

Children with Disabilities in School During COVID-19 Frequently Asked Questions

1. My child cannot learn virtually, what can I do?

You may want to contact the school and call for an Individualized Education Plan (IEP) meeting to discuss your child's difficulties in the virtual environment. The student's IEP must be individualized according to his/her specific needs. Special Education law requires that the student be making educational gains on the goals listed in his/her IEP and in the general education curriculum. If your child is not accessing his/her Free Appropriate Public Education (FAPE) through virtual learning, the IEP team must make a plan so the student can access FAPE – and this may include in-person services unless there is a state/ county order prohibiting such services due to COVID. A local school closure is NOT the same as a state/ county order. If the district closes without such an order and refuses to give in-person services, ask for an assessment of whether your child can access FAPE virtually. If the answer is no, they must provide in-person services as needed.

Use the following document as a guide:

https://arcwi.org/content/uploads/sites/17/2020/09/FACETS-Back-to-School-Prep-sheet-for-Parents_FINAL-2020.9.3.pdf.

2. What can I do if my child needs direct support to access instruction in a virtual environment? What might that support look like?

See above answer. A child's school must provide FAPE, not the parent. If your child needs one-on-one support to access instruction in the virtual environment and make educational gains, the school must provide it, in-person or virtually. The IEP team should meet to discuss what accommodations might be necessary during COVID and virtual learning.

3. I'm a parent with a full-time job who cannot be home for virtual instruction. Can I request in-home support from my child's waiver program?

Yes. If a child is enrolled in the Children Long-Term Support Waiver Program (CLTS), the family can ask for needed in-home supports, including during virtual school. The County Waiver Agency should consider the request and approve (based on the child's need, other services the child is receiving, parents' schedules, etc.). If the County Waiver Agency denies the request, parents will receive a notice of action and have right to appeal its decision.

It may also be possible to get these supports from your county's Comprehensive Community Services (CCS) program, if your child is enrolled. These services vary widely across counties, but the best way to ask for these services is to categorize them under Individual Skill Development and Skill Enhancement (one of the services offered by some county CCS programs).

4. What should I do if my child's school says they are shortening my child's hours of education because of the pandemic?

Schools must make sure the student's IEP is implemented so the student continues to receive FAPE and make progress both in the general education curriculum and toward their IEP goals. If the student's IEP includes a contingency plan for virtual learning that's designed to provide FAPE, then the plan may be implemented if they notify you as the parent. The contingency plan may look different from the program summary for in-person learning. If the IEP needs to be revised to reflect the change in circumstances, an IEP team meeting should be held or schools need to get your permission to make changes without a full meeting. The student's IEP team must make any decision to shorten a student's school day on an individual, case-by-case basis.

If you disagree with the decision to implement a shortened school day, you may participate in mediation with the school district to resolve the dispute. Mediation is a voluntary process conducted by a trained, neutral mediator who helps facilitate discussion and assists parties in reaching a resolution. You may also file a special education complaint with the Wisconsin Department of Public Instruction (DPI). The complaint must be in writing, signed, and submitted within one year of the decision to shorten the school day. You may also file a request for a due process hearing challenging the IEP team's decision. The request must be filed within one year of the decision to shorten the school day. For more information on the dispute resolution options under special education law, visit: <https://dpi.wi.gov/sped/a-z>.

See the following resources for more information: <https://dpi.wi.gov/sped/laws-procedures-bulletins/bulletins/14-03>,
https://dpi.wi.gov/sites/default/files/imce/sped/pdf/Extended_School_Closure_due_to_COVID.pdf.

5. What options do I have if my child is not making progress in the general education curriculum and/or the IEP goals?

Schools are required to provide students with a free appropriate public education, which must involve progress on the goals listed in the child’s IEP and progress in the general education curriculum. If the student is not making progress, the IEP team must convene and make changes so the child can make progress. If the district cannot provide the supports and services necessary for the student to make progress, then the school district must consider additional help. The Special Education Director should be involved in this decision and look into other options for providing the child with FAPE. If the school cannot provide the needed services so the student can make progress, another building in the district must provide them. If nowhere else in district can provide them, the IEP team must look elsewhere for the needed services at the district’s expense.

If the school district is not willing to make changes, parents should file a complaint with DPI. Compelling the district to pay for services for the student elsewhere will likely require such a complaint or a due process hearing.

See the following resource: <https://dpi.wi.gov/sped/laws-procedures-bulletins/bulletins/18-02>.

6. What can I do if I feel my child needs a private tutor?

There are some steps a parent should take before requesting a private tutor through the school. If a child needs remedial services due to a significant achievement gap, the IEP team should write a measurable goal specifically to address what is needed to decrease the gap. If the child fails to progress in that specific goal, the team should address remedial services, since the IEP must be reasonably calculated to enable the child to make progress.

If the IEP team determines repeatedly that the student is not making progress and only a private tutor can help the student make progress, a private tutor can be provided as a “related services” in the child’s IEP.

7. What can I do if I disagree with the placement my child's school offers?

Parents have the right to disagree with placement decisions. If you disagree, you should put your disagreement in writing, which will trigger another IEP meeting or a special education dispute resolution option, such as mediation, to address the issue. See this document for more information about special education dispute resolution options: <https://dpi.wi.gov/sped/dispute-resolution>.

In these cases, it is helpful to talk with an advocate who can find out more information about whether your child is making progress, what to do about it, and how the school arrived at the decision to change the child's placement. Remember that a school must exhaust all resources at the child's current placement before a change of placement is acceptable.