

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 ability during emergency situations, this guidance includes information from the United States Department of Education (USDOE), providing clarification regarding LEAs' obligations under the Individuals Education Act and Section 504 of the Rehabilitation Act of 1973.

If an LEA closes 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. 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 team must assess the need for compensatory services.

Alternatively, if an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of 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.

Initial evaluation timelines: The IDEA provides that initial evaluations must be conducted with 60 calendar days of receiving parental consent *or within a state established timeframe*. Due to the current states of emergency, 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. 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.

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 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, etc., an LEA may need to delay the start of special education and related services to a particular child.

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.

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>.

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