

Special Education Related FAQ

March 30, 2020

These questions were collected from superintendents and special education supervisors in preparation for a call with directors. The Tennessee Department of Education (TDOE) provided responses.

Q: If we hold IEP meetings virtually and parents are unable to electronically sign and return the signature pages, may we document for now that the parent participated by phone, internet, etc and agreed/disagreed? And then we will obtain their signatures once it is safe to do so? Right now, we do not want any papers snail-mailed due to the risk of spreading the coronavirus.

A: All decisions should be documented in a prior written notice and formal signatures obtained as soon as safe and possible to do so. Districts should work with their local board attorneys to ensure their processes for obtaining consent comply with state and federal law.

Q: Can additional guidance be provided for making individual determinations about a need for compensatory services once schools reopen? Would we follow our same basic guidelines for determining a need for ESY, or will this look different?

A: The individual determination for compensatory services due to the loss of skills will be made by the IEP team and will reflect similar decision making to that when determining the need for ESY. Utilize these questions for determining the need:

- How long was the student's school closed?
- Was the student provided instruction or services via an alternative method (such as online instruction, online speech therapy or other related services, or instruction provided telephonically) during the closure?
- Was the student able to consistently access the instruction and services?
- Were alternative methods of instruction and services (i.e., online instruction or online provision of related services, etc.) provided to the student as beneficial to the student as the methods normally used to serve the student?
- Is there documentation of the amount of instruction and services the student was provided during the closure (including dates, times, and duration)? What percentage of the student's IEP-required instruction and services did the student receive?
- Are there indications that the student regressed during the closure? Has the student lost any specific skills?
- Is there a possibility that the student will require extended school year services due to regression?

- Did the closure and/or illness create any new special education needs for the student (e.g. emotional, medical, academic) such that the student should be provided additional services or reevaluated?

According to the most recent OSEP guidance, “If a child does not receive services after an extended period of time, a school must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.” In addition, IEP teams should consider the need for compensatory services for any service hours missed (for instance, missed physical therapy hours that could not be provided virtually).

Q: Will the TDOE send out a guidance letter to parents in regards to initial and/or additional testing, where consents have already been signed, to address the need to wait until schools reopen to evaluate students, or should those be created at the district level? Also, when school reopens, will there be any need to obtain additional consents, or will the initial consents given be sufficient to work from when evaluating students?

A: Any communication to parents should be initiated at the district level. The department is working to develop additional tools, resources, and templates to support districts in their communication efforts. There is no need to obtain additional consents, as the timeline for the initial evaluation is being adjusted to reflect the period of school closures.

Q: How can we ensure FERPA and HIPAA compliance if providing distance learning, either individually or with simultaneous groups of students?

A: The U.S. Department of Education has a great deal of guidance regarding virtual learning and FERPA/HIPAA that we can post to our website and circulate after the call. The guidance provides a list of best practices and a checklist of considerations for your district to consider. Some of their top line things to consider is whether your district has policies and procedures for evaluating and approving online educational services prior to implementation and providing transparent information to parents about those policies and how their child’s privacy will be protected. Have your board attorney review any contracts with applicable vendors.

Q: Is the 4th paragraph on page 2 of the guidance suggesting that we convene IEP teams for all students with disabilities to discuss the type and amount of services to be provided during this time of closure?

A: If an LEA continues to provide educational services (to count towards any attendance requirements or to provide instructional time) to the general student population during a school closure, AND the type or amount of services listed in the IEP or 504 plan must change because they can only be provided face-to-face and not virtually, the IEP team should convene to discuss the type and amount of services to be provided.

Q: Per the flowchart "Are instructional activities being made available to all students?"--If a district is providing instructional activities that are not being counted for attendance and grades, will the provision of accommodations commensurate with those on the IEP meet the requirement of accessibility to students with disabilities?

A: The LEA should review the student's IEP to determine any accommodations or modifications needed to ensure access to the instructional activities, given the mode in which the activities are being delivered. Some students may be able to access the activity with accommodations while others may need additional modifications to ensure equitable access to the content.

Q: Please provide clarification on this portion of the TDOE guidance below. If we provide IEP services virtually but we have to reduce the amount of the service, do we need to hold IEP addendums? For example, a student who receives a full 6.5 hours/per day of services on their IEP is not going to be able to receive that same amount virtually. *"If the only change to a student with a disability's educational services is that they will be provided virtually rather than in person (but the type and amount of services otherwise remain unchanged), an IEP team meeting is not required, and no changes need to be made to the IEP. If, however, the type or amount of services listed in the IEP or 504 plan must change because they cannot be provided face-to-face and not virtually, the IEP team should convene to discuss the type and amount of services to be provided. The team must document any services missed and assess the need for compensatory education. Please see attached flowchart for additional information regarding service delivery during times of school closure."*

A: If the student will not be able to receive the services outlined in their IEP due to virtual limitations, this should be discussed by the IEP team to ensure parents are informed of the deviation from what is documented in the IEP. Since the IEP was previously determined to be appropriate, there is no need for it to be changed. Rather than changing it, the team should document any services missed and assess the need for compensatory education. Alternatively, some districts are choosing to create an addendum to the IEP that reflects the services that will be provided during the period of virtual instruction or school closure. Here again, the team must document any services that could not be provided and assess the need for compensatory education.

Q: Are LEAs held to having an IEP in place by a child's 3rd birthday?

A: Yes, LEAs should make every attempt to meet virtually with families to develop an IEP prior to a child's 3rd birthday. If the family is unable or unwilling to meet virtually, the LEA should document its attempts and meet as soon as possible.

Q: My staff want to do teletherapy/virtual education but I cannot discern through any released guidance if doing so in groups would violate FERPA and confidentiality regs. Can they still do groups or does their teletherapy/virtual education need to be 1:1?

A: If staff normally conduct group sessions in person, they may continue to do so virtually. Group sessions are not prohibited, but similar to in person grouping, educators should make every attempt to partner students who are targeting similar goals and who would benefit from the content of the lesson, as well as the mode of delivery.

Q: How can we ensure FERPA and HIPAA compliance if providing distance learning, either individually or with simultaneous groups of students?

A: The U.S. Department of Education has a great deal of guidance regarding virtual learning and FERPA/HIPAA that we can post to our website and circulate after the call. The guidance provides a list of best practices and a checklist of considerations for your district to consider. Some of their top line things to consider is whether your district has policies and procedures for evaluating and approving online

educational services prior to implementation and providing transparent information to parents about those policies and how their child's privacy will be protected. Have your board attorney review any contracts with applicable vendors.

Q: TEIS student turns 3 in a few months and needs further assessments for eligibility. How do we assess if school is closed?

A: If an evaluation of a student with a disability requires a face-to-face assessment or observation, the evaluation would need to be delayed until school reopens. Evaluations and re-evaluations that do not require face-to-face assessments or observations may take place while schools are closed, so long as a student's parent or legal guardian consents. These same principles apply to similar activities conducted by appropriate personnel for a student with a disability who has a plan developed under Section 504, or who is being evaluated under Section 504.

Q: Students served under developmental delay and will turn 10. How do we complete further assessments?

A: If an evaluation of a student with a disability requires a face-to-face assessment or observation, the evaluation would need to be delayed until school reopens. Evaluations and re-evaluations that do not require face-to-face assessments or observations may take place while schools are closed, so long as a student's parent or legal guardian consents. These same principles apply to similar activities conducted by appropriate personnel for a student with a disability who has a plan developed under Section 504, or who is being evaluated under Section 504.

Q: How do we enter Commissioner Waived days in the EasyIEP calendar?

A: The district calendar in EasyIEP must match the calendar in EIS. EasyIEP Administrators must first confirm with EIS Administrators/attendance staff to ensure that the number of missed instructional days aligns in the two systems.

In terms of how to mark calendars in EasyIEP, "Snow Day" is the day type used in EasyIEP for ANY type of missed instructional day. Districts have the option of noting the reason for the "Snow Day"—this is additional text to provide context for districts as to why they missed the instructional day and is not standardized.

Q: TEIS has contacted teachers wanting to continue referral/transition meetings--I can find no guidance on this? Are these transition from TEIS to IDEA required while schools are closed?

A: To the extent such meetings can be held virtually, LEAs should strive to hold such meetings.

Q: DCS workers are contacting school LEAs requesting IEPs be changed (while schools are out) to give a student 1:1 aide due to behaviors--Could the IEP team not wait until Normal School conditions return and meetings are held to determine what, if any compensatory services are needed

A: The decision to amend an IEP during periods of school closure are an IEP team decision.