

COVID-19 and Special Education

FAQ Recommendations

Question: Do districts have to provide FAPE during COVID-19?

Answer: School districts **must** continue to provide a free and appropriate public education (FAPE) consistent with the need to protect the health and safety of students, and those individuals providing education, specialized instruction, and related services for students. The current exceptional circumstances may affect how special education and related services are provided. School districts may not be able to provide all services in the same manner that they are typically provided. Federal disability law allows for flexibility in determining how to meet the individualized needs of students receiving special education services.

Question: How does the IEP team show due diligence in the delivery of special education service?

Answer: Due diligence is a level of judgement, care, prudence, determination, and activity that a person would reasonably be expected to do under particular circumstances¹. The IEP team can show due diligence by defining what direct instruction looks like during school closure and emphasizing to parents the importance of students participating in distance learning sessions. There needs to be regular and clear communication with families and care givers so the student can access learning opportunities. Additionally, the team should inquire about learning conditions in the home in order to optimize learning and mitigate frustration for students and parents. Teams should consider the present levels of academic achievement and functional performance and what that tells the IEP Team about how the student learns best. Consider the context/conditions (home) where the student is expected to learn. Be aware that the conditions affecting service delivery and the students' needs may differ with new learning conditions and through distance learning.

Question: How does the IEP team show due diligence in parent engagement?

Answer: Meaningful discussions with parents/care givers and gathering observational data from home can be important opportunities to demonstrate due diligence. Anticipate what domains may be impacted by reviewing prior data related to executive function, one to one supports, history with technology, and the ability to engage in learning activities. Teams can also demonstrate due diligence by showing families that the present levels of academic achievement and functional performance have been taken into consideration in designing distance learning. Parents may need support on how to implement positive behavioral support plans to support students in distance learning and plans may need to be reworked as applicable.

Question: How do I communicate with parents about educational expectations?

Answer: Acknowledge in your communications to all parents that your school district has a distance learning plan that provides equitable access and special education and related services to the greatest extent possible during school closure.

¹ <https://definitions.uslegal.com/d/due-diligence/>

Develop a protocol to communicate proactively with parents and care givers regarding their child's IEP services during school closure taking into consideration the parents' preferred method of communication and preferred language. This should be approached through general communication and on an individual basis where each parent has planned check-ins with school personnel.

As soon as possible, notify parents and care givers of students receiving special education services of your individualized plan for that student to access continued educational opportunities. Include the input of parents or guardians and the student, as appropriate, when discussing the plan.

Discuss with parents the conditions that exist at home for distance learning, the supports that may be available and schedules when learning would best take place. In many ways, parents are now on the front line daily supporting their child's learning. Having clear and regular communication may optimize learning and the benefits of related services during this time.

Question: Why is communication with parents so important?

Answer: Engaging parents in communication and providing feedback ensures that parents and students have a voice in the process. Communication should be ongoing throughout the implementation of distance learning so that the educators delivering and/or overseeing the services can make adjustments when appropriate. School district personnel are encouraged to document communication and student progress through the period of school closure.

Question: Do we have to revise the IEP during the COVID-19 time frame to reflect remote learning?

Answer: The US Department of Education has indicated that if all students are receiving continued educational opportunities, and therefore the general education population has moved to distance learning, school districts are **not** required to revise an IEP because all students are receiving an alternate mode of instructional delivery of the general education curriculum. This would obviate the need to conduct IEP meetings related to the instructional delivery method in those cases and would not constitute a change in placement. This also allows school staff to focus on the provision of supports and services, rather than engaging in numerous IEP meetings.

Question: What if a parent, district or school personnel wish to have an IEP team meeting?

Answer: The parties may agree to conduct the meeting via an alternate means of meeting participation, such as video conference or conference call. In determining if an IEP meeting is necessary please consider the following:

- The purpose of the IEP meeting. Given that there is no requirement to revise IEPs to include distance continued educational opportunities; is having an IEP meeting necessary? Will holding an IEP meeting affect the continued educational opportunities being provided to the student?
- Will we be able to meet the IEP membership requirements; will each IEP member be available and able to meaningfully participate in the meeting?
- Confidentiality and privacy concerns; if the meeting is being held telephonically or virtually, will each team member have access to a private space? Is the virtual format being used secure?

Question: What if there is a need to change the IEP during school closures. Must the team meet?

Answer: The parent and the school district may agree not to convene an IEP meeting for the purpose of making changes to an IEP and simply amend the IEP. Communication between school personnel and parents is critical and documentation of these conversations and decisions is strongly advised. However, if the changes to an IEP are substantial and would traditionally require a full IEP team meeting, schools should plan to accomplish this through virtual means.

Question: Do schools have to facilitate annual IEP meetings during the COVID -19?

Answer: There are **no** statutory or regulatory provisions that allow extensions of time to conduct these meetings. School officials are encouraged to use virtual means when agreed to by the parent to conduct annual IEP reviews. If annual review dates are not met, school district officials are encouraged to document efforts to meet the annual review timelines and hold the annual review as soon as possible once school resumes. If the effective date of a student's IEP lapses during the school closure, the student's IEP will remain in effect until a new IEP is developed.

Question: What about initial evaluations during COVID-19?

Answer: To date, the US Department of Education has **not** waived any of the timeline requirements in the Regulations. Good faith and reasonable efforts should be made to meet the timelines required by law and regulations. Teams must consider what is in the best interest of the child and ensure that parents are actively engaged in the decisions.

If evaluation teams have gathered enough evidence (response to Intervention data, formal evaluations, etc.) prior to the closing of schools due to the COVID-19 crisis to make a determination of eligibility, efforts should be made to proceed with evaluation meetings and determinations. If the team has not concluded the necessary information gathering and this cannot be completed through distance methods, the team should meet and make determinations to meet the timeline requirements. There are legitimate excusals for not completing an evaluation and determination including having access to a child in order to complete the evaluation. Communication with parents is crucial and documentation of efforts to meet the initial evaluation timeline is strongly advised.

Question: What about team meetings for reevaluations?

Answer: Reevaluations are a decision of an IEP team and, as such, the IEP team must be involved with the decision to proceed or delay reevaluation due to school closures. Communication with parents is crucial and documentation of efforts is strongly advised.

Early Childhood Special Education (ECSE)

Question: Are districts still required to have children transitioning from EI in service by their 3rd birthday and to report results to RIDE?

Answer: Yes, the federal requirement that children transitioning from Part C (Early Intervention) to Part B have an IEP implemented by their third birthday has not been waived. Districts should make a good faith effort to comply with the requirements during the 6-month transition period and if eligible, to develop an IEP which is implemented by each child's third birthday. All districts will be required to enter EI transition information into the annual preschool performance report.

Question: How should districts evaluate children transitioning from Early Intervention?

Answer: During this COVID-19 national emergency, teams should discuss the options for evaluation with each individual family. There are a variety of possibilities for assessment and review of the available body of evidence. Districts might consider a combination of the following:

- Review of Early Intervention (EI) Assessment Information
 - Formal evaluations including norm-referenced or criterion-referenced assessments;
 - Current progress monitoring data;
 - Functional skills and behaviors available through the Child Outcomes Summary (COS) process
 - Other developmental information, including videos of the child, if available.
- Review of Assessment Information Provided by the Family
- Virtual Evaluation/Assessment
 - Interviews with caregivers;
 - Virtual observation of a play session or other family routine;
 - Guiding parents in simple activities that can then be reviewed together;
 - Direct assessments that are able to be conducted in a virtual or interview format.

When determining methods of conducting evaluations it is important to consider the effectiveness of gathering information in a virtual format, factoring in family preference, as well as advantages and disadvantages of moving forward virtually. A family may choose not to participate in an alternative evaluation or assessment, which will result in the child's evaluation being postponed until the evaluation can be conducted in person. As a general principle, during this unprecedented national emergency, districts are encouraged to work with parents to reach mutually agreeable extensions of time, as appropriate and to document such agreements.

Question: Are districts still required to complete the Child Outcomes Summary (COS) process and to report results to RIDE?

Answer: Yes, OSEP has not granted any exceptions to the required COS entry or exit data. The three components of the COS entries can be completed with families through the process of virtual Evaluation Team and IEP meetings. The three components of the COS exits can also take place with families during virtual meetings. Children that enter preschool special education after December 13, 2019 will not require a COS exit. All districts will be required to enter the COS ratings into the annual preschool performance report.