

Frequently Asked Questions

Special Populations School Reopening¹

The following are some of the frequently asked questions for addressing the needs of special populations when re-opening schools during the COVID-19 pandemic.

FREE APPROPRIATE PUBLIC EDUCATION

1. *Is providing services virtually the only method that counts as direct service? Can contacting parents and providing resources be considered direct service?*

Although the Individuals with Disabilities Education Act 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 those supportive services required to assist a student with a disability to benefit from special education. These services can be provided either directly or indirectly. Districts can provide direct related services through platforms such as teletherapy to the extent it is feasible and applicable.

2. *Are changes to the Individualized Education Program (IEP) required if the parent chooses a virtual model?*

If the IEP services will be delivered as written with just a change in modality (i.e., virtual versus in-person), then changes to the IEP are not required. The change in modality can be documented on a contingency or distance learning plan. However, if changes to the goals, current services, or the service frequency, length, or duration are needed for a virtual setting, the IEP team must convene to discuss those changes. For example, if the student has a goal targeting social skills or participation with peers during lunch, PE or recess, and those activities are not occurring, the team will need to determine the best way to address those needed social skills and peer interactions. Districts should clearly indicate decisions in a Prior Written Notice.

3. *What if a student cannot access distance learning due to his/her disability?*

If a district moves to distance learning, there should be procedures in place to check-in with parents to discuss the ways in which services will be provided remotely and convene an IEP team meeting to update the IEP as needed. **The district is still charged with providing FAPE;** therefore, they should consider the distance learning needs of the student and what is appropriate considering the current

¹ The information provided in this and related documents does not, and is not intended to, constitute legal advice. This is intended to be a guidance document to support local districts and all information included is for reference only. Because local school board policy and unique facts make dramatic differences in analyzing any situation, the Tennessee Department of Education advises each school district to consult with the local school board attorney for specific legal advice regarding the impact of the COVID-19 pandemic on school operations. Additionally, the Tennessee Department of Education encourages districts to consult their local health departments to ensure that the health and safety of all students and staff are prioritized while working to provide a high-quality education to all students. It is likely that evolving circumstances will necessitate changes to this document and local plans. While this guide is not comprehensive to all needs nor static in nature, it is intended to capture the most important components necessary for school planning as of the date of release.

circumstances. For most students, switching from in-person to virtual services will not constitute a change in placement since the only thing that is being changed is the modality, rather than an IEP team's decision regarding LRE.

For some students, however, the IEP team might determine that the student is unable to access instruction via distance learning due to the nature of the disability. In that case, the team must meet to decide how it will provide the student with FAPE. The team should consider whether a change in placement is warranted and should review the full continuum of alternative placements (such as instruction in the home) required by IDEA. IEP teams might also consider bringing small groups into the school for face-to-face instruction, with careful attention made to safety precautions. Whether services should be provided in person is a local decision based on the health and safety of staff and students in consultation with their local health departments, as well as the individual student's need for face-to-face services. Districts are encouraged to consult with their local board attorney when these situations arise.

4. *Are districts obligated to send personnel into homes if the service cannot be delivered virtually?*

This is a local decision based on the health and safety of students and staff and the student's needs related to instructional access. Districts should have a local decision-making model determining when home visits or homebound instruction are considered safe and should consult with their local board attorney. Students *may* receive services in a location other than the home setting. For example, districts may consider developing a safe space in a school building with health and safety procedures in place for the provision of services.

5. *Should we provide compensatory services for all students with disabilities to make up missed services from the early dismissal of school in the 2019-20 school year?*

Districts must have a plan to address learning loss for ALL students, including remediation and intervention options. IEP teams will also need to consider whether students were denied access to the opportunities made available to all students during periods of school closure and if compensatory services are needed. See the Special Education Services section of the [reopening toolkit](#) for more information.

6. *When the district has contracted with a third-party vendor for virtual instruction, is the vendor now responsible for the provision of FAPE?*

No. An LEA may contract with a vendor for the provision of special education and/or related services, but this does not absolve the LEA of its obligations under IDEA, including the LEA's obligation to provide FAPE. LEAs must provide sufficient oversight of vendors and ensure that services listed in a student's IEP are being provided by appropriately licensed personnel and in accordance with the student's IEP.

7. *What is the district's obligation for services when a student transitions to homeschool due to COVID-19?*

If a parent elects to homeschool (which is considered a parentally placed private school), then they are forfeiting the student's individual entitlement to special education services. The only services that will be provided are the services that the district, in consultation with the private schools within its jurisdiction, has determined that it would provide via a services plan. If a student needs a service that was not designated to be provided, then a services plan is not available. There is no obligation to provide the specific services that are on the student's IEP.

If a service plan is not needed, the student should be listed as inactive (known to be continuing). If a student re-enrolls in public school, the student's most recent IEP should be followed until an appropriate IEP can be developed. If the eligibility has expired, then the team will need to conduct a reevaluation. Refer to the federal letter ([here](#)) that relates to this topic for further guidance.

8. If a service plan is written, what responsibilities do LEAs have for technology devices (e.g., Chromebooks, assistive technology devices, augmentative alternative communication systems)?

Service plans describe the specific services an LEA will provide to parentally placed private school students, which includes homeschool in Tennessee. While there is no individual entitlement to special education services, the LEA *may* place equipment and supplies in a private school, but only for the period of time needed to meet the equitable participation requirements.

9. Can related service providers (SLPs, OTs, PTs) who are licensed with a Tennessee Health Board continue to provide virtual related services after the Governor's order expired on August 29?

Yes. The legislature passed a bill on August 12, 2020 expanding the definition of a healthcare provider (including SLPs, OTs, PTs, and audiologists), which allows those professionals under Title 63 licensed by a Tennessee Health Board to provide telehealth services through April 1, 2022. Providers licensed by the health board must continue to follow their professional and ethical codes and respective licensing boards' practice acts regarding telehealth restrictions or requirements (e.g., group therapy, live tele-sessions, etc.). Providers who are licensed through the TDOE are permitted to provide educational services in a virtual mode since it is an extension of the school services.

10. Will the "two years work experience" requirement be waived for students pursuing an occupational diploma?

No. "Work" is purposely not defined in the policy to allow for individualization based on location, student needs, or other factors. Work experience can be paid or unpaid, daily or a few hours a week, on-campus or off-campus as appropriate. While many work environments are currently closed due to COVID, students can engage in meaningful work experiences such as computer drafting, landscape design, pet care, culinary skills, learning to effectively use common software, child care, or other skills readily practiced at home or, if possible, in the school.

11. Must special education services be provided when the school district requires a student to quarantine due to contact tracing?

Unless schools are closed and not providing instruction, school districts must continue to provide FAPE, even in a remote setting. While the IDEA does not specifically address any situation in which students are required to quarantine or in which schools are closed due to exceptional circumstances, such as COVID-19, on March 21, 2020, the U.S. Department of Education (USDOE) issued a guidance regarding special education in light of COVID-19. The guidance included the following:

"School districts must provide a free and appropriate public education (FAPE) consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students. In this unique and ever-changing environment, OCR and OSERS recognize that these exceptional circumstances may affect how all educational and related services and supports are provided, and the Department will offer flexibility where possible. However, school districts must remember that the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or

telephonically.”^[1]

Nothing in state or federal special education law releases an LEA of its obligation to provide FAPE simply because a student is quarantined but otherwise able to participate in their schooling remotely.

PROCEDURAL CONSIDERATIONS

12. *How do we get signatures when meetings are held virtually?*

Signatures can be obtained electronically, following guidelines consistent with IDEA and the Family Educational Rights and Privacy Act, or by mail. As a reminder, once parents are provided written notice of any changes or updates to an IEP, the IEP may be implemented as proposed unless the parent requests mediation or due process within 14 days. The verbal agreement of the parent can be documented in the Prior Written Notice. If signatures are obtained at a later date, the date the parent signed the physical document should be used; backdating is not appropriate.

13. *What is the difference between a contingency plan and a distance learning plan?*

A contingency plan is a document developed to outline **what services** that will be provided to a student during cyclical or intermittent movement between physical and virtual education. This plan, which is **developed by the IEP team** and referenced in the IEP, becomes part of the IEP and is implemented when the specified conditions outlined arise. A distance learning plan is a document developed to outline **how the current services** on the IEP will be delivered through a virtual environment. This plan does not change the frequency, length, or duration of any of the services; it is a **communication tool** to ensure that parents are aware of how the educational opportunities and services will be delivered, which may look different in a virtual setting than in-person. As districts continue to develop and improve virtual learning systems and opportunities, the distance learning plan may be modified.

14. *Must the IEP team convene to create a distance learning plan for virtual instruction if the current services will be delivered, just in a different modality?*

If the IEP services will be delivered as written with just a change in modality (i.e., virtual versus in-person), then changes to the IEP are not required. The change in modality can be documented on a distance learning plan. The purpose of a distance learning plan is to communicate how educational opportunities and services will be delivered to your student during the COVID-19 emergency. This communication tool captures how special education services could look different during this period of public health emergency. **This is not an IEP amendment.** As districts continue to develop and improve virtual learning systems and opportunities, the learning plan may be modified.

15. *How should districts document when parents decline specific services due to COVID versus parents declining special education services overall?*

The student's IEP team, which includes parents, should meet virtually or in person to discuss options for service delivery. Districts should explain implications of declining special education services on goal attainment and the provision of FAPE. If parents decline specific services via the IEP team process, the district should clearly indicate this decision in the Prior Written Notice.

If parents decline special education services overall, they must do so in writing. The LEA should advise

^[1] March 21, 2020 - Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities. Found at <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

the parent if they revoke consent for special education and related services, the student is determined to be ineligible due to parent/guardian declining services. This student will not receive special education or related services, and subsequent requests for special education services will be treated as an initial evaluation. Districts should clearly indicate this decision in the Prior Written Notice.

16. Can we send a district-wide letter to notify parents of the change in service delivery and provide the opportunity to request an IEP team meeting?

A change to the frequency, length, or duration of any of the services would require a change to the IEP (i.e., an IEP addendum/amendment). IDEA allows parents and districts to agree not to convene an IEP team meeting for the purpose of making changes to the annual IEP as indicated in CFR § 300.324 (a)(4). The parent and district may develop a written document to amend or modify the child's IEP.

17. Are districts required to use the templates that are provided in the reopening toolkit?

The templates in the reopening toolkit are provided as examples of documents that districts *may* create or use. None of the templates are **required** to be used. Districts should consult with their local board attorney on any documents they choose to use.

18. Are we required to obtain written parental consent to deliver online teleservices?

Districts must assess whether parental consent is required prior to the provision of telehealth services to students. Please reference the Teleservices COVID-19 FAQ available [here](#) for more guidance.

EVALUATIONS

19. How can the required observations be obtained for an evaluation when students are attending remote instruction?

Observations provide valuable sources of information to help validate other sources of data obtained during the evaluation. If students are returning remotely, districts should problem solve various ways to complete observations. Consider what information is needed to help inform the validity of the assessment results and to provide qualitative or quantitative information about the students learning, behavior, communication, development, motor, and emotional functioning. If the student is scheduled to complete in person evaluations, observational data can be obtained outside the standard administering of assessments by facilitating the use of instructional platforms, engagement, alignment, etc.

20. What should we do if a parent does not want to bring their child in for assessments to complete a special education evaluation due to COVID related concerns?

Districts should complete whatever portions of the evaluation can be completed remotely (e.g., interviews, observations of remote learning, etc.). Additionally, districts should communicate the safety precautions and procedures the district is providing for assessments and determine a schedule to regularly check in with the parent regarding their willingness to proceed with face-to-face assessments. Document all communications. The evaluation timeline may be extended if the parent of a child repeatedly fails or refuses to produce the child for the evaluation. A timeline extension request with all relevant information provided should be completed before finalizing eligibility.

21. What do we do if we question whether the results obtained during assessments are valid given the safety precautions implemented?

The evaluation assessments should be administered in accordance with instructions provided by the

producer of the assessments. It is recommended to visit publishers' sites to see if they have provided additional guidance regarding assessment materials and administration flexibility as well as professional ethics and standards of practice within the national professional associations. When analyzing and reporting evaluation results, be sure to include any relevant information regarding concerns regarding the setting/ environment, rapport building, student engagement and responses, or safety precautions that may impact the validity and accuracy of results. Be transparent regarding concerns and cautions associated with the validity of results within the written reports in order for teams to make informed decisions regarding eligibility. As always, consider the results in context of other data collected to help provide a comprehensive perspective and provide a validity check. If there is conflicting information obtained, consider the factors that may have impacted results and when possible, evaluate further to provide additional information.

FERPA, PRIVACY, and CONFIDENTIALITY

22. What are the FERPA requirements when delivering lessons virtually? Are we required to provide remote live instruction individually to avoid a violation of confidentiality?

The Family Educational Rights and Privacy Act (FERPA) is the federal law that protects the privacy of personally identifiable information (PII) in students' education records. "Education records" are those records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. FERPA does not protect the confidentiality of information in general; rather, FERPA applies to the disclosure of tangible records and of information derived from tangible records. Assuming that during the virtual lesson, personally identifiable information from student education records is not disclosed, FERPA would not prohibit a non-student from observing the lesson. Districts may wish to include instructions for students participating in the virtual classroom regarding not sharing or recording any personally identifiable information from education records that may be disclosed in the virtual classroom or to obtain prior written consent to permit any such sharing of information from education records. As a best practice, educational agencies and institutions should discourage non-students from observing virtual classrooms in the event that PII from a student's education record is, in fact, disclosed in such virtual classrooms. More information can be found [here](#).

23. Are district staff permitted to conduct teletherapy/virtual education sessions in groups, and would that be in compliance with FERPA or other rules around confidentiality?

If staff normally conduct group sessions in person, they may continue to do so virtually. Group sessions are not prohibited, but similar to in-person grouping, educators should make every attempt to partner students who are targeting similar goals and who would benefit from the content of the lesson, as well as the mode of delivery. Further information is available [here](#) in the department Teleservices Toolkit.

Therapists who are operating under a Department of Health license may be prohibited from providing group services due to restrictions from Managed Care Organizations or their licensing boards.

24. Are district employees required to obtain parental consent before delivering special education services in a virtual setting? Are contracted employees required to obtain parental consent?

District employees such as instructors; administrators; health staff; counselors; attorneys; clerical staff; trustees; members of committees and disciplinary boards; and a contractor, volunteer or other party to whom the school has outsourced institutional services or functions fall under FERPA's school official exception and are not required to obtain prior written consent to obtain access to personally

identifiable information contained in education records provided the school has determined that they have "legitimate educational interest" in the information. Contracted employees may also fall under this exception, but districts are advised to consult with their local board attorneys to determine if these employee's contracts meet the requirements of this exception.

EARLY CHILDHOOD SPECIAL EDUCATION

25. *Due to school buildings being closed for COVID in the spring, we are behind on evaluations for eligibility. For children transitioning from TEIS, should we prioritize the children who have already turned three and have not been evaluated, or work first on doing evaluations for children who have not yet turned three?*

Districts have an obligation to evaluate all children. It is important to limit the amount of time any child goes without an eligibility determination and, for those eligible, IEP services. Therefore, considerations should be given to any children who have already turned three and whose eligibility determination and IEP development were delayed, while also providing needed evaluations for those with upcoming third birthdays. It is recommended that districts explore approaches to expedite this process, such as contracting with private evaluators to help with any backlog. Child find and indicator 12 obligations have not been waived, and thorough documentation should be maintained. Compensatory services may be required as a result of the delayed evaluation and any missed services.

26. *How can we address pending referrals from TEIS when we are unable to do face-to-face interactions?*

Districts should complete whatever portions of the evaluation can be completed remotely (e.g., interviews, observations of remote learning, etc.). Once restrictions related to COVID allow in-person interactions with families and children to safely resume, it is important for districts to promptly proceed with any transition-related activities that were unable to be completed. At that time, districts should make every effort to complete evaluations and hold meetings with families as timely as possible. In order to avoid excessive delays, the district needs to demonstrate due diligence to expedite this process to address any backlog and limit delays. Districts may consider contracting with external vendors and exploring alternative evaluation tools when possible and appropriate. Document all efforts as well as any correspondence with parents.

27. *Since TEIS is only providing remote services instead of going into homes, how will school districts get accurate information for the evaluation process?*

The district is responsible for completing a comprehensive evaluation. Districts can still use current assessment information from TEIS if there is any available. In the absence of assessment information from TEIS, the district should proceed with conducting needed evaluations.

28. *If a TEIS caseworker knows that a parent does not want to get services this school year (due to COVID), should we hold a transition meeting?*

Unless the family is refusing to participate in the transition planning conference, it should still be held. The district can use this as an opportunity to discuss some of the options that will be available, depending on eligibility and the specific needs of the child. They can also talk to the parents about how to move forward should they reach a point later when they feel comfortable pursuing eligibility/services.

29. *Our district has a preschool general education classroom that also serves children with IEPs. Many of the parents of the children without IEPs are choosing not to enroll and send their children back to*

school this year. We now have IEPs written for children to be served in a general education environment, but our classroom no longer meets that definition. What do we do?

The least restrictive environment (LRE) for a child is not dependent on what is or is not available within a school district ([Dear Colleague: Preschool LRE letter](#)). It is a district's responsibility to provide a setting to meet the child's LRE decided upon by the IEP team, even if that setting must be found outside the school district (i.e., a community-based placement). If enough children without disabilities cannot be enrolled or a different setting cannot be secured, maintain thorough documentation of all good faith efforts to meet this need as well as any missed services. The children with IEPs should be served to the greatest extent possible, but compensatory services may still be warranted.

30. Now that we need to practice social distancing, we need to keep the enrollment in our general education inclusion room smaller, and we do not have the square footage to have enough typically developing children in the space to meet the criteria for it to remain a general education classroom. What do we need to do for the children whose IEPs require a general education setting for their LRE?

Please see the response to question #28 above.

31. We have a general education classroom with 15 children enrolled. Of those 15 children, seven have an IEP and eight do not. Because of concerns related to COVID, the families for three of our children without IEPs do not want to send their children at this time. Since more than 50% of the children who will be attending for a while will be children with an IEP, would this now be considered a special education classroom? If so, what do we do for the children whose IEP teams determined they should be in a general education setting?

Course codes and annual performance reporting requirements define a general education classroom as a setting where 50% or more of the children enrolled do not have an IEP. In the situation described above it is important to make a distinction between being enrolled versus a child attending on a given day. Provided children without a disability continue to be enrolled in at least 50% of these classroom slots, and that they can return to the classroom at any time the parents feel comfortable, then this would still be seen as a general education setting. That is the intention of the classroom, and that is what the actual enrollment reflects. This is just being temporarily disrupted by COVID concerns.

32. We had planned to have a non-VPK general education preschool classroom to meet the LRE needs for children with disabilities. Because our VPK enrollment was lower than expected, the typical peers that were originally to be included in this classroom have been moved to fill the open VPK seats. We are now having difficulty getting typical peers for this classroom. What should we do?

If there is available space in VPK, districts should consider also enrolling, as appropriate, children with disabilities whose LRE is a general education setting. Districts are reminded that VPK follows a priority enrollment process pursuant to T.C.A. § 49-6-101 et seq. Priority 1 includes both children with and without disabilities who meet the age and income requirements. Priority 2 includes non-income eligible four-year-old children with disabilities. Priority 3 includes any three-year-old children with disabilities. It is a district's responsibility to provide a setting to meet the child's LRE decided upon by the IEP team. That responsibility can be fulfilled within a district provided setting, such as VPK, or secured outside the school district (i.e., a community-based placement).

33. Our district is offering K-12 students both virtual and in-person options. For preschool, only in-person general education options are being offered. A preschool child has an IEP providing a general education placement, but the parent has concerns for the child attending school in-person at the start

of the year. How should the district respond to these circumstances and provide any special education and related services? Does it make a difference if it is a VPK classroom since VPK is considered "voluntary"?

Even though VPK is considered voluntary, the district is still responsible for providing a Free Appropriate Public Education in the least restrictive environment for children with a disability. Districts should consider distance learning opportunities along with special education and related services, which can be offered remotely. An individualized distance learning plan should be developed to describe how each child's educational and IEP needs will be met.

34. The IEP team has determined that a general education setting is the LRE for a child. The child was to be enrolled in our general education preschool classroom and the majority of special education and related services were to be provided in that classroom. The parent does not want to send their child and only wants remote learning opportunities, including tele-therapy at this time. Do we need to update the early childhood environment tab if the majority of services will no longer be in the general education setting?

In this case, the district is offering what was agreed upon by the IEP team to meet FAPE in the LRE. Provided the district is maintaining the enrollment slot for this child in the general education setting and is prepared to provide the services in that setting when the family feels it's safe for this child to return, there is no need to change the environment tab information. The district is still prepared and available to meet the IEP needs in full within the agreed upon placement. Since the parent is not comfortable sending their child due to COVID, the IEP team should convene to discuss how to best meet the child's needs. Virtual learning and related service opportunities should be considered to the extent possible and appropriate.

35. All of our K-12 students will begin the year through a virtual format. District general education preschool classrooms will neither be available virtually nor in-person. What are we obligated to provide for preschoolers with an IEP whose LRE is a general education setting?

The district is still responsible for providing a Free Appropriate Public Education in the least restrictive environment for all children with a disability. This should occur even if a general education setting must be found outside the school district (i.e., a community-based placement). If this setting cannot be secured, document all good faith efforts to provide it. If the IEP services can be delivered remotely with just a change in modality (i.e., virtual versus in-person), then a change in the IEP is not required. An individualized distance learning plan may be developed to describe how each child's educational and IEP needs will be addressed in a remote setting. This should be documented in a prior written notice.

36. We have a preschool child with an IEP whose parent does not feel comfortable sending him to school at the beginning of the school year due to concerns about COVID. How should this be addressed in the IEP?

The IEP team must consider what each child needs to receive FAPE in the LRE. If the district can meet those needs in-person, but the parent is not comfortable sending their child due to COVID, the IEP team should be convened to discuss how to best meet the child's needs. Virtual learning and related service opportunities should be considered to the extent possible and appropriate.

37. Our district has plans to start the first several weeks of the school year with a staggered preschool schedule with half of the children attending in person on alternating days. Children not attending in person are being offered remote learning opportunities. We have children with a general education

placement and IEP services to be provided five times per week. Having made an IEP team decision for this amount of services, how should we proceed for the beginning of this year?

In this case the IEP team should meet to discuss what would be deemed appropriate in the event of limited access to schools or school closures. If the district can deliver the IEP as written with just a change in modality (i.e., virtual versus in person), then a change in the IEP is not required. An individualized distance learning plan may be developed to describe how each child's educational and IEP needs will be addressed in a remote setting. This should be documented in a prior written notice.

38. In thinking about a virtual preschool classroom, if an IEP calls for five hours of services, does that have to be five hours of face-to-face time with a special education teacher, or does that need to be changed?

If the IEP services will be delivered as written with just a change in modality (i.e., virtual versus in-person), then a change in the IEP is not required. However, if changes to the current services or the amount of service time may be needed for a virtual setting, then the IEP team should convene to discuss those changes. The approach to distance learning may impact this.

39. If a child has already been determined eligible and has an IEP developed, but now the parent doesn't want to bring the child into school, what steps need to be taken? Do we need to have the parent sign a revocation of services form?

Even independent of COVID, revocation should not be done unless the parent is clearly not wanting services for the child and has revoked their consent in writing. If virtual options are available for school-age children, the district should consider similar options for preschool. Whatever options are available should be explained to the parent so that they can make an informed decision. An individualized distance learning plan should be used to describe how each child's educational and IEP needs will be met. If the parent still does not feel comfortable with the available options, the district can inactivate the child until the parent is ready to resume. The steps for resuming services should be explained and documented in the prior written notice.