



COVID-19 EDITION
**COVID-19 SCHOOL CLOSURES AND
SPECIAL EDUCATION IN NEW YORK**
NASSAU AND SUFFOLK COUNTIES

Last updated June 12, 2020. The situation is changing rapidly.
Please [check our website](#) for the latest updates.

COVID-19 school closures have been particularly difficult for students with disabilities. This Q&A covers special education issues arising from pandemic related closures.

For more information about COVID-19 special education issues, or special education issues generally, please call the Education and Disability Rights Project at (516) 292-8100 and ask for extension 3118 or 3170.



Is my child entitled to a Free and Appropriate Public Education (“FAPE”) during the COVID-19 school closure?

Yes. School districts must provide each student with a Free and Appropriate Public Education (“FAPE”) by providing the special education and related services in the student’s individualized education program (“IEP”) to the greatest extent possible.

If a student has a 504 Plan, school districts must provide the services in the 504 Plan to the greatest extent possible. “FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students.”

Note: School districts do not have to provide FAPE to students with disabilities if they are not providing any education to any students.

Learn more from the NY State Department of Education by click [here](#) and [here](#).



Can special education and related services be provided through distance instruction during a school closure due to COVID-19?

Yes. School districts may not be able to provide services the way they are typically provided. FAPE may include special education and related services virtually, online or on the phone. [Click here to learn more.](#)

As of June 5, 2020, special education services and instruction **may** be provided **in person** for the 2020 summer term. The New York Department of Health issued an [Interim Advisory](#) regarding these in-person special education services and instruction. Specifically, the services may be provided at locations not operated by a school district, referred to as “independent schools.” Service delivery can occur when: 1) a school district requests that a student receive special education services at an independent school; and 2) the request is made pursuant to Executive Order 202.37. In delivering the special education services, the independent school must adhere to all safety guidelines applicable to the school district. The safety guidelines are set forth in the Department of Health Interim Advisory.

We make every effort to keep referral information, legal educational materials, and related forms up to date. However, the situation is rapidly evolving, and we do not maintain materials on external sites. We cannot guarantee the accuracy of this information, nor are we responsible for any legal advice, information or assistance that you may obtain from external sources. They are provided for general information only.



What happens when my child returns to school after the COVID-19 pandemic? Is my child entitled to receive Compensatory Education?

Possibly. Once a school resumes normal operations, the district's Committee on Special Education ("CSE") should make individual decisions about compensatory or extended school year services, including services to make up for any skills the student lost.

Document the services that your child was receiving before the closure, services offered during the closure and your child's access to materials and education. Keep records of the dates and times when services were provided and the dates when they were not provided.



Will Committee on Special Education ("CSE") meetings be held during this 2019-2020 school year, despite school closures?

Yes. The CSE must meet at least once each school year to conduct an "Annual Review" of each student's IEP. 34 C.F.R. §300.324(b)(1). A CSE does not have to meet in person while schools are closed. Parents/guardians and the CSE may agree to conduct CSE meetings through other means, including videoconferencing or phone calls. 34 C.F.R. §300.328.

Parents/guardians should say that they are not waiving any rights to challenge services offered during the school closure. Parents/guardians should tell the other members of the CSE that they want their concerns included in the Prior Written Notice ("PWN") that the school district will send out after the CSE meeting. If the concern is not in the PWN, then parents/guardians should write a letter to the school explaining their concerns and objections. The letter should say that they expect the services previously provided should resume when school reopens.

If the parent/guardian and district agree to change a child's IEP after the Annual CSE meeting, they may amend or modify the child's current IEP in writing without meeting again. 34 C.F.R. §300.324(a)(4)(i).



I disagree with the IEP. Is there anything I can do?

Yes. Parents/guardians can still make a Due Process Complaint (DPC) or a State Education Complaint to challenge their child's IEP as a denial of FAPE. A State Education Complaint may not be brought if a Due Process Complaint (DPC) is pending. Generally, parents/guardians have two years from when they knew or should have known, of a violation of the IDEA to request a due process hearing [20 U.S.C. §1415(f)(3)(C)] and a State Education Complaint must allege a violation within the past year.



Are any special education deadlines impacted by the COVID-19 school closures?

Yes. "[P]ublic agencies are encouraged to work with parents to reach mutually agreeable extensions of time, as appropriate." The New York State Education Department ("NYSED") announced that several deadlines will not include days schools are closed because of COVID-19:

60 Day Deadline to Provide Special Education Program and Services Doesn't Include Closure Days

New York State Commissioner's Regulation §200.4(d) normally requires a Board of Education to provide appropriate programs and services within 60 school days of receipt of a consent to evaluate or referral for review. The 60-day deadline will not include any days the school is closed due to COVID-19.

30 Day Deadline for Private Placement Doesn't Include Closure Days

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New York State Commissioner's Regulation §200.4(e)(1) normally requires a Board of Education to arrange for placement at an approved private school within 30 school days of the CSE's recommendation. The 30-day time period will not include any days the school is closed due to COVID-19.

Impartial Hearings

An Impartial Hearing Officer (IHO) may receive testimony by video. IHOs may conduct special education due process hearings by video conference. Commissioner's Regulation §200.5(j)(3)(xii)(c).

IHOs may extend cases up to 60 days while schools are closed due to COVID-19. Extensions must still be made at the request of the school district or the parent. IHOs may not grant extensions on their own behalf or to grant extensions unilaterally. Commissioner's Regulation §200.5(j)(5)(i). Learn more from the NY State Department of Education by click [here](#) and [here](#).



May the School District conduct evaluations of my child during the COVID-19 school closures?

Possibly. Evaluations that require face-to-face assessment or observation will have to wait until school reopens. Re-evaluations that do not require face-to-face assessments or observations may take place while schools are closed if a student's parent or guardian consents. The same rule applies for a student with a Section 504 plan, or who is being evaluated under Section 504.



Have the Regents Examinations changed because of the COVID-19 school closures?

Yes. The June 2020 Regents Examinations are cancelled.



Have graduation requirements changed because of the COVID-19 school closures?

Yes. There are several important changes to graduation requirements:

Regents Examination Exemption

A student is exempt from Regents Examinations that he/she was planning to take in June 2020 if:

1. the student earns credit in a Regents course by June, 2020;
2. the student makes up a failed Regents course during summer instruction and is granted course credit in August, 2020; or
3. the student previously earned credit in a Regents course and intended to take the Exam in June, 2020.
4. A seventh-grade student enrolled in a course leading to a Regents Exam may also be exempt if he/she "has met the standard assessed in the provided coursework."

Earning Course Credit

If a student was unable to complete the necessary study units due to COVID-19 related school closure, the student may receive diploma credit if the student "met the standards assessed in the provided coursework."

Career Development and Occupational Studies ("CDOS") Certificate

Many students with a disability pursue a CDOS Certificate. For example, if a student with a disability seeks a Local diploma through a "Superintendent's Determination," that student must obtain a CDOS (among other requirements). The CDOS requires many hours of coursework and/or work-based learning. A student with a disability may also use the CDOS towards the "+1 Pathway" to earn a Regents or Local Diploma.

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Due to school closures, students with disabilities who are otherwise eligible to exit from high school in the 2019-2020 school year may get the CDOS without meeting all the requirements, if the student “has otherwise demonstrated knowledge and skills in the commencement level CDOS learning standards.”

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Do I have to accept the exemption from normal graduation requirements if I think my child is not ready to graduate?

Parents and guardians have the option to decline exemption from the Regents Examination(s) or other assessments required for graduation. If a parent or guardian declines the exemption, a diploma will not be conferred on their student at this time.

School districts must send a notice with a form giving parents/ guardians of students scheduled to graduate in June or August 2020 the chance to opt-out of any exemptions. The notice must be sent at least 10 days before the student is scheduled to receive a high school diploma based on an exemption. The decision to decline the graduation requirement exemption must be submitted on the written declination form forwarded from the school district with the notice letter. The decision to decline the exemption cannot be revoked.

[Click here to learn more from the NY State Department of Education.](#)



My child qualifies for free or reduced cost meals at school. Are they still available?

Yes. Many Districts are offering free meals for children during the COVID-19 school closures. Contact your school district directly for more information.

In addition, all children who receive free or reduced cost meals at school are now eligible for special pandemic food benefits ***even if they are not eligible for SNAP or other public benefits.*** [Check here for more information.](#)

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