



# Frequently Asked Questions: Successfully Navigating Virtual Education for a Student with a Disability

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# Frequently Asked Questions: Successfully Navigating Virtual Education for a Student with a Disability

## Acronyms

Free Appropriate Public Education (FAPE)

Individualized Education Program (IEP)

Individuals with Disabilities Education Act (IDEA)

Intermediate School District (ISD)

Local Education Agency (LEA)

Least Restrictive Environment (LRE)

Michigan Department of Education (MDE)

Office of Special Education (OSE)

Prior Written Notice (PWN)

Pupil Accounting Manual (PAM)

Public School Academy (PSA)

## Continuum of Services

A-1. Which continuum of service delivery options must be considered when a district's service delivery model consists of virtual providers for special education services?

The modality of service delivery is determined by the IEP Team based on a student's individual and unique needs. This includes determining the type of related service, the amount and location of in-person or virtual services, and an explanation of the extent, if any, to which the student will not participate with nondisabled students. The IDEA regulations do not address service delivery options; instead, they address the continuum of alternative placements. As with all related services, the student's IEP Team is responsible for determining the services required for the student to receive a Free Appropriate Public Education (FAPE). This includes determining the type of related service, as well as the amount and location of services. [71 Fed. Reg. 46575 \(Aug. 14, 2006\)](#).

The IEP Team is responsible for developing a student's IEP in accordance with [34 CFR §§300.320](#) through [300.324](#). This includes, among other things, determining the anticipated frequency, location, and duration of the services ([34 CFR §300.320\(a\)\(7\)](#)); an explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class ([34 CFR §300.320\(a\)\(5\)](#)); a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student; and a statement of the program modifications or supports for school personnel that will be provided ([34 CFR §300.320\(a\)\(4\)](#)). The modality of service delivery is a consideration by the IEP Team, based on a student's individual and unique needs, and cannot be made as a matter of general policy by administrators, teachers, or others apart from the IEP Team process. The IEP document should be responsive and meet the unique needs of the student and must provide the student with a FAPE in the Least Restrictive Environment (LRE).

A-2. Are virtual charter schools required to provide special education services in accordance with students' IEPs?

Under the Individuals with Disabilities Education Act (IDEA), all public schools, including charter schools, must provide a Free Appropriate Public Education (FAPE) to students with disabilities, including Child Find, IEP Development and implementation, and discipline.

## FAPE

B-1. Who is responsible for FAPE when a student with an IEP is enrolled in a virtual school located within the student's resident district?

If a virtual school is a public school of an LEA, the LEA is the entity responsible for ensuring that the requirements of Part B are met by the virtual school for children with disabilities participating in the virtual school's program. If the virtual school is a public charter school operating as its own LEA, the virtual charter school is responsible for FAPE.

Each LEA, in providing for the education of students with disabilities within its jurisdiction, must have policies, procedures, and programs consistent with the requirements of Part B. These LEA responsibilities include, but are not limited to:

- Ensuring that each eligible student with a disability has FAPE available in accordance with [34 CFR §§300.101](#) and [300.17](#).
- Implementing the evaluation and eligibility requirements in [34 CFR §§300.300-300.311](#);
- Carrying out the IEP requirements in [34 CFR §§300.320](#) through [300.324](#), including those governing IEP content, IEP Team participants, parent participation, when IEPs must be in effect, consideration of special factors, the development, review, and revision of IEPs, secondary transition services, and participation in State and districtwide assessment programs; and
- Implementing the requirements in [34 CFR §§300.114](#) through [300.117](#), regarding education in the least restrictive environment, including ensuring the availability of a continuum of alternative placements to provide special education and related services.
- Developing a strong virtual instruction policy is the key to ensuring the virtual provider and the student’s resident district communicate, and the students’ needs are met. For additional information on policies and procedures related to virtual instruction, see the [Dear Colleague Letter, August 5, 2016 \(OSERS\)](#).

B-2. What options must a PSA use to meet its responsibilities to provide FAPE, as required by state and federal regulations, to a student with a disability in a virtual setting?

As provided in [MCL 380.1751 of the Revised School Code](#): The board of a local school district (or charter school) must provide special education programs and services designed to meet the individual needs of each student with a disability in its district on record under [MCL 380.1711](#) for whom an appropriate educational or training program can be provided by the intermediate school district special education plan, in either of the following ways or a combination thereof:

- Operate the special education program or service.
- Contract with its intermediate school board, another local school district board, an adjacent school district board in a bordering state, the Michigan Schools for the Deaf and the Blind, or the Department of Health and Human Services, or with an agency approved by the superintendent of public instruction.

In addition to the methods listed above, a PSA may contract with an agency approved by the state superintendent of public instruction for the delivery of ancillary or related professional education services ([MDE PSA FAQs](#)).

B-3. To what extent is an ISD responsible for virtual PSAs serving students whose parents reside outside of the ISD where the PSA is located?

- According to the [Pupil Accounting Manual](#) and for special education purposes, the PSA is a member district of the ISD in which the school is located.
- As a subrecipient of the IDEA grant, the ISD has the same responsibility for the PSA and its enrolled students with IEPs as any other ISD member district.
- Once a student is enrolled in the charter school, both the ISD and the charter school are responsible for ensuring required special education programs and services are provided.

B-5. Who is responsible for providing special education services to students with a disability in a virtual school or program operated by a school district? What if the district contracts with a service center or outside vendor to administer the virtual school/program?

The public school district operating the virtual school is responsible for providing a FAPE for students with disabilities, regardless of whether the district contracts with a service center or outside vendor to administer its virtual school/program. This is also true regardless of the student's school district of residence. If the district sponsoring the virtual school enrolls a student with a disability who resides outside of the district, the district that enrolled the student in its virtual school or program is responsible for providing FAPE, not the student's district of residence.

B-6. What are the district's options when a student with an IEP, participating in virtual programming, is not making appropriate progress in the general education curriculum or toward meeting their IEP goals?

In any instance when a student is not making appropriate progress, the IEP Team must meet and discuss what changes can be made to the services and supports to address the lack of progress ([34 CFR §300.324\(b\)\(1\)\(ii\)\(A\)](#)). This can be accomplished by convening an IEP Team meeting (virtually, if needed) or by the parents and school agreeing to amend the IEP.

B-7. Can a virtual school require a student with an IEP to transfer back to a brick-and-mortar setting when the student is not meeting the virtual school's attendance, behavior, and/or academic requirements?

If the student is not meeting attendance, behavior, and/or effort requirements due to a disability, the student's IEP Team should convene an IEP Team meeting to determine whether the student can receive FAPE in a virtual setting, and if so, how the student can receive FAPE. If the IEP Team determines the student cannot receive FAPE in the virtual setting, the IEP Team must consider a continuum of alternative placements and determine an appropriate placement that will allow the student to receive FAPE. Dispute resolution options, including mediation, filing a state complaint, or filing a due process complaint, are available when a student's parents disagree with the placement decision and offer of FAPE. Districts should collaborate with parents to support students within their current enrollment settings. It is never appropriate to require a parent to revoke consent for services or to disenroll their child from those services.

B-8. Where does the FAPE obligation fall for students aged 18-26 who've completed a virtual K-12 program, but need transition services?

Transition services are integral to providing FAPE. Students with disabilities are entitled to FAPE until age 26, unless they complete the requirements for a high school diploma, are determined no longer eligible for special education, or revoke consent for special education and services. The issuance of a certificate of completion does not end entitlement to FAPE. When a student is enrolled in a virtual K-12 program and does not receive a regular high school diploma, the virtual K-12 program is responsible for paying for or providing transition services. If the virtual entity is the educational provider of record (i.e., the enrolling district), the virtual entity continues to hold the FAPE obligation, which includes the IEP Team consideration and determination of appropriate transition program and/or services. The virtual K-12 can create a transition program and/or services or can contract with another local district or ISD that provides transition programs and/or services. Contracting with another district or ISD to provide transition programming and/or services does not transfer the FAPE obligation. The virtual program will continue to be involved in IEP Team and/or disciplinary meetings involving the student that the virtual program IEP placed in the operating district.

A student who has completed a virtual K-12 program but who continues to need transition programming and/or services must never be asked to revoke consent for special education.

## Enrollment

C-1. Can the district ask parents to revoke consent for a student's IEP as a condition for enrollment in a virtual school or program?

Parents have a right to revoke consent for all special education services and may be advised of that right. However, under no circumstances should the parent, or student who is the age of majority, be required or asked to revoke consent for the provision of special education and services as a condition of enrollment in a virtual school or program.

C-2. If the course of study on a student's IEP indicates a Certificate of Completion, and the student's transition plan is designed to support the student's postsecondary goals in a career that does not require a diploma, does the district have the right to deny the student enrollment in a virtual course in which the student wishes to enroll? (Specific to [5-0-D requirements in the Pupil Accounting Manual \(PAM\)](#)).

A student's course of study is a decision made by the student's IEP Team. Districts "may deny enrollment" for reasons, including that the virtual course is inconsistent with the remaining graduation requirements or career interests of the pupil. If the IEP Team determines a virtual course aligns with the students' course of study, which will enable the student to meet their postsecondary goals, the student should not be denied enrollment in the course.

A student with an IEP should not be denied enrollment in a virtual course without the IEP Team's input. When the IEP Team determines a virtual course is appropriate, the team will then determine the supplementary aids and services and specially designed instruction, if any, necessary for the student to receive FAPE.

C-3. Can a Cyber school student be on a shorted school day student (with a note from a physician and written into the IEP that the student needs a reduced day)?

Under [Title II of the Americans with Disabilities Act](#), qualified individuals with disabilities may not be excluded from participation in or denied the benefits of the services,

programs, or activities of, nor subjected to discrimination by educational agencies ([28 CFR §35.130](#)). Students with disabilities must have the same access to virtual courses, school activities, and resources as any other student with access to the virtual program. A student may be on a shortened school day The district must have written documentation from the family requesting the reduction, and approval must be documented at the district level by an authorized person. For an IEP reduced schedule, the student’s instructional time is only reduced due to medical or emotional reasons. The practice of shortening a student’s school day as a disciplinary measure could be considered a denial of FAPE if the student’s IEP Team does not consider additional services and supports that could enable a student to remain in school, in the LRE, for the full school day before placing the student on a shortened school day. The district then satisfies 553a(2)(b) when it demonstrates that 1,098 hours are available to students who enrolled at the start of the school year and would also be available to these students if it weren’t for the need for a reduced schedule.

MDE OSE released [Shortened School Day](#) guidance for additional information regarding a reduced school day for a student with an IEP.

C-4. Can a student enrolled in a virtual program attend some classes in a brick-and-mortar setting, or are they limited to in-person electives with a hybrid schedule?

Access to electives would need to be determined at the district level. Virtual programs vary in mode of delivery.

The district must ensure compliance with the requirements for equal access. Under Title II of the Americans with Disabilities Act, qualified individuals with disabilities may not be excluded from participation in or denied the benefits of the services, programs, or activities of, nor subjected to discrimination by educational agencies ([28 CFR §35.130\(a\)](#)). A student with a disability enrolled in a virtual program must have the same access to courses, school activities, and resources as any other student has access to from the virtual program.

C-5. The Pupil Accounting Manual states that students can take up to two virtual courses. Does that mean those two classes are not IEP Team decisions?

When it comes to students with disabilities eligible under the IDEA, the obligation of each district is to provide FAPE in the least restrictive environment. This is a federal civil rights entitlement that cannot be overridden by statute or pupil accounting rules. With

that said, the language stated in [MCL Section 388.1621f](#): (2) Subject to subsection (3), a primary district shall enroll an eligible pupil in up to two virtual courses as requested by the pupil during an academic term, semester, or trimester. The use of the term *eligible* for pupil accounting purposes is a student who is of age and meets the residency requirements for enrollment. Section (388.1621f) defines what a district must do for a course to be eligible, and offers a limited number of reasons for denial, and explicitly states a district cannot establish additional requirements beyond those specified in this subsection that would prohibit a pupil from taking a virtual course.

A student with a disability must have access to the two virtual courses under this section. Section (388.1621f) allows for the denial of a virtual course if the course is inconsistent with the remaining graduation requirements or career interests of the pupil and/or the pupil has not completed the prerequisite coursework for the requested virtual course or has not demonstrated proficiency in the prerequisite course content.

As outlined in the IDEA requirements, an IEP for a student with a disability, aged 16 and above, must include the courses of study required for the student to reach their postsecondary goals. The graduation plan for a student with a disability is a decision made by the IEP Team tailored to the individual student's needs. Therefore, a student with an IEP should not be denied enrollment in a virtual course without the IEP Team's input. When the IEP Team determines that a virtual course is appropriate, the team will then determine the supplementary aids and services, as well as any specially designed instruction, necessary for the student to receive FAPE.

C-6. What are the district's obligations when a parent wants their student to participate in virtual programming offered by the school district, which is open enrollment to all students, but the other members of the IEP Team feel that the student's needs would be best met in a brick-and-mortar setting?

The IEP Team determines services and supports, including duration, frequency, and setting or location. Prior Written Notice must include other options the IEP Team considered but not selected. Understanding the [Requirements of Prior Written Notice](#) provides additional information.

Dispute resolution options, including mediation, filing a state complaint, or filing a due process complaint, are available when a student's parent disagrees with the placement

decision and offer of FAPE. Parents should never be encouraged to disenroll their child and go elsewhere, or revoke consent for special education and services.

C-7. If a parent and other members of the IEP Team agree that a student with a disability should participate in a virtual program offered by the school district, how should the IEP Team document the decision?

These changes must be documented in the IEP and clearly articulated. This can be accomplished by convening an IEP Team meeting (virtually, if needed) or by the parents and school agreeing to amend the IEP without a meeting. More information about amendments can be found in [Individualized Education Program \(IEP\) Amendment Guidance](#). The IEP Team is responsible for determining if changes are needed to services and support for student participation in virtual programming and documenting these changes. It is important to note that an IEP must be developed based on the unique needs of each student with a disability, not on program requirements or administrative convenience.

Prior Written Notice should be used to document changes in special education, supports, and services, which would include the reason previous supports are no longer needed.

## Change of Placement

D-1. Is a movement from brick-and-mortar to virtual enrollment always a change of placement?

A change in physical location is not necessarily always a change in placement. Whether a change in placement has occurred is determined on a case-by-case basis and after a review of the following factors ([Letter to Fisher, May 12, 2021 \(OSEP\)](#)):

- Whether the educational program outlined in the IEP has been revised.
- Whether the student will be able to be educated with students without disabilities to the same extent.
- Whether the student will have the same opportunities to participate in non-academic and extracurricular activities.
- Whether the new placement option is the same option on the continuum of alternative placements.

It may also be important to note that a unilateral placement in the virtual setting as a means of managing behavior, a disciplinary consequence, or to avoid a disciplinary consequence counts as a removal under the [Individuals With Disabilities Education Act \(IDEA\) Discipline Requirements](#).

## Additional Questions

E-1. Are school districts obligated to address truancy issues with students enrolled in virtual learning programs?

The State of Michigan has a compulsory school attendance law requiring a parent, legal guardian, or other person having control or charge of a student to send that student to public school for education from the age of six to the child's eighteenth birthday. [MCL 380.1561\(1\)](#). Local boards of education have the authority to adopt attendance policies addressing the number of days a pupil may miss due to illness or other causes. There may be differences in how attendance is measured in brick-and-mortar versus virtual settings. Traditional brick-and-mortar models of attendance utilize seat time as the sole attendance measure. Virtual programs might count the number of meetings completed assignments, or two-way interactions with instructional staff as a means of attendance. A cyber school is required to provide a minimum of 1,098 hours of educational services for a school year under [MCL 380.553a](#) and must ensure each pupil participates for the proportionate number of hours of instruction remaining in the school year based on the pupil's date of enrollment. The school has the ultimate responsibility for enforcing the Compulsory Attendance Act and informing students/parents of their responsibilities for the education of the student.

E-2 How does the state advise districts when reporting the educational setting of students with IEPs enrolled in virtual instruction?

When determining and reporting educational setting data, virtual courses open to all students are considered time inside general education. The course content does not determine the educational environment. Those responsible for data reporting must report on the percentage of time the student is in the general education setting. Use the time the student is physically participating in the general education setting on the count date. Alternatively, if the time varies from day to day, use the time the student spends in the general education setting during the count week.

If a student participates in a hybrid mode of learning, the student might be physically present in one location while participating in a virtual course in which only students with disabilities are enrolled. If there is a prescribed location where students must be while participating in online learning, whether this time is considered time inside the general education setting is based on the actual setting and whether the students who are participating in the prescribed location are students with or without IEPs.

Time in the virtual environment is general education when:

- General education students are participating in the course.
- A general education teacher delivers all instruction.

Time in the virtual environment is considered special education when:

- Only students with IEPs participate in the course, or
- There are some students with IEPs, and the special education teacher provides some or all the specially designed instruction.

For additional information on determining educational setting, refer to [How to Determine and Report Educational Setting Data](#).

E-3. Does a district's obligation toward a transfer student with an IEP end when the student enrolls in a virtual School?

The former district is not obligated to provide the student with special education services if the student is no longer enrolled. The responsibility falls on the LEA in which the student is enrolled. Please refer to OSE's guidance document, [Provision of Special Education Services for Transfer Students](#).

Under the IDEA, the new LEA must take reasonable steps to promptly obtain a copy of the student's IEP and other FAPE-related records from the student's former district. [34 CFR §300.323\(g\)\(1\)](#). The former district, in turn, must take reasonable steps to promptly respond to the new LEA's request for the student's records. [34 CFR §300.323\(g\)\(2\)](#). Delays in providing the student's IEP or other records can cause the student to go without comparable services when attending school in the new LEA.