

COVID 19 and Special Education Q&A

Q1: Do Local Education Agencies (LEAs) have flexibility regarding the provision of a Free and Appropriate Public Education (FAPE) to students receiving special education services in times of emergencies such as the COVID-19 pandemic?

A1: No. Neither state nor federal law provide flexibility to LEAs in times of emergency regarding their obligation to provide FAPE to students receiving special education services. If an LEA closes its schools because the functioning or delivery of educational services is disrupted and does not provide any educational services to the general student population, then an LEA would not be 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). In addition, the Annual Review and Dismissal (ARD) committee would be required to make an individualized determination as to whether compensatory services are needed to make up for any skills that may have been lost because of an extended school closure.

If schools are closed, but the LEA continues to provide educational opportunities to the general student population during the closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. The LEA 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.

Q2: What flexibility do LEAs have in the process required to adjust an individual student's existing IEP in times of emergencies such as the COVID 19 pandemic?

A2: LEAs should continue to follow local policies regarding changing or amending an existing IEP. In addition, according to previous guidance from the United States Department of Education, Office of Special Education Programs (OSEP), if a school continues to provide instruction to the general school population during an extended closure due to a disaster, but is not able to provide services to a student with a disability in accordance with the student's IEP, the student's ARD committee determines which services can be provided to appropriately meet the student's needs.

The ARD committee may meet by teleconference or other means (if all members are able) to determine if some, or all, of the identified services can be provided through alternate or additional methods. Once the school reopens, the ARD committee must determine whether, and to what extent, compensatory services are needed.

As stated in A1, if an LEA is providing educational opportunities to the general student population, the LEA is also required to provide the services and accommodations needed for students with disabilities to have an equal opportunity to participate in the virtual model of delivery.

Q3: Are LEAs still held to timeline requirements regarding Full and Individual Initial Evaluations (FIIIE) in light of potential changes to school calendars and schedules due to the COVID-19 pandemic?

A3: In situations in which school is **closed and not in session (no educational services offered to anyone)**, state evaluation timelines halt as these timelines are based on school days. To be clear, for the purposes of FIE timelines, the days that **school is not in session** (no educational services offered to anyone) do not count as school days. If the school remains open (either on a virtual basis or face-to-face), the 45 school-day timeline requirements of Texas Education Code sec. 29.004 apply.

This is true even if the LEA is experiencing low attendance due to COVID-19 related concerns, and uses the attestation related to educational support to count students absent from campus grounds as present for Average Daily Attendance (ADA) purposes referenced in the March 12th, 2020 To the Administrator Addressed letter regarding COVID 19 [which can be found here](#).

Q4: Are LEAs still held to the 30 calendar day timeline requirements regarding initial eligibility determination, IEP, and placement decision ARD committee meetings upon completion of an FIE in times of emergencies such as the COVID 19 pandemic?

A4: Yes. Requirements related to the 30 calendar day timeline for initial eligibility determination, IEP, and placement decision ARD committee meetings still apply. The ARD committee may meet by teleconference or other means (if all members are able) when necessary, to meet this required timeline.

Q5: What are options for how LEAs provide a free and appropriate public education (FAPE) to students with disabilities when a school goes to a digital/virtual learning platform for all students?

A5: LEAs must ensure that students served by special education have access to the same or equitable learning platform as their peers. To the greatest extent possible, the LEA must provide the student with the services required by the student's IEP. If there are services, accommodations, and modifications required by the student's IEP that cannot be provide during this time, the student's ARD committee must determine which services it can provide to meet the student's needs (34 CFR 300.324(a)(4)).

Changes in services and accommodations may be made through the IEP amendment process. In many cases, instructional accommodations may be met in an online environment by providing additional supports, such as individualized telephone or video conferencing. LEAs should consider *how current accommodations and modifications are provided in a physical classroom setting (i.e. extra time, redirection, small group, among others) and what this would look like in a virtual environment.*

Q6: Is the LEA required to provide ancillary instructional, and/or related services when a school goes to a digital/virtual learning platform for all students?

A6: Yes. If a student's IEP requires the provision of ancillary instructional, and/or related services, the LEA is responsible for providing these services. In many cases, services such as speech and language therapy or special education counseling may be able to be effectively provided in a virtual environment. LEAs should plan carefully to ensure that the services can be provided effectively and that the students in question are able to effectively access them. LEAs should also carefully consider any implications related to privacy and the Family Educational Rights and Privacy Act (FERPA).

In other cases, it may be necessary to provide services in face-to-face environments. If the provision of these services results in an effective change in placement for the student, the change will need to be decided upon by the ARD committee and documented appropriately in the student's IEP. LEAs should carefully consider implications for staffing and travel if ancillary instructional and/or related services providers would need to be physically available for students.

Q7: Can an LEA provide a learning environment at the school or designated site for students who cannot have their learning needs met virtually?

A7: Yes. When an LEA identifies learning needs that cannot be met virtually, they may decide to offer educational opportunities at a designated site, subject to ARD committee decision. If this results in a change in location, the change must be documented in the student's IEP. LEAs must ensure that the learning environment is clean, disinfected, and safe for students and staff to work.

When providing these services, the LEA would be required to meet all aspects of each student's IEP. This would mean that appropriately credentialed/certified academic and related services and support providers would need to be available to provide services to students. Additionally, if the student's IEP includes (or is amended to include) transportation as a related service, the LEA would be required to provide it.

Q8: While LEAs are required to implement IEPs and provide FAPE, what if the LEA cannot fully implement the IEP during the current COVID 19 pandemic COVID 19 response?

A8: If an LEA cannot provide services necessary for the provision of FAPE in either a face to face or virtual environment, the LEA should document carefully what services were not able to be provided to each individual student. This documentation must be detailed enough to enable the ARD committee to later make determinations regarding what compensatory services need to be provided to individual students. LEAs should plan for effective communication with families regarding any services that cannot be provided during the COVID 19 pandemic response.

Q9: If an LEA remains open, or reopens its schools but a state or local emergency authority prohibits students with special health care needs from returning to school for a specified period of time, what is the LEA's obligation for its students who receive special education services who are impacted by the prohibition?

A9: An LEA subject to such a prohibition is nevertheless required to provide FAPE to students with disabilities impacted by the prohibition. If the prohibition from returning to school is an emergency measure not to exceed 10 consecutive school days, the LEA should provide virtual instruction or otherwise grant the student access to educational instruction as discussed above.

If the emergency directive will, or is anticipated to extend beyond 10 consecutive school days, in addition to providing virtual or other educational services, the ARD committee must meet to consider the need for a change in placement in accordance with 34 CFR 300.115 - 300.116, taking into account the heightened health and safety needs, criteria and considerations in determining whether a homebound, or other placement along the continuum of alternative placements is the appropriate placement for the student. [Refer to the OSEP guidance from March 12, 2020.](#)

For additional guidance please see [QUESTIONS AND ANSWERS ON PROVIDING SERVICES TO CHILDREN WITH DISABILITIES DURING THE CORONAVIRUS DISEASE 2019 OUTBREAK](#) published by the United States Department of Education (ED), Office of Special Education Programs (OSEP) on March 12, 2020.