COVID-19 FACT SHEET #4:
FREQUENTLY ASKED QUESTIONS

Parent Information Center
Project of Parents Helping Parents of WY, Inc. online at wpic.org

Information within this Fact Sheet is adapted from guidance documents issued from the U.S. Department of Education Fact Sheets – March 2012.

Question 1: Is a school district or child development center (CDC) required to continue to provide a free appropriate public education (FAPE) to students with disabilities during a school closure caused by a COVID-19 outbreak?

**Q1 Answer:** IDEA, Section 504, and Title II of the ADA do not specifically address a situation in which elementary and secondary schools are closed for an extended period of time (generally more than 10 consecutive days) because of exceptional circumstances, such as an outbreak of a particular disease.

If a school closes to slow or stop the spread of COVID-19 and does not provide any educational services to the general student population, then they would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the school district or CDC must make every effort to provide special education and related services to the child in accordance with the child’s individualized education program (IEP). There may be exceptional circumstances that could affect how a particular service is provided. In addition, an IEP Team would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.

If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504)).
Question 2: Is a school district or child development center required to provide special education and related services to a child with a disability who is absent for an extended period of time because the child is infected with COVID-19, if the schools remain open?

Q2 Answer: Yes. A child with a disability can be classified as needing homebound instruction because of a medical problem, as ordered by a physician. If the student is home for an extended period of time (generally more than 10 consecutive school days), an individualized education program (IEP) meeting is necessary to change the child’s placement and the contents of the child’s IEP, if warranted. If the IEP goals will remain the same and only the time in special education will change, then the IEP team may add an amendment to the IEP stating specifically the amount of time to be spent in special education. If a child with a disability is absent for an extended period of time because of a COVID-19 infection and the school remains open, then the IEP team must determine whether the child is available for instruction and could benefit from homebound services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. School staff should follow appropriate health guidelines to assess and address the risk of transmission in the provision of services.

If a child does not receive services after an extended period of time, a school must make an individualized determination whether and to what extent compensatory (make-up) services may be needed, including the make up for any skills that may have been lost.

Question 3: If a child with a disability at high risk of severe medical complications does not attend school during an outbreak of COVID-19 and the child’s school remains open, should this be considered a change in educational placement subject to the protections of 34 CFR §§ 300.115 and 300.116 and 34 CFR §§ 104.35 and 104.36.?

Q3 Answer: If it is a temporary situation (generally 10 consecutive school days or less), the provision of services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available, is not considered a change in placement. During this time period, a child’s parent or other IEP team member may request an IEP meeting to discuss the potential need for services if the exclusion is likely to be of long duration (generally more than 10 consecutive school days). For long-term absence, a school district or CDC must consider placement decisions under the IDEA’s procedural protections of 34 CFR §§ 300.115 – 300.116.

Under 34 CFR § 300.116, a change in placement decision must be made by a group of persons, including the parents and other persons knowledgeable about the child and the placement options. If the placement group determines that the child meets established high-risk criteria and, due to safety and health concerns, the child’s needs could be met through homebound instruction, then under 34 CFR §300.503(a)(1), the public agency must issue a prior written notice proposing the change in placement. A parent who disagrees with this prior written notice retains all of the due process rights included in 34 CFR §§ 300.500-300.520.
Question 4: May an IEP Team consider a distance learning plan in a child’s IEP in the event of a COVID-19 outbreak that requires the school’s closure?

**Q4 Answer:** Yes. IEP teams may, but are not required to, include distance learning plans in a child’s IEP that could be triggered and implemented during a school closure due to a COVID-19 outbreak. Such contingent provisions may include the provision of special education and related services at an alternate location or the provision of online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, and may identify which special education and related services, if any, could be provided at the child’s home.

Question 5: If a child has been found eligible to receive services under the IDEA, is the IEP Team required to meet and develop an initial IEP within 30 days of a determination of eligibility?

**Q5 Answer:** Yes, an IEP must be developed within 30 days of determining eligibility. However, parents and an IEP Team may agree to conduct IEP meetings through alternate means, including videoconferencing or conference telephone calls.

Question 6: If a child is due for an Annual Review, is the IEP team still expected to meet prior to the one-year IEP meeting date?

**Q6 Answer:** Yes, however the parent of a child with a disability and the school/CDC may mutually agree to not convene an IEP Team meeting for the purposes of making changes, and instead develop a written document to amend or modify the child’s current IEP. 34 C.F.R. §300.324(a)(4)(i).

Question 7: If a parent or school has initiated a special education evaluation must the 60-day timeline be followed?

**Q7 Answer:** Yes. An initial evaluation must be conducted within 60 days of receiving parental consent under IDEA. Once the evaluation is completed, IDEA does not contain an explicit timeline for making the eligibility determination but does require that the IEP be developed in accordance with 34 C.F.R. §§ 300.320-300.324 (34 C.F.R. § 300.306(c)(2)).

*Note* - This guidance is considered valid during the time frame that the COVID-19 Health Emergency is in place. For additional information or specific questions on a student’s special education or related services, please refer to our website at [www.wpic.org](http://www.wpic.org) or call us at 307-684-2277.