

## **Got Back to School Questions? We've Got Your Answers!**

**10-26-2020**

>> Hi everybody. Thank you for joining us for today's webinar, "Got Back to School Questions? We've Got Your Answers!" with Diana Autin. I'm Dr. Melanie Reeves, the director of CADRE, and I'm joined remotely by the rest of the CADRE staff. Today's webinar comes as a response to the COVID-19 pandemic and the questions raised by you about how to navigate the special education environment. A few technical notes about today's presentation. Your lines are muted. During the presentation, you may submit questions to the question box, which will be monitored by CADRE staff, and I'll read them to you, I'll read them to Diana. There will be some time at the end of the presentation to address questions that come up. If you're having technical difficulties or there's an urgent issue, we'll address that as it arises. Do know that all questions are framed as hypothetical situations and will not include case-specific information. Questions have been reframed to exclude child-specific information, will be addressed in general terms. We are very interested in your feedback, and so you'll see in the chat box that there is a link to a survey, so thank you in advance for taking the time to respond to the brief survey at the end of the forum. The link, again, is in the chatbox. And this webinar will be posted and made available to the general public on CADRE's website, so the link is there. Now, time for our disclaimer. The information shared in this webinar is not intended to serve as, nor should it replace, legal advice. Opinions expressed by today's presenter and CADRE are not represented to be an official or unofficial interpretation of legal guidance from the US Department of Education or from CADRE. Application of this information presented may be affected by your state statutes, regulations, local policies and practices, and unique fact patterns of a particular case. With that, I welcome Diana Autin. We are honored and excited to bring you Diana. She's the executive co-director of the SPAN Parent Advocacy Network in New Jersey. Ms. Autin is an attorney who has used her legal knowledge to help train and support parents, and parent leaders, and advocates for their children and families as they navigate education, health, mental health, child welfare, and other systems. Diana brings the voices of parents, families, and communities to the table on state and national advisory committees on health and education. She serves on the board of the National Federation of Families for Children's Mental Health. A graduate of the University of Michigan Law School, she was a [INAUDIBLE] fellow at Columbia University, and a Wasserstein Public Interest Fellow at Harvard Law School. Diana is the adoptive mother of four adult children from diverse racial and cultural backgrounds and is a proud grandmother. A Cajun and Native American, Diana is deeply committed to equity, cultural reciprocity, and language access. And speaking on the behalf of CADRE, and I believe for the field at large, we are appreciative of Diana's generous offer to help us tackle questions arising from these difficult times. Diana has organized her questions into general topics, and I'll ask questions, and Diana will give you her insights. So, with that, I welcome Diana Autin. Welcome, Diana.

>> Thanks, I'm happy to be here, and happy to be able to talk about these important issues with all of the webinar participants.

>> Go ahead and get started. So, the first set of questions are about evaluation and reevaluation. For the first question, can a school district require a parent to waive a 60-day timeline for an evaluation?

>> So, I first want to remind the participants on the webinar that under the federal regulations, the initial evaluation has to be conducted within 60 days of receiving parental consent for the evaluation, or a different timeline, if the state has established their own time frame within which the evaluation must be conducted. And so either that's 60 days, or the state-set time frame. A district may not require a parent to waive any requirements in the Individuals with Disabilities Education Act. However, there are exceptions available to a district in meeting the timeline requirements for conducting initial evaluations and IEP team meetings when access to school buildings is limited, or current health restrictions prevent face to face meetings. The exceptions for the initial evaluation time frame are set forth in the regulations. So, for example, extension of the time frame is permitted if a parent repeatedly fails or refuses to produce the child for the assessment. But if the situation does not meet one of these very limited exceptions in the regulations, then a school district may not require a parent to waive the 60-day timeline or other state timeframe for an evaluation.

>> Okay. Can a school district refuse to consider conducting a virtual evaluation, even if there are health reasons to do so?

>> There have been situations, even absent COVID-19, when an eligibility evaluation must be conducted virtually. For example, in rural areas, or in US territories, when certain personnel are not available to conduct a face to face evaluation. Thus, a school district should not refuse to conduct a virtual evaluation if there are health reasons to do so. Now, one of the things that is important to note in the guidance that has been posted in September of this year, one of the questions that the US Department of Education posed was, what should a school district do if an evaluation requires in person or face to face administration of an assessment tool or instrument? And in that guidance, the Office for Civil Rights noted that while social distancing measures and other restrictions due to COVID-19 may make in person evaluations impracticable, or place limitations on how evaluations and reevaluations are conducted, in those cases where in person evaluations are not possible, schools should make good faith efforts to conduct assessments virtually, or via other comparable methods. And that, of course, has to be consistent with administration by trained personnel in conformance with the test producer's instructions, and also in a manner consistent with other components of the federal regulations that govern evaluations.

>> What are some ways for a school district to conduct a remote evaluation or reevaluation?

>> So, in terms of different strategies that school districts could use to conduct a remote evaluation or reevaluation, the guidance notes that districts should investigate all appropriate instruments and tools to determine if some can be administered or completed remotely during the pandemic. Again, provided that evaluation of the child is based on personal observations. Now, those personal observations don't have to be in person. They can be conducted, for example, via teleconferences. Another recommendation is that the district work with the developers of their current assessment instruments, to determine if those instruments can be administered or completed remotely without significantly impacting the validity and reliability of the results. And one of the things that is interesting to note under COVID-19 is that many of the different test developers have provided some guidance on their websites about ways to use these instruments remotely given the situation where so many

districts and schools are still closed. Now, when conducting reevaluations under part B of IDEA, the IEP team and other qualified professionals must conduct a review of existing evaluation data on the child as part of that reevaluation. A reevaluation may be based solely on a review of existing evaluation data if that data is sufficiently comprehensive to determine, first, whether the child continues to have a disability, and second, their educational needs. And that review of existing evaluation data on the child may occur without a meeting. So, that's certainly an option that should be considered by parents and by districts and other members of the IEP team in thinking about how to conduct a remote reevaluation.

>> Next set of questions has to do with IEP development. So, the first one, are the requirements for IEP meetings, timing, notice, participants, changed during the pandemic?

>> Again, there's very important guidance that's been provided by the US Department of Education, noting that the requirements for IEP meetings are not changed during the pandemic. If a child has been found eligible to receive services under IDEA, the IEP team must meet and develop an initial IEP within 30 days of determination that the child needs special education and related services. In addition, IEPs still must be reviewed annually. At the beginning of each school year, every child with a disability must have an appropriate IEP in place. So, to ensure that an appropriate IEP is in place for each child, the district may need to convene a meeting of the child's IEP team, including all of the individuals that are described and required in the regulations, to determine whether any revisions to the IEP are needed. However, parents and other IEP team members may agree to conduct IEP meetings through alternate means, including videoconferencing, or conference telephone calls. In fact, OSEP's guidance encourages school teams and parents to work collaboratively and creatively to meet IEP timeline requirements. Most importantly, in making changes to a child's IEP after the annual IEP team meeting, it's possible for the parent of the child with a disability and the district to agree not to convene an IEP team meeting to make those changes, and instead develop a written document to amend or modify that current IEP. The IEP team members that still must continue to participate in developing the IEP include the parents of the child, at least one general education teacher if the child is or may be participating in general education, and at least one special education teacher of the child, or, where appropriate, at least one special education provider. Now, it is permissible for certain members to be excused from attending the IEP team meeting in whole or in part if the parent and the district agree, in writing, that the attendance of that person is not necessary because their area is not being discussed or modified. If the IEP team meeting involves a modification to or discussion of that person's area of the curriculum or related services, they could still be excused from attending the IEP team meeting in whole or in part if the parent, in writing, and the district agree to that excusal. And that person submits in writing to the parent and the rest of the IEP team input into the development of the IEP prior to the meeting. In US Department of Ed guidance on this issue, they specifically ask what flexibilities are available to an IEP team in meeting the initial and annual IEP team meeting requirements when access to schools is limited, or local restrictions prevent face to face meetings. Regardless of that situation, the guidance is clear that districts must take steps to ensure that one or both parents attend, or are given the opportunity to participate in the IEP team meeting by notifying them of the meeting early enough to ensure that they can attend, and by scheduling the meeting at a

mutually agreed upon time and place. If face to face meetings are not feasible or practicable, then the department encourages the use of the flexibility that allows those meeting to be held through alternate means such as telephone or video conference call, as long as that's also consistent with privacy standards and acceptable to the parents and the other IEP team meeting participants. And resources on virtual IEP meetings that were developed in part for the Center for Parent Information and Resource and CADRE, as well as other partners, are available on [www.parentcenterhub.org](http://www.parentcenterhub.org).

>> Are the requirements for the content of IEPs changed during the pandemic?

>> All children with disabilities must continue to receive a free, appropriate public education, and have the chance to meet challenging objectives. Therefore, IEP teams must continue to identify how the special education and related services included in a child's IEP will be provided. And also consider a variety of instructional methods and settings if the instruction cannot be conducted in the school building. For example, IEP teams could discuss how a child's IEP will be implemented with remote distance instruction if circumstances require a change to distance learning, or a hybrid model. In making these determinations, IEP teams should consider things like online instruction, teleconference, direct instruction via telephone or video conferencing, or consultative services to the parent if that's feasible, and if that is appropriate.

>> These questions are all very similar, so let's ask them all together. What is the responsibility of a district to ensure that students have access to equipment and connectivity for remote virtual learning? And what can I do if my child with a significant disability is not benefiting from online instruction? And finally, might extended school year services be considered for a student now, even if they haven't received them in the past?

>> So, under IDEA, each school district must provide a free appropriate public education for all students with disabilities in their jurisdiction. This requires the district to consider what assistive technology and other special education and related services are needed to ensure that the student is provided with a free, appropriate public education. Laptop computers, for example, are assistive technology that may need to be provided to ensure that the student can benefit from their education. The determination of what is required to provide a free, appropriate public education in the least restrictive environment is an individualized determination. Things that the IEP team can consider to address challenges with connectivity include the possibility of providing mobile hot spots to students with disabilities who don't have good connectivity in their home. One of the important considerations that we've heard a lot about through this entire period is the difficulty of having students with very significant disabilities benefiting from that virtual instruction, online instruction. So, in their September 2020 guidance, the US Department of Education reminded states and districts that no matter what primary instructional delivery approach is chosen, they and the IEP teams remain responsible for ensuring that a free, appropriate public education is provided to all children with disabilities. If state and local decisions require schools to limit or not provide in person instruction due to health and safety concerns, they are not relieved of their obligation to provide a free, appropriate public education to each child with a disability. If a child is not benefiting from the online instruction that is being provided, it's appropriate for the team to reconvene to discuss how virtual instruction can be modified. There are

great resources for IEP teams to review to identify potential virtual, academic, and support services, and I provide links to some of these resources at the end of this presentation. This is an important consideration, also, when you think about students who have had extended school year services in the past, but weren't able to access them over the summer, or even students who have not been provided with extended school year services in the past. Extended school year services are the special education and related services that are provided with a child to a disability beyond the normal school year, provided in accordance with the child's IEP, are at no cost to the parents of the child, and meet the standards of the state education agency. Each public agency, each school and district has to ensure that extended school year services are available as necessary to provide a free, appropriate public education to children with disabilities. But it's important to remember that IEP team determinations regarding ESY services are prospective, in other words, future-looking, and not intended to make up for past denials of a free, appropriate public education. The need for ESY services should be on the table at every IEP meeting. A student who didn't need ESY in the past when they had access to in person education and related services might need the criteria for receiving ESY services due to having received virtual services this school year. But it's not automatic. It's based on a discussion of the student's situation at the time the team is meeting to discuss ESY services. The specific analysis and standards that an IEP team may use to determine whether a child requires ESY services in order to receive a free appropriate public education are left to states to determine. However, the determination must be based on the individual needs of the child, and not on the category of their child's disability. And a child's entitlement to needed ESY services continue to apply even if schools and other facilities are closed due to COVID-19. ESY services are typically provided to children with disabilities during the summer months, but in guidance from the US Department of Education, they noted that some ESY services, particularly those that required direct, in-person contact, may not have been able to be delivered this past summer. In such instances, public agencies should consider providing ESY services to the child during the normal school year, during school breaks or vacations where appropriate to the child's needs and consistent with the state standards.

>> Thank you, [INAUDIBLE]. FAPE and LRE remote versus in person learning is the topic, so the first question, my district's plan involves only in person learning. Can they require parents to sign a waiver of FAPE and IEP implementation if they "opt" for remote learning?

>> So the first answer to that is districts may not require parents of students with disabilities to waive any rights afforded to students under the Individuals with Disabilities Education Act, or section 504 of the Vocational Rehabilitation Act as a condition of receiving a free, appropriate public education. And in their September 2020 guidance, the US Department of Education reminded states and districts that they remain responsible for ensuring that a free, appropriate public education is provided to all children with disabilities. They also reminded schools that failing to implement aides, services, or accommodations or modifications that are identified in the student's IEP or Section 504 plan could deny the student a free, appropriate public education. However, not every failure to implement an aide, service, or accommodation or modification in an IEP or Section 504 plan constitutes a denial of FAPE. The Office for Civil Rights as well as the Office of Special Education Programs continues to take into account all relevant circumstances when making this determination, including the impact that any

discrepancies from the IEP or 504 plan have on the student's ability to participate in or benefit from the school district's services, programs, and activities.

>> My district's plan involves only remote learning. My child cannot benefit from remote learning. What should I do?

>> In both of these situations, whether the district plan is all about in person or all about remote, it's important to remember that IDEA requires that all decisions regarding a student with a disability be individualized and based on the student's needs. Any policy that does not take into account those individual needs is not consistent with that requirement. Now, a district may make a decision to only have remote schooling, if that's consistent with the state's policy, but it still must offer a free, appropriate public education in the least restrictive environment, and must develop an IEP with the parents based on their child's individual needs, goals, et cetera. And so, if the district's plan involves only remote learning, then it's the responsibility of the IEP team to come up with a plan that allows the child to benefit from remote instruction.

>> My district required parents to select one option at the beginning of the school year, and will not allow any changes, even if the selected option is not working for their child with a disability.

>> Under IDEA, a parent may request an IEP meeting at any time to discuss possible changes to the IEP. And, as noted earlier, an IEP may be changed even without a meeting if the parent and district agree. So, if the option initially selected by the parent is not meeting their child's needs, then the team should meet to discuss any needed changes, which could include a change from remote to in person schooling or vice-versa. Now, one of the things that's very interested in the guidance that was provided by the US Department of Education is a question involving the possibility of districts and schools prioritizing in person instruction for students with disabilities. So, having students with disabilities come back into the school building, you know, while other students are not in the school building in order to ensure the provision of a free, appropriate public education under IDEA or under Section 504. Whether a school district that is phasing in in person instruction may be required to give priority to a student with disability depends on an individualized determination of a student's educational and disability-related needs, and whether providing in person instruction or services would be a reasonable modification to a reopening policy that is necessary to provide a student with a free, appropriate public education, or otherwise to avoid discrimination on the basis of disability. Moreover, as the department explained in its March 16th fact sheet, provision must be made to provide special education and related services for students who have IEPs developed through the IDEA, or who are receiving services under 504, and who are required or advised to stay home by public health authorities or school officials for an extended period of time because of COVID-19. This also applies if a student is absent from school as advised by the student's treating physician, consistent with school policy and documentation requirements. But I want to take this opportunity to address one other concern that we have heard, that some schools who open with a hybrid model, have modified days, and are keeping the same cohort of students with disabilities throughout the day. So, if you're a student with disabilities who is part-time in a resource room, or in a [INAUDIBLE] program, you are not able to participate in any mainstream opportunities that may be in your IEP, regardless of what their IEP includes. If this is a consistent policy that's

mandated for all students with disabilities regardless of what their IEP says, it is not consistent with the provision of a free, appropriate public education in the least restrictive environment, which includes individualized determinations, considerations of the least restrictive appropriate environment, and interactions with non-disabled peers, and implementation of the IEP in terms of instruction, related services, and placement.

>> Regarding remote instruction versus home instruction versus homeschooling. What is the difference between remote instruction, home instruction, and homeschooling, and why does that matter?

>> Knowing the difference between these three terms and types of settings is critically important for families as they are making decisions about educating their children. Remote instruction, or virtual instruction, or instruction at home simply means that the student is home while being educated virtually, just like students without disabilities. Home instruction is a placement on the continual placements under IDEA. It is a placement option whether or not in person schooling is typically available. A student may need home instruction because of their own individual health status, for example, not just doing a COVID-19 pandemic. Homeschooling is when parents take legal responsibility for educating their child as opposed to having the school district assume that responsibility. For home instruction and remote instruction, the student remains enrolled in the public school district, the district remains responsible to provide a free, appropriate public education, and the rights of the student and their parents are fully retained. Instructional responsibility belongs to the teacher, teachers and school district. This includes curriculum, and lesson plans, assignments, and tests. In many states, for homeschooling, the student is no longer enrolled in the public school district, and the district is no longer responsible to provide a free, appropriate public education. The parents no longer have the rights and procedural safeguards under IDEA. Instructional responsibility belongs to them. This includes curriculum, lesson plans, assignments, and tests. And in many states, the student is not eligible for a state-endorsed high school diploma. For remote or virtual instruction at home, the student's IEP remains in effect with no change in placement. Instruction and related services are provided remotely in the home. Under home instruction, the student's IEP also remains in effect, with the placement change to home instruction. And home instruction is some, it's also called homebound instruction, is delivered in the home or another appropriate setting, and related services as listed in the IEP must be provided. Under homeschooling, in most states, the IEP is no longer valid, and educational services, including related services, will not be provided. To return to the district, the student must be re-enrolled and referred to start the IEP process from the beginning. To find out more about the rules around remote instruction, home instruction, and homeschooling in your state or territory, reach out to your parent's center. And you can find your parent's center by going to [www.parentcenterhub.org](http://www.parentcenterhub.org) and clicking on "find your parent's center."

>> So, regarding compliance with COVID-19 safety requirements. Can my child be required to wear a mask to participate in in person learning?

>> In their September 28th, 2020 guidance, the US Department of Education provided a list of questions and answers, one of which was, under what circumstances must a school district waive a face covering requirement for a student with a disability? In their answer, they noted that the Centers

for Disease Control and Prevention has advised school districts to address adherence to behaviors that prevent the spread of COVID-19 as a part of their reopening plans, including the appropriate use of cloth face coverings. They also noted their understanding that using a face covering can be challenging for some students, teachers and staff, especially those students with special education or other healthcare needs. And in some instances, such as where a child with a disability has extreme sensory issues and can't tolerate wearing a face covering in school or at all, the Office for Civil Rights recognized that enforcing a face covering requirement could impede the child's ability to receive a free, appropriate public education. So, school districts should make reasonable modifications in their policies, practices or procedures, including any that address the use of face coverings, when those modifications can be made consistent with the health, safety, and well-being of students and staff, and are necessary to avoid discrimination on the basis of disability. However, the Office for Civil Rights also noted that the Americans with Disabilities Act does not require school districts to permit an individual with a disability to participate in or benefit from their services, programs, or activities when that individual poses a direct threat to the health or safety of others. Whether or not an individual poses such a threat, including in cases where a student may be unable to wear a face covering, will depend on an individualized assessment of the nature, duration, and severity of the risk, the probability that the potential injury will actually occur, and whether reasonable modifications of policies, practices, or procedures, or the provision of auxiliary aides or services could mitigate the risk. All of these assessments must be based on reasonable judgment that relies on current medical knowledge, or the best available objective evidence.

>> Can my child be disciplined if they do not comply with COVID-19 safety requirements like wearing a mask or maintaining physical distancing?

>> So, just to start off, it's important to note that IDEA has a section on authority of school personnel in discipline matters regarding case by case determinations, saying that school personnel may consider any unique circumstances on a case by case basis when determining whether change in placement, such as suspension, is appropriate for a child with a disability who violates a code of student conduct. So, that certainly should be a consideration that school officials take into account. In general, school officials may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension for not more than ten consecutive school days if that is a punishment that's also available to students without disabilities, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct, as long as those removals don't constitute a change in placement. After a child with disability has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal, the district must continue to provide a free, appropriate public education. One of the most relevant components of the discipline procedures in IDEA to this question is the manifestation determination. Within ten school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the district, the parent, and relevant members of the IEP team must review all relevant information in the student's file, including the IEP, any teacher observations, and any relevant information provided by the parent to determine if the conduct in question was



caused by, or had a direct and substantial relationship to the child's disability, or if the conduct in question was the direct result of the district's failure to implement the IEP. If they determine that it was a direct result of the district's failure to implement the IEP, then they must take immediate steps to remedy those deficiencies. But in either one of those situations, they're making a determination that this behavior was a manifestation of the student's disability. So, if they make this determination that the behavior was a manifestation of the student's disability, then they must either conduct a functional behavioral assessment, unless they had already done one, and implement a behavioral intervention plan for the child, or had a behavioral intervention plan already had been developed, they have to review the behavioral plan, modify it as necessary to address the behavior, and return the child to the placement from which they were removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan. So, if violation of rules requiring a facemask, or not maintaining physical distancing are a manifestation of the child's disability, then the child should not be punished. The behavioral intervention plan, or positive behavior support plan, as it's called in some areas, should be reviewed and revised to put into place supports and services that will help the child wear their mask and maintain social distancing. If it's not safe for the student with a disability or other students in their school to have the student in the school building without wearing a mask or maintaining physical distancing, and the positive behavior support plan is not successful, it may be necessary at that time to discuss implementing the IEP in another setting.

>> Regarding compensatory services, are students with disabilities who missed out on services due to the pandemic eligible for compensatory services?

>> In the Department of Education's guidance, they noted that if a child doesn't receive services after an extended period of time, the school must make an individualized determination whether and to what extent compensatory services may be needed, including to make up for any skills that may have been lost. If you believe that a service has not been delivered, or is not being delivered, you should first check to see if the school agrees with you. School personnel may believe that the service is being or was delivered because they have a different concept of what the IEP requires. If you don't agree with the school system's interpretation, and the issue is important enough, you may want to formally challenge its position that the service they delivered or that they are delivering is sufficient and consistent with the IEP. In cases that you believe warrant formal action, you will need to find out where and how to bring a complaint about non-compliance in your state. You may be able to have a situation investigated by state-level office responsible for handling such complaints, or you may have to ask for a due process hearing. You should be able to find the appropriate route by calling your state's department of education or your parent's center. If the school agrees that the service wasn't delivered or is not being delivered, then the only question is how to make up for that lost service effectively. If you can agree on how many hours of services have been lost, they could be made up in any way that fits the student's needs and learning style, by, for example, doubling weekly services temporarily, or providing services during vacation periods. If the parent has covered the missing services by hiring a private service provider until the school began to deliver the service, the parent can seek reimbursement from the school system for that expense. In some situations, you and the IEP team may need to be more creative. For example, if a child's time and learning capacity are already

maxed out, simply adding more hours of service in their ordinary school schedule probably won't work. In such cases, perhaps, the parent and the IEP team to agree to bank the lost services to use at a later time, when there might be disagreement about the need for ongoing services. In cases involving larger issues, such as when a child is provided no services at all for a significant period, you and the team may consider having the school agree to continue providing special education services for a period after your child reaches the maximum age of eligibility for special education in your state. It will be important for you to monitor implementation of your child's IEP. The longer your child goes without a service, the harder it is to really remedy the situation effectively. And one of the resources that I will share at the end of the presentation is a service tracking tool that SPAN has developed and shared with families in our state.

>> What should the IEP team consider when discussing the possible need for compensatory services?

>> One analogy to consider is the discussion we previously had about extended school year services. Remember, when an IEP team considers whether a child needs extended school year services, and what type, and how much he or she needs, it essentially looks to three factors. Whether the break will cause regression from previously-attained levels in one or more goal areas, and whether it will take a long time to recoup or regain those skills, whether the break will cause the child not to realize the meaningful process towards his or her annual goals that the team expected, and whether the break will cause such disengagement from the learning process for the child that services are required to maintain engagement over the break. In addressing the need for post-closure compensatory services, IEP teams could ask similar questions retrospectively about the effect of that on the child. Did the child regress during the closure from previously-attained skill levels targeted in his or her goals? Did the child lose critical skills, and will it take a long time to regain or recoup those skills? Has the child failed to progress enough to realize meaningful progress toward his or her annual goals by the conclusion of the year for which the current IEP was written? Did the child, during the break, become so disengaged from the learning process that he or she requires additional program or supports to re-engage? An affirmative answer to these questions may entitle the child to some form of compensatory service. But not every child will need such services. The answers to these questions will hinge, in part, on the child's capacity to learn virtually during the closure period, and in part, of course, on the level and quality of virtual programming offered by the district. The more robust the special education and related services are under the district's continuity of education program, the less will be required to compensate for the effects of the closures. But remember, as in all decisions around special education under IDEA and Section 504, this is an individualized decision based on the individual student's needs.

>> Regarding waivers, can a school district require a parent to sign a waiver of their child's rights to FAPE and LRE as a condition of receiving services?

>> So, you notice this is the third time we're talking about waivers. We got, this was probably the biggest set of questions that we received, and they were on different components of the process. So, we'll just reiterate here that there has been confirmation and clarification that parents may not be required to sign a waiver of their child's right to a free, appropriate, public education in the least restrictive requirement as a condition of receiving services.

>> What should I do if I'm asked to sign such a waiver?

>> So, first of all, unless you want to waive your child's rights to a free, appropriate public education, the first thing you should do is not sign the waiver. Parents can always use the dispute resolution mechanisms in IDEA, mediation, requests for complaint investigation, or requests for due process hearing if they disagree with any action of the school district. So, if parents are asked to sign a waiver, they might first contact their parent's center and/or their state's special education lead agency, because they might be able to get prompt resolution without having to go through these formal processes. But if that doesn't work, then the parent must consider whether or not they want to proceed with the formal dispute resolution process, and if so, which one they think is most important and most appropriate to the situation.

>> Transition to adult life. How can my youth access transition to adult life services during this pandemic?

>> This is one of the most important questions, because we know that youth with disabilities in the transition process have such a limited amount of time before they'll be exiting the school system. And so, being able to access transition to adult life services during the pandemic, which now, you know, started in March, and here we are in the end of October. There are many schools and districts across the country that are still not open, or they're open in a hybrid style. And so, many of the types of things that we think of as being appropriate to transition services, like community placements in work sites, internship sites, inclusive community preschools, et cetera. And we're hearing from parents that if schools are not, even if schools are reopened, they may still be saying, unilaterally, no to any placements or services in external sites. The development of the transition IEP, including discussion of community placement at work sites, internship sites, et cetera, again, is an individualized and team process that includes the parents and the youth with the disability, as opposed to a unilateral process based on a blanket policy, unless that blanket policy is based on state or district policy consistent with safety protocols and COVID-19 conditions. If this is the case, the National Technical Assistance Center on Transition has useful resources on transition services, including transition-focused instructional services, online instruction resources and tips, transition assessment and planning resources, employment preparation-focused instructional resources, and transition resources focused on students with complex needs that can all be provided virtually. And again, I'll share the link to these great resources at the end of my presentation.

>> What if my youth needs extended and transition services beyond the planned academic year or initial date of exit?

>> Again, the National Technical Assistance Center on Transition received many questions from the field regarding family, school, service provider, district, local agency, and state agency concerns about lost time or acquisition of skills during this period of closed communities, distance learning, and/or closed schools in the context of the COVID-19 pandemic. Questions regarding decisions about the provision of extended school year services, compensatory education services, recovery opportunities, and modified graduation requirements are all distinct issues, again, individualized for each student, and based on data collection and existing policies. But ENTAC did compile a short document with some

relevant resources that may be useful to families and professionals, and I'll provide a link at the end of the presentation. In terms of extending learning and provision of transition services beyond the proposed initial date of exit, the IEP team can convene and change their decision about the age of graduation. In terms of extended education beyond the age of eligibility, the discussion is more likely to be focused on the issue of the need for compensatory education services, which we've already discussed.

>> Regarding resolving disputes. Are dispute resolution procedures and mechanisms waived during COVID-19?

>> In the dispute resolution guidance issued by the US Department of Education, question two specifically asks if a state education agency is permitted to extend the 60-day time limit for resolving a state complaint due to circumstances related to the pandemic. The answer is yes, but only on a case by case basis. Each state's minimum state complaint procedures under part B of IDEA must include a 60-day timeline for complaint resolution. The regulations specify two allowable reasons for extending this 60-day time limit. If exceptional circumstances exist with respect to a particular complaint, or if the parent or individual organization, if mediation or other alternative means of dispute resolution are available to the individual organization under the state procedures, and the public agency involved agree to extend the time to engage in mediation or other alternative means of dispute resolution. With regard to the exceptional circumstances exception to the 60-day timeline, states need to determine on a case by case basis whether it's appropriate to extend that timeline for particular complaint due to exceptional circumstances related to the pandemic or related to health and safety restrictions. A state may not categorically determine that it will not undertake complaint resolution during the pandemic based solely on an assumption that COVID-19 is an exceptional circumstance that would automatically warrant an extension of the 60-day complaint resolution timeline for all complaints. Now, conditions related to the pandemic could be deemed an exceptional circumstance with respect to a particular complaint, the US Department of Education says. If, for example, a large number of state staff are unavailable or absent for an extended period of time as a result of pandemic, or where the state cannot access specific information from school or agency staff, or the child's education records that are needed to resolve a complaint due to conditions related to the pandemic. The guidance also states that mediations, resolution sessions, and due process hearings can all be conducted virtually in order to meet the timelines for these various dispute resolution procedures. In short, dispute resolution procedures and mechanisms are not waived during COVID-19. States must still offer the three methods, which we'll talk about briefly, but there may be circumstances under which some of the timelines may be extended, or the dispute resolution procedures may be virtual as opposed to in person.

>> What are the dispute resolution mechanisms, and how do they differ?

>> So, first of all, let's say that we should always try to use informal dispute resolution mechanisms. I'm not going to go into all the detail about the different alternative dispute resolution mechanisms that are informal that may exist. And there are some great resources to help prevent a dispute from getting far enough to consider formal dispute resolution mechanisms, both on the CADRE website, and also on

the Center for Parent Information and Resources, [www.parentcenterhub.org](http://www.parentcenterhub.org) website. A wonderful resource from the former IDEA partnership is the creating agreement training and tools which are available on the archived IDEA partnership website, and the link is at the end of this presentation. But if you feel you have exhausted your informal options to resolve your disagreement, you can always use the formal dispute resolution mechanisms in IDEA, mediation, requests for complaint investigation, or requests for a hearing. Mediation is voluntary on both sides. It can only be requested by a parent or adult student, or the school or district. It has to be scheduled in a timely manner. And it can't be used to delay or deny a parent's right to a hearing on a due process complaint or any other rights under IDEA. But IDEA itself does not specify a particular timeline, so you need to check your state rules. A request for the state to investigate a complaint can be filed by anyone who believes that IDEA is being violated, and it doesn't require the consent of the parent or the adult student. A decision must be issued within 60 days, except under limited circumstances, which we've already discussed. A request for a due process hearing can only be requested by a parent or adult student, or the school or district, and a written decision should be issued within 45 days after the 30-day resolution period expires. Although IDEA does permit a hearing officer or reviewing officer to grant specific extensions of timelines at the request of either party to the hearing or review. There is no IDEA requirement that both parties agree to the extension request, but the hearing officer or reviewing officer must document the length of the extension and the reason it was provided. And this is true even when we are not under the COVID-19 restrictions and limitations. A follow up question that was asked was, if the school isn't abiding by the hearing officer decision following a due process hearing, how does the parent respond, and what options do they have to enforce the order? It is the responsibility of the state lead agency to ensure that schools and districts abide by hearing officer decisions, so reach out to your parent's center or to your state lead agency to find out the process in your state.

>> What dispute resolution process would be appropriate to obtain compensatory services?

>> So, parents can use any of the three processes, mediation, complaint investigation, or due process to seek to resolve this type of issue. You may want to consider things like cost, how long each process takes, how individualized the issue is, and other factors to make the decision about which process to use. Complaint investigations can resolve aspects of issues like free, appropriate public education, least restrictive environment, et cetera. For example, if a district has a formal or informal policy that all students with autism spectrum disorders are automatically put into a self-contained class or an out-of-district placement, that would be a good issue for a complaint investigation. But whether your specific child with autism spectrum disorder can appropriately be educated in a less restrictive setting is probably not really able to be resolved in a request for complaint investigation. Mediation or a hearing would be more appropriate to decide those individualized issues. So, whether or not your child needs compensatory services and the extent of those compensatory services would likely more appropriately be addressed in a due process hearing or mediation. But if your district has a policy that says we will not provide compensatory education to any student with a disability no matter what, that's certainly something that could easily be addressed in a request for complaint investigation, because just the facts as they're stated violate the individualized requirements in IDEA.

>> Who has the burden of proof?

>> The Supreme Court's decision in 2005 in *Shaper vs. Wiest* placed the burden of proof on parents under the IDEA. Now, since that time, a number of states like Alaska, Connecticut, DC, Delaware, Georgia, Minnesota, New York, New Jersey, West Virginia, have put the burden of proof on the district in due process hearings and court cases. Now, the burden of proof is really the obligation to prove the allegations that are presented in a legal action such as a due process hearing. Having the burden of proof on the district is generally helpful to parents, and parent advocates feel that it's fair to put the burden of proof on districts because school systems have full access to records, teachers, educational experts, therapists, et cetera. School systems are almost always represented by counsel in hearings. Federal law imposes an affirmative obligation on school districts to provide a free, appropriate public education to children with disabilities, and school systems have an obligation to provide the tools and processes that are needed for an appropriate education and should be required to prove the effectiveness of their actions. Reach out to your parent's center to find out who has the burden of proof in your state or territory, or if you'd like to find out how to change the burden of proof if it's on parents in your area. There's a good discussion of burden of proof on the Council of Parent Advocates and Attorneys website at [www.COPAA.org/page/BOP](http://www.COPAA.org/page/BOP) for burden of proof.

>> [INAUDIBLE]

>> So, I have pulled together some resources that I thought were particularly useful in addressing the types of questions that we received in advance of this webinar. And I want to reiterate what Melanie said, which is that we really can't engage in the unauthorized practice of law by providing very individualized determinations or statements about particular child-specific questions that people asked. We tried to combine the questions into different topic areas and get to the underlying gist of the questions, but some questions were so individualized that we really weren't able to address them at all, and so we hope these resources will be helpful. And of course, you can always call your parent's center or your disability rights organization to get more information about how IDEA or Section 504 might apply to your particular situation. So the Center for Parent Information and Resources, which, as I said before, is [parentcenterhub.org](http://parentcenterhub.org), has a whole suite of resources around COVID-19, including information for non-profits, information for parents, information for IEP teams, including that information on how to have a great virtual IEP team meeting. There's good information about evaluations, eligibility, IEP and placement, procedural safeguards, developing the IEP, dispute resolution, and of course, how to find your parent's center. So, these resources are all very easily accessible. Many of the resources are available in languages other than English, especially Spanish.

>> [INAUDIBLE]

>> So, I also wanted to share SPAN's COVID-19 resources. So we have a COVID-19 information page, and that's the link to it. On that information page, we have fact sheets that are available in English and Spanish. We have sample letters in English and Spanish, including sample letters to request meetings to discuss compensatory services. We also have our special education services tracking log, and we have recordings of relevant webinars. So, for each of the fact sheets that we developed, we then did a short, usually half an hour webinar which is on our YouTube channel, that goes through the fact sheet

and answers parent questions, because we did them live, answering questions and then put them up on the YouTube channel as well as on this page on our website. Some of the other SPAN resources that are not specifically around COVID-19, but that may prove useful, we have a pre-IEP meeting letter, which is a letter that, we have that available in English and Spanish, that parents can, actually, we have it available in more than just English and Spanish, I think we have it available in eight languages, that parents can fill out and send before the IEP meeting to their team, to make sure that all the information that they need to have a good IEP meeting is available before or at the meeting. The kinds of topics that they want to discuss, make sure that enough time is allocated, et cetera. There's also an IEP meeting checklist. There's one for preschoolers, and there's one for school-aged students, again, multiple languages. And really, parents can bring this to their meeting with them and just check off to make sure that all of the topics that are supposed to be discussed are discussed, and in the right order, so for example, you don't talk about placement before you talk about strengths and needs, goals and objectives, services, and then where the services will be delivered. And then we also have a special education frequently asked questions in a video format, where you can go to our website and click on one question, for example, a question about the evaluation process, and there's a video that asks that question and then gives you the answer to just that question, so it's not, it doesn't have to be a long video, each video is just a minute or two, or just a few minutes. So, it's a very popular resource on our website. Here is a link to the creating agreement collection. The creating agreement collection was developed by the IDEA partnership. SPAN and CADRE, and a whole slew of family organizations, professional organizations, state school districts, et cetera, came together to develop this creating agreement presentation and resources, which was really addressing critical issues like active listening skills, and coming to the table with your interests, and not your positions, and really assuming and presuming that people are coming to the table with positive intent, and how can we create new knowledge and create agreement instead of coming to the table to be confrontational? So it's a wonderful, wonderful resource. There's some great resources from the Council of Parent Advocates and Attorneys, including that burden of proof resource I talked about before. And then they also have a COVID-19 page that includes information on compensatory services, provision on free appropriate public education. They also have some really great resources on districts and schools and states that are doing things really well during COVID-19, really highlighting and lifting those up as examples of what can be done when states, and schools, and districts, and families come together to make the decisions and implement good IEPs for students with disabilities. There's some wonderful resources on educating students with disabilities virtually. These, the first three are from projects that are funded by the US Department of Education. So, there's the TIES Center, the IRIS Center, and the National Center for Systemic Improvement that has some general resources on COVID-19, but also some resources on distance learning for students with significant cognitive disabilities. And then there's a wonderful Educating All Learners site, which is put together by a variety of advocacy organization that also wanted to highlight resources that were available for families and schools to partner to make sure that students with disabilities received a free, appropriate public education to the maximum extent possible during this period of the pandemic. There's some great virtual transition resources that I mentioned earlier when I was talking about transition to adult life, so there is the transition to adult life virtual learning resources, and the Workforce Innovation TA Center COVID-19 resources. So these resources

include resources both in terms of transition, in terms of when youth and young adults with disabilities are students, but also as they transition into the workplace, community living, et cetera. These are both really great sites that have lots and lots of very useful information.

>> That brings us to questions. [INAUDIBLE] Before we get into your additional questions, I want to remind everybody to provide feedback on the webinar and the survey link that's in the chat, so please do that. One of the questions that keeps coming up over and over again is, will this presentation be made available, and will there be a transcript, because people are having a difficult time taking notes as fast as Diana is talking. So, the answer is yes. CADRE will post this recorded webinar and a written transcript of the webinar, so you can rest your hands now, and [INAUDIBLE] the rest of these questions. And you'll be able to find that link in a few days at [cadreworks.org](http://cadreworks.org). So, here are a few questions, Diana. One thing that families are facing is when the school is doing the reevaluation virtually, the school is not providing previous training for the parents on how to use the virtual format of communication. And specifically, this person is asking for the Latino community.

>> That's a really big issue. And remember that parent training is a related service under IDEA. And so that is something that schools and districts should be thinking about as they plan meetings to have these discussions, whether it's IP meetings, or virtual evaluations where families play a key role. If parents, parents need to have what is required in order to be effective participants in the process, and so the team that's determining the components of the evaluation really has to talk with the parent in advance about what kinds of supports and training they may need in order to effectively participate. I know this is a really big issue, and a bigger issue than we may think. My sister who is a teacher in Pennsylvania had a conversation where she was talking about the fact that she basically had to provide training to all of the parents of the students in her class, she works in a very low-income school district, because they don't use computers. They use their smartphones. And in order for them to monitor their child's homework, and also to participate in discussions, you know, with my sister around their child's progress, they need to be able to use a computer, and she's had to provide that training. So, there are many, many more parents out there, not just parents with limited English proficiency, that may require this kind of training. That question also raises the issue of providing language access, and of course, that is really critical. It's always critical, and it's always required. The IEP meeting, and other activities where the parent has to participate should be provided in the parent's language or primary mode of communication, and COVID-19 does not take away the requirement to provide that language access for families.

>> Are IEP teams now required to address whether a student should receive in person or remote services as part of FAPE?

>> The team is required to consider the student's strengths and needs, goals and objectives, the services that are needed to achieve those goals and objectives, and placement. Now, placement is not necessarily the same thing as virtual or at home, because you can have inclusive instruction in a virtual environment. One of the considerations during this pandemic, when you have a situation where a school may be, a school district may be offering both virtual or in person, or hybrid, so for example, in my state, parents, not just parents of children with disabilities, but parents can make the decision



about whether or not they want their child to be in person or virtual. So, that discussion should be taking place. If, you know, if both of those options are available, that discussion should be taking place routinely, because there are implications, and special implications for students with disabilities. So, for example, if you have the option to have in person instruction or remote instruction, and you have a student that is not capable of complying with mask wearing and physical distancing, even with the provision of a positive behavior support plan, supports and services, et cetera, then that conversation should happen during the IEP meeting, because that student should not be returning to school only to be constantly sent home because they are not complying with the COVID-19 restrictions. On the other hand, if you have a student who is, has a very significant cognitive disability, who really has regressed significantly during the time when the school was all virtual, and now you have the opportunity for in person schooling, then that conversation should be happening, because that student would probably be more effectively served in school. And remember, we talked in the presentation about that consideration, about whether or not a school might be required to prioritize the return of students, a student with disabilities to in person school as a school or district is beginning that phase-in of in person schooling, and also whether or not there might even be the possibility or just having in person schooling for students with disabilities. So, it seems to me, if there's the possibility of prioritizing the return to in person schooling of a student with a disability as possibly being required, then that should be something that's being discussed at every IEP meeting. Now, even if you only have one option, so if you only have the option of remote instruction, you still need to be talking about, how can we make sure that this remote instruction is actually going to benefit my child? And if you're talking about, you know, a school that's open for everybody, then how can we make sure that my child is going to be able to comply with whatever COVID-19 rules and regulations are in the school building?

>> Well, that seems to answer another question of, would a change from remote instruction to in person instruction constitute a change of placement? I think you've addressed that.

>> So, it's not-- it is, if a child is provided, if the IEP team changes the placement to home instruction, that could occur simultaneously with, you know, with the student being educated at home. That is a change of placement, general classroom, home instruction, self-contained class, et cetera. But you can have all placements, you can have, you know, inclusion, you can have self-contained class, you can have home instruction. All of those can be provided while the child is learning at home. So, it's not necessarily a change of placement. It's just a change of the location of where the services and placement will be implemented.

>> And we had [INAUDIBLE].

>> Melanie, you're breaking up for me, I can't really understand what you're saying.

>> [INAUDIBLE] I don't know what happened there. Can you hear me now? Okay. Tips for facilitating successful virtual IEP meetings might be very helpful [INAUDIBLE].

>> I'm sorry, I can't understand now, again, what you're saying. You're breaking up.

>> Okay. [INAUDIBLE]

>> Where might I find that question? Oh, no, I don't know if anybody else can ask it, Melanie, but I really--

>> Oh, hold on just a second. We'll try this. I found a headset, that better? Okay.

>> Yeah.

>> Okay, so there was a suggestion that offering the tips for facilitating a successful virtual IEP meeting is a great resource for this group, in terms of getting good insight for how to participate, and those are also available on the [INAUDIBLE] website, so I wanted to just draw attention to that. So, another question that came up, can an evaluation be performed without the parent's knowledge or agreement?

>> An evaluation cannot be performed without the parent's knowledge. How would an evaluation-- you mean like in a school building, where the school would evaluate the child behind the parent's back?

>> [INAUDIBLE] Can an evaluation go on without a parent's knowledge or agreement, I think, is generally, that's the question.

>> So, the IDEA requires that the district or school obtain informed consent from the parent of the child before the initial provision of special education services, and if they propose to conduct an initial evaluation to determine if a child qualifies as a child with disability, they have to provide notice and obtain informed consent before conducting the evaluation. Now, there are some, if the child is a ward of the state, and is not residing with the child's parent, there's an exception, and if the parent of the child doesn't provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the district may, but doesn't have to, pursue the initial evaluation by using the procedural safeguards that are available under IDEA, including mediation or due process, unless the state has a different law. In other words, the state might prohibit that from happening. But it certainly can't happen without first giving the proper consent, you know, notice to the parent, and requesting their consent, and they certainly can't do it if the parent doesn't respond, or does not provide consent. They can't just go ahead and do it automatically. They have to use either mediation, and that can't make a decision to force an evaluation, or due process, in order to do an evaluation without parental consent.

>> What should be advise parents who are asked to sign a waiver, not on educational rights, but rather regarding school district liability if the student, or the child contracts COVID-19?

>> So, that really is a question that is about your state law, and not about IDEA. If the, as long as the district is willing to provide your child with a free, appropriate public education in a different format, such as remotely, if they say that we are not going to provide any services, we won't implement the IEP even remotely unless you sign this waiver of liability for your child coming down with COVID-19, then that would likely violate the prohibition against asking the parents to sign a waiver of their rights under IDEA. Because if you're saying the only option that you have is to come to in person schooling, and the only way we're going to let you come to in person schooling is if you sign this waiver of liability for your child contracting COVID-19, and we won't provide, if you won't do that waiver, we won't provide any

services to your child, even remotely, then in effect, you are asking the parent to sign a waiver of FAPE and LRE. But if the school or district is saying we will provide a free, appropriate public education remotely, and won't, you know, and otherwise you have to sign this waiver of your child potentially contracting COVID-19, that's really not an IDEA discussion. That's really something that's about kind of state law. Does state law allow that kind of waiver to be requested? And so I would certainly reach out to the state lead agency for special education if that is happening, and ask them for their thoughts on whether or not it's a violation of their, of IDEA or their state special education laws or regulations.

>> Okay, thank you. What about independent study as a way to gain education if youth cannot benefit from online instruction? [INAUDIBLE] be a long term solution.

>> That, I would say, is the only way that intersects with IDEA is that parents are always encouraged to bring their ideas about services to the IEP meeting, and if the parent, if that's one of the parent's concerns or recommendations, then that should be discussed by the IEP team. The state rules for independent study vary greatly from state to state, so it's also really impossible to say to what extent independent study would be reasonable in one state versus another state.

>> Just going to do a quick check-in with you, Diana. We have certainly more questions than we're going to be able to answer in the next ten minutes. How do you want to do that? We can certainly go over if you'd like, or we can try to address them in some other fashion. How do you want to move forward, Diana?

>> We have more questions than ten minutes' worth, is what you're saying?

>> Yes. Yes.

>> So, let's do what we can do until 2:30, and I guess you have a list of the questions. I'm not saying that I will be able to answer all of them, because some of them may be individualized, but I'll do my best to answer the ones that I can, that aren't requiring me to make a legal interpretation or anything that's too individualized for a particular child.

>> Well, again, [INAUDIBLE] reminder to everybody, if you are going to be signing off, please go ahead and fill out that survey. [INAUDIBLE] All right, so the next question had to do with just a clarification. So, it's not an accommodation for [INAUDIBLE]. Is the school failing to provide an appropriate accommodation if the parents don't know how to use virtual apps for a virtual [INAUDIBLE]?

>> The parent, I'm going to say exactly [INAUDIBLE].

>> Yeah, I'm sorry.

>> That's, I'm sorry, but that's a legal determination. Parents have a right to participate effectively in the process. Parent training that's needed is something that is a related service that should be considered during the IEP meeting. It's a related service under IDEA. And if the parent cannot effectively participate, if they don't know how to use the apps, the hardware, the technology, you know, any of the technology, then that's not effective participation. But whether or not a particular training, or use of a particular app, or you know, anything in particular is a violation really is a case by case decision. And again, I would encourage parents to reach out to their parent's center, I would

encourage them to reach out to their state department of education, the lead agency for IDEA part B, preschool and special education services, to ask them to intervene if it's clear that the parent cannot effectively participate, and the district is not even willing to discuss how they might be able to help support the parent to be able to be prepared to effectively participate.

>> Thank you. If the district has a hybrid model, so in person and virtual, what if the parent wants remote services because of safety, but the IEP team says [INAUDIBLE]?

>> Well, first of all, the parent is a member of the IEP team, so it's the IEP team, including the parent.

>> Right.

>> And in my experience, often, if the parent shares their underlying interests in why they think that one is better than the other, as opposed to coming in saying, you know, I demand this, or how can you not listen to me, but really explains what their concerns and reasons are, that often, the rest of the IEP team can support that approach. As in any other issue, if the parent is not able to have the rest of the IEP team understand where they're coming from and agree with what they're looking to have happen, if it's an initial IEP, then the IEP can't move forward without parental consent. In most states, if it's not the initial IEP, then the team can move forward with their decision. The rest of the IEP team can move forward with their decision, even if the parent disagrees, and then the parent has those mechanisms. They have mediation, requests for complaint investigation, requests for a due process hearing, to be able to secure the decision that they're looking to have made for their child with the disability.

>> Do you, or are you aware of states utilizing IEP facilitation as a mechanism order in [INAUDIBLE]?

>> I cannot say that I'm familiar with orders of states in complaint investigations. You know, there's no reason why it couldn't happen, but I don't routinely review state complaint investigation results, especially in states that are not New Jersey.

>> What are some pros and cons of permitting advocates to file state complaints with and behalf of parents to engage in mediation? It seems this effort would make advocates part of the problem-solving process rather than as an adversary.

>> So, I got that question before the webinar, and I did not answer it, because that is not a legal question.

>> Okay.

>> That's a question about what is, what would be helpful or not helpful, and, you know, there are certainly pros and cons, but that's really a what if. And so, unfortunately, I'm not prepared to answer it.

>> Excellent job setting boundaries, Diana. Do schools still have to provide children with therapy services that are listed in their IEP when the child is on medical, homebound, or doing virtual school during a pandemic?

>> So, the school has to implement the child's IEP. That includes the instruction and the related services. And how that happens is likely going to be somewhat different if the child is being educated at home as opposed to being in a school building. But that doesn't mean that related services can't be

provided. They probably will be provided, you know, in a different way, because there isn't, you know, the person is not face to face with the child, or with the small group of children that are receiving the related service. So, yes, they have to implement the IEP, including the related services, and the discussion of what, you know, how those related services might look different should happen during the IEP meeting, so that the parent both has an opportunity to contribute to the conversation, and also to have a very clear understanding of what the related service will look like in a remote environment compared to what it would look like if the child was in school.

>> Here's a hypothetical situation. Parents of "typical" students get to choose whether they want virtual learning or in person learning. Parents of children with special needs have no choice. They're required to send their children to school. Only option other than that is homeschool. Seems to discriminate against children with disabilities. What do you think?

>> So, in one of the pieces of OCR guidance, they basically said that you can't discriminate against students with disabilities in terms of the options that are offered for instruction. So, if there are options that are offered for instruction for students without disabilities, then students with disabilities should have options for instruction as well. And if you look at that, if you look at the-- you can find the US Department of Education guidance on all the COVID-19 related issues on the parentcenterhub website. And I would really encourage this questioner to find that OCR question and answer document that talks about non-discrimination, and not treating students with disabilities in a less advantageous way than students without disabilities are treated.

>> Along the same lines, must the IEP document the decision of remote, hybrid, or in person instruction?

>> I don't think there's any way that the IEP can't address that issue, because it's going to impact the services that are provided, and how the services are provided, and how monitoring of IEP implementation is going to take place. However, I don't know that there is enough guidance to know whether or not changing from virtual to in person, or changing from hybrid to in person, all in person would constitute a formal change of placement under IDEA. I would argue that it should, because it is a significant change in how a student's being instructed, but I really don't think there's enough guidance out there yet to know whether that's something that would require all the kinds of notice and provide the opportunities for dispute resolution mechanisms that are available for a change of placement.

>> Diana, are you aware, does the guidance cover teachers working one on one with students on their IEP goals during remote learning? The questioner goes on, in some cases, instruction's provided as a group, and there's not always a focus on individual goals. Some teachers do organize one with breakout rooms with Zoom or Microsoft Teams, but depending on the platform, it's not always happening.

>> I missed the first part of that question, Melanie. You were a little--

>> Does the guidance cover teachers working one on one with students on their IEP goals during remote learning?

>> Okay, so, no, so this is what the guidance does. It does not take 100,000 different scenarios and answer them all. What it does is it says the IEP has to be developed. It has to have all the contents that an IEP has. It has to be developed by the team that has to develop the IEP. It has to meet the IEP timelines. It has to help the child meet challenging goals that, you know, come out Andrew F, the Andrew F Supreme Court decision. And then the IEP has to be implemented, including the provision of all the academic and related services. And of course, as we know, related services, the group size is one of the components of related services in an IEP, so it has to be done consistent with the IEP. So, you develop the IEP using the same people, timeline, and content that you did in the past, and then you have to implement the IEP so that the-- and then you have to monitor implementation and monitor the student's progress, and then come back together if it's not having the desired effect, and revise the IEP in a way that hopefully will have the desired effect. But there's no guidance that goes into that level of detail.

>> If I wanted to-- if I had a choice to return my child to in person learning, and it's in my child's best interests to do so, what if I don't feel that the rest of the classmates are capable of following COVID protocols to keep my child safe?

>> What if you don't think--

>> Should I send my child to school if I don't think that the other students are going to follow COVID protocols?

>> I certainly, it's certainly not a legal question, and I certainly cannot make that decision for you.

>> Would that be something for the IEP team to discuss?

>> I think that would be something for the IEP team to discuss, or even, you know, even for the parent, I mean, if you have an option and you don't think that your child is going to be safe in that, in the school environment, you have an option, then you have to choose the option that you think is best for your child. And then if you, you know, you can certainly inquire as to what kinds of monitoring is happening of other students obeying the physical distancing and wearing the masks, et cetera. But really, it's a decision you have to make for your own child. It's not-- and you, you know, if you have the option, you can make the decision. But certainly, it's something to talk about with the IEP team, too, because the IEP team may be able to assuage some of your fears about what's happening with the rest of the students.

>> Let's say, hypothetically, an IEP team states, or an IEP [INAUDIBLE] physical therapy. Should the school accommodate a time and space within the school for that student to receive therapy [INAUDIBLE] be taking the child to school on the time and days approve? I'm assuming that the school is virtual at this point, but there's physical therapy [INAUDIBLE].

>> I'm sorry, Melanie, I missed half the question again.

>> [INAUDIBLE]

>> And it's already 2:34, so.

>> Okay. [INAUDIBLE] The question just is asking, if the IEP requires physical therapy, should the school accommodate a time and place within the school to receive the services?

>> A related service decision about opening schools is no different than any other decision about opening schools. And if there are health and safety reasons why schools are not open, then there's no mandate that the school open a space to provide related services, or even provide related services in person. They have to provide physical therapy, and they have to do it in a way that helps the child achieve their related services physical therapy goals, but that doesn't mean that they have to provide, they have to open the school for related services just because it's really, really hard to provide physical therapy virtually.

>> And there are a couple of questions here that just address a parent not agreeing with the IEP team, and next steps, you know, [INAUDIBLE] not require my child to come to school if they're requiring it. So, generally speaking, a parent disagrees with an IEP, next steps would be?

>> The next steps would be to, well, first I would say, you know, try some informal dispute resolution mechanisms. You can always go up the chain of command. You can, you know, talk to the principal, you can talk to the superintendent, you know, you can go to people who have the authority to provide you with more options. But if informal dispute resolution mechanisms don't work, then you have mediation, requests for complaint investigation, requests for a due process hearing. Again, before you do those, I would, you know, call your parent's center, and, you know, call your special education state office to see whether there's anything that you might not be aware of that might help resolve the issue without going to one of those formal mechanisms.

>> And I think we have a last question. Are you aware of any policy regarding parents who are illiterate, can't speak English, or are themselves disabled in terms of participation and notification?

>> Yes, so, and that's not just about COVID-19.

>> Right.

>> So, information has to be provided to parents in a language and format that they understand. And so, if a parent is not literate, then the information should be provided to them verbally. If a parent doesn't speak, you know, is not literate in English, then it should be provided to them in their language. If a parent has a disability, then the information should be provided to them as much as possible in language that a person with their disability-- now, of course, really it's only cognitive disabilities that would interfere with a parent's ability to understand. But if they have a cognitive disability, then, you know, providing the information as much as possible in a manner and a format that the parent can understand. And that is something that's required under IDEA, because parents are supposed to be informed and effective participants in the IEP team and in decision making. And I would also say that, if someone is aware of a person in that situation, then I would definitely contact the parent's center, I would definitely contact, you know, other organizations that might be able to provide support to the parent to help them, to help them understand the information more effectively. Again, if the information is not provided in a language and in a format that the parent can understand, then that is a

violation of IDEA, and then parents can follow up with the support of, you know, a parent center or the disability rights organization in their state, et cetera.

>> Well, Diana, thank you so much. We cannot tell you how much we appreciate your generous sharing of your time and your talents today, and your willingness to tackle these tough questions. This has been extraordinarily informative and helpful, and we're fortunate to have your continued friendship. So, thank you again. Last reminder, your feedback's important, so please click on the link in the chatbox for the brief survey to evaluate today's webinar. We'd really appreciate it. And finally, keep safe out there, and take care of yourself as you take care of others. And thank you for participating in today's webinar. Thanks.

>> Thank you, Melanie, and thank you everybody for participating, and for all your great questions, both before and during the webinar.

>> Take care. Bye bye.

>> Bye.