

Services to Students with Disabilities COVID-19 Guidance

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.

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 services are not provided in accordance with the IEP team or 504 plan, the assigned team must assess the need for compensatory education and services (outlined below).

Alternatively, if an LEA continues to provide educational opportunities 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 same opportunities, including the provision of 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.

The Tennessee Department of Education 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.

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 requirements. This will allow for districts experiencing school closures to make reasonable accommodations commensurate with the general durations of closures.

If your LEA is unaffected by the states of emergency, it is expected that evaluations will continue to be completed within the 60-calendar day timeline.

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.

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 re-evaluation timelines and maintain that decision-making rationale in the student's file.

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. 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 public agency 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 a public agency may agree to use alternative means of meeting participation requirements, such as video conferences and conference calls.

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 these re-evaluation timelines and maintain that 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 (to count towards any attendance requirements or to provide instructional time), students with IEPs who do not receive services may be eligible for compensatory services. 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 related to these re-evaluation timelines 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>.

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