



PREPARING FOR INFECTIOUS DISEASE: EBOLA

DEPARTMENT OF EDUCATION QUESTIONS AND ANSWERS ON PROVIDING SERVICES TO CHILDREN WITH DISABILITIES DURING EXTENDED STUDENT ABSENCE OR SCHOOL DISMISSAL

The risk of exposure to Ebola in the United States is exceedingly low. The [Centers for Disease Control and Prevention \(CDC\) has issued guidelines](#) on actions to be implemented by school officials, in close consultation with public health authorities, to further reduce the risk of Ebola transmission in schools.

The U.S. Department of Education's (Department's) Office of Special Education and Rehabilitative Services (OSERS) is issuing this Question and Answer (Q & A) document to respond to additional questions that States (including State educational agencies (SEAs) and State lead agencies), local entities (including local educational agencies (LEAs) and early intervention service (EIS) providers), and others (including the Bureau of Indian Education (BIE) and BIE-funded schools) may have concerning the provision of special education and related services and early intervention services under Parts B and C of the Individuals with Disabilities Education Act (*IDEA*), related to the extended absence of a child, school dismissal, or EIS provider closure, due to public health actions related to Ebola virus exposure.¹

This Q & A document does not create or confer any rights for, or on, any person or impose any additional requirements beyond those already included in applicable law and regulations. The responses presented in this document generally constitute

¹ This document does not address when to require student absence, school dismissal or Part C EIS provider closure, because school officials and EIS providers should work with public health authorities to make those decisions. School personnel and Part C EIS providers, however, may consult the CDC's guidance for recommendations regarding public health actions, which may be accessed at <http://www.cdc.gov/vhf/ebola/children/k-12-school-guidance.html>.

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informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented here and are not legally binding.

This Q & A document is not intended to be a replacement for careful study of the *IDEA*, Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), and their implementing regulations. The *IDEA*, its implementing regulations, and other important documents related to the *IDEA* and its implementing regulations can be found at <http://idea.ed.gov/>. For more information on the requirements of Section 504 and Title II, please consult the Section 504 regulations at 34 CFR Part 104 at www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html and the Title II regulations at 28 CFR Part 35 at www.ed.gov/policy/rights/reg/ocr/edlite-28cfr35.html.

If you are interested in commenting on this Q & A document, please e-mail us your comment at OSERSguidancecomments@ed.gov (put the word Ebola in the subject line of your e-mail) or write to us at the following address:

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A. Implementing Part B of the *IDEA* and Section 504 during public health actions related to Ebola

Question A-1: Must an LEA provide special education and related services to a child with a disability who is absent from school for an extended period of time because the child has been advised, requested, or required by public health authorities to stay away from public places, including school, or because the school has been dismissed at the request of public health authorities?

Answer: Yes. It has long been the Department's position that when a child with a disability is classified as needing homebound instruction because of a medical problem, as ordered by a physician, and is home for an extended period of time (generally more than 10 consecutive school days), an individualized education program (IEP) meeting is necessary to change the child's placement and the contents of the child's IEP, if warranted. Further, if the IEP goals remain the same and only the time in special education will change, then the IEP Team may add an amendment to the IEP stating specifically the amount of time to be spent in special education. If a child with a disability is absent from school for an extended period of time because the child has been requested by public health authorities to stay away from public places, including school, or because the school has been dismissed at the request of public health authorities, then school administration officials and the child's IEP Team (or appropriate personnel under Section 504), in collaboration with public health authorities, must determine whether the child is available for instruction and could benefit from homebound services such as instructional telephone calls, homework packets, Internet-based lessons, and other distance-based learning approaches, to the extent available. In so doing, school personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services. In addition, if neither parent can attend an IEP Team meeting, the school must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with 34 CFR §§300.322(c) and 300.328.

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If a child does not receive services for an extended period of time, a subsequent individualized determination is required to decide whether a child with a disability requires compensatory education to make up for any skills that may have been lost because the child did not receive educational benefit.

Question A-2: If a child with a disability is absent from school for an extended period of time, either because the child has been advised, requested or required by public health authorities to stay away from public places, including school, or because the school has been dismissed at the request of public health authorities, is the exclusion considered a change in educational placement subject to the protections of 34 CFR §§300.115 and 300.116?

Answer: If the exclusion is a temporary emergency measure (generally 10 consecutive school days or less), the provision of homebound services such as instructional telephone calls, homework packets, Internet-based lessons, and other available distance-based learning approaches is not considered a change in placement. During this time period, a child's parent or other IEP Team member may request an IEP meeting to discuss the potential need for services if the exclusion is likely to be of long duration (generally more than 10 consecutive school days).

For long-term exclusions, an LEA must consider placement decisions under the *IDEA's* procedural protections of 34 CFR §§300.115 – 300.116, regarding the continuum of alternative placements and the determination of placements.

Under 34 CFR §300.116, a change in placement must be made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. If the placement group determines that, due to public health risks the child's needs cannot be met in his current placement and could be met through homebound instruction, then under 34 CFR §300.503(a)(1), the public agency must issue a prior written notice proposing the change in placement. A parent who disagrees with this prior written notice retains all of the due process rights included in 34 CFR §§300.500-300.520.

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For children with disabilities protected by Section 504 who are excluded from school either as a temporary emergency measure or on a long-term basis, because the child has been requested by public health authorities to stay away from public places, including school, compliance with the procedures described above and completion of any necessary evaluations of the child satisfy the evaluation, placement, and procedural requirements of 34 CFR §§104.35 and 104.36.

Question A-3: May an IEP Team include a distance learning plan in a child's IEP as a contingency plan in the event that a child is absent from school for an extended period of time because the child has been requested by public health authorities to stay away from public places, including school, or because the school has been dismissed at the request of public health authorities?

Answer: Yes. IEP teams may, but are not required to, include distance learning plans in a child's IEP that could be triggered and implemented during an extended student absence or school dismissal. Such contingent provisions may include the provision of special education and related services at an alternate location or the provision of instructional telephone calls, homework packets, Internet-based lessons, and other available distance-based learning approaches, and may identify which special education and related services, if any, could be provided at the child's home.

Creating a contingency plan before an extended student absence or school dismissal gives the child's service providers and the child's parents an opportunity to reach agreement as to what circumstances would trigger the use of the child's distance learning plan and the services that would be provided during the dismissal.

Question A-4: What activities other than special education and related services may be provided with *IDEA* Part B funds both prior to, and during, school dismissal or extended absence?

Answer: *IDEA* Part B funds may be used for activities that directly relate to providing, and ensuring the continuity of, special education and related services to children with disabilities. For example, an LEA may use *IDEA* Part B funds to disseminate health and Ebola virus information

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that is specifically related to children with disabilities, to develop emergency plans for children with disabilities, or to provide other information (e.g., guidance on coordination of the provision of services in alternate locations as described in Question A-3) to parties who may need such information, including school staff responsible for implementing IEPs, parents of eligible children, and staff in alternate locations where special education and related services may be provided. LEAs, however, may not use *IDEA* Part B funds to develop or distribute general Ebola virus guidance or to carry out activities that are not specific to children with disabilities (e.g., general Ebola informational activities for all children, parents, and staff to help cope with Ebola-related fears.).

B. Implementing *IDEA* Part C during public health actions related to Ebola

Question B-1: Must a state lead agency or an EIS provider continue to make available early intervention services to infants and toddlers with disabilities and their families if the offices of the State lead agency or EIS provider are closed for public health reasons or it cannot provide *IDEA* Part C services to a particular Part C infant or toddler with a disability and that child's family in accordance with that child's individualized family service plan (IFSP) due to public health reasons?

Answer: If the offices of the state lead agency and the EIS provider are closed due to public health concerns, then Part C services would not need to be made available to infants and toddlers with disabilities and their families during that period of time. If the lead agency's offices are open but the offices of the EIS provider in a specific geographical area are closed due to public health concerns, the EIS provider would not be required to make available *IDEA* Part C services during the closure.

If the offices of the EIS provider remain open, but *IDEA* Part C services cannot be provided in a particular location (such as in the child's home due to public health concerns regarding the child or others living in the home), by a particular EIS provider, or to a particular child, then the state lead agency or EIS provider must work closely with the public health authorities to identify other forms of delivery of Part C services. Where possible, the state lead agency and EIS provider should continue to make *IDEA* Part C services available to the eligible child and family through alternate means, including consultative services to the parent or video or telephone conferencing. Determining how to provide Part C services in a manner that is consistent with then-available public health guidance is left to the discretion of the state lead agency and the EIS provider serving a particular child and family.

Once the offices reopen or Part C services based on the IFSP are resumed, the service coordinator and EIS providers for each child must determine if the child's service needs have changed and determine whether the IFSP team needs to meet to review the child's IFSP to determine whether any changes are needed. If offices are closed for an extended period and services are not provided for an extended period, the IFSP team must meet under 34 CFR §303.342(b)(1) to

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determine if changes are needed to the IFSP and to determine whether compensatory services are needed to address the infant or toddler's developmental delay due to any missed services.

Question B-2: What activities other than child find, evaluations and assessments, and *IDEA* Part C service provision may be provided with *IDEA* Part C funds both prior to, and during, a period when, for public health reasons, the offices of the State lead agency or EIS provider are closed or *IDEA* Part C services cannot be provided?

Answer: *IDEA* Part C funds may be used for activities that directly relate to child find, evaluations and assessments, and providing, and ensuring the continuity of, *IDEA* Part C services to eligible children and their families in addition to those activities authorized under *IDEA* section 638 and 34 CFR §303.501. The state may use *IDEA* Part C funds to disseminate public health and Ebola virus information that would potentially affect *IDEA* Part C providers and families, develop emergency plans, or provide other information (e.g., how the lead agency staff or EIS providers may provide alternate services or services in alternate locations as described in Question B-1 in a manner that is safe and consistent with the recommendations of public health authorities) to parties who need this information. These parties may include the parents and families of children referred to *IDEA* Part C as well as eligible children, primary referral sources, EIS providers, child care centers, and staff in other locations where early intervention services or early childhood transition services are provided. Other activities that may also be funded that relate to service provision include the provision of service coordination, child find (including public awareness) activities, evaluations and assessments, and procedural safeguards related to *IDEA* Part C. EIS providers may not use *IDEA* Part C funds to develop or distribute general Ebola virus guidance unless it is part of information needed to ensure the continuity of *IDEA* Part C services and activities.