

GUIDANCE



School Year 2020-21 Compliance with the Individuals with Disabilities Education Act and the Kansas Special Education for Exceptional Children Act for Reopening Schools during the COVID-19 Pandemic

Asterisks () indicate new or revised material added since the previous version of this document.

The Individuals with Disabilities Education Act (IDEA) and the Kansas Special Education for Exceptional Children Act require school districts to provide special education and related services to students with exceptionalities. The Kansas State Department of Education's (KSDE) Special Education and Title Services (SETS) team created this document to provide a response to questions we are receiving in a uniform and consistent manner. As you all are aware, this is a rapidly changing situation, and this document will be continually revised to provide the most up to date information.

Special education timelines and requirements are set forth in statute, which was written and enacted by the United States Congress and the Kansas Legislature. The Kansas State Department of Education (KSDE) does not have the authority to alter or waive these statutory requirements and timelines.

Please note that the [Navigating Change: Kansas' Guide to Learning and School Safety Operations](https://www.ksde.org/Teaching-Learning/Resources/Navigating-Change-Kansas-Guide-to-Learning-and-School-Safety-Operations)¹ document, released by the Kansas State Department of Education, is simply guidance. When a district creates its own plan for the 2020–21 school year it must balance this guidance with the requirements of special education law, as well as the context for its staff and students, including any guidance or requirements issued by state or local health officials.

This document is not intended to provide legal advice. For legal advice on your specific situation, please consult with your attorney. Kansas State Department of Education staff are not permitted to provide legal advice.

¹ <https://www.ksde.org/Teaching-Learning/Resources/Navigating-Change-Kansas-Guide-to-Learning-and-School-Safety-Operations>

A. Special Education Legal Questions

Question A-1. What special education and related services must be provided when a school district is not providing any educational services to the general student population due to COVID-19?

Answer A-1. When a school district is not providing any educational services to the general student population due to a COVID-19, the school district is not required to provide a FAPE or any IEP services to children with exceptionalities.

Question A-2. What special education and related services must be provided to students with exceptionalities when a school district is serving its students remotely?

Answer A-2. When a school is serving its students remotely, the school must ensure that each student with an exceptionality also has equal access to the same opportunities, including, to the extent possible under these unprecedented circumstances, a free appropriate public education (FAPE). School districts must provide a FAPE consistent with the need to protect the health and safety of students with exceptionalities and those individuals providing education, specialized instruction, and related services to these students. In this unique and ever-changing environment, these exceptional circumstances may affect how all educational and related services and supports are provided. FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, through instructional materials sent home, or telephonically. The determination of how FAPE is to be provided may need to be different during the time when a school is serving its student remotely. As mentioned above, 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. This guidance is consistent with and based upon the [Office for Civil Rights \(OCR\) and Office of Special Education and Rehabilitative Services \(OSERS\) Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities²](#) issued on March 21, 2020. Educators should read that document fully for more guidance regarding how to provide special education and related services in a distance learning environment.

The services and supports in a child's IEP most likely contemplated the traditional educational environment, which most students are no longer in. The child's IEP Team should start by thinking about the district's the general education curriculum in place at this time through the different learning environments the district is offering (e.g., hybrid learning or remote learning). All services and supports are intended to support the child in accessing the general education curriculum with their nondisabled peers to the maximum extent appropriate. The child's IEP Team should develop a plan for temporary services in line with the guidance in [Answer A-6 below](#) to enable the child:

- (1) To advance appropriately toward attaining the child's annual IEP goals;
- (2) to be involved in and make progress in the general education curriculum (in this instance, the district's general education curriculum available to all students within a given learning environment), or appropriate activities for children ages 3–5;
- (3) to participate in extracurricular and other nonacademic activities; and
- (4) to be educated and participate with their nondisabled peers to the maximum extent appropriate, in

² <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

all of these activities (in this instance to participate in the remote learning environment with their nondisabled peers) (K.S.A. 72-3429(c)(4)).

The child's IEP Team should think about the definition of specially designed instruction, within the context of the learning environment in which the child will participate. "Specially designed instruction" means adapting, as appropriate to the needs of each exceptional child, the content, methodology or delivery of instruction for the following purposes:

- (1) To address the unique needs of the child that result from the child's exceptionality; and
- (2) to ensure access of any child with a disability to the general curriculum (in this instance, the general education curriculum available to all students within a given learning environment), so that the child can meet the educational standards within the jurisdiction of the agency that apply to all children (K.A.R. 91-40-1(III)).

The child's IEP Team should think about related services in the context of what specially designed instruction (special education services) means within the district's learning environment options. Related services are developmental, corrective, and supportive services required to assist a child, who has been identified as a child with an exceptionality, to benefit from special education services (K.A.R. 91-40-1(ccc)).

The child's IEP Team should think about supplementary aids and services, program modifications, and supports for school personnel in the context of "to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate" (in this instance to participate in the district's general education curriculum available to all students within a given learning environment with their nondisabled peers) (K.S.A. 72-3429(c)(4); K.A.R. 91-40-1(ttt)).

Question A-3. The [Navigating Change: Kansas' Guide to Learning and School Safety Operations](#)³ guidance states that schools can choose to offer "learning environment" options for the 2020-21 school year, such as onsite learning, remote learning, and hybrid learning. Are these learning environment options the same as IDEA educational placements on the least restrictive environment (LRE) continuum of alternative placements? For example, is remote learning considered a homebound placement for a child with an IEP?

Answer A-3. Special education law does not address this specific question because the operation of schools during a global pandemic is a novel situation. Without any guidance from the U.S. Department of Education on this question to date, the KSDE Special Education & Title Services Team provides the following guidance, which is subject to change:

Alternatives to traditional classroom instruction offered by a school district to all students, such as remote learning, hybrid learning and virtual school, should be considered options for accessing the general education curriculum, rather than educational placements on the LRE continuum.

The terms "remote learning" and "homebound," are not defined in special education statute or regulation. However, an IEP Team should only remove a child with a disability from the regular education environment and place the child in a more restrictive educational environment (such as special classes, special schools, home instruction, and instruction in hospitals and institutions) when the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 C.F.R. §§ 300.114, .115). Remote learning, a model

³ <https://www.ksde.org/Teaching-Learning/Resources/Navigating-Change-Kansas-Guide-to-Learning-and-School-Safety-Operations>

of providing access to the general education curriculum offered to all students because of COVID-19, refers to distance instruction provided in the child's home due to unusual global circumstances not related to the individual child. When a school district offers all students the option to access the general education curriculum remotely, the school is not proposing to change the educational placement of an individual child with a disability or to remove the child from the regular education environment or the placement specified in the child's IEP. Remote learning is simply an option that the school district offers to all students for accessing the general education curriculum.

Question A-4. What are the overarching principles to keep in mind if a school district offers students alternative options for accessing the general education curriculum, such as the Navigating Change "learning environment" examples (onsite, remote, hybrid), as well as virtual school?

Answer A-4.

1. A student's IEP is developed by the student's IEP Team.
2. The IEP developed by the IEP Team is the district's offer of FAPE (typically in a school building) for a particular child.
3. The district's offer of FAPE (especially in a school building) should not be permanently changed to fit circumstances arising from a parent's unilateral alternative option choice.
4. When a district makes multiple alternative "learning environment" options available to all students (such as remote learning, hybrid learning, or virtual school), children with disabilities have a right to choose to participate in those alternative options.
5. When a parent of a child with a disability unilaterally chooses one of those alternative options without the agreement of the IEP Team (including enrollment in a virtual school or form of remote learning), that is strictly a parent decision. It is not an IEP Team decision. In such a case, the IEP Team should preserve its offer of FAPE by keeping the current IEP in full force and effect. The IEP Team has a duty under both the IDEA and Section 504 to offer the services the child will need to have an equal opportunity to participate in and to benefit from participation in that alternative option, which includes enabling the child to receive a FAPE in the parent's chosen alternative option. See [Question and Answer A-6 below](#) for more guidance on how an IEP Team should address this situation in a PWN and in the IEP.

Question A-5. If a school district offers alternative options to students for accessing the general education curriculum for the 2020-21 school year, such as the Navigating Change "learning environment" examples (onsite, remote, hybrid) or virtual school, who decides on the alternative option in which a student with a disability will participate: the student's IEP Team, school administrators, or the parent?

Answer A-5. If a school district offers alternative options for accessing the general education curriculum in the 2020-21 school year, the decision as to whether a child with a disability will participate in an alternative option (such as onsite, remote learning, hybrid learning, or virtual school) should belong to the parent as long as the student meets any non-discriminatory admissions criteria that apply to all students. Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act (see 34 C.F.R. § 300.110) both require a school district to give students with disabilities equal access to the same opportunities and programs that are offered to students without disabilities. If an IEP Team or a school administrator requires a child with a disability to participate in one particular option but offers students

without disabilities the opportunity to choose among several options or places different admissions criteria on the child with a disability, that could be perceived as disparate treatment and discrimination.

Question A-6. How should a school handle a situation where the parent wants their student with a disability to participate in a remote learning, hybrid learning, or virtual school option offered by the school district for the 2020-21 school year but school administrators or the other members of the IEP Team believe the student could or should attend school onsite in the brick and mortar building instead?

Answer A-6. If a parent wishes for their child to participate in an alternative option for accessing the general education curriculum that the district is offering to students for the 2020-21 school year, the child meets the non-discriminatory admissions criteria that applies to all students, and the other members of the child's IEP Team do not believe that the parent's choice will provide the child with FAPE in the LRE, then the offer of FAPE should be kept intact in the child's IEP. However, the IEP Team should also create a temporary plan for services and supports needed for the child to participate in the alternative option chosen by the parent. Here are some guidelines to consider when creating such a plan:

1. Categorical aid is only available for services that are listed within a child's IEP. With that in mind, the IEP Team may want to put the temporary plan within the IEP document, rather than in a PWN or other separate document.
2. This temporary plan should include language indicating that the IEP Team does not believe the child's participation in the parent's chosen alternative option provides the child with a FAPE. However, because the child meets the non-discriminatory admissions criteria that applies to all students, the child will participate in the alternative option at the parent's request.
3. The plan should also indicate that the change in services and supports articulated for the child's participation in the alternative option are temporary and will apply only until such time as the child leaves the alternative option, at which time the original set of services and supports in the IEP developed prior to the child's participation in the alternative option will resume automatically without any action of the IEP team and without any additional notice or parent consent.
4. If there are any services and supports that the IEP Team determines cannot reasonably be provided in the parent's chosen alternative option, the IEP Team should make that clear to the parent and state in the plan that those services and supports will be provided on site at the school building. Note that this should not be an "all or nothing" offer, meaning that all of the services and supports that can be reasonably provided in the alternative option should be provided; then only the remaining services and supports that cannot be reasonably provided should be made available on site.
5. To the extent these temporary services and supports are a change from what is currently stated in the IEP, a PWN is needed; parent consent is also needed if the temporary services constitute a material change in services.
6. Making these temporary changes to the IEP can be accomplished by convening an IEP Team meeting (virtually, if needed) or by the parent and school agreeing to amend the IEP without a meeting.

Question A-7. If a parent and the other members of the IEP Team agree that a student with a disability could or should participate in a remote learning, hybrid learning, or virtual school option offered by the school district, how should the IEP Team document that decision?

Answer A-7. In this instance, the IEP Team should determine whether any changes are needed to the services and supports in the IEP in order for the student to participate in the alternative option. These changes should be stated in the IEP and clearly articulated as temporary provisions as described in [Answer A-6 above](#). This can be accomplished by convening an IEP Team meeting (virtually, if needed) or by the parent and school agreeing to amend the IEP without a meeting.

Question A-8. When a school district offers only two learning environment options to all parents, full onsite learning or full remote learning, and does not offer hybrid learning (i.e. parents are not permitted to choose remote learning and then bring their child onsite for band class, etc.) what are the implications for a parent of a student with an IEP who chooses the remote learning option but asks for the student to go onsite to receive some special education services?

Answer A-8. Such a policy as described in this question appears to be a neutral criterion that applies to equally to all students. In general, as a matter of policy, the school can tell parents (of students with and without exceptionalities) that hybrid learning is not an option (i.e. remote learning students cannot come onsite even part-time and onsite learning students cannot participate remotely even part-time).

However, district policy – even when it is facially neutral and applies to all children – cannot be applied in a manner that deprives a child with an exceptionality a free appropriate public education (FAPE). The legal obligation set forth in state and federal special education statutes to provide a FAPE overrides a district’s authority to create and implement policies. Thus, when a parent selects a remote option, but the student’s IEP Team determines that a specific service (i.e. physical therapy that involves massage and physical manipulation) can only be provided in a district building, the IEP Team needs to offer that service in a district building regardless of district policy.

Question A-9. When a school district requires all students to participate in remote learning and does not offer onsite or hybrid learning, what are the implications for a parent of a student with an IEP who asks for the student to go onsite to receive some special education services?

Answer A-9. Such a policy as described in this question appears to be a neutral criterion that applies equally to all students. In general, as a matter of policy, the school can tell parents (of students with and without exceptionalities) that onsite learning and hybrid learning are not an option.

However, district policy – even when it is facially neutral and applies to all children – cannot be applied in a manner that deprives a child with an exceptionality a free appropriate public education (FAPE). The legal obligation set forth in state and federal special education statutes to provide a FAPE overrides a district’s authority to create and implement policies. Thus, when a district requires students to participate in remote learning, but the student’s IEP Team determines that a specific service (i.e. physical therapy that involves massage and physical manipulation) can only be provided in a district building, the IEP Team needs to offer that service in a district building regardless of district policy.

Question A-10. If a parent of a child with an exceptionality chooses a remote learning option offered by the district, and the IEP Team determines that some of the IEP services can only be provided onsite, must the district provide transportation to and from the child’s home and school for those onsite services?

Answer A-10. Transportation is a type of related service. The term “related service” is defined as “developmental, corrective, and supportive services that are required to assist an exceptional child to benefit from special education” (K.A.R. 91-40-1(ccc); 34 C.F.R. § 300.34(a)). In a situation where a parent selects a remote learning option, but the IEP Team determines that a specific special education or related service can only be provided in a district building, the IEP Team must also determine whether the child requires transportation in order to benefit from that onsite service. Note that there is no requirement that the need for transportation be related to the child’s disability. For example, a child with an intellectual disability who is fully mobile may still need transportation as a related service, if without it, the student would not be able to come to the school building to receive the special education services that the IEP Team determined would only be provided onsite. IEP Teams may consider the parent’s ability to transport the student, the student’s ability to safely walk to school, the availability of public transportation, and the student’s age, among other factors. For more guidance on making this determination, see the [Kansas Special Education Process Handbook](#)⁴ (Chapter 5, Section B.3.; Chapter 5, Questions and Answers – Answer 6.).

Question A-11. If a student with an IEP is participating in remote learning or hybrid learning and is not making appropriate progress in the general education curriculum or toward meeting his/her IEP goals, what should the school do?

Answer A-11. In any instance when a student is not making appropriate progress, the IEP Team would need to meet and discuss what changes can be made to the services and supports to address the lack of progress (34 C.F.R. § 300.324(b)(1)(ii)(A)). This can be accomplished by convening an IEP Team meeting (virtually, if needed) or by the parent and school agreeing to amend the IEP without a meeting.

Question A-12. If a school district chooses to implement a phased opening such as staggered schedules or half days, what considerations for students with disabilities should the school district keep in mind?

Answer A-12.

1. The U.S. Department of Education’s Office of Special Education Programs issued [guidance on March 12](#)⁵ that stated, “If an LEA 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 an LEA would not be required to provide services to students with disabilities during that same period of time.” So, if a school district is closing its schools for half of every school day and not providing any educational services to any students during those half-days when the school is closed, then the school district is not required to provide services to students with IEPs during those half-days when the schools are closed. However, this does not mean that a child with an IEP would only receive half of the services in his IEP. For example, if a particular student’s IEP requires special reading instruction for 1 hour (duration) on 2 days per week (frequency) and the child will attend school on Monday, Wednesday, and Friday, then: (a) the special reading instruction must not be scheduled for Tuesday and Thursday, or Tuesday and Wednesday; and (b) the reading instruction should not be reduced to thirty minutes. Instead, attempt to provide all of the services in the IEP that reasonably can be provided, even in the abbreviated school schedule.

⁴ <https://www.ksde.org/Agency/Division-of-Learning-Services/Special-Education-and-Title-Services/Special-Education/Legal-Special-Education-Law/Kansas-Special-Education-Process-Handbook>

⁵ <https://sites.ed.gov/idea/idea-files/q-and-a-providing-services-to-children-with-disabilities-during-the-coronavirus-disease-2019-outbreak/#Q-A-1>

2. In those situations where a district or a parent believes providing all the IEP services that can be provided is unreasonable, the IEP processes provide flexibility. When parents and school officials agree, they may use the IEP amendment process to revise the IEP specifically for the time period in which school is open on only a part-time basis. Where there is not initial agreement, IEP teams may meet to discuss proposals that are made to the team.
3. A school district could choose to prioritize students with disabilities and provide those students with the option to attend full time; no staggered days or half days. The law requires schools to provide equal access to students with disabilities, but nothing prevents a school from offering students with disabilities more than their general education peers. Note the use of the words “option” and “offer” here. The school must not place different requirements on students with disabilities than the requirements placed on students without disabilities, which would be disparate treatment.
4. Here are some specific examples to consider within the context of students attending school for half days or alternate days.
 - a. The first is a situation where a student’s IEP requires a full day (duration) of special education services in a resource room every school day for 36 weeks (frequency). The district might take one of two paths: (1) The district might choose to close school for all students every other day, with half of the students attending one day and the other half attending the next day. If the district goes this route, this particular student would receive a full day of special education services in a resource room every other day, and the student will not receive any services on the days the school is closed for the group to which this student is assigned. (2) Alternatively, the district might choose to close school for half of each day for all students. If the district goes this route, this particular student will not receive any services for the half-day that the school is closed for all students. Either one of these options would be consistent with the March 12 OSEP guidance referenced in [Answer A-12.1. above](#).
 - b. The second, less simplistic, situation is where a student’s IEP does not require special education services all day, for example, a student who has a 20-minute (duration) speech session two times per week (frequency) and a 1-hour (duration) special education math session two times per week (frequency). In this situation, the child’s IEP services should not be cut in half. The school should implement the IEP to the extent it reasonably can be implemented within the reduced school day/week. That is, schools should not provide two 10-minute speech sessions per week, nor provide only one 20-minute speech session. In either of these scenarios, the school reasonably can provide both services in the frequency and duration described in the IEP despite being open only half of each day or alternate days. Failure to provide these services with the frequency and duration described in the IEP, when they reasonably can be so provided even in the shortened school day/week, could interfere with the child’s progress in the general curriculum and on IEP goals.
5. Stating the duration and frequency of services in the IEP in specific time units such as minutes/hours/days/weeks does not afford much flexibility when situations, such as this one, arise. There are other ways to state duration and frequency that are still clear to everyone involved. Using the examples provided above, for a child who is in a resource room all day long every day for 36 weeks, the duration and frequency could be stated as “for the entire duration of every day that school is in session in the 2020/2021 school year with the exception of lunch,

recess, and any class or school assemblies or field trips.” For a child receiving speech services two times per week, the duration could be, “Two days per week from the time ‘Morning Meeting’ concludes in the classroom until math begins.” For this same child receiving special education math support twice per week the duration could be, “Two days per week for the duration of general education math instruction.” These descriptions could work both in the context of half or staggered days or full-time on-site instruction. For more guidance regarding frequency and duration, see the documents posted on the [Special Education Resources for Families and Educators webpage of the KSDE website](#)⁶ titled, “Assuring the Documentation of Frequency, Location, and Duration of Accommodations in the IEP” and “Documenting Frequency, Location, and Duration of Accommodations and Modifications on the IEP during the 2020-21 school year”.

Keep in mind that SPEDPro data reporting requires reporting of the services a student actually receives in specific time units. But these specific time units are not required to be stated within a student’s IEP. IEP requirements are different from data reporting requirements. IEP requirements are set in law. Data reporting requirements are set by the U.S. Department of Education and must reflect the services a student actually received. Plans for student learning must be developed based on student need and not driven by data reporting requirements.

Question A-13. In an effort to reduce the spread of COVID-19 in school buildings, may a school group onsite students into cohorts that stay together all day without changing classrooms and interacting with other students, or would this practice be in conflict with the educational placements of students with IEPs? What is the implication if all students with IEPs are grouped together in a cohort? What is the implication if a student is grouped in a regular education cohort, but his/her IEP states that he/she must receive specially designed instruction in the resource/special education classroom during a portion of the day (e.g. math class)?

Answer A-13. Educational placement and least restrictive environment (LRE) are about the extent to which a child with an IEP participates with children who do not have exceptionalities. The less a child participates with children who do not have exceptionalities, the more restrictive his/her educational placement is, and visa versa. The educational placement of a child with an exceptionality on the LRE continuum a) is made by a group of persons knowledgeable about the child, the meaning of evaluation data, and the placement options (typically the child’s IEP team) and b) is based upon the services and supports required by the child’s IEP. Further, the law requires that to the maximum extent appropriate, children with exceptionalities must be educated with children who do not have exceptionalities. The law also requires that special classes, such as a resource/special education environment, or other removal of children with exceptionalities from the regular education environment must occur only if the nature or severity of the exceptionality is such that education in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. [See 34 C.F.R. 300.114 and 300.116]. This is to say that LRE is determined based on the child’s exceptionality and the needs that result from that exceptionality, not from unrelated universal factors such as a global pandemic. In addition, each child’s IEP must include an explanation of the extent, if any, to which the child will not participate with children who do not have exceptionalities in the regular class and in extracurricular and other nonacademic activities. [See 34 C.F.R. 300.320(a)(5)]. All of these requirements mean the following:

1. Each child’s IEP is individualized and requires a specific educational placement. One IEP might place a child in the regular education environment (participating with children who do not have

⁶ <https://www.ksde.org/Default.aspx?tabid=553#IEP>

exceptionalities) for the entire school day. Another IEP might place a different child in the special education environment (not participating with children who do not have exceptionalities) for the entire school day. Yet another IEP might place a third child in the regular education environment for part of the school day and in the special education environment for the other part of the school day. Schools must ensure that each child with an IEP is placed in the educational environment required by his/her IEP. Thus, grouping all students with IEPs together for the entire school day is likely to conflict with the educational placement required by at least some, if not most, of those students' IEPs.

2. If an administrator, parent, or other member of a child's IEP Team wants to change the educational placement required by the child's IEP (to a more restrictive or less restrictive environment), then the IEP Team must make that determination based on the nature or severity of the child's exceptionality. It would be inappropriate and inconsistent with the law (34 C.F.R. 300.114 through 300.117) to change the child's placement because of parental preference or other factors unrelated to the nature or severity of the child's exceptionality, such as administrative convenience or social distancing protocol.
3. If a child's IEP requires that the child will not participate with children who do not have exceptionalities during a portion of the day (e.g. math class), then that child must not participate with children who do not have exceptionalities during that time period (e.g. math class). With that said, walls do not make educational placements or environments. It is not necessary that a child with an IEP that requires a special education environment during math class be in another room separate from students without exceptionalities during math. For example, during math class, this child could stay in the regular education classroom if a special education teacher works with this child and other students with IEPs in a different area of the classroom. The important points here are that, although in the same physical room, the child with an IEP is working with a special education teacher and other children with IEPs for math instruction, and this child is not participating with children who do not have exceptionalities for math instruction.
4. If a school or IEP Team refuses a parent's requests to change their child's educational placement, the parent must be provided with prior written notice of the refusal within 15 school days of receiving the parent's request. Further, if an IEP Team determines that it is appropriate to change the educational placement of a child with an exceptionality based on the nature or severity of the child's exceptionality, the parent must be provided with prior written notice of the proposed change a reasonable time before the change in placement is implemented [see 34 C.F.R. 300.503(a)(1)-(2)]. In addition, if the change in educational placement is a "substantial change in placement", parent consent must be obtained before the change can be made [see K.S.A. 72-3430(b)(6)]. A "substantial change in placement" means "the movement of an exceptional child, for more than 25% of the child's school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment" [see K.A.R. 91-40-1(sss)].

Question A-14. Can a school district decide not to provide any special education and related services to all students with IEPs during the first week of the 2020-21 school year so that students can spend more time learning about social/emotional competencies, general expectations, and procedures?

Answer A-14. Each child's IEP must be individualized and created by that child's IEP team to meet that child's unique needs. If an individual child's IEP team decides that it is appropriate to begin services on the second or third week of school, then the IEP team has the authority to make that decision and put it

in the IEP. It would be inconsistent with the law for an IEP to be written to begin on the second or third week of school because of administrative convenience or scheduling. Some children will need services starting on the first day of school and others may not, but that decision must be made by each individual IEP team based on what an individual child needs. For more on this topic, see Question and Answer 13 in the Questions and Answers section at the end of Chapter 5 in the [Kansas Special Education Process Handbook](#)⁷.

Question A-15. What factors should IEP Teams consider when determining whether a student with an IEP needs compensatory services and in what timeline?

Answer A-15. Where, due to the COVID-19 outbreak and closures of schools during the spring of the 2019-20 school year, there was an interruption in providing IEP services, IEP teams must make an individualized determination whether and to what extent compensatory services may be needed. Compensatory services may be necessary when there is a decline in the student's skills that occurred as a result of a student not receiving services during an extended school closure (or an extended student absence) caused by the COVID-19 outbreak. The student's IEP Team also must review the student's IEP and determine whether any changes to the IEP are needed as a result of the extended absence from school. An IEP Team may consider using informal assessments or screenings to determine whether there have been changes in a student's performance.

IEP Teams should consider whether there has been a regression in skills and the extent to which the student failed to make appropriate progress toward attaining their IEP goals and in the general education curriculum (see [USDE, September 29, 2009, Guidance on Flexibility and Waivers for SEAs, LEAs, Postsecondary Institutions, and Other Grantee and Program Participants in Responding to Pandemic Influenza \(H1N1 Virus\)](#)⁸). To determine whether the child's skills have regressed, the IEP Team should compare the last source of data prior to school closure with the student's current progress. The IEP Team should compare the progress that the student was expected to make in the 2020 spring semester had school buildings remained open to the actual progress the student made after school buildings closed. If progress is slower than expected for a particular student in light of his/her unique circumstances, then the student likely requires compensatory services and/or interventions through a multi-tiered system of supports. The IEP Team should also consider whether the student requires additional services and supports that were not previously provided based on the student's needs within the learning environment selected for the 2020-21 school year.

The IEP Team's focus should be on the impact of remote instruction and the extent and quality of the special education services provided during the extended school closure on the child's progress and performance and determine how to ensure the continued provision of FAPE in order for the child to continue to progress and meet the annual goals in his or her IEP (see Letter to Clarke, OSEP March 2007). The IEP Team should also consider the amount of review and other remedial activities that will be provided to all students to address the loss of instructional time as well as consideration of information from the district's multi-tiered system of supports.

Previous guidance issued during the spring 2020 semester indicated that IEP Teams should not make these determinations until "schools return to normal operations next school year." However, as we approach the 2020–21 school year Kansas schools likely will not return to normal operations this school

⁷ <https://www.ksde.org/Agency/Division-of-Learning-Services/Special-Education-and-Title-Services/Special-Education/Legal-Special-Education-Law/Kansas-Special-Education-Process-Handbook>

⁸ <https://www2.ed.gov/admins/lead/safety/emergencyplan/pandemic/index.html>

year. The safest approach would be for IEP Teams to begin making these determinations at the beginning of this school year as soon as sufficient predictive data is obtained and then continue to assess this on an ongoing basis. This data can be obtained through formal or informal assessments to determine the student's present level of academic achievement and functional performance. For many students, data on their present level of academic achievement and functional performance will need to be gathered without the student coming to a school building. As the school year goes on and the progress of students continues to be checked, just as in any instance when a student is not making appropriate progress, the IEP Team must meet and discuss what changes can be made to the services and supports to address the lack of progress (34 C.F.R. § 300.324(b)(1)(ii)(A)).

In all cases, once on-site learning has resumed for all students, this determination should be made for all students with IEPs within a reasonable period of time.

Question A-16. Are students with disabilities required to wear masks in school buildings in compliance with the Governor's Executive Order 20-59?

Answer A-16. The [Governor's Executive Order 20-59](#)⁹ includes exceptions to the mask requirement. One exception states that "persons with a medical condition, mental health condition, or disability that prevents wearing a face covering..." would not be required to wear a mask (see 1.e. in the order). If the district where the child attends establishes a policy for how these exceptions will be determined and documented in the district, then this policy should be followed.

These decisions may be made by school administration unless a parent is specifically requesting an addition to the child's IEP regarding a mask exception; in that case the parent's request must be referred to the child's IEP Team. The school can make the parent aware of other places this exception could be documented (e.g., health plan, 504 plan, or other document as established by district policy regarding this exception), but if the parent requests an addition to the child's IEP, it is an IEP Team decision. The IEP Team should determine whether a mask exception for this student is needed as a program modification within the IEP to enable the child to a) advance appropriately toward attaining the annual IEP goals; b) to be involved in and make progress in the general education curriculum; c) to participate in extracurricular and other nonacademic activities; and d) to be educated and participate with other children with and without disabilities (34 C.F.R. 300.320(a)(4)). If the IEP Team considers all of these elements and determines a mask exception is not a necessary program modification within the IEP, the IEP Team could refer the parent to request that this provision be included in a 504 plan or a health plan. If the IEP Team determines that the mask exception is a necessary program modification that should be in the IEP, the program modification should be clearly stated as time-limited so that further notice and parent consent is not needed to remove this temporary provision from the IEP at a later date. In either case, the IEP team must provide the parent with a PWN that describes the decision of the IEP team and an explanation of the reason for making that decision.

For additional frequently asked questions on the Governor's Executive Order 20-59, please consult the [FAQs for Executive Order 20-59](#)¹⁰.

⁹ <https://governor.kansas.gov/wp-content/uploads/2020/07/EO-20-59-Signed.pdf>

¹⁰ <https://www.ksde.org/Agency/Fiscal-and-Administrative-Services/School-Finance/Whats-New>

B. Special Education Data Reporting Questions

For additional frequently asked questions and answers on SPEDPro reporting please see the documents listed under the heading “MIS Frequently Asked Questions” on the [MIS and Student Data page of the KSDE website¹¹](#).

Question B-1. How should data be reported in SPEDPro for the 2020-21 school year regarding students who receive IEP support onsite in a school building?

Answer B-1. There are no data reporting changes for this situation. Current reporting requirements are still applicable for both preschool and school age students:

1. Participation in qualified regular early childhood programs (K time) is reported at the level of the child’s participation.
2. Students receiving IEP support while under out-of-school suspension/expulsion are reported under the current reporting requirements.
3. Students receiving IEP support while participating in non-school or community-based programs are reported under the same corresponding setting codes: D (Non-School locations) or E (Community Based Direct Instruction).

Question B-2. How should data be reported in SPEDPro for the 2020-21 school year for students who receive IEP support in a synchronous (live interaction) remote learning environment? (Synchronous remote learning refers to online or distance education that happens in real time. Students and teachers interact with one another in a specific virtual place, through a specific online medium, at a specific time. Methods of synchronous remote learning may include video conferencing, teleconferencing, live chatting, live-streaming instruction, etc.)

Answer B-2. In this situation, the location for remote services align with the same setting code as school building locations:

1. Students receiving IEP support at a location of the student’s discretion (i.e. home, public library, etc.) through synchronous remote learning in the same general education class as all other students (with and without exceptionalities), are reported under the “regular education class” – setting code C (Special Ed Direct Services in a Regular Ed Classroom in an Elementary or Secondary Building).
2. *Students receiving individual (one-on-one) or group IEP support (groups of only students with exceptionalities) at a location of the student’s discretion through synchronous remote learning are reported under setting code D (Non-School locations) or G (Special Ed Direct Services outside Regular Ed Classrooms/programs/other locations).
3. Students receiving IEP support through synchronous remote learning who are located in a correctional facility, alternative school, day school, residential facility, etc., are reported under the same corresponding setting codes: I (Incarceration), Y (Juvenile Correctional Facility), H (Alternative School), J (Special Day School), M (Residential), etc.

¹¹ <https://www.ksde.org/Agency/Division-of-Learning-Services/Special-Education-and-Title-Services/Special-Education/MIS-and-Student-Data>

4. Preschool students receiving IEP support at a location of the student's discretion through synchronous remote learning in regular early childhood, community-based programs, early childhood special education and reverse mainstream classrooms, are reported under the same corresponding setting codes: B (Early Childhood Locations), R (E.C. Special Education program classroom), W (Reverse Mainstream ECSE Classroom).

Question B-3. How should data be reported in SPEDPro for the 2020-21 school year regarding students who receive IEP support in an asynchronous (independent or “at-your-own-pace”) remote learning environment? (Asynchronous remote learning refers to online or distance education that happens at the student's own pace. Students and teachers do not interact with one another in a live setting. Methods of asynchronous remote learning may include self-guided lesson modules, pre-recorded video content, virtual libraries, take-home packets, etc.)

Answer B-3.

1. *A student with an IEP is at a location of the student's discretion (i.e. home, public library, etc.) and participating in synchronous remote learning in the same general education class as all other students (with and without exceptionalities). In a situation when this student, along with all other students participating in the general education class, are instructed to work on an assignment independently (asynchronously) for a period of time but this student's assignment constitutes [specially designed instruction](#)¹², this is reported under setting code C (Special Ed Direct Services in a Regular Ed Classroom in an Elementary or Secondary Building).
2. *Students receiving special education and related services that can be accessed at any time and at a location of the student's discretion (i.e. home, public library, etc.) through asynchronous remote learning, with no interaction with students without disabilities, are reported under setting code D (Non-School locations) or G (Special Ed Direct Services outside Regular Ed Classrooms/programs/other locations). For Indicator 5 (Education Environments) federal reporting purposes, setting codes D and G are treated the same.
3. Students receiving IEP support through asynchronous remote learning who are located in an alternative school, day school, residential facility, etc., are reported under setting code D (Non-School locations).
4. *Preschool students receiving IEP support at a location of the student's discretion through asynchronous remote learning in regular early childhood, community-based programs, early childhood special education and reverse mainstream classrooms, are reported setting code D (Non-School locations) or G (Special Ed Direct Services outside Regular Ed Classrooms/programs/other locations). For Indicator 6 (Preschool Environments) federal reporting purposes, setting codes D and G are treated the same.
5. Students receiving IEP support through asynchronous remote learning who are located in correctional facilities, both juvenile and adult, are reported under the same corresponding setting codes: I (Incarceration) or Y (Juvenile Correctional Facility).

¹² Specially designed instruction (SDI) means “adapting, as appropriate to the needs of each exceptional child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's exceptionality; and to ensure access of any child with a disability to the general education curriculum, so that the child can meet the educational standards within the jurisdiction of the agency that apply to all children” (K.A.R. 91-40-1(III)). The provision of accommodations alone does not suffice as specially designed instruction. For more on SDI, see <https://www.ksde.org/Portals/0/SES/pubs/ConsiderationsForSpeciallyDesignedInstruction.pdf>.

***Question B-4.** When reporting services in SPEDPro for students participating in remote learning, should the focus for setting codes be on where the child is physically located or on translating the classroom settings to remote learning?

***Answer B-4.** The focus should be on translating the classroom settings to remote learning. As provided in [Answer A-3 above](#), alternatives to traditional classroom instruction offered by a school district to all students, such as remote learning, hybrid learning, and virtual school, are considered options for accessing the general education curriculum, rather than educational placements on the LRE continuum. IEP services do not necessarily need to become exclusionary, or become a more restrictive placement on the LRE continuum, simply because the student is participating in remote learning at home or elsewhere. Use the examples in [Answer B-2](#) and [Answer B-3](#) above to guide your thinking. Setting codes A (Home-Based) and D (Non-School locations) will likely not be used often.

Here are two examples to help illustrate this concept:

Scenario 1.

During 3rd hour (10:00 a.m.) general education English class, the provider hosts the class synchronously and remotely from her kitchen. All students enrolled in the class participate from various remote locations of their choosing. Because the entire class participates, it is considered the general education environment. A student with an IEP in this class receives support either through interaction with the special education provider (also participating) or through individualized specially designed instructional material sent home to the student. The service location is considered setting code C (Special Ed Direct Services in a Regular Ed Classroom in an Elementary or Secondary Building). Like school-based services, the MIS reporting in the SPEDPro application would not change due to unforeseen/temporary circumstances, student illness, late participation (e.g., a student logs in at 11:30 a.m. to watch the 10:00 a.m. session recording), etc.

Scenario 2.

During 4th hour (11:00 a.m.) special education math class, a special education provider hosts the class synchronously and remotely from her kitchen. Only students with IEPs are enrolled in the class and they all participate from various remote locations of their choosing. These students with IEPs receive support either through interaction with the special education provider or through individualized specially designed instructional material sent home to the student. The service location is considered setting code G (Special Ed Direct Services outside Regular Ed Classrooms/programs/other locations).

Question B-5. Are there changes to timelines for other special education data collections for the 2020–21 school year?

Answer B-5. Special education data reporting requirements are set forth in statute, which was written and enacted by the United States Congress or the Kansas Legislature, or in reporting requirements from the United State Department of Education. KSDE does not have the authority to alter or waive these data reporting requirements and has little ability to alter established timelines.

Individual districts can request an extension with a justification. Please contact the lead for a given data collection if you have questions. The lead for each data collection is located in the [2020-21 KIAS Contacts by Topic](#)¹³ document.

¹³ <https://www.ksde.org/Portals/0/ECSETS/KIAS/KIAS-Contacts.pdf>

C. Special Education Fiscal Questions

Question C-1. In response to the extra measures necessary for the 2020-21 school year, some school districts want to “borrow” paraprofessionals to provide non-special education duties such as check-in duties, temperature taking, covering classes, etc.... Would this violate the 100% time and effort rules for working with special education students?

Answer C-1. Both classified and unclassified staff who perform non-special education duties must document that time in a personnel activity report (PAR) or equivalent system. Any non-special education duties must be paid from funds other than special education, and may not be reimbursed with state special education categorical aid, IDEA funds, or ESSER-SPED funds. Regular ESSER or SPARK funds may be used for eligible COVID-19 related services.

Question C-2. If a school district contracts with an employee for additional time to provide special education services related to COVID-19 that are in excess of the regular annual contract period or 1,116 hours for classified staff. Will the district receive more than 1 FTE of state special education categorical aid?

Answer C-2. No. While the district may employ and contract with staff to provide additional special education services related to COVID-19, the amount of state special education categorical aid for the regular term is capped at 1 FTE. Staff may be paid out of other state, local, and federal funds, including ESSER and ESSER-SPED.

Question C-3. Are districts that receive ESSER or ESSER-SPED funds required, to the greatest extent practicable, to continue to pay employees and contractors during the period of any disruptions or closures related to COVID-19?

Answer C-3. Yes. Section 18006 of the CARES Act of 2020 states that, “A local educational agency, State, institution of higher education, or other entity that receives funds under ‘Education Stabilization Fund’, shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.”

This requirement is separate from the similar requirement passed by the Kansas Legislature, and which expired on June 30, 2020. Section 18006 of the CARES Act applies to the duration of the interruption, but does not grant additional flexibilities or otherwise impact state funding.

Question C-4. What may ESSER-SPED funds be used for?

Answer C-4. ESSER-SPED funds must be used to provide special education services that are necessary as a result of COVID-19.

GUIDANCE ON COMPLIANCE WITH IDEA AND THE KANSAS SPECIAL EDUCATION FOR EXCEPTIONAL CHILDREN ACT
FOR REOPENING SCHOOLS DURING THE COVID-19 PANDEMIC

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