

Thank you for attending our 5/19/2020 Webinar *Navigating Special Education During COVID-19: California Tips for Families and Systems Advocates*. The answers below are based on the knowledge available to us as of 6/1/2020. Decisions about school reopening and district policies on special education continue to evolve. The answers below are also not intended to be legal advice--they are based on a general understanding of the situation and the rights of your student under important civil rights and education laws.

To learn more about special education and disability, and how to advocate effectively for foster (or any) youth, you can start with the Parent Training and Information Center (PTI) funded by the US Department of Education for your region. The link to find your PTI is here: <https://www.parentcenterhub.org/find-your-center/>

You can also reach out to your local legal aid or public interest law firm. Here is a place to start for education issues in CA:

<http://www.lawhelpca.org/index.php/subtopics/education-rights>

General Guidance on Being an Effective Special Education Advocate

Before we jump into answers to specific questions, here is some general guidance about being an effective advocate for your child (foster, bio, relative, CASA, etc.) that applies to many of the questions participants in our webinar asked. Specific answers to questions follow below.

1. Put concerns/requests in writing. Documentation matters! Deliver your requests in ways that provide proof of receipt, for instance, email or fax.
2. When in doubt, *act!* The school is probably not going to proactively address issues your student is facing, until it has gotten to the point where the student is failing academically or having severe behavior problems. Requesting assessment/evaluation for a student who may need an IEP starts the process even if timelines are uncertain. Calling an IEP meeting for a student who already has one to discuss any questions or concerns can be an effective first step to resolving issues. And given how much is unknown right now, there is no harm in asking for an exception to be made to existing timelines (summer break, for example), by pointing out that for foster youth, who are a very vulnerable population educationally, you are asking for an exception that is worth asking for. By asking for things now, you set up considerations about compensatory education down the road.
3. If an issue cannot be resolved, rather than meeting over and over again, don't be afraid to take things up the chain of command to the special education director or to reach out to your parent training center or for legal help as appropriate.
4. Ask for answers to your questions or concerns IN WRITING. Often you want the district to say no (rather than not responding or postponing the answer) in writing because that is what triggers all of your next steps and legal options. If you do not have an answer you're stuck. So as counterintuitive as it may seem, it is best to push for an answer one way or the other so that you can then consider what to do next.

- a. For example, when the district refuses to assess a foster youth, they must give the legal reason why they are refusing. You may receive that notice and see that it says that because the child is new to the district and needs time to settle in they are refusing or because the child is passing all of their classes they are refusing. This allows you to write back and provide supplementary information – for example, you know from the child’s health and education passport that this child has struggled in every education setting they’ve been in and so waiting would be detrimental to the child OR The child is passing their classes because the content is being modified so much that it is no longer grade level and so their grades are not the best indicator of their progress - other data such as test scores and teacher input shows that the students’ needs are not being met
5. Always remind the team that academics and education are not necessarily the same thing. The federal law that provides special education for eligible students is called the individuals with Disabilities Education Act- not the “Academics Act”. Students with disabilities may struggle with social skills, mental health/trauma, anger management, communication, organizational skills, fine motor skills or functional/self-care skills, for example, And the child’s day to day caregiver, especially in this current situation, who sees the impact of those kinds of challenges on the student progress and performance at school, needs an opportunity to share this information with the team and have it considered.
6. Emphasize the vulnerability and poor education outcomes generally for foster youth as a reason for looking extra hard at the situation and individualize this child’s unique strengths and challenges. Having the student present, even briefly, in online meetings can really help the team keep the student’s unique needs at the center of the discussion. Some families interview their child ahead of a meeting and ask them to say one of their favorite things about school and one of the things it’s hardest for them about school. Others bring a picture of the child. Anything you can do to personalize the child helps center that child’s unique situation.
7. Remember that you are not being disrespectful or rude when you advocate for a child. Be “hard on the issues and soft on the people”, meaning, treat everyone with respect but insist that the child needs be met because their future is at stake.
8. Remember to request an interpreter if you have language barriers – even if you can speak some English these meetings are full of special terminology and can also be emotional or stressful which makes it hard to follow along, especially if English is not your first language. Also remember that you have a right to ask for the IEP to be translated into English under Title VI of the Civil Rights Act so that you can understand what you’re signing or what support the child should be getting. Here is a great resource about that: <https://parentsreachingout.org/iep-translation/>
9. Do not assume that removing the student to a “special” or “therapeutic” school is the best thing to do in every situation. Special isn’t necessarily more or better. Just as we understand that removing students from family/congregate care settings is not in their best interest in almost all cases, removing students from their least restrictive school settings can also be a problem. It is concerning that during this crisis, some districts seem to be more willing to remove students to non-public schools which relieves them of the obligation of serving them in their least restrictive setting. One silver lining of this crisis is that you may have more leverage to suggest that a child should not be removed since everyone is learning from home-And you can supply front line information about what you see working and not working for the child educationally. More than a

decade of research and evidence shows clearly that all students learn more and do better long term when they are educated with non-disabled peers. Before removing a child from the most inclusive setting possible, be sure that you ask important questions about whether services and supports the child needs to be successful have already been tried before agreeing to remove the child, especially when behavior is an issue. There is so much information about how to address behavior challenges at school and removing a child should be the last option, not the first one that the team considers.

10. And finally, given that so many of the questions were around assessments/ identification during this crisis, do not forget that every school district, county office of education or charter school has an obligation to locate, identify and serve eligible students with disabilities. This important part of the law is called CHILD FIND and it also applies to students who may be eligible under Section 504 of the Rehabilitation Act because of a disability or impairment that creates barriers to participating and benefiting from education like non-disabled students. Being flexible and understanding that timelines may need to be extended or that evaluations may be done differently *does not mean* that you accept complete silence from the school. Despite all the challenges of the COVID-19 pandemic and the resulting physical school closures, this important obligation remains in place, in part because the sooner students in need of help, support and intervention are identified, the more positive the outcome for that child. But also remember that no matter how old a student is, it is never too late to advocate for them. A high school student who has never received support and then gets it may be able to graduate after all – so don't let age be a reason to not step in to advocate! Seeing a foster youth earn a high school diploma and/or receive the support and services necessary to learn to live a fulfilling life as independently as possible in the local community is a gift that all of us in the QPI movement see as central to our work.

We are so grateful for your participation in our webinar and your continued advocacy and partnership no matter what your role in supporting a foster youth!

Answers to Q & A from the Webinar

Question: If you have requested testing in writing and the school has agreed to do the testing but stopped because of COVID 19 and distance learning... Is this accurate? That evaluation will begin again when school is in session?

Answer: Not necessarily- there are a few different scenarios that could be happening here. **NOTE: this information covers INITIAL evaluations only. Annual and triennial evaluations are required to happen on the same timeline as always.**

One possibility is that you requested the evaluation, the school agreed, and the school sent you an assessment plan, which you signed and returned. If you have signed and returned an assessment plan, the school has 60 calendar days to complete the assessment, regardless of the COVID-19 school closure, unless you agree to give them more time. They can hit “pause” on that clock for breaks over five school days long, so they can wait until after summer to complete, depending on when you signed. So, for

instance, if you signed an agreement on May 1st, 60 calendar days from then would be June 30th. If school ends on May 30 and starts again in August, the school will have 30 days from the start of school to finish.

Schools are supposed to do whatever evaluations they can remotely, so they don't have to wait until school is open again. If their deadline for completion falls a few weeks after summer break, they could wait and schedule all of the testing for after break. If their deadline for completion falls prior to summer break, they are supposed to keep doing whatever testing they can in order to meet the deadline. Schools usually don't do testing over summer break, but they can if they want to—it doesn't matter exactly when they do the testing, as long as they meet their deadline.

Another possibility is that you requested an eval prior to school closure. If you did, the school was supposed to send you an assessment plan within 15 calendar days of your request. If the school closure happened in that 15-day period, the school got an extension on that timeline due to SB 117, and, as long as schools are closed, there is no specific time frame in which they must send you the assessment plan. The same applies if you requested an evaluation after school closure. Once schools open again, they will have to send you the assessment plan within 15 days.

But, schools are still supposed to respond to requests for evaluation "as expeditiously as possible" during school closure. So, you can still ask them to move forward.

The last possibility is that you requested an eval prior to school closure and the 15-day period would have been up before school closure. If you never received an assessment plan, the school is responsible for sending you an assessment plan as soon as possible. For example, if you requested an evaluation on February 1st, the school was supposed to send you an assessment plan by February 16. There were no school closures at that point, so there was no reason that the school couldn't have sent you an evaluation in a timely manner.

Can parents request an "initial" IEP at this time?

See above question.

What am I able to do if my son's IEP has been "forgotten" all the assessments haven't happened and I've not received a reply from the assistant principal? He also gets (finally) 30 mins / times a week of teacher zoom?

See above for information about initial evaluations.

If your son already had an IEP and was supposed to have additional assessments as part of his annual or triennial IEP, the school is not allowed to delay those because of COVID-19 (unless there is a specific kind of assessment that cannot be done remotely).

How can an IEP be obtained if a child attends a private school?

Private schools are not required to provide students with IEPs. Only public schools are subject to the IDEA. If you are referring to a “non-public” school or a school that is affiliated with a group home or STRTP that your child has been placed at, those schools are subject to the IDEA.

We went through due process and agreed that my son was to get outside resources three times a week and it was happening before the school closure, but they said it won't continue until after school is back in session. Is that right or can I complain? Or what do I do?

I don't know the specific terms of your due process settlement, but this seems like something that you could negotiate about. If your son's IEP says that he is supposed to get outside resources three times a week, the school should be discussing options for providing that service with you, not just unilaterally saying that it is impossible to provide. Schools are not excused from providing special education services during school closures. Make sure you keep a record of how many weeks of service he missed. If you had legal counsel for the due process hearing, you may want to contact them to ask about the specific terms of the settlement.

If you did sign that paper can you revoke it? I work with Spanish-speaking families that do not know what they are signing or influenced.

It will depend on the situation and what, exactly they signed, and under what circumstances. I think that a lot of these documents that claim to waive all special education rights will not hold up well in court if they are challenged, but that requires going to court. I will note that if you are seeing systemic issues with this, that you can contact a civil legal aid provider in your area- there are many organizations that work to ensure that all students have access to education, and it may be easier to deal with this situation on a group/policy level rather than trying to get at it through every student's individual IEP.

As a general note, an IEP is a process. So if a parent signs something in September that they later realize they disagree with, they can call another IEP to talk about why what was agreed to in September isn't working. Signing a paper that says that your child is going to get 30 minutes of therapy a month does not mean that you aren't allowed to go back to the IEP team and ask for 30 minutes of therapy a week. Students' needs change over time. The annual IEP is a baseline measure—the IEP team HAS to meet at least once a year. But what is written in the annual IEP is not set in stone. If a school refuses to provide requested services, ask for the reason why in writing.

If the parent signed something about school placement in an alternative school, that might not have occurred through the IEP process- there are specific laws and processes that cover transfers to community, continuation, or alternative schools. Many school districts do not correctly follow these policies, and so there may be ways to challenge these placements if parents do not agree with them. Foster youth, homeless youth, and justice-involved youth have specific protections under the law that are meant to prevent them from being placed in non-traditional schools without consent.

Is there information about Special Education in Spanish?

Disability Rights California has information about a number of different disability-related issues, including special education, available in multiple languages.

<https://www.disabilityrightsca.org/publications>.

Many Parent Information and Training Centers will have resources available in the most common languages spoken in their region. Here are some Spanish Language videos from Parents Helping Parents in San Jose. <https://www.php.com/es/videos-informativos-en-espanol/>.

The Pacer Center has many Spanish language resources available to download for free from their website. <https://www.pacer.org/publications/spanish.asp>

Can you call an IEP meeting during the summer months? Such as if a child moves districts due to a change in placement or if schools release plans for fall that aren't going to work for a child you care for who has special education needs.

Yes, you can ask. The district is not required to hold the meeting during the summer, but it could agree to do so. There is an especially strong rationale for doing this for foster youth, given the educational instability experienced by this group. The main reason that a school might not want to do this during the summer is that they may not be able to provide all of the required IEP team members (for instance, the gen ed and special ed teacher may be unavailable due to summer break). As the child's education rights holder, you can waive the attendance of required IEP team members, which may or may not make sense depending on what issue you are hoping to discuss. If you do have a meeting without all of the required members (for instance, if you are trying to make sure that your child's day-1 most basic needs at their new placement are met), you will probably want to have another IEP meeting a month or two into the new placement to discuss how things are going with the teachers and professionals who are working with them on a daily basis.

In the eventuality that teaching resumes and social distancing is enforced and child has a behaviorist who needs to be stand by, or child can't wear a mask, what solutions do you foresee in these instances, which is the case for many students with IEPs?

This is a hard question, and I do not have a definitive answer, because I think a lot depends on our evolving understanding of COVID-19 and how it is transmitted. For instance, I've heard that the primary purpose of wearing masks is to prevent yourself from transmitting to another person, not to protect yourself- if that's the case, maybe it is not as worrisome that a child cannot wear a mask as long as the folks around them are. Public health officials and schools are going to have to work together to come up with good protocols and work with families to help them evaluate their options. I think it's fair to say that there is probably not going to be a zero-risk option for going back to school for a while—as a society, we're still trying to figure out what the risk is, what we can do to mitigate it, how comfortable we are with the risk, and how that risk compares to other risks that we do take regularly.

Students who are medically fragile have always had and will continue to have the ability to request home instruction. Guidance here: <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf>. So, we may see

instances in which certain youth continue distance learning because they are at particular risk of infection. If the family is comfortable, they could have an instructor come to the house.

Schools are also in the midst of redesigning themselves to mitigate risk- we might expect different classroom lay-outs, use of outdoor space, or physical barriers that are put in place to minimize contact between students. It's going to be hard for a parent to evaluate how they feel about that until they see it. For youth who do need that one-on-one aide, is the parent comfortable as long as that's the only person who is getting close to their youth? What does the parent need to be comfortable with that- masking? Disinfection protocols? Assurances that the aide is also maintaining distance at work.

Is there a way for families who are caring for high-need/medically fragile youth to work together with the school and public health officials to share concerns/come up with strategies that work for everyone (for instance, maybe it's better to use a separate wing of the school for youth who are particularly vulnerable, or to let them arrive earlier/later than other children so they don't interact?). At the same time, one of the key benefits of school for a lot of youth who are high-need or medically fragile is interaction with same-age peers, so maybe cordoning them off is not a good idea, or we need to think of new ways to ensure that these youth are integrated with peers (can this happen via video? Through a glass/plastic barrier?).

I've answered your question with a lot more questions, but hopefully this helps you think through some of the possible strategies for keeping your student safe!

If a child has primarily mental health issues and difficulty interacting with others, this would be more difficult to assess remotely? How can this be done without delaying the 60-day timeline?

There might be mental health issues that are difficult to evaluate remotely. I'm not a mental health professional, so I can't say for certain which tests can be done remotely and which cannot. I also think that it would depend on what the child's specific needs are. One of the most common tests that is given to evaluate possible depression or anxiety is the BASC-3, which is a questionnaire that can be given remotely (and often is). Also, evaluators often use information that is not generated by administering a test to a student, like talking to their teachers, families, and providers, or looking at their educational history—this information should still be available.

Here is some general information about evaluating mental health/behavior issues under the IDEA that you might find helpful in thinking about this question.

- Eligibility under the IDEA is not the same as a medical diagnosis. There are some categories of eligibility that may require a specific diagnosis, for instance Autism, but others like "Emotional Disturbance" do not require that a youth be diagnosed with clinical depression vs bipolar vs PTSD. This is important, because the process of diagnosing a person, particularly a youth or child, with a mental health condition often takes more than 60 days, because clinicians may need to observe someone over time, and mental health is complicated! If a youth does have a medical diagnosis, you may want to share that information with the IEP team, if the youth is comfortable with you sharing (you may want to double check how much information you are sharing when you share medical records- for instance, it may be good for the IEP team to know that your youth has PTSD, but they may not need to know the details of the experience that caused it)

- For the IDEA, an evaluator needs to identify that there is an issue, that the issue is significantly impacting the student's ability to engage in school, and that the student needs support. Depending on the student, this may not require a lot of in-depth testing to determine *eligibility* (i.e. is there an issue that is affecting learning?). What the evaluator may have a harder time doing remotely is recommending specific strategies to address the need, but that could be addressed once a youth is back in school. You could still qualify a student for special education without having a full picture of all of the support that the school should offer (but make sure to ask for that part of the evaluation to be completed once the student is back in school!)
- Evaluations start broad, and then focus in on the specific areas that evaluators think are most important. Oftentimes, it turns out that a youth who has been referred for behavior issues has something else going on, like an intellectual or learning disability, which is contributing to or causing the behavior issues.
- There are 13 categories of eligibility under the IDEA, and students are often eligible under multiple categories. In the above scenario, say, the child has a learning disability but also definitely needs a behavior evaluation, maybe a Behavior Improvement Plan (BIP). Those evaluations do often include some amount of classroom observation, which is hard to do at the moment. The behaviorist may have some things they can do now, like attend a Zoom class, or collect interview data from parents and teachers, which they can use to make some recommendations now, but isn't a full evaluation. The school can go ahead and implement an IEP for that student based on their eligibility as a student with a learning disability; when the behavior evaluation is complete, after school opens, the school and parent can convene an IEP to discuss if the youth also has eligibility under another category, or if there are any additional needs/supports that the youth needs.
- REMEMBER: the eligibility category that a student is qualified under does not determine the student's services. A student whose primary eligibility category is learning disability can also get mental health support through an IEP, if the team agrees that it is necessary. Some schools mistakenly think that a student can only get mental health/behavior support if the student is categorized as having an "Emotional Disturbance," but that's not true.

Is the school responsible for providing home visits to Special Ed students who are refusing to do school assignments at home? Some parents report that they feel helpless and more stressed because their kids get out of control every time they are having Zoom classes or meetings.

The school is not required to do home visits for all special education students, but you could request them informally or in an IEP, depending on the student's needs. Students who had behavioral aides or one-on-one instruction are more likely to qualify for this sort of support, because it was already deemed necessary for the student's learning prior to COVID-19.

There are a lot of reasons that students might act up during their online classes- it could be that they are overwhelmed with excitement at seeing their peers, it could be that they find it stressful to be on camera, it could be that the sights and sounds are overwhelming—it is worth raising this concern with the teacher and seeing if you can come up with an alternative strategy for learning. Does the student have problems when it's just one-on-one with the teacher? Does the student have an easier time watching the video of the lesson with captions after-the-fact? Does the student need sensory breaks? Would the student benefit from

some other social outlet to get their energy out before class? There may be solutions to this issue that don't require someone to come to the home, and a school will likely want to explore those before implementing home visits, given the heightened risk to staff and families.

Where should a parent send the written request for initial IEP or emergency IEP during school closure? The school address? Addressed to the principal?

The easiest way to find out may just be to ask your student's teacher, if you're communicating with them regularly. If you go on the school's website, you can usually find a listing of contact info for special education staff, or the administrator responsible for special education, so just emailing all of those addresses with your written request (plus any administrative assistants) and cc'ing the principal is a good way to go. If you're feeling self-conscious about emailing so many people a) it's fine - as an attorney I often email everyone who could possibly be responsible for my client's evaluation, because I don't want it to get lost in the shuffle, and b) you can say in your email that you weren't sure where to direct the request due to school closure.

I have read that my child is entitled to up to 2 hours a day. 1st grade LAUSD.

I'm not sure what the specific question is here, but I just want to say that your child is not "entitled to up to 2 hours" your child is entitled to the services they need in order to meet their IEP goals (which may need to be addressed through compensatory education). That may be how they are scheduling/offering services now, but districts should not be making blanket orders saying that up to 2 hours a day is what all special education students in 1st grade are "entitled" to.

That being said, if 2 hours is working for you and your child, that's great! But if at the end of all of this, your child is behind on her IEP goals, the fact that the district told you that everyone in 1st grade gets 2 hours does not mean that you can't ask for compensatory services. Or, if the 2 hours is really not working, you can ask for something else. Functionally speaking, the district is probably correct in thinking that most 1st graders are not going to benefit from more than 2 hours of live video instruction, so maybe asking for more of that is not the way to go, but if your child needs social skills group, small-group reading, self-paced exercises, etc., you can ask for those things.

I need my child to have an aide. Does the school get aggravated by asking for extra?

I can't say that schools *never* get aggravated by requests for services, but most of the time, educators want what is best for students and their families. If you think your child needs an aide, ask for one! But be prepared for a conversation about *why* you think your child needs an aide and be open to other potential solutions for the problems you're identifying (without knowing your specific situation, it's hard for me to say whether there might be other good solutions). If you ask for an aide and the school says no, get them to give you the reasons they said no in writing. The school may want to try other solutions first, which may be ok, but set a timeframe for meeting again to discuss whether the other solutions are working. If they're not, that strengthens your argument for needing an aide.