



*Anyone can lead when the plan is working.
The best lead when the plan is falling apart.*

COVID-19 — SPECIAL EDUCATION Q&A —

Monday, August 3, 2020
1:30 – 2:30 pm CST



krihaboucek.com



[@krihabouceklaw](https://twitter.com/krihabouceklaw)

Oakbrook Terrace Office

2 Trans Am Plaza Dr., Suite 450
Oakbrook Terrace, IL 60181

Southern Illinois Office

3 Club Centre Court Suite D
Edwardsville, IL 62025

Contact us!

b



Cassie
Black

cassie@krihaboucek.com
Direct: (630) 332-0469
Cell: (312) 848-0432

k



Elizabeth
Kelly

elizabeth@krihaboucek.com
Direct: (618) 215-2659
Cell: (217) 825-7128

b



Sara
Boucek

sara@krihaboucek.com
Direct: (630) 394-3792
Cell: (217) 781-4877

k



Laura
Knittle

laura@krihaboucek.com
Direct: (630) 394-3783
Cell: (502) 599-7530

g



Kevin
Gordon

kevin@krihaboucek.com
Direct: (630) 394-3784
Cell: (708) 522-6712

k



Darcy
Kriha

darcy@krihaboucek.com
Direct: (630) 394-3782
Cell: (708) 921-3410

j



Shane
Jones

shane@krihaboucek.com
Direct: (618) 207-4820
Cell: (314) 303-3605

l



Mohammed
Lakhani

mohammed@krihaboucek.com
Direct: (630) 394-3785
Cell: (630) 362-8115

j



Stephanie
Jones

stephanie@krihaboucek.com
Direct: (630) 394-3786
Cell: (314) 503-1299

s



Rob
Swain

rob@krihaboucek.com
Direct: (630) 394-3788
Cell: (630) 864-0278

REMEMBER
WHY YOU
STARTED

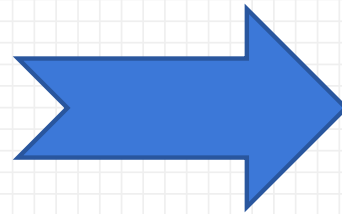


IEP / 504 Considerations



Timelines

- Evaluation timelines
- Reevaluation timelines
- Responding to referrals
- IEP meeting timelines
- Transition plans at 14½
- 10-day notice for IEP meetings
- Vision / Hearing screenings



ALL special
education
timelines
remain in full
force and
effect

To Amend or Not to Amend

Page 45 / [103-page guidance](#)

The basic guidelines and options/opportunities are based on the following core beliefs:

- IEPs remain in place and should direct students' remote learning. Be mindful that a student's program may require commencing a team meeting (in-person or virtually).

Review IEPs, 504 Plans, asthma action plans, or Individualized Health Plans to determine if these plans will need to be amended or modified. [page 16 / 63-page guidance](#)

Page 49 / [103-page guidance](#)

The IEP team must convene before any changes to students' IEP required assessments are made for the duration of the pandemic. It is important to note that districts have local control in

Districts must adhere to timelines for annual IEP meetings and required evaluations. There continues to be limited flexibility from complying with federal and state laws. All Individuals with Disabilities Education Act and Section 504 timelines remain in effect. IEP teams should meet to determine whether any amendments to students IEPs are necessary to address students' current levels of performance. [page 24 / 63-page guidance](#)

504 Plans, too?



Checklist

- Case Managers review each IEP / 504 Plan on caseload
- Case Managers must determine whether the IEP / 504 Plan will:
 - × Remain as written during remote/hybrid learning OR
 - × Require revisions during remote/hybrid learning
- Communicate verbally and in writing with parent/guardian
- RLP will constitute an amendment; parental consent is required
 - × Notify parent that the 'body' of last agreed IEP will remain as written
 - × When full-time in-person school resumes, IEP will go back into effect
- If no parental consent, convene IEP / 504 meeting
- Parent/guardian retains the right to file for due process



Prior Written Notice (PWN)

1. A description of the action proposed or refused by the school
2. An explanation of why the school proposes or refuses to take the action
3. A description of each evaluation procedure, assessment, record, or report the school used as a basis for their decision
4. A statement that the parents of a child with a disability have protection under the procedural safeguards and, how the parents can obtain a copy of them
5. Sources for parents to contact to obtain assistance in understanding these provisions
6. A description of other options that the IEP Team considered and the reasons why those options were accepted or rejected
7. A description of other factors relevant to the school's proposal or refusal

§300.503(b)



Robert Redfield, MD, Director Centers for Disease Control and Prevention Tuesday, July 14, 2020

But there has been another cost that we've seen, particularly in high schools. We're seeing, sadly, far greater suicides now than we are deaths from COVID. We're seeing far greater deaths from drug overdose that are above excess that we had as background than we are seeing the deaths from COVID. So this is why I keep coming back for the overall social being of individuals, is let's all work together and find out how we can find common ground to get these schools open in a way that people are comfortable and their safe. And if there is a need for investment and resources, just like there is a need for some of the underprivileged children that are probably better served if they have certain comorbidities to do homeschooling, they need the access to be able to have the computer and the internet to do that.

Child Find



Employment Considerations

Prioritizing In-Person Learning for Certain Students

We strongly encourage prioritizing in-person learning for students with Individualized Education Programs (IEPs), English Learners (ELs), and students under the age of 13. Depending on what is occurring in your community, districts may decide to take a blended learning approach,

- ISBE/IDPH encourage in-person learning for special education students
- Labor/management issue that must be discussed with union leadership



Leaves of Absence

- FFCRA Emergency Sick Leave
- FFCRA Expanded FMLA Leave
- Regular Sick Leave
- Regular FMLA Leave
- Collective Bargaining Agreement Leave



FFCRA – Emergency Sick Leave

<p>COVID-19 Emergency Sick Leave</p>	<ol style="list-style-type: none"> 1. The employee is subject to Federal, State, or local quarantine or isolation order related to COVID-19 (Quarantine Order); 2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19 (Self-Quarantine); 3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis; 4. The employee is caring for an individual who is subject to a Quarantine Order [(1), above] or Self-Quarantine [(2), above]; 5. The employee is caring for a son/daughter (under age 18) of such employee if the school or place of care of the son/daughter is closed, or a childcare provider of such son/daughter is unavailable due to COVID-19 precautions. [Note: A childcare provider is someone who receives compensation for providing childcare services on a regular basis (unless it is a family member or friend).] 6. The employee is experiencing any other substantially similar condition (to COVID-19) that is specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor. 	<p>Employees are eligible to use COVID-19 Emergency Sick Leave on their first day of work.</p>	<p>Full-time Employees – 80 hours.</p> <p>Part-Time Employees - # hours equal to two-week average worked</p> <p>(COVID-19 Emergency Sick Leave does not roll-over or replenish in new school year).</p>	<p><u>Sequencing with Regular Sick Leave:</u> The District may not require the employee to exhaust Regular Sick Leave before accessing COVID-19 Emergency Sick Leave.</p> <p><u>Paid:</u> Employees are paid at their regular salary/wage rate up to a maximum of \$511/day (and \$5,110 total) for leave taken for reasons (1), (2), or (3), above.</p> <p>Employees are paid at their regular salary/wage rate up to a maximum of \$200/day (and \$2,000 total) for leave taken for reasons (4), (5), and (6), above.</p> <p><u>Expiration:</u> Unless extended by Congress, COVID-19 Emergency Sick Leave expires at the end of the day on December 31, 2020. Unused days do not roll-over or convert to regular sick days.</p>
---	--	--	---	--



FFCRA – Expanded FMLA

<p>COVID-19 Expanded FMLA Leave</p>	<p>The employee is unable to work (<u>or telework</u>) due to a need for leave to care for a son/daughter (under 18 years) of such employee because the school or place of care has been closed, or the childcare provider of such son/daughter is unavailable due to a public health emergency (e.g., COVID-19).</p>	<p>Employed for 30 days.</p>	<p>An employee may use any unused regular FMLA leave up to 12 weeks in the FMLA Year.</p>	<p>Unpaid: First 2 weeks leave is unpaid (But, employee may substitute available accrued paid leave, including COVID-19 Emergency Sick Leave)</p> <p>Remaining leave (up to 10 weeks) is paid at 2/3 of the employee's regular rate of pay up to a maximum amount of \$200/day (and \$10,000 total).</p> <p><u>Expiration:</u> Unless extended by Congress, COVID-19 Expanded FMLA Leave expires at the end of the day on December 31, 2020. Unused days do not roll-over or convert to regular sick days.</p>
--	---	------------------------------	---	--



Regular Sick Leave

Regular Sick Leave	Regular Sick Leave (School Code/CBA Sick Leave) is available to an employee for his/her personal illness, quarantine, serious illness or death in the immediate family or household, or birth, adoption, or placement for adoption	Current employee	As accrued and unused by the teacher 30 days for birth, adoption, or placement for adoption.	Paid at the teacher's regular rate
---------------------------	---	-------------------------	---	---



Regular FMLA Leave

Regular FMLA	Employee is unable to work (1) due to the employee's own serious health condition (e.g. COVID-19), or (2) due to the need to care for a family member with a serious health condition.	Employed at least 12 mos. AND 1250 hours of service during 12 months immediately prior to commencement of leave.	12 Weeks per FMLA Year	Unpaid. But employee may elect to use accrued paid leave concurrently. Employer may require employee to run accrued paid leave concurrently.
---------------------	--	--	------------------------	--



Masks and Social Distancing



Some things at school will be different when I go back. I will wear a mask to stay healthy.

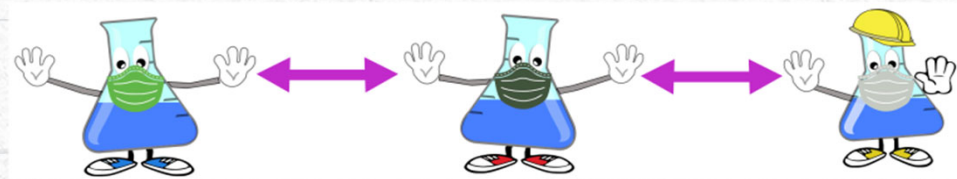
Masks

1. New social norm
2. Face shields / plexiglass options
3. Consider parental requests with or without notes supporting documentation (*i.e.*, note from physician)
4. Administration can make the decision because it is a health/safety issue
5. Communicate decision to parents in writing with rationale
6. Transfer to remote platform if health/safety is impacted

Social Distancing

1. Social distancing must be observed as much as possible
2. Use visuals with special education populations
3. Staggered scheduling
4. In-person for special education populations?

Social distance, please



Great Lawyers

Homebound Tutoring



SUBPART D: PLACEMENT

Section 226.300 Continuum of Alternative Placement Options

Each local school district shall, in conformance with the requirements of 34 CFR 300.39 and 300.115, ensure that a continuum of placements is available to meet the needs of children with disabilities for special education and related services. With respect to the home instruction and instruction in hospitals and institutions referenced in 34 CFR 300.39 and 300.115:

- a) The child receives services at home or in a hospital or other setting because he or she is unable to attend school elsewhere due to a medical condition.
- b) When an eligible student has a medical condition that will cause an absence for two or more consecutive weeks of school or ongoing intermittent absences, as defined in Section 14-13.01(a) of the School Code [105 ILCS 5/14-13.01(a)], the IEP Team for that child shall consider the need for home or hospital services. The provision of home or hospital services shall be based upon a written statement from a physician licensed to practice medicine in all its branches that specifies:
 - 1) the child's medical condition;
 - 2) the impact on the child's ability to participate in education (the child's physical and mental level of tolerance for receiving educational services); and
 - 3) the anticipated duration or nature of the child's absence from school.

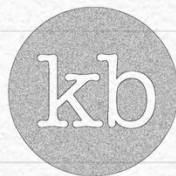
Determining Home/Hospital Instruction

- Consider the student's needs
- Determine amount of instruction or related services to meet the student's needs
- Consider how services will be provided
 - X Remote learning platform
 - X Live streaming
 - X In-person
- Revise the IEP



Catch All

Questions?



krihaboucek.com



@krihabouceklaw

