

# Frequently Asked Questions:

## *Providing a Free Appropriate Public Education (FAPE) for Students with Disabilities While Considering School Re-entry Scenarios*

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### ***In-Person and/or Blended Instruction***

#### **Q1. Should we amend IEPs to address blended models?**

- A1. It is unnecessary to amend the IEP if the student's special education and related services can be delivered within the blended model as currently written in the IEP. If the educational environment (GEE, SEE), service delivery, or service times will change because of the blended model, amend the IEP to reflect those changes. Consider convening an IEP Team meeting if changes in time and/or educational environment impacts the student's placement in the LRE.

#### **Q2. Should we amend an IEP to address services and LRE if the instructional day is shortened to allow for daily cleaning in a traditional five-day model?**

- A2. Amend the IEP if changes to the length of the instructional day changes the amount of service minutes per week/month that are documented in the IEP.

When using a calculated percentage of total minutes to determine general and special education placement, determine whether the shortened instructional day reduces the total educational minutes. If so, consider convening an IEP Team meeting, rather than amending the IEP, to change the LRE.

#### **Q3. Upon re-entry, how can districts provide special education and related services while limiting exposure outside a student cohort?**

- A3. Students with disabilities must have access to special education and related services listed on their IEPs. IEPs are written to provide FAPE and allow the student to make appropriate progress toward their goals.
- » The first consideration for LRE is whether FAPE can be provided in the general education environment with accommodations and modifications.
  - » If the student needs direct special education and/or related services during in-person instruction, follow health and safety measures.
  - » Use online or teletherapy services in blended scenarios to allow students to remain in a cohort if necessary.
  - » In blended models, if class sizes are reduced, districts should maintain compliance with WVBE Policy 2419 *Regulations for the Education of Students with Exceptionalities*, including the percentage limit for special education students requiring specially designed instruction for integrated and co-taught classrooms.
  - » If after adjustments are made to consider these percentages, compliance cannot be met, a waiver for overage of these class percentages may be requested to the Office of Special Education Director, Susan Beck, using the required [Waiver Request Form](#) on the WVDE Office of Special Education website.

## Virtual Options

### **Q4. If the County Virtual Option cannot meet the needs of students with significant cognitive disabilities, are there other virtual options that may be considered?**

A4. If the county-selected virtual option is not possible for a student with a significant cognitive disability. The IEP Team may determine that the student is able to participate in a customized virtual learning option using local teachers and curriculum based on the West Virginia Alternate Academic Achievement Standards (WVAAAS). Online learning programs such as Unique Learning System and TeachTown are appropriate for students with significant cognitive disabilities. These online programs are not a substitute for direct special education services listed on a student's IEP. These programs will provide ongoing adapted educational opportunities based on Alternate Academic Achievement Standards that may be a portion of a customized virtual learning option.

### **Q5. How do we document services on a virtual option IEP? When should the IEP Team document a special education environment (SEE) versus general education environment (GEE)?**

A5. If the IEP Team determines a virtual option will be appropriate and allow the student to make progress towards their IEP goals, the IEP may need revised to indicate any necessary changes for a virtual environment. Special Education and Related Services in a virtual environment may be listed on the IEP as they would during a traditional in-person model. Services may be documented as follows:

- » List special education student accommodations in the supplementary aids and services section of the IEP. Address the student's accommodations for the virtual platform and instruction.
- » When special education services and or related services are provided directly to the student, list as D/SEE.
- » Students participating in a general education virtual classroom with a special educator co-teaching is considered D/GEE if this service is indicated on the student's IEP.
- » Special Education and/or Related Services are considered D/SEE if students are participating in a breakout special education virtual environment for instruction.
- » When the special educator is consulting with the virtual instructor or general education teacher and not providing direct services to the student(s) this may be considered as an indirect service.
- » All other virtual instructional time should be general education as it would be for all students.
- » The LRE is determined by the amount of D/SEE services the student is provided.

### **Q6. Will the K-12 virtual school option continue during a governor-mandated emergency school closure?**

A6. Yes. The full-time virtual option is not impacted by an emergency school closure or transition to remote learning. Follow IEPs as written.

**Q7. When considering a virtual option, how can eligibility be determined/continued for certain students where their impediment/disability is no longer a barrier to accessing their educational environment? Is a goal related to socialization/interaction and that opportunity a barrier when considering a virtual option?**

- A7. Consider each case individually. In Eligibility Committee Meetings, evaluate the three prongs of eligibility required according to WVBE Policy 2419: *Regulations for the Education of Students with Exceptionalities*. For the second prong, “adverse effect on educational performance,” determine whether the student has the skills necessary to access virtual school courses. Attending virtual school does not remove the student from receiving services. The determination for the student not to receive services is not based on the student attending virtual school and not interacting directly with a teacher/class. The speech language pathologist (SLP) would need evidence that their academics, social interaction and potential vocational skills are being affected by speech, language, fluency, voice or social communication disability. Information from the Teacher Evaluation Report and Parent Information Report could be sources of evidence. At this point, for students just beginning virtual school, consider relying on information regarding academic performance prior to the Governor’s emergency school closures. The decision on eligibility should be based on what the student needs if they meet the three prongs, not whether the student will be attending virtual school.

Several service delivery options are available if you are updating an IEP at an Annual Review and not changing eligibility. Considering there may be skill regression, do not dismiss a student from services at this time unless data supports that they have met their IEP goals, have generalized their skills outside the therapy room, have plateaued, or have no continued adverse academic impact. If the student had a communication disability properly using the three-prongs of eligibility, there was evidence that their academics were adversely impacted in the face-to-face setting; however, the student may not be affected in the virtual environment. At this point, there is no data reflecting that impact; therefore, you must gather this data. Students who receive language therapy might experience an adverse impact on their virtual school academics. Service delivery options for virtual school students could include indirect services or a reduction of service time based on the probable decrease in the impact of the disability on virtual school academics as data is gathered. Both options would allow students to retain their eligibility should they return to brick and mortar schools and enable speech-language pathologists to gather data on academic impact and completion of goals to justify dismissal later. This same guidance applies to Occupational Therapy and Physical Therapy.

Consider goals related to socialization/interaction in the same manner. The student qualified for services because of an educational impact related to social communication (socialization/interaction) in the face-to-face, brick and mortar setting. Unless data supports that the student is ready for dismissal, guidance is to continue the services. While the student’s need for social support is reduced during virtual therapy, the student’s need for support will increase if there is a return to face-to-face or blended instruction. Consider reducing the therapy time or doing indirect services to gather data on impact while the student is receiving virtual instruction.

**Q8. How do we complete the observation component for students participating in the virtual option?**

A8. With consent, do not delay a student's initial evaluation or re-evaluation because a direct observation component cannot be completed. Parents can complete information reports and virtual instructors can observe the student's learning style, strengths, and weaknesses. Consider all pertinent information when making an eligibility decision. The Eligibility Committee must meet within required timelines to address all areas of eligibility considered during the evaluation. If the committee needs additional evaluations, request these during the meeting. Districts utilizing face to face tutoring in the school building or virtual sessions with teachers can use this time to observe a student and complete an observation report.

**Q9. Are the blended and/or virtual Toolkit scenarios considered Out-of-School Environment (OSE) as the Least Restrictive Environment (LRE) placement option?**

A9. Both blended and virtual scenarios are a general education option for all students. These are not considered an OSE LRE placement.

## **Remote Learning**

**Q10. Can students receive in-person related services or evaluations if the governor requires remote learning?**

A10. Yes. Any service that the IEP has determined cannot be provided virtually or is not conducive to be provided virtually may be provided in-person during remote learning, provided that safety protocols are followed. The number of individuals physically in a school building will be greatly reduced during remote learning, thus allowing for a much safer environment for necessary in-person services to be provided.

## **Related Services**

**Q11. How is a Teletherapy learning environment documented on an IEP? Do Teletherapy services require additional permissions? When are Teletherapy services considered SEE versus GEE?**

A11. Teletherapy is a real-time, direct specialized student instruction provided by a therapist. Teletherapy is considered D/SEE. If a therapist is using a teletherapy platform to work with a student who may be accessing a computer in their general education classroom, this is considered D/SEE, because the student is isolated from the general education instruction and is not participating in the general education environment for that amount of time. Therapists may add indirect minutes for parent training and progress monitoring to the student's IEP under Related Services indicating only the minutes required. Written permission including consent for Health Insurance Portability and Accountability Act (HIPAA) is required for any student who receives teletherapy services.

## Preschool

### **Q12. What options are available for West Virginia Universal Pre-K students with disabilities and an IEP?**

- A12. Districts must provide FAPE for preschool students with disabilities. Districts may consider home-based services, a blended option or Distance Family Engagement for Pre-K children with disabilities. Remote learning will occur for pre-k children participating in the in-person or blended option if the Governor determines it is necessary to close a school or county temporarily due to increases in COVID-19 cases impacting the school community. Preschoolers learn through relationships and active hands-on exploration. To the **extent possible**, services should prioritize in-person opportunities for preschoolers.

In [\*WVBE Policy 2419: Regulations for the Education of Students with Exceptionalities\*](#), home is a preschool student placement option and is a viable option for a preschool student with an IEP. In this setting, the student receives some special education and related services in the student's principal residence and receives no services in the early childhood or special education setting.

In blended West Virginia Universal Pre-K programs, children receive quality instruction part-time inside the school building and part-time outside the school building. If utilizing a blended model for Pre-K students, schools must consider developmental appropriateness of schedules and use of technology as well as equity and broadband access.

In a Distance Family Engagement Option, children and families participate in at-home learning supported by regular one-and two-way communication with and between families that supports development of children across the content standards in family-friendly language. The Distance Family Engagement model is more dependent on family engagement. For Least Restrictive Environment (LRE) considerations, home-based services could capture the Distance Family Engagement option.

A parent/caregiver can choose not to continue enrollment for their child in West Virginia Universal Pre-K because of COVID-19 concerns. If the family/caregiver removes their child from enrollment, the public school system must follow Policy 2419 regarding the process for exiting a student from special education. Districts must provide the family Prior Written Notice (PWN) documenting their choice to no longer receive special education or related services due to the COVID-19 pandemic.

Communication must be clear and transparent so the family understands their child will lose eligibility for special education or related services. It is important for the family to make the most informed decision as possible when removing their child from enrollment.

### **Q13. Are the requirements of Early Childhood Outcome Entrance and Exit Ratings still in place?**

- A13. Yes, districts must still complete the Child Outcomes Summary process for all students with an IEP. There is no flexibility regarding the requirement for special education data reporting. County boards of education are federally required to complete the early childhood outcome progress ratings for each preschooler, ages 3-5 years, with an IEP in a program for at least six months. This includes speech-only IEPs.

The Child Outcomes Summary (COS) process must be completed for entry and exit of each preschool student with an IEP regardless of the service delivery option. Be flexible in gathering additional information through parent report and or informal assessment used to support the completion of the rating, such as virtual meetings, teleconferences, or other remote learning resources.

**Entry Rating:**

For completion of the Entry rating consider using the following information:

- » Assessments;
- » Observations;
- » Referral information;
- » Review of existing evaluation documentation (e.g., WV Birth to Three information);
- » Parent/caretaker interviews; and
- » Review of any medical information.

Document which materials/information were used to determine the Entry rating.

**Exit Rating:**

The teacher/team should use available data to complete the Exit rating to reflect the student's current level of performance. For completion of the Exit rating consider using the following information:

- » Progress data collected prior to building closures;
- » Student work samples;
- » Observations;
- » Assessments and/or evaluations;
- » Parent/Caretaker information; and
- » Anecdotal information.

Document which materials/information were used to determine the Exit rating.

## **Homebound**

**Q14. Can Out-of-School Environment (OSE) be used as the Least Restrictive Environment (LRE) option for homebound/medically fragile students?**

A14. A medical order must declare the student high-risk or medically fragile. The IEP Team will conduct a meeting to determine the most appropriate accommodations and special education and related services to provide FAPE and meaningful benefit for the student in an out-of-school environment. See [\*WVBE Policy 2510: Assuring the Quality of Education: Regulations for Education Programs\*](#) for information on Homebound/Hospital Services.

**Q15. How do we address homebound medical orders for students who are unable to wear a face covering, mask or face shield?**

A15. As face coverings and face shields are recognized as a health and safety measure within the Center for Disease Control and Prevention (CDC) guidelines, as well as the [West Virginia Schools Re-entry Toolkit COVID-19 Guidance](#), both indicate populations of children that may not be able to wear face coverings or face shields. This should not solely exclude a student from attending school in-person. This is not considered for medical homebound unless the student has a medical condition preventing in-person attendance during the COVID-19 pandemic without a face covering or face shield. Districts can reassure families and medical providers of the measures that will be taken during in-person learning in compliance with WVDE, Department of Health and Human Resources (DHHR) and CDC guidance. These measures include social distancing, cohorts, personal protective equipment (PPE), hand washing, and sanitization of the learning environments both in the school building and buses. Districts can give medical providers information about school-based alternatives available for students who cannot wear a face-covering, mask, or face shield. Medical providers can make an informed final decision regarding homebound needs. Districts must not make statements that discriminate against students who are not willing or able to wear a face-covering, mask, or face shield. The IEP team must make individualized decisions within the district's homebound policy.

**Q16. How should districts address homebound medical orders based on family safety?**

A16. Homebound decisions are based upon the student's current medical condition and the district homebound policy requirements. The district may convene an IEP Team meeting to determine whether virtual school options are appropriate for the student and then make the appropriate LRE placement. See [WVBE Policy 2510: Assuring the Quality of Education: Regulations for Education Programs](#) for information on Homebound/Hospital Services.

## **Homeschool**

**Q17. What is the process when a parent requests to homeschool their child and subsequently requests their child enroll in one or two virtual classes?**

A17. As required by W. Va. Code §18-8-1, parents/guardians apply to their county board of education to homeschool their child as an exception to the state requirement of compulsory school attendance. Parents submit an educational plan for county approval.

**Q18. Are home school students eligible for special education services?**

A18. The obligation to provide a free and appropriate public education (FAPE) does not apply to students who are home schooled. (WVBE Policy 2419).

**Q19. If a home school student enrolls in up to four courses, are they eligible for special education services?**

A19. The obligation to provide FAPE does not apply to home school students. Even though students may enroll in up to four courses (virtual or traditional), the obligation to provide FAPE does not apply as these students are still considered home school students.

**Q20. If a previously identified special education student transfers from home school back to public school, does their previous eligibility and individualized education program (IEP) resume?**

A20. Once a student transfers to home school, the student's eligibility ends. When students re-enroll in public school, their eligibility does not automatically resume. Once re-enrolled, students would enter an eligibility process to determine if educational services are necessary.

## **Finance**

**Q21. What are the financial options through repurposing Results Driven Priorities (RDP) funding?**

A21. The Office of Special Education will consider repurposing of remaining IDEA discretionary grant funds under RDP. To repurpose your funding, please e-mail Shana Clay ([sdclay@k12.wv.us](mailto:sdclay@k12.wv.us)) and Susan Beck ([sbeck@k12.wv.us](mailto:sbeck@k12.wv.us)) describing how you would like to change your IDEA budget under RDP, including all available details regarding approximate expense amounts in their correct program categories. Be reminded that IDEA funds must be spent with the primary focus on students with disabilities. General education students may receive only an incidental benefit from these funds and may not be the primary focus.

If you have any questions about the repurposing of ReClaimWV funds once included under the RDP grant program, direct those questions to the Office of Student Support and Well-being, specifically Elizabeth McCoy ([eamccoy@k12.wv.us](mailto:eamccoy@k12.wv.us)) and Stephanie Hayes ([stephanie.hayes@k12.wv.us](mailto:stephanie.hayes@k12.wv.us)).

**Q22. Does WVDE anticipate mini grants to assist with the cost of special education?**

A22. Currently, the Office of Special Education plans no additional grants.

You can use CARES/ESSERF funds for anything allowable under IDEA. Additional competitive grant funds were made available to county superintendents.

**Q23. Can RDP money be used for learning platforms/virtual options?**

A23. Yes. You can purchase these platforms with IDEA funds if these platforms are used primarily for students with disabilities. You may not use IDEA funds to purchase learning platforms/virtual options that will be used by all students.

**WVDE Contact:**

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