

# Providing a Free Appropriate Public Education (FAPE) During School Closure due to the COVID-19 Pandemic through Distance Learning *Frequently Asked Questions*



The West Virginia Department of Education (WVDE) encourages county boards of education to provide educational opportunities to all students, including students with disabilities, in the format each county finds best serves the local community. First and foremost, counties and schools should prioritize taking all necessary steps to protect the health and safety of their students and discourage activity that might contribute to the spread of the coronavirus.

There is no identified method or detailed guidance to adequately and equitably meet the needs of all students in an unprecedented event such as the COVID-19 pandemic. School systems need to be flexible and consider employing a variety of delivery options as they make reasonable efforts to provide services to students with disabilities. Communication and collaboration with families are of paramount importance in identifying the most appropriate course of action.

Counties should identify and acknowledge service delivery limitations, as well as the need to make reasonable efforts to fully implement a student's Individual Education Program (IEP) once normal school operations resume on campus. This requirement to "make every effort ..." does not allow a county to decline all services to students with an IEP and only offer compensatory services at a later date.

The Individuals with Disabilities Education Act (IDEA) requirements stand as written. Requirements for IEP development and review, evaluations, and eligibility, the provision of special education and related services, data and reporting, monitoring, and funding are still in place. However, methods to meet these requirements may look different during this time. Engaging families will be essential to the successful implementation of distance learning for all students, but especially students with IEPs. Partnerships with families are critical to making sure learning continues for the remainder of the school year and beyond.

## **Providing FAPE**

### **1) When school buildings are closed in times of emergencies such as the COVID-19 pandemic and educational opportunities are being provided through distance learning options, are special education and related services required?**

**Yes.** If a county provides educational opportunities through distance learning options, the county must make every effort to ensure the provision of special education and related services to the greatest extent possible. When providing online opportunities, the county must determine if any student receiving special education services needs additional supports to access these opportunities. The county must consider whether and to what extent, compensatory services are required once the regular school operations resume for students who did not receive special education or related services or for reduced minutes. Each case should be considered on an individual basis.

**2) What are options for how counties provide a FAPE to students with disabilities when a school goes to distance learning for all students?**

Counties must ensure that students served by special education have access to the same or equitable learning options as their peers. To the greatest extent possible, the county must make every effort to 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 provided during this time, the student's IEP Team must determine which services it can provide to meet the student's needs (34 CFR 300.324(a)(4)).

In many cases, instructional accommodations may be met in an online environment by providing additional supports, such as individualized telephone or video conferencing. Counties should consider how current accommodations and modifications are offered 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 a county required to provide related services when a school goes to distance learning for all students?**

**Yes.** If a student's IEP requires the provision of related services, the county is responsible for providing these services through distance learning. In many cases, services such as speech and language therapy may be provided in a virtual environment. Other related services, such as occupational therapy and physical therapy, may not be as easily delivered through virtual means and may need to be considered for compensatory services once normal school operations resume.

Individual students should access special education services effectively based on careful county planning. Counties should also carefully consider any implications related to privacy and the Health Insurance Portability and Accountability Act (HIPAA). The Office of Civil Rights (OCR) waived some of the restrictions due to the COVID-19 pandemic.

**4) How will counties provide FAPE to high needs students who cannot participate in some or all distance learning options?**

Counties should first consider alternatives to online opportunities for learning. When electing to use distance learning, there are various factors for the team to consider regarding student characteristics. Not every student is a good candidate for distance learning services; thus, careful consideration needs to occur. Considerations include the complexity of the student's condition, context and environment the student interacts, how comfortable the student is with using technology, and the nature and complexity of the service or intervention required or being asked of by the school. It is also important to note that an adult must be present for each distance learning session that involves one service provider and one student.

The county must consider what compensatory services are required once normal school operations resume if online opportunities or alternative means that were available to other students was not an option.

**5) How should students with disabilities, including students in special class programs, medically fragile students, students with one-to-one paraprofessionals, and students receiving related services, be accommodated in the plan?**

Home instruction/services should be consistent with the student's Individualized Education Program (IEP) to the most appropriate extent possible. Counties should talk to parents, who are critical members of the IEP Team, and help them consider how they may best ensure that students with disabilities have the necessary supports, including medical supports, in place during public health-related school closure. Consultation with the parents should explore how students with disabilities will gain equitable access to home instruction. This is a temporary situation, and counties must offer special education and related services to the most appropriate extent possible while students are away from their schools/programs. IEP teams may need to consider compensatory services when students return to school, and IEPs may need to be adjusted accordingly. The IEP Team should determine the amount of compensatory related services students with IEPs may require, on a case-by-case basis, when regular school operations resume.

## **IEP Goals and Progress Monitoring**

**6) How should IEP teams monitor progress toward annual IEP goals?**

IEP teams will determine if changes are needed by reviewing the students' annual goals and, if applicable, objectives. The Team will also need to consider how the progress toward meeting the annual goals will be measured and periodically reported to parents. The IEP Team, including the parent, may determine it is best to focus on specific IEP goals during the timeframe the student is receiving special education and related services through distance learning. Counties need to ensure they have documented students' present levels for IEP goals to record necessary baseline data. Baseline data will be critical in measuring progress toward the annual goals and having efficient data to make essential educational decisions once normal school operations resume. Once operations resume, the parent of a student with a disability and the county may agree not to convene an IEP Team meeting to make these necessary changes, and instead amend the student's current IEP.

If an IEP Team meeting is warranted or requested by the parents, the county should schedule and hold the IEP Team meeting virtually or by a phone conference.

Teams must document the provision of a student's special education and related services during school building closure. By developing a distance learning plan with the parent(s), teams will be able to determine to what extent special education and related services can be provided during this temporary situation. Teams will ensure every effort is made to provide similar opportunities as to those provided for general education. The plan will not be perfect, but it should be tailored to the individual needs and circumstances of the student and family. Counties should ensure educators track dates, times, and duration of services provided to students with disabilities.

## Individualized Education Programs (IEP): Placement

### 7) Will IEP Team meetings be required for all students receiving special education services to change their placement during this school-building closure due to the COVID-19 pandemic?

The placement of a student who receives special education services does not necessarily mean the physical location where the special education and related services are provided. The closure to normal school operations would not automatically be a change of placement for all students receiving special education and related services. If a county or school is shifting educational opportunities to an alternative model for all students due to an ordered school-building closure, it is not required to convene the IEP Team or amend the IEP for the sole purpose of the school-building closure.

If an IEP Team meeting is warranted or requested by the parents, the county should schedule and hold the IEP meeting virtually or by a phone conference.

Teams must document the provision of a student's special education and related services during school building closure. By developing a distance learning plan with the parent(s), teams will be able to determine to what extent special education and related services can be provided during this temporary situation. Teams will ensure every effort is made to provide similar opportunities as to those provided for general education. The plan will not be perfect, but it should be tailored to the individual needs and circumstances of the student and family. Counties should ensure educators track dates, times, and duration of services provided to students with disabilities.

## IEP Meetings

### 8) Must initial and annual IEP meetings be held during this ordered school-building closure due to the COVID-19 pandemic?

The Office of Special Education and Student Support (OSESS) is unable to extend the required timelines under the IDEA. Counties must make every effort possible to meet required timelines by scheduling and holding IEP Team meetings virtually or by phone conferences and should document all attempts.

- » Team meetings should still consist of all required team members. Please see West Virginia Policy 2419: *Regulations for the Education of Students with Exceptionalities*, Chapter 5: Individualized Education Programs (IEP), Section 1: IEP Initiation.
- » The OSESS encourages county teams and parents to work collaboratively and creatively to meet IEP timeline requirements. If the parent(s) cannot attend virtual meetings or phone conference meetings due to accessibility issues, the county should document reasonable attempts to schedule meetings and document parent contact. A Prior Written Notice (PWN) is provided to inform the parents of any group decision and reasons for that decision. Please document any plans for a future meeting past the annual due date of an IEP in which parents will be able to participate virtually or by phone.

## Evaluations

### 9) How should counties move forward regarding evaluations?

On March 16, 2020, the United States Department of Education (ED), Office for Civil Rights (OCR) published a fact sheet acknowledging that evaluations may be delayed due to issues related to the current COVID-19 pandemic. There has been no communication from ED, as of the publication of this document, indicating that required timelines have been waived for purposes of compliance reporting.

- » **Initial Evaluations:** West Virginia Policy 2419: *Regulations for the Education of Students with Exceptionalities* states when the 80-day initial evaluation timelines will not apply. An allowable reason is when counties close due to circumstances resulting in a state of emergency determined by the Governor of West Virginia. The timeline will be extended in direct proportion to the duration of the state of emergency. Due to the possible long-term state of emergency as a result of the COVID-19 pandemic, Initial evaluations should be completed as soon as possible once the state of emergency subsides.
- » Evaluations that require in-person testing or observations may be postponed until school reopens. If the evaluation or re-evaluation does not require in-person testing or observation, it may be completed while school is closed, with parent consent. (See page 3, <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf>).
- » If the Team determines the evaluation must be postponed due to extreme circumstances, document the decision with a PWN.
- » An interagency transition plan must be developed for a student transitioning from the Part C early childhood intervention program, to ensure that they either have an IEP or Individual Family Service Plan (IFSP) that has been developed and implemented by the time they turn three. This is in accordance with Chapter 5, Section 2: IEP Development of Policy 2419: *Regulations for the Education of Students with Exceptionalities*. There have been no exceptions made for this requirement. To accomplish this, teams may conduct meetings virtually via telephone or videoconference. Document reasonable efforts attempted when there is a delay due to the COVID-19 pandemic.

## Re-evaluations

### 10) Are counties still required to conduct re-evaluations?

The IDEA re-evaluation timeline is three years. For re-evaluations due during a school closing, teams should complete the re-evaluation as soon as possible upon return. Evaluations that do not require face-to-face assessments or observations may occur while schools are closed, so long as the student's parent or legal guardian consents.

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.

Schools should develop a plan to support maintaining timelines and document any delay, the nature and extent of the delay, and the plan to move as quickly as possible to timely remedy the delay.



## Home Instruction

### 11) How is home instruction provided during a health and safety crisis?

If all schools are closed, and the county determines, for health and safety reasons, that staff will not provide home instruction during the public health emergency, the county must contact the parent(s) to review the IEP, if applicable, and determine what, if any, compensatory services must be offered when school resumes.

## Graduation for Students with Disabilities

### 12) How should the IEP Team address graduation for students with disabilities?

County boards of education and IEP teams should exercise flexibility to ensure students with disabilities who were on track to graduate according to their transcripts and Individualized Education Program (IEP) still graduate. We want to make sure that students are not negatively impacted by measures taken in response to the COVID-19.

## Continuation of Special Education Services for Seniors

As counties develop coursework options for seniors, there should be consideration for the provision of services and supports included in student IEPs. Counties are encouraged to communicate with students and families regarding the potential need for flexibility and adjustments to ensure that health and safety requirements are satisfied, while also continuing to provide special education and related services to the extent possible. This will necessitate coordination of all staff involved in the delivery of services.

If the IEP Team determines and documents that a student has not met the graduation requirements or that the student's graduation requirements include extended services through the age of 21, the student can continue to receive services until the school year in which they turn 21. The determination that the student has not met graduation requirements is based on the student's course of study in the IEP and their performance and progress before the school closures caused by COVID-19.

## Ending Special Services Due to Graduation

Before graduation and the discontinuation of special education services, the parent and adult student must be provided with written notice that the county's obligation to provide special education services ends when the student obtains a regular high school diploma. The parent and adult student must be provided a Summary of Performance (SOP), a written summary of academic achievement and functional performance, including recommendations to assist the student in meeting his or her postsecondary goals.

## Extended School Year Services (ESY)

### **13) If a student's IEP calls for ESY services, will those services need to be provided during a period of distance learning?**

The IEP Team determines the need for ESY. A public agency cannot unilaterally limit the type, amount, or duration of those services. A county should consider a student's needs for ESY services within a reasonable time after it is aware or should be aware that the student may need such services. Extended closure of normal school operations may necessitate a reconsideration of ESY services.

If a student's IEP presently calls for ESY, the county needs to provide those services. Counties must provide ESY services when the student's IEP Team determines that the services are necessary for the provision of FAPE.

## Compensatory Education

### **14) If distance learning is provided in some capacity but does not mirror the offer of FAPE in the IEP, will compensatory services be required once normal school operations resume?**

Once regular school operations resume, IEP teams should plan to make individualized determinations regarding whether compensatory education and services are needed for a student. The educational need can be measured by assessing whether the student continued making progress in the general education curriculum, or alternative course of study specified in their IEP. The IEP Team can determine if the student continued making progress on individualized IEP goals and if any regression occurred during the period of school building closure due to COVID-19 pandemic.