



Frequently Asked Questions: The Start of the 2021-22 School Year and the New Minnesota Special Education Recovery Services Law

September 2021

This document is intended to answer frequently asked questions stemming from the start of the 2021-22 school year with the continued presence of the COVID-19 pandemic and the passage of Minnesota’s Special Education Recovery Services and Supports law, effective July 1, 2021.¹ This FAQ document is intended to assist school districts and charter schools in continuing to provide equitable access to high-quality special education and related services in accordance with the Individuals with Disabilities Education Act (IDEA) and to support families of students with disabilities and school districts and charter schools as they address the impact of disruptions to in-person instruction related to the COVID-19 pandemic on students’ access to a free appropriate public education (FAPE). The Minnesota Department of Education (MDE) strives to focus our general supervisory responsibilities on providing technical assistance and support to local educational agencies and early intervention service providers to – (1) mitigate and address the impact of service disruptions on the progress of infants and toddlers with disabilities and their families and children with disabilities, with a particular emphasis on infants, toddlers, and children who have been most impacted by the COVID-19 pandemic; and (2) ensure full implementation of IDEA during the 2021-22 school year.

MDE recognizes that current public health and safety needs may change, and the U.S. Department of Education could release additional guidance that may require MDE to update this document. MDE continues to encourage school districts and charter schools and parents to frequently visit the Centers for Disease Control and Prevention (CDC) website and the Minnesota Department of Health (MDH) website for updates on public health and safety guidance.²

Question 1: Are there any COVID-19 pandemic related orders in effect at the start of the 2021-22 school year pertaining to school districts and charter schools?

Answer 1: Yes. Effective February 1, 2021, the CDC issued an order requiring the wearing of masks by people on public transportation conveyances or on the premises of transportation hubs, regardless of vaccination status,

¹ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1.

² See e.g., CDC, [Guidance for COVID-19 Prevention in Schools](#) (updated Aug. 5, 2021); MDH, [Best Practice Recommendations for COVID-19 Prevention in Schools for the 2021-22 School Year](#) (Sept. 1, 2021).

to prevent spread of the virus that causes COVID-19.³ This order applies to public and private school busses including transportation to and from school and all school related activities. There are some exemptions to the order, including an exemption for people with disabilities who cannot wear a mask, or cannot safely wear a mask, because of their disability.⁴

Question 2: At the start of the 2021-22 school year, are there any Minnesota executive orders in effect pertaining to the COVID-19 pandemic and school districts or charter schools?

Answer 2: Currently, Governor Walz does not have any emergency powers in place regarding the COVID-19 pandemic. As such, there are no Minnesota executive orders that are in effect at the start the 2021-22 school year relating to the COVID-19 pandemic and school districts and charter schools. At the start of the 2021-22 school year, decisions pertaining to the COVID-19 pandemic and school districts and charter schools are made at the local educational agency level. MDE highly encourages school districts and charter schools to adopt CDC recommendations and guidance on mitigating the spread of COVID-19.

Question 3: Are school districts and charter schools required to offer families a distance learning option for students at the start of the 2021-22 school year?

Answer 3: During the COVID-19 peacetime emergency, Minnesota public schools were required to offer a distance learning option for families. The peacetime emergency has ended, and school districts and charter schools are no longer required to provide a distance learning option. School districts and charter schools that choose to continue to offer an online learning option for their students and families are required to become an approved online learning (OLL) provider through MDE.⁵ School districts and charter schools that become approved online learning providers may offer online and blended learning to students and families, but student participation in an online learning program cannot be required.⁶ MDE highly encourages school districts and charter schools to apply to become online providers for all grades served, but school districts and charter schools will determine local context and need.

Question 4: Are there any waivers from IDEA requirements in effect for the 2021-22 school year that will impact students with disabilities?

Answer 4: No. The United States Department of Education, Office of Special Education and Rehabilitative Services (OSERS) has made clear, that for the 2020-21 school year, no IDEA requirements were waived. Specifically, OSERS clarified that “no matter what primary instructional delivery approach was chosen for that

³ CDC, Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations 70.2, 71.31(b), Requirement for Persons to Wear Masks While On Conveyances and at Transportation Hubs. [Mask-Order-CDC GMTF 01-29-21-p.pdf](#).

⁴ Exemptions from the CDC order requiring masks on public transportation include, but are not limited to, a child under the age of 2 years and a person with a disability who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. §§ 12101 *et seq.*).

⁵ More information about online learning provides may be found here: <https://education.mn.gov/MDE/dse/online/>.

⁶ More information about online learning and approved Minnesota online learning providers may be found here: <https://education.mn.gov/MDE/fam/oll/>.

year, state educational agencies (SEAs) and local educational agencies (LEAs) remained responsible for ensuring that a free appropriate public education (FAPE) was available to all children with disabilities.”⁷ OSERS reiterated and emphasized that during the 2021-22 school year, students with disabilities retain their rights to receive appropriate services under IDEA, despite the unprecedented educational disruptions and other challenges resulting from the COVID-19 pandemic.⁸ Specifically, “[t]his includes ensuring that IEPs [Individualized Education Programs] are in effect for children with disabilities at the start of the upcoming school year, and all other rights of children with disabilities and their parents under IDEP Part B are protected. Similarly, IDEA Part C requires IFSPs [Individualized Family Service Plans] to be implemented and that all other rights of parents and their infants and toddlers with disabilities must be protected.”⁹ OSERS further provided:¹⁰

With few exceptions, IDEA does not provide waiver authority to the Department: thus, OSERS is unable to grant waivers under IDEA Parts B and C to SEAs or LAs [state lead agencies] as a result of the pandemic or to otherwise create safe harbors from potential or existing litigation by parents or others.

Question 5: What are school districts’ and charter schools’ responsibilities under Minnesota’s Special Education Recovery Services and Supports law?

Answer 5: School districts and charter schools that serve one or more students with disabilities must invite the parents/guardians of a student with a disability to an IEP team meeting as soon as practicable but no later than December 1, 2021.¹¹ The meeting may occur in an annual or other regularly schedule IEP team meeting.¹² The purpose of the IEP team meeting is to determine whether special education services and supports are necessary to address the student’s lack of progress on IEP goals or in the general education curriculum or loss of learning or skills due to disruptions related to the COVID-19 pandemic.¹³

Question 6: What types of services and supports should the IEP team be looking at during the IEP team meeting?

Answer 6: Special education recovery services and supports may include but are not limited to extended school year (ESY) services, additional IEP services, compensatory services, or other appropriate services.¹⁴ If the IEP team determines that the services and supports are necessary, the IEP team will determine what services and

⁷ U.S. Department of Education, Office of Special Education and Rehabilitative Services, August 24, 2021, [Letter to Special Education and Early Intervention Partners](#).

⁸ U.S. Department of Education, Office of Special Education and Rehabilitative Services, August 24, 2021, [Letter to Special Education and Early Intervention Partners](#).

⁹ For further information about Part C responsibilities, please see [Guidance for Part C/Early Intervention and the Application of Special Education Recovery Services and Supports](#).

¹⁰ U.S. Department of Education, Office of Special Education and Rehabilitative Services, August 24, 2021, [Letter to Special Education and Early Intervention Partners](#).

¹¹ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 1.

¹² Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 1.

¹³ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 1.

¹⁴ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 1.

supports are appropriate for the student and when and how those services should be provided, in accordance with relevant guidance from MDE and the U.S. Department of Education.¹⁵ When considering how and when the services and supports should be provided, the IEP team must take into account the timing and delivery method most appropriate for the student, such as time of day, day of week, or time of year, and the availability of other services accessible to the student to address learning loss.¹⁶ The IEP team may determine that outside providers, in addition to school district or charter school staff, are most appropriate to provide the special education recovery services and supports.¹⁷

Question 7: How should a student’s IEP team determine whether a student is eligible for special education recovery services and supports and what special education recovery services and supports are appropriate for the student?

Answer 7: The IEP team must consider the following in determining special education recovery services and supports:¹⁸

- (1) Services and supports provided to the student before the disruptions to in-person instruction related to the COVID-19 pandemic;
- (2) The ability of the student to access services and supports;
- (3) The student’s progress toward IEP goals, including the goals in the IEP in effect before disruptions to in-person instruction related to the COVID-19 pandemic, and progress in the general education curriculum;
- (4) The student’s regression or lost skills resulting from disruptions to instruction;
- (5) Other significant influences on the student’s ability to participate in and benefit from instruction related to the COVID-19 pandemic, including family loss, changed family circumstances, other trauma, and illness; and
- (6) The types of services and supports that would benefit the student and improve the student’s ability to benefit from school, including academic supports, behavioral supports, mental health supports, related services, and other services and supports.

Question 8: How long do school districts and charter schools have to provide special education recovery services and supports outlined in a student’s IEP?

Answer 8: A school district or charter school must make the special education recovery services and supports that the IEP team included in a student’s IEP available until the IEP team determines that those services and supports are no longer necessary to address the student’s lack of progress on IEP goals or in the general education curriculum or loss of learning or skills due to disruptions related to the COVID-19 pandemic.¹⁹

¹⁵ See [Updated Guide to Addressing the Impact of the COVID-19 Pandemic on Students with Disabilities](#), February 2021/Updated July 2021.

¹⁶ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 2(c).

¹⁷ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 2(c).

¹⁸ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 2(b).

¹⁹ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 2(d).

Question 9: If a school district or charter school held an IEP team meeting in spring or summer 2021 and the IEP team, including the student’s parents/guardians, already determined whether special education services and supports are necessary to address the student’s lack of progress on IEP goals or in the general education curriculum or loss of learning or skills due to disruptions related to the COVID-19 pandemic, is the school district or charter school required to invite that student’s parents/guardians to another IEP team meeting no later than December 1, 2021?

Answer 9: If the school district or charter school held a meeting with the student’s parents/guardians in spring or summer 2021, and did the following: 1) made the six considerations listed in question 7 above, 2) made a determination of whether special education services and supports are necessary to address lack of progress on IEP goals or in the general education curriculum or loss of learning or skills due to disruptions related to the COVID-19 pandemic, and 3) included in the student’s IEP when and how those services should be provided, taking into account the timing and delivery method most appropriate for the student, then the school district or charter school is not required to invite the student’s parents to another IEP team meeting for the same purpose. However, the special education recovery services and supports must continue to be available until the IEP team determines that services and support are no longer necessary.²⁰

Further, school districts or charter schools have an ongoing responsibility to ensure that a student’s IEP team reviews and revises the student’s IEP, as appropriate, to address any lack of expected progress toward the student’s IEP annual goals or in the general education curriculum, the results of a reevaluation, information about the student provided to or by the student’s parents, the student’s anticipated needs, or other matters.²¹ The impact of the ongoing COVID-19 pandemic on the student’s progress or anticipated needs may need to be addressed at future IEP team meetings to ensure the provision of FAPE to the student.²²

Question 10: If a student’s IEP progress reports show that the student made appropriate progress and did not experience regression or lost skills, is the school district or charter school still required to invite the student’s parents to an IEP team meeting no later than December 1, 2021 to determine whether the student needs special education services and supports due to disruptions related to the COVID-19 pandemic?

Answer 10: Yes. Any school district or charter school that serves one or more students with disabilities must invite the parents of a student with a disability to an IEP team meeting as soon as practicable but no later than December 1, 2021.²³ The determination of whether a student needs special education services and supports due to disruptions related to the COVID-19 pandemic includes additional considerations, not just progress toward IEP annual goals, regression, or lost skills. The IEP team must also consider the services and supports provided to the student before the disruptions to in-person instruction related to the COVID-19 pandemic; the ability of the student to access services and supports; the student’s progress in the general education curriculum; other significant influences on the student’s ability to participate in and benefit from instruction related to the COVID-

²⁰ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 2(c).

²¹ 34 C.F.R. § 300.324(b).

²² 34 C.F.R. § 300.324(b).

²³ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 1.

19 pandemic, including family loss, changed family circumstances, other trauma, and illness; and the types of services and supports that would benefit the student and improve the student's ability to benefit from school, including academic supports, behavioral supports, mental health supports, related services, and other services and supports.²⁴

Question 11: If a school district or charter school did not experience significant disruptions to in-person learning and/or was able to provide effective distance learning instruction throughout the 2020-21 school year, does that school district or charter school still need to invite the parents of students with disabilities to IEP team meetings prior to December 1, 2021?

Answer 11: Yes. Any school district or charter school that serves one or more students with disabilities must invite the parents of a student with a disability to an IEP team meeting as soon as practicable but no later than December 1, 2021.²⁵ The determination of whether a student needs special education services and support includes considerations in addition to the impact of disruptions to in-person instruction related to the COVID-19 pandemic and the ability of the student to access services and supports. The IEP team must also consider the services and supports provided to the student before the disruptions to in-person instruction related to the COVID-19 pandemic; the student's progress toward IEP goals and in the general education curriculum; the student's regression or lost skills resulting from disruptions to instruction; other significant influences on the student's ability to participate in and benefit from instruction related to the COVID-19 pandemic, including family loss, changed family circumstances, other trauma, and illness; and the types of services and supports that would benefit the student and improve the student's ability to benefit from school, including academic supports, behavioral supports, mental health supports, related services, and other services and supports.²⁶

Note that IEP teams will need to consider the impact of the entire pandemic, March 2020 through the present, when addressing disruptions to in-person learning related to the COVID-19 pandemic.

Question 12: If a school district or charter school invites a student's parents/guardians to an IEP team meeting to determine the student's need for special education recovery services and supports due to disruptions related to the COVID-19 pandemic, and the parent/guardian declines the invitation to meet, has the school district or charter school met the requirements of the law?

Answer 12: The law regarding special education recovery services and supports requires school districts and charter schools to invite the parents/guardians of a student with a disability to an IEP team meeting as soon as practicable but no later than December 1, 2021.²⁷ Parents/guardians may decline the invitation to participate in such a meeting. However, school districts and charter schools have an ongoing responsibility to ensure that a student's IEP team reviews the student's IEP periodically, but not less than annually, and revises the student's IEP, as appropriate, to address any lack of expected progress toward the student's IEP annual goals or in the

²⁴ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 2(b).

²⁵ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 1.

²⁶ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 2(b).

²⁷ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 1.

general education curriculum, the results of a reevaluation, information about the student provided to or by the student's parents, the student's anticipated needs, or other matters.²⁸ If the school district or charter school determines that an IEP team meeting is necessary, the school district or charter school must take steps to ensure that one or both of the student's parents/guardians are present or are afforded the opportunity to participate in the IEP team meeting, including notifying the parents/guardians of the meeting early enough to ensure that they will have an opportunity to attend, scheduling the meeting at a mutually agreed on time and place, and offering alternative means of meeting participation.²⁹ If the school district or charter school is unable to convince the parents/guardians that they should attend, an IEP team meeting may be conducted without a parent/guardian in attendance, and the school district or charter school must keep a record of its attempts to arrange a mutually agreed on time and place.³⁰

Question 13: Is a school district or charter school required to invite the parents/guardians of a student who has recently been identified as a child with a disability to an IEP team meeting to determine whether that student needs special education services and support due to disruptions related to the COVID-19 pandemic?

Answer 13: Yes, school districts and charter schools must invite the parents of a student with a disability to an IEP team meeting as soon as practicable but no later than December 1, 2021 to determine whether the student needs special education services and supports due to disruptions related to the COVID-19 pandemic.³¹ Some considerations, such as the services and supports provided to the student before the disruptions to in-person instruction related to the COVID-19 pandemic, the student's progress toward IEP goals, or the ability of the student to access services and supports, may not be relevant to a student recently identified as a child with a disability. However, the IEP team must also consider the student's progress in the general education curriculum; the student's regression or lost skills resulting from disruptions to instruction; other significant influences on the student's ability to participate in and benefit from instruction related to the COVID-19 pandemic, including family loss, changed family circumstances, other trauma, and illness; and the types of services and supports that would benefit the student and improve the student's ability to benefit from school, including academic supports, behavioral supports, mental health supports, related services, and other services and supports. The student's IEP team may also consider any delays or disruptions to the student's evaluation related to the COVID-19 pandemic when determining the student's need for special education services and supports.³²

Question 14: Are there any limitations on the requirement that the IEP team takes into account the timing and delivery method most appropriate for the student when determining special education recovery services and

²⁸ 34 C.F.R. § 300.324(b).

²⁹ 34 C.F.R. § 300.322(a)-(c).

³⁰ 34 C.F.R. § 300.322(d).

³¹ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 1.

³² See Office of Civil Rights (OCR) and OSERS, [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#) (March 21, 2020) (stating, "[w]here, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services – or even making decisions about how to provide services - IEP teams . . . must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.").

support? For example, if a parent requests that services be provided after 6 p.m., does the school district or charter school have to meet that request?

Answer 14: While it important for IEP teams to consider the concerns of the student’s parents/guardians, the IEP team’s consideration is the timing and delivery method most appropriate for the student, which could include multiple times of the day, week, or year. If school district or charter school staff are not available during times that are appropriate for the student, the IEP team may determine that providers in addition to school district or charter school staff are most appropriate to provide the services and supports to the student.³³

Question 15: What kind of documentation are school districts and charter schools expected to keep to show that parents/guardians were invited to IEP team meetings prior to December 1, 2021?

Answer 15: The new Minnesota law on special education recovery services and supports does not specify what documentation, if any, school districts and charter schools are required to maintain regarding this invitation. In general, a school district or charter school is expected to “keep records to show its compliance with program requirements” and should consider documenting steps taken in consideration of the new law regarding special education recovery services and supports with sufficient detail to show compliance with the law.³⁴

In addition, school districts and charter schools must report to the commissioner, in the form and manner determined by the commissioner, the special education recovery services and supports provided to students with disabilities, including the cost of providing the services.³⁵

Question 16: If a student’s parents/guardians initially decline the invitation to meet to determine whether the student needs special education services and supports due to disruptions related to the COVID-19 pandemic, can the parents/guardians later change their mind and request a meeting?

Answer 16: School districts and charter schools must collaborate with families of students with disabilities to address the impact of disruptions to in-person instruction on students' access to FAPE related to the COVID-19 pandemic, and this may include meeting with a student’s parents/guardians if they initially declined but later accepted the school district or charter’s schools invitation to meet. In addition, a parent/guardian may request that the school district or charter school hold an IEP team meeting at any time, and the school district or charter school must ensure that the student’s IEP team reviews and revises the student’s IEP, as appropriate, to address any lack of expected progress toward the student’s IEP annual goals or in the general education curriculum, the results of a reevaluation, information about the student provided to or by the student’s parents/guardians, the student’s anticipated needs, or other matters.³⁶

Question 17: Are school districts required to invite parents of infants and toddlers with disabilities who are receiving early intervention services to IFSP team meetings to determine the impact of any disruption resulting from the COVID-19 pandemic on progress towards the outcomes identified in the IFSP?

³³ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 2(c).

³⁴ 34 C.F.R. § 76.731.

³⁵ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 2(a). For further information on school districts’ and charter schools’ reporting requirements see MDE’s [General Guidance for Special Education Recovery Services and Supports](#) (August 18, 2021).

³⁶ 34 C.F.R. § 300.324(b).

Answer 17: Yes. By December 1, 2021, school districts must invite families to meet and discuss the impact of the COVID-19 pandemic on the provision of FAPE to infants and toddlers.³⁷ For an infant or and toddler who is no longer identified as a child with disability and is no longer eligible for early intervention services or Part B services, there is no requirement to invite the child’s parents to a meeting. For more information, including a list of considerations for IFSP teams.³⁸

Question 18: Are school districts required to invite parents of nonpublic school students (i.e. homeschool or private school students) who are receiving special education services from the school district on a shared time basis to a meeting no later than December 1, 2021?

Answer 18: Yes. A school district providing special education services on a shared time basis to a student enrolled in a nonpublic school must invite the student’s parents/guardian to a meeting no later than December 1, 2021 and must offer the student services and supports in accordance with the considerations in the new law on special education recovery services and supports.³⁹

For questions related to this FAQ, please contact MDE’s Assistance and Compliance, Dispute Resolution Team, at mde.assistance-compliance@state.mn.us or by calling 651-582-8689.

For more guidance and information related to special education during the COVID-19 pandemic, please visit MDE’s webpage at [COVID-19 Updates \(mn.gov\)](https://www.mn.gov/COVID-19-Updates).

For questions related to special education funding, please contact MDE’s School Finance Division, Special Education Funding, at mde.spedfunding@state.mn.us.

For questions related to special education recovery services and supports for infants and toddlers, please contact Early Learning Services by emailing mde.ecse@state.mn.us or by calling 651-582-8412.

For questions related to online learning, please contact mde.onlinelearning@state.mn.us or by calling 651-582-8457.

For questions related to school districts’ and charter schools’ reporting requirements, please contact MDE’s Special Education Division at mde.special-ed@state.mn.us or by calling 651-582-8616.

³⁷ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 1.

³⁸ For more information on the application of special education recovery services and supports to infants and toddlers, please see [Guidance for Part C/Early Intervention and the Application of Special Education Recovery Services and Supports](#).

³⁹ Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, subd. 2(e).