



Special Education in Virtual Schools: Guidance and FAQs

April 2023

Table of Contents

Introduction.....	3
Overview.....	3
Enrollment.....	4
Attendance.....	4
Child Find Responsibilities.....	4
FAPE.....	5
Instructional Materials and Technology.....	5
Funding.....	6
Frequently Asked Questions.....	6
Enrollment.....	6
Child Find.....	8
Transportation.....	9
Instruction.....	10
Provision of Services.....	11
Definitions.....	12

Introduction

This document provides guidance regarding the provision of special education and related services within a virtual school. Local Education Agencies (LEA) seeking additional information regarding special education should refer to resources found on the Tennessee Department of Education's [special education website](#).¹

Overview

With the proliferation of virtual schools in Tennessee, it is important LEAs ensure their virtual schools comply with the requirements of the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act (Title II), and the Rules of the State Board of Education. Federal and state regulations related to students with disabilities apply to students attending virtual schools to the same extent that they apply to students attending traditional brick-and-mortar schools. See U.S. Dep't of Educ., "[Dear Colleague Letter](#)," (Aug. 5, 2016). Virtual schools must provide all special education and/or special education related services listed on a student's individualized education program (IEP). The LEA must ensure the provision of free appropriate public education (FAPE) to children with disabilities attending virtual schools.

LEAs should review and ensure their adopted policies and/or procedures regarding children with disabilities are non-discriminatory and are consistent with state rules, policies, and procedures.

LEAs should closely review policies and/or procedures to ensure the virtual school:

1. employs or contracts with personnel that have the knowledge, skills, and training to serve students with disabilities;
2. provides required special education and related services to all enrolled students with an IEP;
3. implements child find activities to identify, locate, and evaluate all children with disabilities, or children who are suspected of having a disability, within its jurisdictional boundaries and within its enrolled student population;
4. reports data related to enrolled students with disabilities via EasyIEP, the LEA's SIS, and if applicable, other required student information systems in a timely manner;
5. safeguards personally identifiable information (PII) and records of all students pursuant to The Family Educational Rights and Privacy Act (FERPA);²
6. includes enrolled students with disabilities in all general state and LEA assessments, with appropriate accommodations where necessary as indicated in their IEPs;
7. establishes and defines dispute resolution procedures to implement IDEA procedural safeguards; and

¹ <https://www.tn.gov/education/families/student-support/special-education.html>

² 20 U.S.C. § 1232g; 34 C.F.R. Part 99

- continuously monitors to identify and correct noncompliance with requirements of Part B of the IDEA, including the implementation of IDEA in virtual schools.

Enrollment

The LEA and virtual school must ensure that its virtual school enrollment policies and admission procedures do not discriminate against students with disabilities. Imposing attendance requirements or criteria for enrollment, such as the ability to work independently, can be discriminatory and impermissible. Excluding a student who is working toward an alternate academic diploma, occupational diploma, or special education diploma would also violate federal and state law. LEAs may not use selective enrollment criteria (such as GPA, attendance records, discipline records, etc.) for any students who reside within the LEA's zone of residency (See T.C.A. § 49-16-211). LEAs may establish selective enrollment policies for students who live outside the LEA's zone of residency, provided that these policies are non-discriminatory and uniformly applied to all students residing outside the LEA's zone of residency (See SBE Rule 0520-01-02-.17(4)).

Attendance

The LEA must ensure that all students are offered, at a minimum, the equivalent of one hundred eighty (180) days of instruction per academic year and six and one-half (6½) hours of instructional time per day.³ This does not preclude a student from demonstrating mastery or completion of a course or subject area at the student's own pace and receiving credit for the course or subject area.⁴

If a student's IEP dictates that the one hundred eighty (180) days of instruction should be amended or instructional time per day should be changed from the six and one-half (6½) hour requirement, the IEP should take precedence to ensure the student receives FAPE.

Child Find Responsibilities

LEAs must have Child Find policies and procedures in place to ensure children with disabilities who attend virtual schools are identified, located, and evaluated.⁵ The LEA's policies must be consistent with the state's rules and policies on Child Find. Because the operation of a virtual school typically limits a teacher's interaction and in-person contact with a student, it may be more challenging to identify children who should be evaluated. LEAs should determine alternative ways of meeting these responsibilities, such as conducting screenings and requiring that questionnaires be completed by teachers, staff, and parents. Reliance on referrals by parents should not be the primary vehicle for meeting IDEA's Child Find requirements. For children who have IEPs prior to their enrollment in virtual schools, LEAs should ensure that reevaluations are conducted a minimum

³ T.C.A. § 49-16-205(2) (citing T.C.A. § 49-6-3004); SBE Rule 0520-01-03-.05(1)(b)(4).

⁴ *Id.*

⁵ 34 C.F.R. §300.111(a); 34 C.F.R. § 300.201; SBE Rule 0520-01-09-.05(1).

of every three years.⁶ The United States Department of Education (USDOE) has released a [Return to School Roadmap](#) that addresses Child Find frequently asked questions.⁷

FAPE

The LEA that authorizes a virtual school is responsible for making FAPE available to a child with a disability.⁸ The LEA retains this responsibility even if the LEA enters into a contract with a third party to manage the virtual school and/or provide educational services to children with disabilities. A virtual school must provide students with disabilities an equal opportunity to participate in or benefit from virtual schooling, and must ensure that its virtual curriculum, instructional materials, and programming is as accessible to students with disabilities as it is for students without disabilities.⁹ Based on the student's unique needs, an IEP team may make an individualized determination that virtual schooling does not meet FAPE and is not an appropriate educational placement.

Other LEA responsibilities to ensure FAPE include:

- implementing the IDEA's [evaluation and eligibility requirements](#),¹⁰
- carrying out the IDEA's IEP requirements, including those governing IEP content, IEP team participants, parent participation, IEP effective dates, consideration of special factors, the development, review and revision of IEPs, secondary transition services and participation in state and LEA assessments;¹¹ and
- providing education in the least restrictive environment (LRE), including ensuring the availability of a continuum of alternative placements to provide special education and related services.¹²

Instructional Materials and Technology

It is the responsibility of the LEA that authorizes a public virtual school to ensure that the school provides all enrolled students access to a sequential curriculum that meets or exceeds the academic standards adopted by the State Board of Education by utilizing state-approved textbooks and instructional materials unless a waiver has been granted to the LEA in accordance with T.C.A. § 49-6-2206 and Chapter 0520-01-18 of the State Board of Education Rules. Virtual schools must also ensure enrolled students have access to necessary technology such as a computer, printer, and internet connection used for school work for each family with an enrolled student.¹³ Digital resources must be accessible, such as providing students with closed captioning of

⁶ See 34 C.F.R. § 300.303.

⁷ https://sites.ed.gov/idea/idea-files/rts-qa-child-find-part-b-08-24-2021/#citem_e90c-3d33

⁸ See 34 C.F.R. § 300.101.

⁹ <https://sites.ed.gov/idea/topic-areas/#Accessibility-Instructional-Materials>

¹⁰ See 34 C.F.R. §§ 300.301 through -.311.

¹¹ See 34 C.F.R. §§ 300.320 through -.327.

¹² See 34 C.F.R. §§ 300.114 through -.118.

¹³ T.C.A. § 49-16-206; SBE Rule 0520-01-03-.05(1)(b)(10). At a minimum, the school must ensure access through a physical computer lab that is available to the student through regularly scheduled times. T.C.A. § 49-16-206(2).

audio and video resources and supporting text-to-speech functionality for course materials or web content, as determined by the student's IEP. [Examples of accommodations and modifications using technology](#) can be found on the Tennessee Department of Education's website.¹⁴

Funding

LEAs must provide resources to a virtual school in the same manner as they provide resources to a brick-and-mortar school.¹⁵ LEAs receive funding to meet the needs of eligible students from several sources including the Basic Education Program (BEP), federal IDEA Part B funds, and high-cost reimbursements. BEP funds are generated at the LEA level and are used to provide services for all eligible students in the LEA, regardless of where the student is enrolled. IDEA funds are provided on a reimbursement basis for services provided. LEAs should submit a request to the department at the end of each year if they choose to request reimbursement for qualifying services provided to students at any public school within the LEA, including virtual schools.

Frequently Asked Questions

Enrollment

(1) Can an LEA choose to limit or exclude students with disabilities from enrollment in its virtual school or virtual education program?

No. LEAs may not deny admission to a student with a disability solely because the student needs special education or related services.¹⁶ The LEA may not discriminate against students with a disability through its recruitment policies and may not place different enrollment or eligibility requirements upon a student with a disability than students without a disability.

Moreover, IDEA requirements and regulations apply to virtual schools in the same manner as they apply to brick-and-mortar schools.¹⁷ Students with disabilities must have the same variety of educational programs available to them as non-disabled students.¹⁸ Therefore, virtual schools must provide students with disabilities the same opportunities to participate in virtual schooling as non-disabled students.

¹⁴<https://www.tn.gov/education/student-support/special-education/special-education-tools-resources.html>

¹⁵ [T.C.A. § 49-16-204](#)

¹⁶ See SBE Rule 0520-01-03-.05(1)(b)(7); Office for Civil Rights, *Quillayute Valley (WA) School District No. 402*, Case No. 10-06-1196, [108 LRP 17959](#) (Nov. 16, 2007).

¹⁷ U.S. Dep't of Educ., "[Dear Colleague Letter](#)," (Aug. 5, 2016).

¹⁸ See 34 C.F.R. § 300.110

(2) Can an LEA deny admission of a student with a disability to its virtual school when the LEA believes it does not have the ability to modify curriculum or instruction in the manner described in a student’s IEP?

No. A virtual school has the same legal obligation as a brick-and-mortar school to comply with all provisions in federal and state law regarding students with disabilities. An LEA must serve students with a disability that live within the LEA’s zone of residency regardless of the nature or severity of the student’s handicap.¹⁹

If the service cannot be provided virtually, then the LEA must plan to provide the service(s) in accordance with the student’s IEP. Some examples include making the service available onsite within the virtual school’s LEA or partnering with an agency closer to the student’s residence to provide the service(s) in-person (e.g., in the student’s home, drop-in services at a school, at a community center, etc.). In rare situations, the IEP team may need to convene to consider LRE settings that offer in-person learning. More information on instructional practices to support students who may require modified instruction can be found on the department’s [low incidence webpage](#).

(3) Can a virtual school require a student with a disability to transfer back to a brick-and-mortar school when the student is not meeting the virtual school’s attendance, behavior, and/or effort requirements?

If the student is not meeting attendance, behavior, and/or effort requirements due to the student’s disability, the student’s IEP team should convene an IEP meeting to determine whether the student can receive FAPE in the virtual setting. If the IEP team determines that the student cannot receive FAPE in the virtual setting, the IEP team should make a placement offer to the student in which the student can receive FAPE. The student’s parents can either accept the placement offer, challenge the IEP team’s determination that FAPE cannot be provided in the virtual setting through dispute resolution, or reject the placement offer and decline FAPE. Within ten (10) days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child’s IEP Team (as determined by the parent and the LEA) must review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents.²⁰

¹⁹ See 34 C.F.R. § 104.33(a)

²⁰ See 34 C.F.R. § 300.530(e)

If the student's inability to meet attendance, behavior, and/or effort requirements is **not** caused by the student's disability and the IEP is followed with fidelity, the same criterion for removal from the virtual school or virtual education program that applies to non-special education students can be applied to students with a disability. This criterion should be set forth in a clear written policy that is uniformly applied and complies with applicable laws, including IDEA.

(4) Can an LEA ask the student to provide a copy of his/her IEP during enrollment in a virtual school?

Yes. To ensure a seamless transition of services and that the student has all necessary provisions as identified within the IEP, an LEA can ask the student to provide a copy of his/her IEP as a part of the enrollment process. The LEA cannot deny the student enrollment solely on the basis that the student or parent refuses to provide a copy of the IEP.

(5) Can an LEA ask the parent to disclose the student's disability status during enrollment in a virtual school?

Yes. An LEA can, and should, ask the parent to disclose the student's disability status during the enrollment process. This will help the school provide FAPE in the most expedient manner for the student.

Child Find

(6) What should an LEA do if the parent/student is unwilling or unable to meet at a school building for an evaluation?

The LEA must make reasonable efforts²¹ to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.²² If the evaluation does not require face-to-face assessment and the parent consents to both the initial evaluation and remote evaluation, the LEA may use alternative means of meeting participation, such as video conferences and conference calls.²³ If the evaluation requires face-to-face interaction with the student the LEA may conduct the evaluation in the student's home; however, the LEA is not required to do so. If the parent/guardian cannot or will not bring the student into a brick-and-mortar building, the LEA may request a timeline extension to extend the evaluation past the sixty (60) day timeline.²⁴ If the parent/guardian still refuses to bring the student into a brick-and-mortar location for evaluation, the LEA may refuse to initiate the

²¹ See 34 C.F.R. § 300.322(d)

²² 34 C.F.R. § 300.300(a)(1)(iii)

²³ 34 C.F.R. § 300.328

²⁴ 34 C.F.R. § 300.301(d)(1)

evaluation and must provide the parent/guardian with a prior written notice stating that the LEA refuses to initiate the evaluation process.²⁵

(7) Must virtual schools provide multi-tiered systems of support utilizing RTI² to help identify students who are struggling academically?

Yes. All schools, including virtual schools, must implement the RTI² framework to provide multi-tiered intervention for struggling students.²⁶ Data obtained from the RTI² framework is also a component of the evaluation process to identify students with a specific learning disability.²⁷ If a student fails to respond to intensive interventions and is suspected of having a specific learning disability, then the student should be referred for an initial evaluation for special education and related services.²⁸

Transportation

(8) Must an LEA provide transportation for virtual students when the virtual school or IEP requires the student to attend in-person?

Yes. If the student's IEP includes transportation as a requirement, the LEA that authorizes the virtual school is responsible to provide transportation to locations in which the student will receive special education services, support services, and/or instructional services as defined in the student's IEP. In instances that a virtual school provides mass transportation for students enrolled within the virtual school (e.g., field trips, extracurricular activities sponsored by the school, required school events, etc.), the virtual school must also provide transportation for students with a disability.²⁹

(9) Must an LEA provide transportation for an enrolled virtual student with disabilities that resides outside the LEA's zone of residency?

If the student's IEP includes transportation as a requirement, the LEA that authorizes the virtual school is responsible to provide transportation to locations in which the student will receive special education services, support services, and/or instructional services as defined in the student's IEP. In instances that a virtual school provides mass transportation for students enrolled within the virtual school (i.e., field trips, extracurricular activities sponsored by the

²⁵ SBE Rule 0520-01-09-.15(4)(b)

²⁶ SBE Rule 0520-01-03-.03(7)

²⁷ See 34 C.F.R. § 300.307(a)(2); State Board of Education, "[Standards for Special Education Evaluation & Eligibility, Specific Learning Disability.](#)"

²⁸ SBE Rule 0520-01-09-.05(1)

²⁹ 34 CFR §300.34(a) and (c)(16)

school, required school events, etc.), the virtual school must also provide transportation for students with a disability.³⁰ This expense may be eligible for high-cost reimbursement.

Instruction

(10) What model of virtual instruction can a virtual school use to meet FAPE?

A virtual school may use any model of virtual instruction to meet FAPE provided that the student with a disability has access to all accommodations and modifications required by the student's IEP.³¹ LEAs must ensure that students have appropriate access to special education teachers and service providers, as established by their IEP, to ensure that the student receives FAPE.

(11) Can an IEP require face-to-face instruction for a student in a virtual school?

Yes. If the IEP team determines that the student needs face-to-face instruction to receive FAPE, a student may be required to attend a portion of their school day in-person within a brick-and-mortar school, or other setting agreed upon by the IEP team and parents. The virtual school is required to provide transportation for the student to attend in-person learning. However, if a majority of a student's instruction is in-person, the student must enroll in a brick-and-mortar school and may pursue participation in a virtual education program.

(12) Can a virtual school exclude a student with a disability from synchronous instruction due to an inability to provide required IEP accommodations during the synchronous time?

No. Virtual schools and virtual teachers must provide the same learning opportunities in a synchronous setting for students with disabilities as they do for students without disabilities. Additionally, virtual schools and virtual teachers must provide FAPE in accordance with the student's IEP. Teachers cannot exclude a student from a class or meeting due to an inability to meet IEP accommodations. In addition to the student's scheduled synchronous learning, teachers can request that a student with a disability meet for additional time apart from the scheduled synchronous meeting if the teacher believes that the additional time will benefit the student. The IEP team may need to consider additional or different assistive technology to support the student during synchronous learning. More information on instructional practices to support students who may require modified instruction can be found on the department's

³⁰ *Id.*

³¹ 71 Fed. Reg. 46,665 (2006) ("There is nothing in the [IDEA] that requires an IEP to include specific instructional methodologies.")

[low incidence webpage](#).³² [Examples of accommodations and modifications using technology](#) can be found on the Tennessee Department of Education's website.³³

(13) What educational environment (service location) should the IEP indicate for virtual courses?

A *general education setting* is a virtual and/or in-person environment for both students with and without disabilities in which a teacher provides virtual and/or in-person instruction to students regardless of disability status.³⁴ Virtual co-teach classes in which students with disability receive services from both a special education teacher and a general education teacher are held within the *general education setting*.

A *special education setting* is a virtual and/or in-person learning environment specifically for students with disabilities or potential disabilities. If a student requires services delivered face-to-face at a brick-and-mortar school or agreed upon site, the setting should be noted as a *special education setting*.

Provision of Services

(14) What should a virtual school do if a particular special education related service cannot be provided virtually?

The LEA and virtual school must make every reasonable effort to provide special education related services and accommodations virtually. If the service cannot be provided virtually, then the LEA must make arrangements to provide the service(s) in accordance with the student's IEP. Some examples include making the service(s) available onsite within the virtual school's LEA or partnering with an agency closer to the student's residence to provide the service(s) in-person (e.g., in the student's home, drop-in services at a school, at a community center, etc.). In rare situations, the IEP team may need to convene to consider LRE settings that offer in-person learning. Based on the student's unique needs, an IEP team may make an individualized determination that virtual schooling does not meet FAPE and is not an appropriate educational placement.

³² <https://www.tn.gov/education/families/student-support/special-education/low-incidence-.html>

³³ <https://www.tn.gov/education/families/student-support/special-education/special-education-tools-resources.html>

³⁴ Bull, B., Thacker, C., Crain, D., and O'Hara, N. (2016, December). Online Learning and IDEA Educational Environments (Ages 6-21): Determining Educational Environments for Students With Disabilities (Version 1.0). IDEA Data Center. Rockville, MD: Westat.

(15) Can an LEA require a virtual student with disabilities to come onsite for all special education services?

No. Every reasonable effort should be made to provide special education services and accommodations virtually. Only those services that are not reasonably capable of being provided virtually should require onsite participation. If a majority of a student’s instruction is in-person, the student must enroll in a brick-and-mortar school and may pursue participation in a virtual education program.

(16) What should a virtual school do if a student is not making appropriate academic progress or meeting IEP goals?

When a student is not making appropriate progress, the IEP team should meet and discuss what changes can be made to the services and supports to address the lack of progress.³⁵ The IEP team can make changes to an IEP by convening an IEP team meeting (virtually, if needed) or by the parent and school agreeing to amend the IEP without a meeting in accordance with 34 C.F.R. § 300.324.

Definitions

- **Asynchronous instruction:** instruction provided by a Tennessee educator to students who participate in instruction at a separate time from when the teacher delivers the instruction. This may include, but is not limited to, methods such as printed work materials, teacher-assigned individual or group projects, audio- or video-recorded lessons, online course modules, etc.
- **Child Find:** the process of locating, identifying, and evaluating children with disabilities to ensure that they receive services to which they are entitled. *See* 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111.
- **Child with a disability:** a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, intellectually gifted, functional delay, or specific learning disabilities; and who, by reason thereof, needs special education and related services. *See* 20 U.S.C. § 1401(3); 34 C.F.R. § 300.8; SBE Rule 0520-01-09-.03.
- **FAPE:** a free appropriate public education. *See* 20 U.S.C. § 1401(9); *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017) (defining an appropriate education as one “reasonably

³⁵ 34 C.F.R. 300.324(b)(1)(ii)(A)

calculated to enable a child to make progress appropriate in light of the child's circumstances.”)

- **IDEA:** the Individuals with Disabilities Education Act, which is codified at 20 U.S.C. § 1400 *et. seq.* Part B, addresses the provision of FAPE in the LRE for children with disabilities for school-aged children.
- **IEP:** individualized education program that is specifically designed to address the educational needs of a child with a disability. The IDEA defines IEPs and lists the requirements for IEPs at 20 U.S.C. § 1414(d)(1)(A).
- **LEA:** Local Educational Agency, which is sometimes referred to as a school district.
- **LRE:** the least restrictive environment, which refers to the principle that a child with a disability must be educated within the same classroom as typical mainstreamed non-disabled peers to the fullest extent possible to ensure that the disabled child is receiving FAPE. The requirement to educate a student with a disability in the student's LRE is codified at 20 U.S.C. § 1412(a)(5) and 34 C.F.R. §§ 300.114 through .117.
- **Section 504:** Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of a disability, and is codified at 29 U.S.C. § 794.
- **Synchronous instruction:** instruction provided by a Tennessee educator to a student or students at the same time but not necessarily in the same place. This may include, but is not limited to, in-person, telephonic, Internet-based, or other appropriate methods of real-time instruction. Examples of synchronous instruction are a class happening via platforms such as WebEx or Zoom, over the telephone, or in person.
- **Title II:** Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination against individuals with disabilities in all programs, activities, and services of public entities, and is codified at 42 U.S.C. §§ 12131 through 12165.
- **Virtual school:** a public school in which the school uses technology in order to deliver a significant portion of instruction to its students via the internet in a virtual or remote setting. See T.C.A. § 49-16-203(2); SBE Rule 0520-01-03-.05(1)(a).
- **Zone of residency:** the geographic area that a school or LEA is responsible for serving.