

School Closures and Special Education: Guidance on Services to Students with Disabilities

UPDATED: March 25, 2020

Recent school closures due to the Middle Tennessee tornados and the COVID-19 pandemic have raised questions regarding the provision of special education and related services for students with disabilities. Such events can create serious challenges for local education agencies (LEAs). While we know that LEAs will continue to serve students to the best of their abilities during emergency situations, this guidance includes information from the United States Department of Education (USDOE), and provides clarification regarding an LEA's obligations under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973. In addition, the Tennessee Department of Education (TDOE) recognizes that during these times, there may be challenges to meeting deadlines associated with special education. Guidance on each of these timelines is included below and the department encourages districts to be in touch with the Special Populations Division for any support or technical assistance that might be needed.

Special Education Service Delivery

The department recognizes that there are many options available to districts as they seek to provide instructional opportunities for students during school closures. These options range from closing schools completely, providing homework packets, providing continuous learning opportunities, to e-learning/distance learning. There are several things to consider when serving students with disabilities within each of these options as outlined below:

Continuum of School Closure Options and Considerations for Special Education



Description	School is completely closed No services provided to any student	School is closed but learning activities are being provided for students Learning activities are primarily parent/guardian supported	School is closed but learning is continuing with teachers and service providers actively checking in with students	Brick and mortar school is closed Learning is continuing through a continued series of structured activities which are teacher directed, student implemented, and assessed for progress	Brick and mortar schools are open
Focus of your efforts	Planning for when schools move to the next level on the continuum	Is the work being provided accessible to all students? How are you documenting what is being provided to all of your students?	Is the work being provided accessible to all students? Is it focused on IEP goals? What reasonable efforts are you making to engage students?	Is the learning goal focused and uniquely tailored? Is the learning accessible in the new learning environment? Are we providing as high quality services to students as possible?	Brick and mortar schools are open What's appropriate? Endrew F. Standard
FAPE considerations	If no students are receiving services, then there is no obligation to provide FAPE to students with disabilities	What's appropriate in light of the <i>current</i> circumstances? Compare learning of students with disabilities to other students (i.e. is any student getting appropriate instruction?) (See attached flowchart)			What's appropriate? Endrew F. Standard

If an LEA elects to close one or more of its schools and does not provide any educational services to the general student population, it is not required to provide services to students with disabilities during that same period of time. However, 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) or 504 plan. If a child does not receive services during a closure, a child's IEP team or 504 team 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.

Alternatively, 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, the school or district must ensure that students with disabilities also have equal access to the educational services and receive a Free and Appropriate Public Education (FAPE). LEAs 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 or 504 plan.

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 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. 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.

Virtual Instruction for Students with Disabilities

On March 21, 2020, USDOE released additional [guidance](#) regarding serving students with disabilities in the face of the COVID-19 pandemic. The guidance states that while many schools are choosing to move to virtual instruction, some educators have been reluctant to provide any distance instruction because they believe that federal disability law presents insurmountable barriers to remote education. USDOE states that this is simply not true. Schools should not opt to close or decline to provide distance instruction, at the expense of students, to address matters pertaining to services for students with disabilities. Rather, school systems must make local decisions that take into consideration the health, safety, and well-being of all their students and staff. To be clear: ensuring compliance with IDEA, Section 504, and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance instruction. TDOE is prepared to help school districts provide distance learning in a manner that is accessible to all students. For more information, refer to this [toolkit for supporting special populations during school closure](#) on TDOE's website.

Initial Evaluation Timelines

The IDEA provides that initial evaluations must be conducted within 60 calendar days of receiving parental consent *or within a state established timeframe*. Due to the current states of emergency at the federal and state levels, evaluations initiated or in process on or after March 3, 2020 may be completed within 90 calendar days of receipt of parental consent, rather than the usual 60-day requirement. This

timeline will be revisited (and extended) as needed. This will allow for districts experiencing school closures to extend timelines commensurate with the general durations of closures.

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.

Re-evaluations

The IDEA does not provide an evaluation timeline for re-evaluations other than the 3-year re-evaluation timeline. For re-evaluations due during a school closing, teams should complete the re-evaluation as soon as possible upon return. For re-evaluations due while students are attending a virtual instructional setting, cases should be treated on an individual basis; however, every attempt should be made to complete the re-evaluation to the extent possible, given reasonable access to the student.

Districts and schools are strongly encouraged to document decisions related to these re-evaluation timelines and maintain that decision-making rationale in the student's file.

Initial IEPs

Pursuant to 34 CFR §300.323(c), a meeting to develop an IEP for a child must be conducted within 30 days of a determination that the child needs special education and related services. As soon as possible following the development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP. "As soon as possible" recognizes that there may be some isolated circumstances where, because of damage caused by the storm, power outages, closure due to pandemic, etc., an LEA may need to delay the start of special education and related services to a particular child.

Districts and schools are strongly encouraged to document decisions related to these IEP timelines and maintain that decision-making rationale in the student's file.

Annual IEP Reviews

The IDEA requires that the child's IEP be reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revise the IEP, as appropriate. **LEAs should make every attempt to conduct annual IEP team meetings that are due during periods of school closure.** There is some flexibility in this provision. For example, in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the LEA may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. In addition, when conducting IEP Team meetings and placement meetings, the parent of a child with a disability and an LEA may agree to use alternative means of meeting participation requirements, such as video conferences and conference calls.

IEP team meeting timelines may be extended only if:

- The LEA has reasonably determined the use of virtual technology is not a suitable method of conducting the required meeting; or

- Information necessary for the IEP team’s deliberation is not attainable due to recommendations of the state or local health departments that limit access to important student records.

These decisions must include the child’s parent or guardian and meaningfully work towards ensuring that each child receives an IEP review commensurate with the intent of the law, and in the best interest of the child.

Districts and schools are strongly encouraged to document decisions related to annual reviews and maintain the decision-making rationale in the student’s file.

Compensatory Education and Services

In the case that districts or schools are closed, but virtual or home-based work is assigned that does not count towards attendance or instructional time (due to the approved waiver of instructional days), IEP services are not required since services aren’t being provided to any student. IEP teams will, however, determine the need for compensatory services for individual loss of skills during the period of school closure.

Compensatory services are services that should be provided to a student that are needed to elevate him or her to the position he or she would have otherwise occupied had the services not been delayed or postponed. This can include making up missed hours of occupational therapy, hours of individual academic intervention, etc.

It should also be noted that each child should be evaluated and supported based on the unique needs of that child. In some cases, a delay in services can be more challenging to “make-up” and may require more hours than what was originally scheduled in order to bring the child back to the position he or she would have otherwise been in had the services not stopped. The reverse could also be true, though it is not recommended that fewer hours be provided to any children.

Decisions related to compensatory education and services should be clearly documented in terms of the hours or services that were missed, and the decision on what services are necessary to bring the child to the same position he or she would have otherwise been in, had services not stopped. Districts and schools are strongly encouraged to document decisions and maintain that decision-making rationale in the student’s file.

Additional Guidance and Support for Closures

In some cases, based on the needs of the student, a lack of services may create additional challenges to the student, especially if the child is out of the structures of a regular school day. Conversations and guidance for families to best address and support the needs of their children as it relates to accommodations are encouraged. Districts and schools should consider the comprehensive needs of the student and proactively dialogue with families about ways to support students during any school closures. Scheduling a phone conference or sending home some guidance may help families and the school to ensure consistent coverage for students.

Additional guidance related to the provision of special education and related services during school closings or virtual settings can be found on the Q&A document recently issued by the USDOE:

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>.



A supplemental fact sheet issued by the Office of Special Education Programs (OSEP) on March 21, 2020 can also be found here:

https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term

For further assistance, please contact Assistant Commissioner, Special Populations Theresa Nicholls at Theresa.Nicholls@tn.gov.

Special Education Service Provision during COVID-19 School Closures

Are instructional activities being made available to all students?

No

IEP services are not required, as instruction is not being provided to any student.

Then

IEP teams will determine need for compensatory services for individual loss of skills during period of school closure.

Yes

Are instructional activities required and being counted for attendance and grades?

No

IEP services are not required; however optional instructional materials must be accessible to students with disabilities.

Yes

IEP services are required to the greatest extent possible. Instructional materials provided to students with disabilities must be accessible.

Services provided and services missed must be documented.

Then

IEP teams will determine need for compensatory services for individual loss of skills during period of school closure AND for any services unable to be provided.

