible to make-up days and instructional hours lost due to a pandemic or similar public health emergency, including extending the school year or increasing instructional time on presently scheduled days. Information is subject to change depending on the severity of a pandemic. The Department of Education will continue to work with the Attorney General's Office to determine the requirements for making up lost instructional time."

In the past, when Arizona schools have closed for limited periods of time (such as during the teacher walkouts in 2018), Arizona districts and charters have added additional days to the school year in order to meet the state requirement of at least 180 days of instruction. However, [some other states](#) have already waived their instructional day requirements in light of COVID-19. Depending on how long school closures last, it is possible Arizona will do the same, which will mean students may be provided fewer than 180 days of instruction during the 2019-2020 school year.

8. My child relies on meals provided by the school. Can we still access this resource during school closures?

Yes. According to the Arizona Department of Education website, the Arizona Department of Education has received approval from the USDA Food and Nutrition Service to waive the congregate meal requirement of the

meal service programs. This means that meals can be provided in a way that will allow students to take their food off campus and consume it at home in order to practice social distancing.

Different school districts/charters will be providing meals in different ways. You can find more information about where and when your child can access nutrition by visiting your child's school district/charter website or calling the school administrative office for more information.

This [article](#) provides information on the availability of food through various Arizona school districts (current as of the publication of this resource).

It is ACDL's recommendation that parents of students with disabilities stay up-to-date on the duration of school closures by following announcements from the [Governor's office](#) and the [Arizona Department of Education](#), as well as by checking in with their child's school district or charter school. Many Arizona districts and charters have information about COVID-19 and school closures on their websites and are sharing information on social media.

At the time this guidance is published, ACDL will also be publishing lists of resources and ideas from other organizations about how to support students with special education needs at this time. Please refer to those documents for more information.