

## School Closures and Special Education: Guidance on Services to Students with Disabilities

UPDATED: March 27, 2020

(Revised March 27, 2020 based on [United States Department of Education \(USED\) Supplemental Fact Sheet, released March 21, 2020](#))<sup>1</sup>

### Overview

Given the increasing number of cases of COVID-19 in Tennessee, and out of an abundance of caution for the health and safety of children and school staff, Governor Lee strongly encouraged the suspension of school building operations for educational purposes at all public (K-12) schools in Tennessee, through April 24, 2020.

On March 21, 2020, the U.S. Department of Education (USDOE) released a [Supplemental Fact Sheet](#) stating that during this national emergency:

*“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.”*

**Due to this significant change in federal guidance and the recently announced lengthy period of school closures, the Tennessee Department of Education (TDOE or Department) is issuing this updated and revised document superseding the previously released “Frequently Asked Questions” document previously issued.**

The school closures under these emergency public health orders do not necessarily affect the ability of school buildings to provide food or other essential non-educational services. TDOE encourages schools and districts to provide alternative remote learning for all students, including students with disabilities, during the period of school closure. Public schools and districts should make every reasonable attempt to continue collaborative efforts to provide students with access to alternative learning opportunities.

TDOE provides the following guidance specific to implementation of special education services during this period of school closure. These responses are based on the [new Supplemental Fact Sheet](#) issued by the USDOE, and will provide additional information as it is made available.

### ***Special Education Guidance: U.S. Department of Education***

School closures and the implementation of virtual learning opportunities due to the COVID-19 pandemic have raised questions regarding the provision of services to special populations and students with disabilities. The United States Department of Education’s Supplemental Fact Sheet released on March, 21<sup>st</sup> states:

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<sup>1</sup> Given the evolving nature of the COVID-19 pandemic, and the ongoing updates to guidance related to special education, this information is subject to change and will be updated as new information and guidance are provided. The TDOE has submitted this document for review by the USDOE, to ensure total compliance with federal law and intent. The TDOE will make any updates to this document as a result of additional guidance received, and communicate that information accordingly.

***“To be clear: ensuring compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance instruction.”***

While we know that LEAs will continue to serve students to the best of their abilities during emergency situations, this guidance from the United States Department of Education provides clarification regarding an LEA’s obligations under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973. In addition, the Tennessee Department of Education recognizes that during these times, there may be challenges to meeting deadlines associated with special education. Guidance on each of these timelines is included below and the department encourages districts to be in touch with the Special Populations Division for any support or technical assistance that might be needed.

### **Special Education Service Delivery**

The department recognizes that there are many options available to districts as they seek to provide instructional opportunities for students during school closures. These options include providing homework packets, virtual or distance learning, etc. While the USDOE and TDOE will offer flexibility where possible, the USDOE has emphasized many disability-related modifications and services may be effectively provided remotely or online.

As virtual or distance learning takes place to the general student population during a school closure, the school or district must ensure that students with disabilities also have **equal access** to the same educational opportunities, taking into consideration the individual needs of students. During this period of school closure, districts should make every effort to use creative strategies to provide special education instruction and services to the extent safe and feasible. Moreover, any educational opportunities offered to the general student population, including enrichment activities and resources, must be made accessible to students with disabilities.

**If the only change to a student with a disability’s educational services is that they will be provided virtually rather than in person (but the type and amount of services otherwise remain unchanged), an IEP team meeting is not required, and no changes need to be made to the IEP.**

If, however, the type or amount of services listed in the IEP or 504 plan must change because they can only be provided face-to-face and not virtually, the IEP team should convene to discuss the type and amount of services to be provided. The team must document any services missed and assess the need for compensatory education.

Once the traditional school day 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) or 504 plan. If a child does not receive services during a building closure, a child’s IEP team or 504 team must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

## **Virtual Instruction for Students with Disabilities**

On March 21, 2020, USDOE released additional [guidance](#) regarding serving students with disabilities in the face of the COVID-19 pandemic. The guidance states that while many schools are choosing to move to virtual instruction, some educators have been reluctant to provide any distance instruction because they believe that federal disability law presents insurmountable barriers to remote education. USDOE states that this is not true. Schools should not opt to close or decline to provide distance instruction, at the expense of students, to address matters pertaining to services for students with disabilities. Rather, school systems must make local decisions that take into consideration the health, safety, and well-being of all their students and staff. Again, a restatement of the guidance provided by USDOE on March 21<sup>st</sup>:

*“To be clear: ensuring compliance with IDEA, Section 504, and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance instruction.”*

TDOE is prepared to help school districts provide distance learning in a manner that is accessible to all students. For more information, refer to the [TDOE COVID Support Webpage](#) and scroll down to “School Closure Toolkits”.

## **Initial Evaluation Timelines**

The IDEA provides that initial evaluations must be conducted within 60 calendar days of receiving parental consent *or within a state established timeframe*. Due to the current states of emergency at the federal and state levels, evaluations initiated or in process on or after March 3, 2020 may be completed within 90 calendar days of receipt of parental consent, rather than the usual 60-day requirement. This timeline will be revisited (and extended) as needed. This will allow for districts experiencing school building closures to extend timelines commensurate with the general durations of closures.

If an evaluation of a student with a disability requires a face-to-face assessment or observation, the evaluation would need to be delayed until school buildings reopen. Evaluations and re-evaluations that do not require face-to-face assessments or observations may take place while school buildings are closed, so long as a student’s parent or legal guardian consents. These same principles apply to similar activities conducted by appropriate personnel for a student with a disability who has a plan developed under Section 504, or who is being evaluated under Section 504.

## **Re-evaluations**

The IDEA does not provide an evaluation timeline for re-evaluations other than the 3-year re-evaluation timeline. For re-evaluations due during a school closing, teams should complete the re-evaluation as soon as possible upon return. For re-evaluations due while students are attending a virtual instructional setting, cases should be treated on an individual basis; however, every attempt should be made to complete the re-evaluation to the extent possible, given reasonable access to the student.

Districts and schools are strongly encouraged to document decisions related to these re-evaluation timelines and maintain that decision-making rationale in the student’s file.

### Initial IEPs

Pursuant to 34 CFR §300.323(c), a meeting to develop an IEP for a child must be conducted within 30 days of a determination that the child needs special education and related services. As soon as possible following the development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP. "As soon as possible" recognizes that there may be some isolated circumstances where, because of damage caused by the storm, power outages, closure due to pandemic, etc., an LEA may need to delay the start of special education and related services to a particular child.

Districts and schools are strongly encouraged to document decisions related to these IEP timelines and maintain that decision-making rationale in the student's file.

### Annual IEP Reviews

The IDEA requires that the child's IEP be reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revise the IEP, as appropriate. **LEAs should make every attempt to conduct annual IEP team meetings that are due during periods of school closure.** There is some flexibility in this provision. For example, in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the LEA may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. In addition, when conducting IEP Team meetings and placement meetings, the parent of a child with a disability and an LEA may agree to use alternative means of meeting participation requirements, such as video conferences and conference calls.

#### **IEP team meeting timelines may be extended only if:**

- The LEA has reasonably determined the use of virtual technology is not a suitable method of conducting the required meeting; or
- Information necessary for the IEP team's deliberation is not attainable due to recommendations of the state or local health departments that limit access to important student records.

These decisions must include the child's parent or guardian and meaningfully work towards ensuring that each child receives an IEP review commensurate with the intent of the law, and in the best interest of the child.

Districts and schools are strongly encouraged to document decisions related to annual reviews and maintain the decision-making rationale in the student's file.

### Compensatory Education and Services

Once school resumes, IEP teams will determine the need for compensatory services for individual students due to the loss of skills during the period of school closure.

Compensatory services are services that should be provided to a student that are needed to elevate him or her to the position he or she would have otherwise occupied had the services not been delayed or

postponed. This can include making up missed hours of occupational therapy, hours of individual academic intervention, etc.

It should also be noted that each child should be evaluated and supported based on the unique needs of that child. In some cases, a delay in services can be more challenging to “make-up” and may require more hours than what was originally scheduled in order to bring the child back to the position he or she would have otherwise been in had the services not stopped. The reverse could also be true, though it is not recommended that fewer hours be provided to any children.

Decisions related to compensatory education and services should be clearly documented in terms of the hours or services that were missed, and the decision on what services are necessary to bring the child to the same position he or she would have otherwise been in, had services not stopped. Districts and schools are strongly encouraged to document decisions and maintain that decision-making rationale in the student’s file.

### **Dispute Resolution Processes**

IDEA Part B and state special education law provide for the three dispute resolution processes: administrative complaint, mediation, and due process hearing. Even during times of school closure or distance learning, parents retain their legal right to request dispute resolution. More information about each of the three processes is available [here](#).

Administrative Complaints (ACs) – The department is continuing to investigate all the current ACs and newly submitted ACs. These investigations are normally completed within 60 calendar days, as required by IDEA. However, IDEA states that investigations may go beyond the traditional 60 day timeframe when exceptional circumstances exist with respect to a particular complaint. The COVID-19 pandemic could be deemed an exceptional circumstance if LEA and/or SEA staff are unavailable or absent for an extended period of time. LEAs may request from TDOE’s complaint investigators an extension if LEA staff need additional time to prepare their response to the complaint. Complaint investigators will ensure that corrective action plans align to LEA closures as a result of COVID-19.

Due Process Hearing (DPHs) – When a parent files a due process complaint, the LEA must convene a resolution meeting within 15 days of receiving notice of the parent’s complaint, unless the parties agree in writing to waive the meeting or to use mediation. While the IDEA specifically mentions 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. Additionally, although a hearing decision must be issued and mailed to the parties 45 days after the expiration of the 30-day resolution period or an adjusted resolution period, a hearing officer may grant a specific extension of time at the request of either party to the hearing.

IDEA due process hearings are heard by the Tennessee Secretary of State’s Administrative Procedures Division (APD). APD has released the following information regarding DPHs during the COVID-19 pandemic:

*“In recent days, Tennessee’s judiciary and administrative courts have weighed the COVID-19 pandemic, considering the continually evolving landscape, and responded, accordingly. The Tennessee Supreme Court issued an ORDER SUSPENDING IN-PERSON COURT PROCEEDINGS. The Administrative Procedures Division has made the informed decision to follow that collective*

*wisdom. The Administrative Procedures Division will continue work to serve the public and state agencies. However, in order to minimize the risks associated with in-person contact, the following procedures are hereby implemented until further notice.”*

In-Person Hearings - Cases that are typically heard in-person may be heard by audio or visual teleconference. Alternatively, should it be necessary for a case to be heard in-person, participants may be given the option to participate by audio or visual teleconference, dependent upon the technological capacity of the Agency and location. The Administrative Judge may employ additional protective measures for in-person hearings. Agencies that provide hearing locations should contact opposing litigants, or their counsel, to advise of these options. Agencies that are unable to contact opposing litigants, or their counsel, should post signs at the hearing location with a contact number for the Agency. Otherwise, litigants, or their counsel, may coordinate with the opposing state agency and/or request guidance from the Administrative Judge presiding over the case. If no options are feasible for conducting a hearing by teleconference or in-person as scheduled, the hearing may be continued to a later date.

Extended Appeal Rights - Pursuant to the Tennessee Supreme Court’s ORDER SUSPENDING IN-PERSON COURT PROCEEDINGS, “deadlines set forth in court rules, statutes, ordinances, administrative rules, or otherwise that are set to expire between March 13, and March 31, 2020” are extended through April 6, 2020. Therefore, in cases wherein Petitions for Reconsideration, as contemplated by Tenn. Code Ann. §§ 4-5-315, 317; or Appeals of Initial Orders, as contemplated by Tenn. Code Ann. 4-5-315; and any other deadlines are set to expire between March 13 and March 31, these deadlines shall be extended through April 6, 2020. Should the Tennessee Supreme Court issue an additional Order enlarging the time for the extension of deadlines, such extension shall be immediately effective upon the entry of such Order.

Filings - **Filings should be made by email, to [APD.Filings@tn.gov](mailto:APD.Filings@tn.gov), or by facsimile, to 615-741-4472.** Paper filings should only be made by mail or in-person if a litigant has no access to either email or facsimile.

Questions regarding mediation and due process hearings - **Non-legal questions** may be asked of Administrative Procedures Division staff, during normal business hours (8:00 a.m. - 4:30 p.m., Central Time), by calling 615-741-7008. If you have **legal questions**, please direct them to the Administrative Judge presiding over your case.

Mediation – IDEA mediations are run by the Tennessee Secretary of State’s Administrative Procedures Division (APD). At this time, APD has not released any guidance with regarding to scheduling mediations during the COVID-19 pandemic. Districts should direct any mediation related questions to APD using the contact information above.

### **Additional Guidance and Support for Closures**

In some cases, based on the needs of the student, a lack of services may create additional challenges to the student, especially if he or she is out of the structure of a regular school day. Conversations and guidance for families to best address and support the needs of their children as it relates to accommodations are encouraged. Districts and schools should consider the comprehensive needs of the student and proactively dialogue with families about ways to support students during any school

closures. Scheduling a phone conference or sending home some guidance may help families and the school to ensure consistent coverage for students.

Additional guidance related to the provision of special education and related services during school closings or virtual settings can be found on the Q&A document recently issued by the USDOE: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/ga-covid-19-03-12-2020.pdf>.

A supplemental fact sheet issued by the Office of Special Education Programs (OSEP) on March 21, 2020 can also be found here:

[https://www2.ed.gov/about/offices/list/ocr/frontpage/fag/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term](https://www2.ed.gov/about/offices/list/ocr/frontpage/fag/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term)

For further assistance, please contact Assistant Commissioner, Special Populations Theresa Nicholls at [Theresa.Nicholls@tn.gov](mailto:Theresa.Nicholls@tn.gov)

## **COVID-19 and Special Education: Frequently Asked Questions on Services to Students with Disabilities**

*UPDATED: March 27, 2020*

### *Learning Opportunities for Students with Disabilities*

#### **Q: What are the district's obligations to provide FAPE to students with disabilities through distance learning due to COVID-19?**

How a district will provide FAPE will look different during this unprecedented period of national and state emergency. While ensuring the health and safety of students and educators is a priority, it may not be feasible during the current period of school closures to provide, for example, hands-on physical therapy, occupational therapy, or tactile sign language services. However, many specialized instructional opportunities and related services may be modified to be effectively provided by sending resources and supports to students directly, online or telephonically. Such forms of specialized instruction may include, for instance, accessible reading materials, speech and language services through video conferencing, and videos with accurate captioning. Moreover, districts may continue to implement many of the accommodations on a student's IEP, such as extensions of time for assignments, large print, and use of speech-to-text and other assistive technology. IDEA funds provided to districts may support the expenses related to equipment or materials necessary for related accommodations.

Once school resumes, the district must review how the closure impacted the delivery of special education and related services to individual students and convene IEP Team meetings as necessary in order to make an individualized determination as to what compensatory services may be necessary, and to ensure the student receives FAPE prospectively.

#### **Q. How often should districts communicate with families during this period of school closure?**

School districts should ensure that an IEP Team member (e.g., classroom teacher, special education teacher or other service provider) communicates regularly with families (or guardians) during the period of school closure. The frequency and type of communication will vary depending on the child's

individual needs, the availability of the team member, and the mode of communication utilized. This ongoing communication will help educators and parents/guardians develop a plan for students to receive as much individualized instruction and related services as is possible through distance learning or other remote learning opportunities.

**Q: What provisions need to be made for a district to provide services on a student's IEP remotely?**

During this national emergency, schools may not be able to provide all services in the same manner they are typically provided. Many disability-related modifications and services may be effectively provided remotely. These may include, for instance, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing. It is important to emphasize that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities. The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency.

For any services that cannot be provided remotely (such as some types of physical therapy) the IEP team should document any missed hours and provide compensatory education.

**Q: Are all students eligible for compensatory services following these extended closures?**

Whether a student is entitled to receive compensatory services because of the school's closure is an individualized determination to be made by the IEP team. Doing everything possible *now* to provide required special education instruction and services will be the most effective way for school districts to mitigate the need to provide compensatory services in the future. TDOE anticipates providing further guidance regarding compensatory services before schools re-open in accordance with any further guidance that TDOE has requested on this topic from the USDOE.

**Q: What types of services can be provided remotely?**

USED has stated that the IDEA does not mandate specific methodologies. Where technology itself imposes a barrier to access or where educational materials are simply not available in an accessible format, educators may still meet their legal obligations by providing children with disabilities equally effective alternate access to the curriculum or services provided to other students. For example, if a teacher who has a blind student in her class is working from home and cannot distribute a document accessible to that student, she can distribute materials to students in the class and, if appropriate for the student with the visual impairment, read the document over the phone, online, or provide an audio recording of someone reading the document aloud. IDEA funds may be used to purchase materials to support efforts such as this. TDOE encourages parents, educators, and administrators to collaborate creatively to continue to meet the needs of students with disabilities. Consider practices such as distance instruction, teletherapy and tele-intervention, meetings held on digital platforms, online options for data tracking, and documentation. In addition, districts can provide resources and supports such as instructional packets, projects, and written assignments that are not dependent on students' access to technology.

***Educational Resources***

**Q: What are the most effective ways to provide students with disabilities educational resources during periods of school closure?**

The USDOE has designated the [National Center for Systemic Instruction \(NCSI\)](#) as a resource hub related to the remote provision of special education services and supports during this period of school closures. The Department encourages educators and administrators to refer to the [padlet site](#) NCSI has specifically created to share instructional resources and service delivery solutions. NCSI anticipates continually adding resources and content to support remote special education learning options.

- NCSI website: <https://ncsi.wested.org/>
- Padlet site for educators and administrators: <https://padlet.com/wested/educate>

***Impact on Community-based Settings***

**Q: How do the school closures impact special education students who receive services in community-based settings and students who participate in inclusive concurrent enrollment programs at institutions of higher education?**

Although it will not be possible for students to participate in-person in community-based programs and inclusive concurrent enrollment programs at institutions of higher education, districts should make efforts to develop plans collaboratively with community-based providers, colleges, parents/guardians, and students in order for students to access as much programming as possible during this period of extended closure. Once school resumes, the district should review how the closure impacted the delivery of special education and related services to individual students and convene individual IEP team meetings as necessary to make an individualized determination about whether a student will need compensatory or additional services.

***State and Federal Timelines and Related Activities***

**Q: What is the status of TDOE onsite monitoring and assistance activities during school closures?**

The department officially suspended all monitoring visits through March 31. LEAs that wish to continue with on-site visits may do so virtually. LEAs completing desktop monitoring have been offered extensions to complete at a later date, and all LEAs that were completing self-assessment monitoring may either submit by May 15 or request a waiver for this year. For more information, please contact [Geneva.Taylor@tn.gov](mailto:Geneva.Taylor@tn.gov) or view the Monitoring FAQ on the [TDOE Coronavirus Webpage](#). All IEP-related monitoring processes have been extended until at least **June 1**. Please contact [Laura.Dunn@tn.gov](mailto:Laura.Dunn@tn.gov) for additional information.

All technical assistance visits have been suspended. We want you to focus on what matters most, which is keeping your students and staff safe. The Divisions of Special Populations and Federal Programs and Oversight can provide assistance for any LEA that would like additional programmatic or compliance-related support virtually during this time. For further assistance, please contact [Deborah.Thompson@tn.gov](mailto:Deborah.Thompson@tn.gov) (Federal Programs), [Theresa.Nicholls@tn.gov](mailto:Theresa.Nicholls@tn.gov) (Special Populations) or your assigned coordinator or consultant.

**Q: Since TNReady has been suspended, what data should we use to measure student performance?**

IEP teams should consider multiple sources of data to determine a student's present level of performance, progress on IEP goals/objectives, and instructional needs. These include but are not limited to:

- Universal screening and progress monitoring data
- written assessments
- behavior charting
- work samples
- other summative assessments
- formative assessments
- classroom assessments