

April 2, 2020

## **Special Education Compliance COVID-19 Q&A**

The following list of questions and answers related to COVID-19 and school closures was assembled from a variety of resources, including guidance documents posted by other states and national organizations as well as questions received from Missouri educators serving special education students and staff. Please know, we are all testing these uncharted waters together. Our challenge is to think about the intent and purpose behind the procedural requirements for each step of the special education process, and then have teams reflect on how they can fulfill that same purpose and intent in an alternate way, in light of our current circumstances. We must do the best we can to stay true to the intent of IDEA.

### **Q1: Do local education agencies (LEAs) have flexibility regarding the provision of a Free and Appropriate Public Education (FAPE) to students receiving special education services in times of emergencies such as the COVID-19 pandemic?**

No. Neither state nor federal law provide flexibility to LEAs in times of emergency regarding their obligation to provide FAPE to students receiving special education services. If an LEA closes its schools and the function and delivery of educational services is disrupted and the LEA does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's Individualized Education Program (IEP).

In addition, the IEP team would be required to make an individualized determination as to whether compensatory services are needed to make up for any skills that may have been lost due to an extended school closure.

If schools are closed, but the LEA continues to provide educational opportunities to the general student population during the closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. The LEA must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP.

### **Q2: When a school is closed under a public health order and no hours of instruction are provided, but some learning opportunities such as packets are made available, must students with disabilities also have access?**

Yes. LEAs should ensure that students with disabilities have equal access to these opportunities to the greatest extent possible. The LEA, in collaboration with the parents, should discuss and document the specific accommodations, modifications, assistive technology, instruction, consultation, related services and/or supports each student will need during the school closure in a distance learning plan.

Documentation of these individualized determinations can be recorded by using the DESE sample model form, *The Continuity of Instruction and Individual Education Program (IEP) Implementation Plan*.

This form is available on [DESE's website](#) and can be used to document each student's plan for distance learning. The Council for Administrators of Special Education (CASE) also provided [this sample distance learning plan](#).

**Q3: While LEAs are required to implement IEPs and provide FAPE, what if the LEA cannot fully implement the IEP during the current COVID-19 pandemic response?**

The guidance, [Addressing the Risk of COVID-19 in Schools](#) (March 21, 2020), from the U.S. Department of Education Office for Civil Rights (OCR) and Office for Special Education and Rehabilitative Services (OSERS) indicated that "...there may be exceptional circumstances that could affect how a particular service is provided." There is not an expectation that IEP services would be delivered exactly as the IEP states. This is a national emergency, and districts should be communicating with families and making decisions based on student need and how those services can be provided while protecting the health, safety and wellbeing of students, families and LEA staff.

If an LEA cannot implement the IEP as written and provide services necessary for the provision of FAPE in either a face-to-face or virtual environment, the LEA should document carefully what services were not able to be provided to each individual student. This documentation must be detailed enough to enable the IEP team to later make determinations regarding what compensatory services need to be considered for individual students. LEAs should plan for effective communication with families regarding any services provided during the COVID-19 pandemic response. The *Continuity of Instruction and Individual Education Program (IEP) Implementation Plan* was designed to help LEAs document services provided during the pandemic. Find the form on the [DESE COVID-19 webpage](#) in the Special Education Information and Guidance section. The Council for Administrators of Special Education (CASE) also provided a [sample distance learning plan here](#).

**Q4: How do districts provide services to students with significant behavioral difficulties who require a 1:1 paraprofessional and/or a high level of behavioral support for the safety of themselves and others?**

Districts are encouraged to brainstorm to find creative ways to provide services to their students, including how to individualize these services based on the unique circumstances of each student. These services will look different based on safety needs, student need, parent engagement, staffing configurations, regional need and district systems. Additionally, there is not an expectation that IEP services would be delivered exactly as the IEP states, and providing support, such as a one-to-one paraprofessional, may not be needed at home or may not be feasible based on staffing configurations and health/safety risks. Districts should make decisions based on individual student needs and the focus should be on supporting students and their parents/caregivers in engaging in systems that promote safe behaviors in the home and community.

Schools and systems should leverage the behavioral expertise of their personnel to support interventions that meet the needs of their students and the new learning environment, and prioritize the immediate needs of their most impacted students. Behavioral support at home will likely look very different than behavioral support in schools, and parents/caregivers may need guidance on how to implement the needed interventions and support. Examples of behavioral supports that could be implemented in the home include parent/caregiver behavioral coaching, or coaching and support around interventions, such as "first, then choice boards," activity schedules, functional communication strategies, implementation of reinforcement contingencies, etc.

**Q5: While schools are closed for COVID-19, can they stop taking referrals for initial evaluations and reject any parent requests for initial evaluations that may take place during the time of closure?**

No. Child find obligations are not suspended during this time while schools are closed for COVID-19. When a district has reason to suspect a child is a child with a disability, they are mandated to evaluate the child under IDEA Child Find obligations. The only time the LEA can reject a parent or teacher request for a special education evaluation is if the LEA does not suspect the child is a child with a disability. School being closed for COVID-19 is not a reason to reject a special education referral. If a parent or LEA makes

a special education referral during the time period the school is closed for COVID-19, the LEA should take steps to proceed with the referral process, to include an initial evaluation if a disability is suspected.

**Q6: How do you proceed in the situation with a kindergarten child identified as Young Child with Developmental Delay (YCDD)? The student will be transitioning to first grade in the fall, so they need to determine eligibility for school age identification.**

A student identified as a YCDD transitioning from kindergarten to first grade must meet initial criteria in an eligibility category other than YCDD prior to entering first grade. While the student has to meet initial criteria, that does not always mean the team will need all new assessments. The team must conduct the Review of Existing Data (RED) meeting (by conferring or meeting through alternative means) to determine if the team has enough information to establish:

- Whether the child has a particular category of disability.
- The present levels of performance and educational needs of the student.
- Whether the child needs special education and related services.
- Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

If the team has enough information to do those four things without additional assessment, then the team can determine eligibility by utilizing the evaluation without additional assessment process. After eligibility has been determined, the team can proceed with developing an IEP through virtual technology or a teleconference. If the team does not have the information needed to make an eligibility decision and write an appropriate IEP, then steps should be taken to start an evaluation with assessment. The Missouri State Plan for Special Education, Regulation III allows that evaluation timelines may be extended for just cause. If a student is not available because the school is closed and there is no alternate method to provide the needed assessments, the timeline for conducting the evaluation may be extended. LEAs should maintain documentation as to why the timeline was extended and all good faith efforts made toward completing the necessary steps. LEAs should communicate with parents why the evaluation cannot be completed within the 60 days. LEAs should make good faith efforts to determine eligibility for all kindergarten YCDD students transitioning into first grade during the 2020-2021 school year. Keep in mind that evaluations can take place during the summer or prior to the beginning of the 2020-2021 school year if health and safety conditions allow. However, in the event LEAs are unable to determine eligibility prior to the student entering first grade, LEAs should expedite the evaluation process while continuing to provide services to the students until an eligibility determination can be made.

**Q 7: Is there any extension in the Part C to B transition timeline regarding the requirement to have the IEP in place by the child's third birthday?**

OSEP has not provided specific guidance about Part C to B transition timelines. Apply the general guidance regarding IEP timelines to the C to B transition when it comes to having the IEP in place by the third birthday. Here are a few possible outcomes:

- If review of existing data (RED) has been completed, which determined additional information is needed through assessment, and testing has already been started for a child who will turn three-years-old before the 2020-2021 school year, it might be possible to use the information already gathered from First Steps and the information already obtained from any assessments already completed to make an eligibility determination, at this time, through a virtual meeting or a phone conference. From that determination, an IEP could be written and a virtual meeting or phone conference could be held prior to the third birthday.
- If RED has been completed, which determined additional information is needed through assessment, but testing has not begun, there are some things to consider:
  - Revisit the information with the parent to determine if the First Steps information is sufficient to make an eligibility determination and develop an IEP.

- If there is not enough information from First Steps, determine whether you could gather enough additional information about the child virtually to make an eligibility determination and develop an IEP.
- If there is simply no way to complete the evaluation with information you already have or can get virtually, communicate with the parents and First Steps to let them know about the situation, document that conversation and meet ASAP to complete testing when normalcy resumes.
- If you have not yet completed a RED, do so by alternative means or through conferring. If possible, use the information from First Steps to determine eligibility and develop an IEP.

If a child transitioning from Part C to Part B does not have an IEP in place by the third birthday and should have, the IEP team will need to consider the need for compensatory services for the time between the third birthday and when the IEP does get developed.

Document all efforts, both successful and unsuccessful, to have meetings and complete evaluations. Be sure to include why meetings and evaluations were not able to be done if that occurs.

**Q8: Are districts required to complete reevaluations by their due date during the COVID-19 school closure?**

Neither the Federal Office of Special Education Programs (OSEP) nor DESE has the authority to waive or extend any requirements stipulated in IDEA. If a reevaluation is warranted, document the good faith efforts to complete it within the required timelines, according to IDEA regulations. Please consider, however, completing a reevaluation doesn't always mean conducting assessments and writing a report to document the decision about continued eligibility. If the team has enough information to confirm the student continues to be a child with a disability who needs special education services through an IEP and has enough information to write an appropriate IEP, then the parent and a representative of the school could agree to waive the triennial reevaluation. Any IEP team member can request a reevaluation at a later date if the team needs more information to decide continued eligibility or write an appropriate IEP.

Another option would be to either meet or confer to develop a RED. If, after gathering this data, the team has enough information to determine the four things listed in Q6 (above), then document that decision and review/revise the IEP if needed. If the team does not have the information needed to support continued eligibility and write an appropriate IEP, then steps should be taken to start a reevaluation with assessment. While there are existing allowable extensions to timelines for completing evaluations, keep in mind that there are no allowable extensions to the requirement to reevaluate students within three years of the most recent reevaluation or initial evaluation.

**Q9: How do we document that a student is not available for evaluation?**

There is no official form to document exceptions to the 60-day timeline. If the student is not made available for completing assessments that are part of the student's evaluation, the LEA should document all parent communication and parent responses regarding their attempts to assess the student. LEAs can use DESE's *Continuity of Instruction and IEP Implementation Plan* for documenting their attempts to complete the necessary assessments. The LEA should conduct the evaluation as quickly as possible once school resumes. The final evaluation report should also indicate the reason why the evaluation was not completed within the appropriate timelines.

**Q10: When a school is closed, may IEP team meetings be conducted virtually or through conference calls?**

Yes. In order to minimize contact with others, an IEP team meeting may be conducted through virtual technology or through a conference call. All required IEP team members should participate unless appropriately excused. Please keep in mind that procedural requirements regarding meeting notifications, the excusal process for required IEP team members and providing parents prior written notices, when

appropriate, still apply when conducting an IEP meeting through alternate methods. Various ways of fulfilling these requirements may be considered, including through email, regular mail, phone or other appropriate and accessible methods.

**Q11: What should schools do if they have IEPs which are due for review during the time schools are closed for COVID-19?**

Neither the Federal Office of Special Education Programs (OSEP) nor DESE has the authority to waive or extend any requirements stipulated in IDEA. Please explore all alternative methods for convening the IEP team and document the good faith efforts to do so within the appropriate timeline. The most appropriate action at this time, in light of these unique circumstances, is to convene the IEP team through virtual means (i.e. conference call or video chat). IEP teams should consider whether services currently in the IEP will meet the student's needs when students are allowed to return to school. If so, the IEP team may agree to leave all or most of the IEP intact and agree to meet again when school resumes to address the need for compensatory services and make any additional adjustments as determined necessary for the student to receive FAPE.

**Q12: As a result of schools being closed, do we need to consider this a change of placement for our students with disabilities and complete a prior written notice document?**

No. Use the *Continuity of Instruction and Individual Education Program (IEP) Implementation Plan* or some other form of distance learning plan to document the temporary changes to students' services and accommodations/modifications as well as the communication with parents and goal progress during this time. No prior written notice is required for this temporary change because a change in educational placement has occurred for all students displaced from schools due to COVID-19 closures.

**Q13: With the closures of schools across our state and nation, how will DESE calculate timelines for certain areas of compliance? For example, for in-state and out-of-state transfers where we have requested documents from the student's previous school, will timelines for completing the transfer be extended to exclude the time period when schools were closed and no one was available to fulfill our request for documents?**

Transfer questions are heavily context-dependent based on what information you have and whether it is enough to establish that the student is eligible for special education services through an IEP. Add to that complexity the current crisis, wherein Missouri schools are using a multitude of approaches to address provision of educational opportunities, ranging between providing no educational opportunities at all to going completely to a virtual instruction platform. So, please consider what you know about the student. If there is reason to suspect that the student has an educational disability and was either being served through an IEP or would be eligible for services through an IEP, then take steps to comply with the timelines for conducting an evaluation if you do not receive an evaluation from the sending district that can be accepted or rejected. If supported by information, provide comparable services when known. Focus on those services that will allow the student to access educational opportunities which are being provided to all students during these COVID-19 closures.

**Q14: Is the LEA required to provide related services when a school goes to a digital/virtual learning platform for all students?**

The LEA is responsible to implement the IEP, including related services, to the greatest extent possible during the COVID-19 closure if it is providing educational opportunities to the general student population. As with other services, providers should keep in mind the unique circumstances of the student and the family when planning for the provision of these services. DESE does note that it may not be feasible or safe for some institutions to provide some related services in a direct and hands-on manner. In many cases, related services such as speech and language therapy, occupational therapy, physical therapy, special education counseling and others may be adequately provided in a virtual environment. This will require planning by the therapist, in consultation with the families, to ensure these services can be provided in a way that is safe and effective.

It has been determined that the provision of special education and related services to small groups of students remotely through virtual means is not a violation of the Family Education Rights Privacy Act (FERPA), as long as the teacher or therapist does not provide personally identifiable information (PII) or release educational records during those sessions. A violation of FERPA occurs when PII or educational records are released without parent consent. Parents have the right to observe their child in classrooms without a FERPA violation occurring, as long as the teacher or therapist does not reveal any PII during the classroom period. If a teacher or therapist wants to record these sessions, it is suggested to contact the district legal counsel for guidance. American Speech-Language-Hearing Association (ASHA) has provided [additional information](#) on this question.

The LEA should consult the guidance released by the U.S. Department of Health and Human Services entitled [Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency](#), which permits flexibility to provide services in good faith.

If, after careful consideration of all of the child's circumstances and consultation with the family, it is determined that the provision of related services in any fashion is not possible, document that decision and the reasons behind it. When school resumes, schedule a meeting to determine the potential need for compensatory services.

**Q15: What is the guidance on IEP goal progress reporting during this time?**

As educational services are provided, districts should collect IEP goal progress data in whatever ways are feasible. This data should be used to inform IEP teams, including parents, about the need for compensatory services when the team meets after school operations resume. Notes about how often progress data is collected and when progress reports will be provided to parents should be included in the distance learning plan.

*Information about the COVID-19 pandemic is released continuously. Updated information will be posted on the [DESE COVID19 website](#). The department will continue to update this document to address new questions or when additional information is released.*