



## **Questions & Answers Related to the Hot Topic: In-Person Special Education Services Under the Governor's Executive Orders**

All guidance is based upon the most current information available and the Department's best interpretation of that information. Please note that this is an evolving situation and answers are subject to revision as things change. Public education agencies (PEAs) are strongly encouraged to consult their legal counsel for student-specific questions.

**Q:** Are PEAs required to hold an IEP meeting for every student prior to the beginning of school?

**A:** No. An IEP meeting is not required prior to the start of school and the guidance in the Hot Topic is not intended to imply differently.

If the student's current IEP continues to provide the student a FAPE, a review/revision would not be necessary outside of the annual review requirement. The method/mode of instruction is not required to be included in the IEP unless the failure to provide the methodology would prevent a FAPE being delivered to the student.

IEP meetings would only be necessary for those students whose needs have changed. If the current IEP can be substantially implemented and services delivered in either a distance learning or in-person environment, then an IEP meeting would not be required. Please see the [Considerations for Determining the Need for an IEP Meeting Tool](#) and the [Virtual Remote Learning Considerations Tool](#) posted on the [ESS SY 2020-2021 School Reentry webpage](#) for additional suggestions on how to determine the need for an IEP meeting

**Q:** What if a parent refuses to meet to conduct the annual IEP review?

**A:** No waivers to the IDEA have been granted, therefore IEP meetings must be held in accordance with federal regulations. Per IDEA 300.322, each public agency must take steps to ensure that one or both parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed time and place. Alternate attempts to communicate and/or meet to discuss special education needs can be made virtually or by phone.



**Q:** If the provision of a FAPE to a child requires in-person services, but the parent refuses to bring the student to an in-person site, can the PEA offer services (to the extent possible) in a virtual setting?

**A:** Nothing prohibits the provision of virtual services and, in fact, they can be very beneficial to students. However, if the PEA stands ready, willing, and able to provide in-person services, then the PEA has satisfied the required offer of a provision of a FAPE. Please consult your legal counsel for advice in specific student or IEP situations.

**Q:** Does EO 2020-51 dictate and/or limit the location of in-person special education service delivery options?

**A:** No. Services can be provided to students in any location where it is safe and feasible to do so. It is not required that special education services be delivered in the same space where supervised learning opportunities may be provided as outlined in EO 2020-51. PEAs are encouraged to be creative in how they design in-person special education delivery services.

**Q:** How does a PEA allocate staffing resources to provide in-person services?

**A:** Unfortunately, ADE cannot provide guidance regarding human resources, employment, or staffing issues beyond providing professional development activities. Please reach out to your internal HR departments and/or consult with your colleagues or legal counsel about staffing solutions.

**Q:** Will the ADE/ESS monitor PEA decisions to provide services to individual students in either a distance learning or in-person model?

**A:** No. ADE/ESS does not second guess PEA decisions related to the method of instruction for individual students and will not be monitoring the implementation of distance learning or in-person learning. Parents who disagree with the provision of a FAPE for a student retain their procedural safeguards, and the process and procedure for exercising safeguards has not changed.



**Q:** Can parents invoke procedural safeguards if the PEA does not believe that on-site instruction is necessary and if the parent believes it is?

**A:** Parents retain their procedural safeguards when they disagree with the identification, evaluation, placement, or provision of a FAPE to their child. PEAs should consult their legal counsel regarding student specific issues that may arise when determining the need for in person instruction and a FAPE.

**Q:** Must the in-person support that is articulated in EO 2020-51 for students with disabilities be provided for the entire school day, every day?

**A:** No. The EO does not require full instructional days to resume in-person. If a student is unable to receive a FAPE in a distance learning/virtual environment and needs in-person services to be delivered to receive a FAPE, only those services would be required to be provided in an in-person environment. It is possible that a student would be learning in both virtual and in-person environments, dependent upon the needs of the student and upon the services outlined in the IEP. PEAs are encouraged to be creative in designing in-person instruction so that the safety of both students and staff remains a priority.

**Q:** If a PEA has decided to begin online instruction for all students that continues beyond August 17, is the PEA still required to provide on-site services for students with disabilities, even if it is not providing in-person instruction for all students?

**A:** Yes, under EO 2020-51, PEAs must develop a way to deliver in-person services to those students with disabilities who cannot be provided a FAPE in a virtual/distance learning environment. This may be separate from the space where supervised learning opportunities are being provided, as outlined in the EO.