

Q & A - Reopening concerns – FAPE, Evaluations, Re-evaluations, IEP’s

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What services and programs are districts required to provide for Pre-K aged students with IEP's?

Students with disabilities ages three through five are afforded the right to a free appropriate public education (FAPE) in the least restrictive environment (LRE). Services are defined in the individualized educational program (IEP) and are tailored to each student's strengths and needs.

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. The current unique and ever-changing environment may affect how educational and related services and supports are provided.

Federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities; however, if services continue to be provided to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same educational opportunities, including the provision of FAPE. [28 CFR § 35.130]. In addition, the U.S. Department of Education (DOE) has made it clear that "ensuring compliance with IDEA [Individuals with Disabilities Education Act] should not prevent any school from offering educational programs through distance instruction."

*Source: <https://tats.ucf.edu/wp-content/uploads/sites/9/2020/03/Supple-Fact-Sheet-3.21.20-FINAL.pdf>
Primary Source: Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities, UNITED STATES DEPARTMENT OF EDUCATION, Office for Civil Rights Office for Special Education and Rehabilitative Services, March 21, 2020*

Per the Florida Executive Order (Number 20-52) (DOE Order 2020-EO-06) related to reopening schools: Pursuant to the authority granted in section 1001.10(8), Florida Statutes, school districts and charter school governing boards must provide the full array of services that are required by law so that families who wish to educate their children in a brick and mortar school full time have the opportunity to do so; these services include in-person instruction (barring a state or local health directive to the contrary), specialized instruction and services for students with Individualized Education Programs (IEPs) or live synchronous or asynchronous instruction with the same curriculum as in-person instruction and the ability to interact with a student's teacher and peers as approved by the Commissioner of Education.

If a student's access to instruction changes (face-to-face, virtual) should the IEP be amended?

Every student with a disability is entitled special education services based on their individualized education program (IEP). It may not be feasible, depending on the needs of the individual student to adhere both to distancing and safety guidelines and the criteria outlined in a specific IEP. Attempts to meet physical distancing guidelines while addressing the needs of the individual student and may require creative solutions, often on a case-by-case basis. Additional supports and accommodations should be considered if changes in instructional or therapy techniques are needed in order to maintain best practices for a student's health and safety.

The decision to amend an IEP should be based on data along with input from teachers, therapists, family members, and professionals. Collaborate with family members related to concerns they have about addressing their child's health and physical needs. Keep documentation of all parent conferences. District staff should be consulted regarding guidelines for considering the amendment of a student's IEP.

Example 1: A student's goal addresses imitating speech sounds following a visual (mouth) and sound model. If masks are worn and the therapist is unable to present a clear model, consider providing the model using photos and recordings of the teacher or therapist producing the sound. Look online for example lessons that show production of specific sounds. The method of access to instruction should be documented along with the student's performance. However, changing the goal and objectives on the IEP would not necessarily be required.

Example 2: A student's goal addresses sequences of motor movements related to self-care (steps of toileting, handwashing, and self-feeding). The student is accessing instruction remotely. The therapist and teacher collaborate regarding instruction so that a prompting hierarchy of verbal, visual, and physically modeled movements can be provided consistently. The student often requires physical assistance during some steps of the self-care sequences (hand-over-hand, guiding to begin a motion, steadying from the elbow). Because of instructional access being provided remotely the therapist and teacher might consider coaching the family members who assist the student at home. A component of the coaching can be recorded videos to support the family in their efforts to provide prompts, as well as copies of visuals used. The method of access to instruction should be documented along with the student's performance. A change in the goal on the IEP would not necessarily be required at this time.

Will requirements for eligibility/IEP timelines (i.e. consent for evaluations, evaluations, reevaluations) change or be waived?

Individualized Education Programs (IEPs)

If a child has been found eligible to receive services under the IDEA, the IEP Team must meet and develop an initial IEP within 30 days of a determination that the child needs special education and related services. [34 C.F.R. § 300.323(c)(1)].

IEPs also must be reviewed annually. [34 C.F.R. §300.324(b)(1)]. However, parents and an IEP Team may agree to conduct IEP meetings through alternate means, including videoconferencing or conference telephone calls. [34 C.F.R. §300.328]. School teams and parents are encouraged to work collaboratively and creatively to meet IEP timeline requirements. Keep documentation conferences and contacts with students' parents/guardians.

In making changes to a student's IEP after the annual IEP Team meeting, because of the COVID-19 pandemic, the parent of a student with a disability and the public agency may agree to not convene an IEP Team meeting for the purposes of making those changes, and instead develop a written document to amend or modify the student's current IEP. [34 C.F.R. §300.324(a)(4)(i)]. Refer to your district for specific documents that address notice of changes to IEP without an IEP meeting.

Source: <https://tats.ucf.edu/wp-content/uploads/sites/9/2020/04/qa-covid-19-03-12-2020.pdf> Primary source: Questions and Answers on Providing Services to Children with Disabilities during the Coronavirus Disease 2019 Outbreak, UNITED STATES DEPARTMENT OF EDUCATION, Office for Civil Rights Office for Special Education and Rehabilitative Services March 12, 2020

Reevaluations

A reevaluation of each student with a disability must be conducted at least every three years, unless the parents and the public agency agree that a reevaluation is unnecessary [34 C.F.R. § 300.303(b)(2)]. However, when appropriate, any reevaluation may be conducted through a review of existing evaluation data, and this review may occur without a meeting and without obtaining parental consent, unless it is determined that additional assessments are needed. [34 C.F.R. §300.305(a)]. Consult with district staff for specific district guidelines and procedures. It is important to document contacts with and information shared with families related to the procedures included in the reevaluation process.

Source: <https://tats.ucf.edu/wp-content/uploads/sites/9/2020/03/Supple-Fact-Sheet-3.21.20-FINAL.pdf> Primary Source: Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities, UNITED STATES DEPARTMENT OF EDUCATION, Office for Civil Rights Office for Special Education and Rehabilitative Services, March 21, 2020

Consent:

Electronic and digital signatures for consent are acceptable long as the public agency ensures there are appropriate safeguards in place to protect the integrity of the process. In addition, under Part B of IDEA, these safeguards should include a statement that indicates that the

parent has been fully informed of the relevant activity and that the consent is voluntary on the part of the parent consistent with the IDEA definition of “consent”.

Prior Written Notice:

The OSEP document of June 30, 2020 states that it would be appropriate to consider factors such as the closure of some buildings and facilities, social distancing, and other health-related orders during the pandemic in determining what constitutes a “reasonable time” for the purpose of prior written notice. Nevertheless, public agencies should make every effort to ensure that written notice is provided as soon as possible prior to the proposed or refused action.

Source: <https://tats.ucf.edu/wp-content/uploads/sites/9/2020/07/osep-safeguards-services.pdf> Primary Source: IDEA Part B Procedural Safeguards, US Department of Education, Office of Special Education Programs, June 30, 2020.

Considering testing under alternate circumstances (virtual, PPE) how can we maintain standardization and validity of assessments? What are suggestions for gathering information to inform the process?

Reevaluations

When appropriate, any reevaluation may be conducted through a review of existing evaluation data, and this review may occur without a meeting and without obtaining parental consent, unless it is determined that additional assessments are needed. [34 C.F.R. §300.305(a)].

Evaluations and Eligibility

Many assessment practices can be successfully implemented even when the practitioner cannot be in the same room with the child and family such as during the COVID-19 pandemic or other events that require social distancing. Assessment serves many purposes in early childhood special education service delivery, and these varying purposes require different tools and processes.

Suggestions for consideration:

- Establish and maintain a system of consistent and transparent communication with families. Document the family’s concerns related to evaluations. Discuss and document their choices whether they prefer alternate methods (remote, interview, combination of methods) or if their preference is for a person-to-person evaluation.
- Review existing information and records and discuss these records with the family. Staff should be knowledgeable of regulations of FERPA and HIPAA when requesting and discussing records.
- Investigate available assessment instruments in order to determine those that best meet the needs for administration, including options of interviews, videoconferencing, in-person and video observations. Maintaining of standardization is a vital component of assessment.
 - Tools that focus on naturally occurring behaviors lend themselves to collecting information remotely. With these tools, gathering information on a child’s

functioning can be done through teleconference, parent report, or parent videos of the child engaging in everyday routines and activities. However, highly scripted assessments that require practitioners to directly administer tasks to a child are unlikely to produce valid results, and thus are not suitable for remote administration.

- Statements from assessment tools publishers: <https://padlet.com/eita/statments>
- Best practices for conducting evaluations of young children apply for evaluations conducted using social distancing and increased safety precautions.
 - 1. Distancing and safety preventative measures:
 - Provide options for a family interview to be conducted remotely in order to maintain distancing.
 - Maintain appropriate social distance within the assessment environment. Request that the family members accompany their child into the testing environment and request that they assist in monitoring, redirecting, and physically intervening (for safety) as needed. Note: Emphasize that they should limit assistance so that they do not help their child on assessment items.
 - Maintain your district social distancing guidelines during person-to-person evaluation sessions (i.e. distance apart, masks). Describe the district guidelines to the family before the evaluation session so that they know what to expect.
 - 2. Cleaning Guidelines
 - Clean and sanitize the testing environment between children and families. Use materials and cleaning solutions as outlined in district guidelines.
 - Clean toys, manipulative items, and test items between children and families.
 - If possible keep a separate set of testing items that can be stored in bins. Alternate the use of sets of items to insure that there has been sufficient time after cleaning (as outlined in district guidelines).
 - Request that families bring a comfort or chew item if needed for their child.
 - Remind family members and children about the guidelines to wash hands upon entering the room. Examiners should model and set a good example by washing their hands. Provide wipes if hand-washing sinks are not available.
 - 3. Preparation
 - Collaborate with family members to prepare young children for “talking with” and “playing with” adults who will be wearing masks.
 - Set up the environment so that items that are not used in the assessment are not available and are preferably out of sight.
 - Examiners should have their materials in close proximity so that they can avoid moving around the room to gather materials.

See additional resources and suggestions in Options for districts for evaluations related to Transition from Part C. TATS Website page: <https://tats.ucf.edu/ideas-and-resources-for-evaluations-transition-and-collaborating-with-families/>

How do we address parents' requests that are not within the district guidelines (face-to-face or virtual meetings and evaluations, number of people attending meetings)?

First, address the parents' request by referring to the district's guidelines regarding health and safety. If the requests continue to be unresolved, consult district leadership for guidance. If possible, offer parents the opportunity to invite their desired guests to attend remotely. Consult district contacts for assistance in responding to the parents' requests. Maintain positive communication with the family while waiting for a resolution. Document contacts with parents/guardians related to the information about guidelines that is given to them, as well as their requests.

What are options for districts when children transitioning from Early Steps do not have current standardized assessments?

As children transition from Part C to Part B services the expectation is to have the child's IEP in place by their third birthday. Similar to evaluation timelines, OSEP has not waived or changed this IDEA requirement related to Indicator 12. Subsequently, as children transitioning from Part C to Part B are evaluated and found eligible during this time, it is the expectation to complete those activities and start the IEP services on or before the child's third birthday. Keep in mind that instances in which parents choose to delay the evaluation or IEP start date constitute allowable use of delay codes.

During school/program closure and reopening with social distancing, it is critical that communication between Part C and 619 occur regarding available assessment information as written in their Interagency Agreements. Collaboration should occur in order to identify additional information needed in order to determine eligibility. In those instances, when there is not sufficient information to determine eligibility the LEA is responsible for gathering additional information or conducting assessments in order to comply with Indicator 12 timeline (Transition from Part C to Part B by third birthday).

First and foremost, ensure transparency with the family, gain their informed, verbal consent and provide written notices per IDEA. The results of any family contacts, including verbal consents, must be clearly documented in the child's record and on the form relating to the activity for which consent is being obtained.

A family may choose not to participate in virtual or socially-distanced evaluation procedures and therefore postpone their child's evaluation. It is important to document all contacts with the family and provide specific details regarding families' requests.

When determining methods of conducting evaluations, including hearing and vision screening, it is important to consider the effectiveness of each component of the evaluation. Consider a combination of the following:

- Review of existing developmental information, including videos of the child, if available;
- Virtual observation of a play session or other routine;

- Guiding parents in simple activities that can then be reviewed together;
- Direct assessments that are able to be conducted in an interview format

When using a review of records to inform professional judgment related to eligibility the following should be thoroughly reviewed and considered:

- Possibility of administering an evaluation instrument;
- Reviewing the child's history (including interviewing the parent);
- Identifying the child's level of functioning in each of the developmental areas (cognitive development, physical development, including vision and hearing), communication development, social or emotional development, and adaptive development);
- Gathering information from other sources such as family members, other caregivers, medical providers, social workers and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and
- Reviewing medical, educational, or other records.
- The use of a child's previous records during the evaluation process is further detailed at the following site: https://www.ecfr.gov/cgi-bin/text-idx?SID=ff53566124171a51fa168636bffc206e&mc=true&node=se34.2.303_1321&rgn=div8

The following resources offer guidance related to evaluation instruments that are recommended for consideration when procedures might likely rely on virtual or social-distancing formats:

TATS Website page: <https://tats.ucf.edu/ideas-and-resources-for-evaluations-transition-and-collaborating-with-families/>

- Screening, Evaluation, and Assessment Updates from ECTA: <https://ectacenter.org/topics/earlyid/screeneval.asp>
- Norm-referenced Assessment Tools with Potential for Remote Administration: https://tats.ucf.edu/wp-content/uploads/sites/9/2020/06/Assessment_Tool_Table.pdf
- Q&A Related to Pre-K Evaluations, Transitions, Additional Year, and Reevaluations <https://tats.ucf.edu/wp-content/uploads/sites/9/2020/05/Questions-and-Answers-2-edit-SS-5.1.20-1.pdf>
- Vision and Hearing Screening Questionnaire (Example) <https://tats.ucf.edu/wp-content/uploads/sites/9/2020/04/ESE-hearing-vision-questionnaire.pdf>
- IDEA Part B Procedural Safeguards, US Department of Education, Office of Special Education Programs, June 30, 2020. <https://tats.ucf.edu/wp-content/uploads/sites/9/2020/07/osep-safeguards-services.pdf>
- Applying Assessment Principles to Determining Eligibility Remotely, ECTA, April 22, 2020, <https://tats.ucf.edu/wp-content/uploads/sites/9/2020/07/y2020remoteeligibility619.pdf>
- Resource Links to Screening Instruments from Head Start, <https://tats.ucf.edu/wp-content/uploads/sites/9/2020/07/screening-resource-links.pdf>
- Statements from assessment tools publishers: <https://padlet.com/eita/statments>

What are the guidelines for situations in which a student is not receiving therapy and related services (due to shortage of therapists, illnesses, exposure to COVID-19)? What are suggestions related to compensatory services?

The student's IEP team is encouraged to consider related services in the context of what specially designed instruction (special education services) means within a district's continuity of learning plan. Related services (i.e. OT, PT) are supportive services required to assist a child who has been identified as a child with an IEP to benefit from special education services.

When districts reopen schools, regardless of a student's access to instruction, IEP teams will need to review individual student IEPs to determine Present Levels of Performance for students, including progress monitoring data from previous remote instruction.

Per the Florida Executive Order (Number 20-52) (DOE Order 2020-EO-06) School districts must immediately begin working with IEP teams to identify students who may have regressed during school closures. School districts must ensure that IEP teams determine needed services, including compensatory services. IEP teams must follow a student-centered approach with a commitment to ensure that the individual needs of each child are met.

An IEP team may consider using informal assessments or screenings to determine if a student has experienced changes in a performance and/or gaps in skill development. Where, due to the COVID-19 pandemic and resulting closures of school buildings, there has been an interruption in providing IEP services, IEP teams should make an individualized determination whether and to what extent compensatory education may be needed. (Article 7 of IDEA) NOTE: If a student with a disability was refused services by a school, or otherwise did not receive services or instruction, while other students were receiving services during the building closures, then actual compensatory services may be warranted.

It is vital that contacts and conferences with families be documented. The appropriate district-level staff should be consulted regarding guidelines for determining and providing compensatory services.

What are suggested guidelines for addressing inconsistent attendance and the impact it will have on a student's progress on the IEP goals?

Special considerations and accommodations to account for the diversity of students should be made, especially for our vulnerable populations, including those who are medically fragile or have special health care needs or disabilities, with the goal of safe return to school. No student should be excluded from school unless required in order to adhere to local public health mandates or because of unique medical needs. Pediatricians, families, and schools should partner together to collaboratively identify and develop accommodations, when needed. Collaborate with families and document contacts and conferences with them related to their concerns about students' health and safety needs.

Source: <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/> Primary Source: COVID-19 Planning Considerations: Guidance for School Re-entry. American Academy of Pediatrics.

Clearly Articulated Attendance Policies

The multiple scenarios that school districts may face during reopening require that they practice flexibility in attendance policies and practices. At-risk students and staff may need accommodations to remain in their homes, increasing the need for access to internet and related educational technologies for those engaged in distance learning.

Pre-K ESE has no attendance requirement since it is not a compulsory program but consideration should be given regarding ways to encourage attendance and communicate with families when students' attendance is inconsistent. Document contacts with families related to attendance. Progress monitoring data should be consistently collected to ensure that IEP goals are being addressed and that families are informed about the status of students' progress.

Source: American School Superintendents' Association Task Force for Reopening Schools, Guiding Principles and Action Steps, June, 2020.

References:

References are arranged in order of the agency or department that developed the documents cited.

American Academy of Pediatrics, *COVID-19 Planning Considerations: Guidance for School Re-entry. Interim Guidance*, June 25, 2020 from <https://ectacenter.org/topics/disaster/coronavirus-re-opening.asp>

American Academy of Pediatrics, *Return to School During COVID-19, Healthy Children*. <https://www.healthychildren.org/English/health-issues/conditions/COVID-19/Pages/Return-to-School-During-COVID-19.aspx>

Department of Social Services and Department of Education, California, April 7, 2020. *Social and Physical Distancing Guidance and Healthy Practices in Response to the Global Pandemic*, Source: <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>

Departments of Education, Health, and Human Services. Michigan, *Considerations for Planning Return to In-person Education*, June 4, 2020. Source: <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>

ECTA Resources:

Child Find and Identification: <https://ectacenter.org/topics/earlyid/earlyid.asp>

Part B Section 619 Eligibility: <https://ectacenter.org/topics/earlyid/partbelig.asp>

Transition: <https://ectacenter.org/topics/transition/transition.asp>

IEP's: <https://ectacenter.org/topics/iep/iep.asp>

IDEA Guidance: <https://www.ed.gov/coronavirus>

Part B Procedural Safeguards, June 30, 2020. Source: <https://www.ed.gov/coronavirus>
COVID-19 pandemic may be found online at <https://www.ed.gov/coronavirus>

Office for Civil Rights Office for Special Education and Rehabilitative Services, US Department of Education, March 21, 2020, *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, <https://tats.ucf.edu/wp-content/uploads/sites/9/2020/04/qa-covid-19-03-12-2020.pdf>