

There is no defined or correct method to adequately and equitably meet the needs of all students in an unprecedented event such as the current COVID 19 pandemic response. LEAs need to be flexible and consider employing a variety of delivery options as they make reasonable efforts to provide services to students with disabilities.

Above all, LEAs should prioritize health and safety of students, staff, and communities. LEAs should identify and acknowledge service delivery limitations, as well as the need for LEAs to make reasonable efforts to fully implement a student's IEP once school resumes. This requirement to "make every effort..." does not allow a LEAs to decline all services to students with an IEP and only offer compensatory services at a later date. Below are a few considerations:

- As LEA leadership plans for educational services during school closures, they should consider, address, and communicate equity needs for students with disabilities, placed by the LEA in private facilities, those receiving preschool services, and those served in transition programs and home/hospital placements,
- LEAs should provide proactive and ongoing communication with parents and families of students with disabilities. LEAs should identify communication channels to and from parents and families and ensure there are real-time opportunities for questions and concerns to be responded to and needs addressed.
- LEAs who are applying temporary changes to locations, schedules, etc. should inform parents of the temporary nature and proceed with reasonable efforts in providing FAPE until permanent actions are determined.
- If there are unavoidable deviations from legally established timelines, LEAs should document in the student's folder all reasonable efforts made to follow timelines.
- LEAs should also consider ways to use distance technology to the extent possible to provide child find, hold initial and annual ARD committee meetings, and/or evaluation/eligibility meetings, if the LEA members and parents are available but not able to attend in person. Continuing to complete ARD committee and evaluation/eligibility meetings will help decrease the workload when school resumes. If required members of the committee and/or parents are not available or believe their participation is impacted by the lack of an in-person meeting, LEAs should document the reason and complete the activity in a timely manner following the ending of school closures.
- When school resumes, ARD committees should address student-specific needs resulting from the closure. This might include discussions of compensatory education and extended school year (ESY) services made on a case-by-case basis. Any need for compensatory services related to school closure or inability to fully implement a student's IEP will be addressed by ARD committees after school closures end.
- LEAs may wish to create a template document that assists school staff in documenting decisions made, why timelines were exceeded, and documentation of participation and consent through

temporary alternate methods, such as email or notes. LEAs should **not** create a standard form that is not individualized and applied to all files and activities.

- In planning for school closure and the potential distance delivery of educational services (including special education and related services), LEA and school staff will want to prioritize decisions and actions based on health and safety first, communication with staff and families, and then consider requirements of IDEA and state law.

## **FREE AND APPROPRIATE PUBLIC EDUCATION (FAPE) AND THE PROVISION OF SERVICES**

### **1. 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? Updated March 20, 2020**

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.

### **2. 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? Updated March 20, 2020**

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.*

### **3. 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? Updated March 20, 2020**

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.

**4. 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 response? Updated March 24, 2020**

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.

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

Updated  
4/7/20

Our Special Education Task Force is considering whether students can be served in a non-virtual setting without violating any applicable governor orders or local shelter-in-place orders. Further guidance will be provided at a later time.

**6. 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? Updated March 24, 2020**

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.](#)

7. **Are LEAs required to continue services to students identified, and receiving services for dyslexia and currently being served by special education or under Section 504 of the Rehabilitation Act of 1973? Updated March 24, 2020**

Yes. As described in the March 12<sup>th</sup>, 2020 guidance from OSEP, LEAs must make reasonable efforts to provide FAPE to students **served by special education or served under section 504** even in extreme circumstances such as the current COVID 19 pandemic response. LEAs who are not able to provide the necessary level of services for any reason, should document carefully what should have been provided and was not to allow for effective decisions regarding compensatory services to be made by ARD committees and Section 504 teams when the situation gets back to normal.

As with any student receiving intervention services through a student support team or other general education intervention program, LEAs should carefully consider the needs of students receiving interventions for dyslexia outside of special education or Section 504 when planning to move to virtual or other non-traditional models during the COVID 19 pandemic response.

8. **Should LEAs continue to provide services, or conduct evaluation activities during mandatory school closures or shelter in place orders? Updated March 26, 2020**

LEAs should comply with all statewide or local orders. This includes but is not limited to school closures and shelter in place orders. As with all decisions made during the COVID 19 pandemic response, school staff will want to prioritize actions based on health and safety first, communication with staff and families, and then consider requirements of IDEA and state law regarding special education.

9. **Should LEAs continue to provide services to students served by special education who are already receiving homebound services due to a significant health concern? Updated March 26, 2020**

LEAs should prioritize the health and safety of students, staff, and communities in all decisions regarding service provision. As with all other situations, there may be options available to provide instructional and related services to students receiving homebound services leveraging technology and other more non-traditional methods. Reasonable efforts should be made to provide students with FAPE and LEAs should carefully document what was not able to be provided during the COVID 19 pandemic response. 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.

## **EVALUATIONS**

1. **Are LEAs still held to timeline requirements regarding Full and Individual Initial Evaluations (FIE) in light of potential changes to school calendars and schedules due to the COVID-19 pandemic? Updated March 20, 2020**

Yes. Please refer to the School Finance FAQ, listed under Waivers & Funding, on the [TEA Coronavirus \(COVID-19\) Support and Guidance website](#). In situations in which LEAs are “Closed, Preparing” or “Closed, Temporary,” state evaluation timelines halt as these timelines are based on school days. In situations in which LEAs are “Closed, instructing” or “Open,” the 45 school-day timeline requirements of Texas Education Code sec. 29.004 apply.

On March 16<sup>th</sup>, 2020 the United States Department of Education (ED), Office for Civil Rights (OCR) [published a fact sheet](#) acknowledging that evaluations might be delayed due to issues related to the current COVID 19 pandemic. However, there has been no communication from ED, as of the publication of this document, indicating that the required timelines have been waived for purposes of compliance reporting.

**2. What if a student’s triennial evaluation date is not met due COVID 19 pandemic response related issues? Updated March 24, 2020**

LEAs should proceed with completing reevaluations within timelines. Missed triennial evaluations should be completed as soon as possible. If there are deviations from legally established timelines, LEAs should document in the student’s folder all reasonable efforts made to follow timelines.

**3. What if early childhood transition services and timelines have been affected due COVID 19 pandemic response related issues? Updated March 24, 2020**

School closure dates are not applicable for Part C ECI to Part B IDEA evaluation timelines, and LEAs should make reasonable efforts to expedite timelines once school resumes, so as not to delay provision of services and FAPE if the student is determined eligible. If there are deviations from legally established timelines, LEAs should document in the student’s folder all reasonable efforts made to follow timelines.

**4. What are LEAs’ responsibilities regarding IDEA Child Find requirements during the COVID 19 pandemic response and associated school closures?**

New  
4/7/20

An LEA’s responsibility to identify, locate, and evaluate students who have or may be suspected of having a disability and need for special education is ongoing. However, as explained elsewhere in this document, federal, state, and/or local health and safety orders or recommendations may temporarily prevent an LEA from conducting or completing an initial evaluation. Times in which the LEA is “Open” or “Closed-Instructing” as described in the School Finance FAQ located on the [TEA Coronavirus \(COVID-19\) Support & Guidance webpage](#), under Waivers & Funding. LEAs should consider updating information on their website regarding contact information and processes for child find during the COVID 19 pandemic response.

For more information regarding evaluating students during the COVID 19 pandemic response, please see [Evaluation Considerations During COVID 19](#).

**INDIVIDUALIZED EDUCATION PROGRAM (IEP) and ADMISSION, REVIEW, AND DISMISSAL (ARD) COMMITTEES**

**1. 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? Updated March 20, 2020**

If it is determined that an IEP needs to be changed or adjusted, LEAs should continue to follow local policies. 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.

School boards might consider reviewing their local policies regarding the allowable process to amend an IEP without convening the full ARD committee in specific circumstances (TASB EHBAB (LOCAL)). Changes to these policies could be enacted locally on a temporary basis as part of the current COVID 19 pandemic response to allow for a broader local application of the amendment process allowed by IDEA. Any specific change to local policy must still comply with federal and state law, and strong, timely communication with families regarding any such changes is imperative.

**2. 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 FIIE in times of emergencies such as the COVID 19 pandemic? Updated March 20, 2020**

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. If there are deviations from legally established timelines, LEAs should document in the student's folder all reasonable efforts made to follow timelines.

**3. What if a student's annual Admission Review and Dismissal (ARD) date is not met due to school closures or other COVID 19 pandemic response related issues? Updated March 24, 2020**

If there are deviations from legally established timelines, LEAs should document in the student's folder all reasonable efforts made to follow timelines.

**4. Should ARD committees move forward with special education eligibility decisions if an FIIE has not yet been completed due to concerns over the current COVID 19 pandemic response? Updated March 26, 2020**

No. Special education eligibility determinations for students should not be made without consideration of all relevant data points that would be provided in an FIIE. Eligibility decisions, and any subsequent IEP development decisions require consideration of all relevant data in order to ensure that sound decisions are made in the best interest of the student [34 CFR 300.306]. LEAs should continue to provide all appropriate general education interventions and supports to struggling students while they are going through the referral process and eligibility determinations are being made. To reiterate what is stated elsewhere in this document, LEA and school staff will want to prioritize decisions and actions based on health and safety first, communication with staff and families, and then consider requirements of IDEA and state law.

**5. Is a student receiving special education services required to complete an Individualized Graduation Committee (IGC) process, or does the ARD committee continue to make educational decisions, including decisions related to required performance on academic assessments and graduation? Updated March 26, 2020**

A student receiving special education services is not subject to the requirements of an IGC. A student's ARD committee determines whether a student is required to achieve satisfactory performance on an EOC assessment and qualifications to graduate.



**6. Are required timelines for manifestation determinations waived because of the current COVID 19 pandemic response? Updated April 2, 2020**

No. All required timelines for manifestation determinations are still in effect. For calculating school days for these timelines, LEAs should refer to the School Finance FAQ, listed under Waivers & Funding, on the [TEA Coronavirus \(COVID-19\) Support and Guidance website](#). In situations in which LEAs are “Closed, Preparing” or “Closed, Temporary,” manifestation determination timelines halt. In situations in which LEAs are “Closed, instructing” or “Open,” manifestation determination school-day timeline requirements required by 34 CFR 300.530(e) apply. LEAs are reminded that required meetings can be held virtually if needed, provided that all required participants have access.

If there are deviations from legally established timelines, LEAs should communicate with families and document in the student’s folder all reasonable efforts made to follow timelines.

**7. What if a student transferred into the LEA immediately before school closure and was identified as eligible to receive special education services, but no records were received from the previous LEA?**

New  
4/7/20

As a general rule, the LEA in which the student was previously enrolled must furnish the new school district with a copy of the student’s records, including special education records, not later than the 10th working day after receiving the request for records. If sufficient records are not available in the Texas Records Exchange (TREx) system and if the student’s family cannot provide the school with a copy of the most recent IEP, the LEA should collaborate with the family to determine what services can be provided to replicate what was in place before the transfer. In any case involving student transfer and a lag in record transfer, LEAs should communicate with families and make the best decisions possible with the information available to them. Additionally, LEAs should document all reasonable efforts to obtain records as well as all reasonable efforts to provide a FAPE, including through the provision of commensurate services until such time as an appropriate transfer ARD committee meeting can take place.

**GENERAL QUESTIONS**

**1. Are LEAs required to continue to support access to IDEA B non-ed funds during the current COVID 19 pandemic response and resulting school closures? Updated March 26, 2020**

LEAs should continue to support access to appropriate non-ed funds to students for whom they are appropriate. For more information about non-ed funds, see the [TEA Q&A on Non-Ed Funds](#).

**2. Will timelines or flexibilities be provided to LEAs reporting data for State Performance Plan (SPP) Indicators? Updated March 26, 2020**

These reporting and submission requirements will not be adjusted. LEAs are encouraged to keep detailed records concerning LEA closures and student absences. Detailed records may include but are not limited to LEA calendars/closures, student attendance records, Early Childhood Intervention (ECI) closures, comprehensive records of phone calls made or attempted, and copies of correspondence sent to/from parents or ECIs. LEAs can provide clarifications of any missed timelines through the data clarification process during the SPP data collection extension period in August 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 for Civil Rights (OCR), and Office of Special Education and

Rehabilitative Services (OSERS) on March 12, 2020 and the [SUPPLEMENTAL FACT SHEET](#) published by the United States Department of Education (ED), Office of Special Education Programs (OSEP) on March 21, 2020

**3. Are licensures for evaluation, ancillary, and related service staff valid if evaluations or services are being conducted virtually? Updated April 2, 2020**

In general, yes. For specific information related to licenses not issued by TEA, LEAs should check with the licensing agency. For TEA issued certification, all TEA issued certifications would remain valid in an online or other virtual environment.

**4. Are local education agencies (LEAs) still subject to the IDEA resolution period timelines during the Covid-19 pandemic response, even if the campus is closed? Updated April 2, 2020**

In the [March 21<sup>st</sup> Supplemental Fact Sheet](#), the U.S. Department of Education (ED) provided guidance stating that LEAs must convene a resolution meeting within 15 days of receiving notice of a due process complaint filed by a parent or guardian, unless the parties agree in writing to waive the meeting or to use mediation. 34 C.F.R. § 300.510(a). In addition, "[w]hile the IDEA identifies circumstances in which the 30-day resolution period can be adjusted, it does not prevent the parties from mutually agreeing to extend the timeline because of unavoidable delays caused by the COVID-19 pandemic."

TEA interprets this guidance to require LEAs to convene a resolution meeting within 15 days of receiving notice of a request for a due process hearing, even if the campus is closed, unless one of the two exceptions identified above apply. The LEA and the parent may agree to conduct this meeting through alternate means, including videoconferencing or conference telephone calls. To the extent the LEA is unable to retrieve documents from a closed campus, it may choose to convene a resolution meeting through alternate means and work with the parent to continue the meeting at a later date upon which the LEA reasonably believes it may have access to the information it needs to conduct the meeting. The ED makes it clear that the parties may mutually agree to extend the resolution period beyond the 30-day timeline set forth in the regulations.

If an LEA is unable to convene a resolution meeting as set forth above, it should document all reasonable efforts made to meet this timeline.

**5. Will TEA provide any flexibility in the April 30<sup>th</sup>, 2020 deadline for LEAs to assure their compliance with the requirements of SB 139?**

New  
4/7/20

Due to the prioritization of COVID 19 resource distribution across the state to address challenges created by the current pandemic response, the deadline for LEAs to assure their compliance with the requirements of Senate Bill 139 as described in the [February 13<sup>th</sup>, 2020 TAA "Senate Bill 139, Notice to Families"](#) has been extended. Each LEA must provide the agency with assurance no later than October 1, 2020 that it provided the notice required by TEC sec. 29.023 to the parent of every child who attended school in the LEA at any time during the 2019-2020 school year.

All LEAs in the state should assure their compliance with these requirements by [logging in to the Legal Framework](#) and checking the appropriate assurances by the October 1, 2020 timeline. Questions about this deadline should be directed to [disasterinfo@tea.texas.gov](mailto:disasterinfo@tea.texas.gov).



New  
4/7/20

6. **If LEAs are not sending report cards but rather are providing families of all students with letters reporting a pass/fail status, are LEAs still required to comply with progress reporting requirements in individual students' IEPs?**

LEAs should make all reasonable efforts to comply with the requirements of individual students' IEPs. LEAs should develop a plan and expectations that is created with input from an individual student's parents for how progress monitoring toward IEP goals will be conducted, documented, and communicated. As is always the case, effective and regular communication with families is imperative.

LEAs may document changes to progress reporting processes during the COVID 19 pandemic response through an agreement to temporarily amend the IEP. For more information on this, see the document titled ["Documenting Temporary Special Education Services During COVID-19 FAQ."](#)

New  
4/7/20

7. **Will certification requirements be extended or waived for the upcoming 2020-2021 school year due to cancelation of certification tests by TEA?**

IDEA requires staff delivering instructional, ancillary, or related services to be appropriately certified. *See 34 CFR 300.156.* Neither TEA nor the United States Department of Education, Office of Special Education Programs has the legal authority to waive this requirement. If an LEA is not able to comply with this requirement, the LEA should communicate with the student's family and document all reasonable efforts to comply with applicable certification requirements.