



**OKLAHOMA**  
**Education**

## FAQ: Providing a Free Appropriate Public Education (FAPE) through a Distance Learning Platform during a Closure to Normal School Operations due to the COVID 19 Pandemic

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. As stated in the *Oklahoma Resources for Distance Learning* document, “*Distance learning is any method of learning that happens outside the traditional school building.*” Districts need to be flexible and consider employing a variety of delivery options as they make reasonable efforts to provide services to students with disabilities. Above all, districts should prioritize health and safety of students, staff, and communities.

Districts 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 district 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 cannot be waived. 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 successful implementation of distance learning for all students, but especially students on IEPs. Partnerships with families will be critical as we work together to make sure learning continues for the remainder of the school year and beyond.

### Providing FAPE

#### **1) When school buildings are closed under a public health order and hours of instruction are being provided through a distance learning platform, are special education and related services required?**

Yes. If a district provides hours of instruction through a distance learning platform, the district must ensure that the special education and related services are provided to the greatest extent possible. If online instruction is provided, the district must determine if any

student receiving special education services needs additional supports to access the online learning. If some special education and/or related services cannot be provided or minutes of services are reduced, the district must consider, whether and to what extent, compensatory services are required once the normal school operations resume. These determinations must be made on an individual student basis. The OSDE-SES has developed the following **optional** form to assist districts in reviewing files and documenting individualized decisions on compensatory services.

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

Districts must ensure that students served by special education have access to the same or equitable learning platform as their peers. To the greatest extent possible, the district must provide the student with the services required by the student's IEP. If there are services, accommodations, and modifications required by the student's IEP that cannot be 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)).

Changes in services and accommodations may be made through the IEP amendment process. In many cases, instructional accommodations may be met in an online environment by providing additional supports, such as individualized telephone or video conferencing. Districts should consider how current accommodations and modifications are provided in a physical classroom setting (i.e. extra time, redirection, small group, among others) and what this would look like in a virtual environment.

**3) Is a district required to provide related services when a school goes distance learning platform for all students?**

Yes. If a student's IEP requires the provision of related services, the district is responsible for providing these services through a distance learning platform. In many cases, services such as speech and language therapy or special education counseling may be able to be provided in a virtual environment. Districts should plan carefully to ensure that services can be provided effectively and that individual students are able to effectively access them. Districts should also carefully consider any implications related to privacy and the Family Educational Rights and Privacy Act (FERPA).

**4) How will districts provide FAPE to high needs students who cannot participate in a distance learning platform?**

Districts should first consider alternatives to online opportunities for learning. Please consult the *Distance Learning Guidance for Special Education*.

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, the context and environment in which the student

interacts, how comfortable the student is with using technology, and the nature and complexity of the service and/or intervention required and/or being asked of by the school.

If services cannot be provided through an online opportunity or alternative means that are available to other students, then the district must determine what compensatory services are required once normal school operations resume.

**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. Districts should talk to parents, who are key 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 a 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 districts must offer special education 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 normal school operations resume.

**IEP Goals and Progress Monitoring**

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

IEP teams will need to review students' annual goals and, if applicable, objectives, to determine if any changes need made. The team will also need to review 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 a distance learning platform. Districts will need to ensure they have documented students' present levels for IEP goals in order 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 resumes. The parent of a student with a disability and the district may agree to not convene an IEP meeting for the purposes of making these necessary changes, and instead develop a written document to amend or modify the student's current IEP (to be included as part of the IEP).

## IEP Amendments

### **7) What flexibility do districts have in the process required to amend an individual student's existing IEP during a closure of normal school operations?**

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 district may agree to not convene an IEP meeting for the purposes of making necessary changes, and instead develop a written document to amend or modify the student's current IEP (to be included as part of the IEP). 34 C.F.R. §300.324(a)(4)(i) However, if these changes are made to the IEP under this circumstance, the school must ensure that the members of the IEP team are informed of these changes. 34 C.F.R. §300.324(a)(4)

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

It is vital that teams document a student's specialized instruction, related services and how they were provided during school building closure. In the absence of documentation, a hearing officer may assume that no services were provided. Districts should ensure educators track dates, times, and duration of instruction and services provided to students with disabilities.

## IEP Meetings

### **8) Must initial and annual IEP meetings be held during this closure to normal school operations?**

The OSDE-SES cannot extend the required timelines under the IDEA. School districts must make every effort possible to meet required timelines by scheduling and holding IEP meetings virtually or by phone conferences and should document all attempts. [See 34 CFR §300.501 Opportunity to examine records; parent participation in meetings.](#)

- Team meetings should still consist of all required team members. [Please see the Oklahoma Special Education Handbook, Chapter 5.](#) Individualized Education Programs (IEP) Section 1.F "Excusal from Meeting" should be completed if any members are not able to attend.
- The OSDE-SES encourages district teams and parents to work collaboratively and creatively to meet IEP timeline requirements. If parent(s) cannot attend virtual meetings or by phone conference meetings due to accessibility issues, the district should document reasonable attempts to schedule meetings and document parent contact. A Written Notice to Parents must be used 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.

## Individualized Education Programs (IEP): Placement

### **9) Will IEP meetings be required for all students receiving special education services to change their placement during this closure to normal school operations?**

The placement of a student receiving special education services does not necessarily mean the physical location where the special education and related services are being provided; therefore, the closure to normal school operations would not automatically be a change of placement for all students receiving special education and related services. Thus, an amendment to the IEP is not always necessary. If a student with IEPs are receiving the same services as students in the general education setting during school building closure, the IEP may not need to be amended with regard to placement or setting.

IEPs will need reviewed to determine how services will be provided and if a change of placement has occurred. Any changes to services (frequency, duration or placement) will need to be documented as through an IEP amendment.

## Individualized Education Programs (IEP): Service Types

### **10) What service types do we use when developing IEPs for students receiving instruction through a Distance Learning Platform?**

The service types, in most cases, will remain the same. IEP teams will need to review IEPs to determine if service types need to be changed.

Service types are as follows.

- **Monitoring:** The student receives primary instruction from a general education teacher. The special education teacher monitors the performance of the student in the LRE to ensure appropriate access to the curriculum and progress toward annual IEP goals.
- **Collaboration:** The student receives primary instruction from a general education teacher and the special education teacher reinforces the direct instruction of the general education curriculum.
- **Co-teaching:** The student receives primary instruction from both a general education teacher and a special education teacher within the general education classroom. Teachers have an equal partnership in the responsibility.
- **Direct Instruction:** The student receives primary instruction from a qualified special education teacher outside of the general education classroom.

## Evaluations

### **11)How should districts move forward in regard to evaluations?**

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

- Initial evaluations must be completed within 45 school days of parental consent. An eligibility determination must be made; and an IEP must be developed in accordance with IDEA.
- Evaluations that require in-person testing or observations may be postponed until school reopens. If the evaluation or reevaluation 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 team determines that evaluation must be postponed due to extreme circumstances, document the decision with written notice.
- Typically, transitions from Part C to Part B must be completed within 45 days of the district receiving a referral. However, the timeline may not apply if the family is unavailable due to “exceptional family circumstances that are documented”; the COVID-19 pandemic could be considered an exceptional family circumstance.
- Some assessment publishing companies allow qualified examiners (school psychologists, school psychometrists and/or speech language pathologists) to use any test the qualified examiner deems appropriate even if the publishers have not intended for the test to be virtually administered. This raises issues regarding the reliability and validity of the results obtained, as norming samples have not included telehealth administration. Additional factors will need to be considered to maintain test integrity, including others who may be in the testing room and the level of distractions present during administration.

## Reevaluations

### **12)Are districts still required to conduct reevaluations?**

A reevaluation of a student with a disability must be conducted at least every three years, unless the parents and the district 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 MEEGs meeting, unless it is determined that additional assessments are needed. 34 C.F.R. §300.305(a)

## Home Instruction

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

If all schools are open and the district determines, for health and safety reasons, that staff will not provide home instruction during the public health emergency, the district must review the IEP, if applicable, and determine what, if any, compensatory services must be offered when school resumes.

## Graduation for Students with Disabilities

### **14)How should the IEP team address graduation for students with disabilities?**

Districts and IEP teams should exercise flexibility to ensure students with disabilities who were on track to graduate according to their transcripts and Individual 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 districts develop coursework options for seniors, there should be consideration for provision of services and supports included in student IEPs. Districts 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 specially designed instruction to the extent possible. This will necessitate coordination of staff involved in delivery of instruction.

If the IEP team determines and documents that a student has not met the graduation requirements or that the student's graduation requirements include 18–21 services, 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 should be based on the student's course of study in the IEP and their performance and progress prior to the school closures caused by COVID-19.

### **Ending Special Services Due to Graduation**

A reevaluation is not required to discontinue a student's special education services due to graduation. However, prior to graduation and the discontinuation of special education services, the district must provide the parent and/or adult student with written notice that the district's obligation to provide special education services ends when the student obtains a regular high school diploma; and provide the parent and/or adult student with 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. For more information and resources for the discontinuation of services and the Summary of Performance, please refer to the [OK Special Education Handbook](#) and [The Center for Change in Transition Services](#).

## Extended School Year Services (ESY)

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

The need for ESY is determined by the IEP team. A public agency cannot unilaterally limit the type, amount, or duration of those services. A district 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. An extended closure of normal school operations may necessitate a reconsideration of ESY services.

If a child's IEP presently calls for ESY, the district needs to provide those services. Districts must provide ESY services when the child's IEP team determines that the services are necessary for the provision of FAPE to the child. 34 CFR 300.106 (a)(2).

## Compensatory Education

### **16) 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 normal school operations resume, IEP teams should plan to make individualized determinations regarding whether or not compensatory education and services may be needed for a student. Educational need can be measured by assessing whether or not the student continued making progress in the general education curriculum, or alternative course of study specified in their IEP, or toward meeting their individualized IEP goals and/or if any regression occurred during the period of school site closure.