

## Special Education Study Council Frequently Asked Questions May 1, 2020

**Q: We are contacting parents regularly and providing resources for students with disabilities. However, we have not begun providing direct services to students. If we continue just providing support versus direct service, do we amend the IEP? This is especially true of the related services. If we do amend the IEP, what do we put for service times and start date?**

A: Teams should consider the supports needed to ensure that students with disabilities have access to the same opportunities as those that are provided to the general population. Supports might include accommodations, modifications, direct, or related services. Templates to document these efforts and necessary supports can be found in the special populations toolkit [here](#). It is not necessary to amend the IEP in this situation.

**Q: Is providing services virtually the only method that counts as direct service? Can #1 be considered direct service?**

A: Although IDEA does not provide a specific definition, direct services are generally defined as specialized instruction that is provided **directly to** the student, as opposed to indirect services which are done **on behalf of** the student. Direct services include specially designed instruction and/or supplementary instruction delivered by a **special education teacher or paraprofessional** through individual and/or small group instruction. Consultation with others and the provision of materials for others to use with a student are indirect services.

Related services are developmental, corrective, and other supportive services required to assist a student with a disability to benefit from special education. These services can be provided either directly or indirectly. LEAs should provide direct related services through platforms such as teletherapy to the extent it is feasible and applicable. LEAs should document any attempts to provide these services as well as any services that are not able to be provided in a virtual format. The extent to which services were provided must be considered when assessing the need for compensatory and/or remedial services.

**Q: Some parents are requesting that we wait until school resumes to hold annual IEP/eligibility meetings. Is this ok as long as it is documented that we reached out to parent and offered to meet?**

A: 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:**

1. The LEA has reasonably determined the use of virtual technology is not a suitable method of conducting the required meeting; or
2. 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.

**Q: Can an individual school decide to hold all meetings upon return as long as they have contacted parents and discussed and parents agree?**

A: See response above. Postponing meetings may result in expired IEPs, as well as a backlog and an unnecessary delay to IEP decisions and the provision of necessary special education services.

**Q: How do we actually complete each section of the IEP to address virtual instruction? Can you provide a sample of what is expected?**

A: 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.

**Q: If we are not requiring learning for ALL students, how are we responsible for providing SPED services? Isn't this the same as when we are on breaks and summer? If general education peers are not being provided educational services, how are sped students entitled to more than their peers?**

A: If an LEA closes its schools (no attendance, no grades), but provides optional enrichment activities to the general student population, it must ensure that students with disabilities also have equal access to the same educational opportunities, including the provision of FAPE. The LEA should review the student's IEP to determine any accommodations or modifications needed to ensure access to the 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 supports or modifications to the material to ensure equitable access to the content. During this time, districts are not required to provide any direct special education services that require face-to-face interaction with students. IEP teams must convene to discuss which of a student's direct services are able to be provided virtually and whether such services must be provided in order to ensure FAPE. Keep in mind that how a district will provide FAPE will look different during this unprecedented period of national and state emergency. While ensuring the health and safety of students and educators is a priority, it may not be feasible during the current period of school closures to provide, for example, hands-on physical therapy, occupational therapy, or tactile sign language services. However, many specialized instructional opportunities and related services may be modified to be effectively provided by sending resources and supports to students directly, online or telephonically. Any services delivered during the school closure will not only support student learning, assist in the maintenance of skills, but may also reduce the number of compensatory hours owed. If an LEA closes its schools, and does not provide any educational services to the general student population, the LEA is not required to FAPE to students with disabilities during that same period of time. Remember that any services provided to SWDs during periods of school closure will mitigate the effects of regression and possible need for additional services to recoup lost skills once school resumes.

**Q: How do we address assuring that students and staff have access to all necessary tools? (Internet, knowledge of technology)**

A: Technology grants have been made available to support the use of technology, including technology with universal design principles, assistive technology devices, and technology for telehealth services, to maximize accessibility to the general education curriculum for children with disabilities.

**Q: If we will be held responsible for providing compensatory services, funding to do so is a concern. When would these services be offered? How will they impact LRE if we are "doubling" the amount of sped services a student receives when we return to school?**

A: In addition to the CARES Act funding, the department will issue a grant opportunity in which districts can apply for up to \$20,000 to support innovative approaches to providing remediation for students with disabilities as a result of COVID-19 school closures, including staffing needs. The department will also increase the total amount of funding awarded through the IDEA funding formula for the 2020-21 school year. The department is also working closely with OSEP to understand the possible flexibilities associated with state and local determinations.

**Q: Will we be held harmless regarding APR indicators impacted by this closure?**

A: The department is working closely with OSEP to understand the possible flexibilities associated with state and local determinations.

**Q: Can additional options be added as acceptable reasons for timeline extensions? Can more guidance be provided on what was passed by State Board? If a district was out of school for 30 days, does that mean those 45 days didn't count in the timeline or does the district have an additional 45 days when school resumes?**

A: According to the emergency state board rule, the 60 calendar day timeline for initial evaluations may be extended by the duration of an order, declaration, or recommendation to stay at home, self-quarantine, or implement social distancing that results in school closure. The timeline is restarted when that order, declaration, or recommendation is lifted. The order, declaration, or recommendation may be related to the recent tornados and/or COVID-19 outbreak. The duration of the timeline extension may vary from one school district to the next. As a result, one school district's extension may be longer than another's. The Department of Education has issued detailed [guidance](#) on how to calculate the length of a school district's allowable extension based on the duration of the order, declaration, or recommendation a school district chooses to follow.

**Q: What do districts do with discretionary grant funds that have not yet been spent?**

A: Individual questions related to current discretionary grant funds should be sent to Allison Davey at [Allison.Davey@tn.gov](mailto:Allison.Davey@tn.gov).

**Q: Will there be any direct ongoing means of communication between TDOE and SPED directors?**

A: Each Monday, email blasts from the Office of Whole Child are sent to stakeholders, including special education directors, with updated guidance and resources. Attendance at upcoming virtual study council meetings are also being scheduled for May.

**Q: Considering all kids are regressing with closure, are we expected to use a different formula for SWDs? If so, what?**

A: Once normal district operations resume, IEP teams will need to examine the regression, or loss of skills, for individual students and determine whether this regression necessitates additional services for the recoupment of these skills. Additional guidance will be provided to assist IEP teams in this decision making process.

**Q: When school resumes and we work to get physical signatures from parents, do we have them sign the date the IEP documents were generated and agreed upon virtually? OR the date that the document was generated (first day school resumes) and we are able to secure a physical signature? I have concerns about back dating and would like to know the expectation: do we have them sign the date they physically can sign (the day school resumes) or backdate to when they virtually agreed?**

**And/or option: Do we have a case manager add a statement above or under the signature that states, you agreed to the IEP on \_\_\_ date, (the day we had a virtual IEP meeting) and then have them sign and date the day they receive the documentation when school resumes? That means they are signing that they agreed virtually but not back dating, just accepting the statement as well as signing physically at that time?**

A: Signatures can be obtained electronically, following guidelines consistent with IDEA and FERPA, or by mail. If a parent provides verbal consent and/or agreement during a virtual IEP meeting, the verbal consent and/or agreement of the parent should be documented in the PWN and meeting minutes. If signatures are obtained at a later date, the date the parent signed the physical document should be used; backdating is not necessary. Because each district's circumstances are unique, LEAs should contact their local board attorney for specific legal advice. As a reminder, an IEP must be implemented as soon as possible after completion. However, if agreement was not reached, no change in the child's IEP or eligibility status will be made for fourteen (14) days, in order to afford a parent time to request a due process hearing.