



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

## **Guidance Related to Coronavirus (COVID-19): IDEA, Part B Provision of FAPE Frequently Asked Questions**

(March 25, 2020)

### **Background**

As a part of the District's response to the coronavirus (COVID-19) outbreak in the United States, OSSE is offering this guidance document, alongside other relevant guidance documents, to support local education agencies (LEAs). For information on obligations related to the provision of free appropriate public education (FAPE) under Part B of the Individuals with Disabilities Education Act (IDEA) in the event of school closures related to COVID-19, please see the guidance available [here](#). Also see guidance issued by the U.S. Department of Education (USED), Office of Special Education Programs (OSEP) on ensuring FAPE during the COVID-19 outbreak, which can be accessed [here](#), and a supplemental fact sheet available [here](#).

### **Scope**

This document contains guidance on LEA responsibilities under Part B of IDEA relating to the provision of FAPE. This document generally constitutes informal guidance and does not impose any additional requirements beyond those included in applicable federal and local law and regulations.

### **Effective Date**

This guidance was issued on March 25, 2020, and will remain in effect until further notice.

### **Frequently Asked Questions**

OSSE acknowledges that LEAs and schools are operating in a rapidly changing environment under unprecedented circumstances. We are committed to being flexible and accommodating where possible, and offer the following guidance to provide clarity on questions and concerns OSSE has received from LEAs. In the absence of federal or local guidance, LEAs should establish policies and procedures consistent with IDEA requirements.

#### **Q1: When is an LEA required to make educational opportunities available to students with disabilities during a school closure due to COVID-19?**

**A:** If a school or LEA is closed due to COVID-19 and is not providing any educational opportunities to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once school 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).

The USED, in [guidance](#) released on March 21, 2020, reminded LEAs and schools that they should not opt to close or decline to provide distance instruction, at the expense of all students, to avoid the

provision of education services for students with disabilities. Rather, LEAs must make local decisions that take into consideration the health, safety, and well-being of all their students and staff. ([USED Supplemental Fact Sheet, p. 1](#))

If a school or LEA is closed due to COVID-19 and is offering any educational opportunity including distance learning, the LEA must ensure that students with disabilities have equal access to such opportunities. ([OSEP Guidance A-1](#))

**Q2: Can distance learning count towards the provision of FAPE?**

**A:** The determination of whether a student with a disability received FAPE through distance learning, or any other type of educational opportunity or service provision, would be an individualized determination based on the specific needs of and services provided to the student. However, USED has acknowledged that FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically. ([USED Supplemental Fact Sheet p. 1-2](#))

Where technology itself imposes a barrier to access or where educational materials simply are 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 to the rest of the class an inaccessible document and, if appropriate for the student, read the document over the phone to the blind student or provide the blind student with an audio recording of a reading of the document aloud. ([USED Supplemental Fact Sheet, p. 2](#))

**Q3: When and how must an LEA provide services to a student with a disability during a school closure due to COVID-19?**

**A:** If a school or LEA is closed for fewer than 10 consecutive school days and no educational services are provided for any student, a student with a disability is not entitled to specialized instruction or related services. If a school or LEA is closed for 10 consecutive school days or more, it may constitute a change in placement for a student with a disability require the IEP team to convene to determine the appropriate placement for a student during the period of closure. If a school or LEA is closed for any period of time and educational services are provided to students through distance learning (as described above), the IEP team must consider the appropriateness of providing services to the student during the period of closure in an alternate location, including in the student's home. As part of its considerations, the IEP team should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services.

**Q4: What should an LEA do if a parent refuses to participate in remote service provision, including distance learning?**

**A:** If a parent or student refuses to participate in the remote, virtual, or in-home provision of services during the period of closure, the LEA may indicate in its documentation that the service was attempted and the student was unavailable for the service.

**Q5: How should an LEA document the remote provision of related services?**

**A:** If a school or LEA is indicated as closed per the school calendar, and a related service provider attempts to log a service provided on a school closure day, the Special Education Data System (SEDS)

will provide the user with a warning that “the date of service is on a school holiday or other non-working day”, but will allow the related service provider to document the service as usual. As such, remote services should be documented consistent with current requirements. If a related service provider has difficulty documenting a service, OSSE recommends the provider document the service provision consistent with the information usually gathered in SEDS, upload such documentation to the student’s SEDS file as a Miscellaneous Document, and designate appropriate naming conventions to reflect the service provided and date(s) of service (for example, “Audiology March 20 2020.doc”). Please note that services provided and documented during a school closure will appear in the Related Services Management Report (RSMR) under “School Closure” in the Delivered Services Type field.

**Q6: What factors should be considered when determining the appropriateness of homebound instruction or distance learning for students with disabilities?**

**A:** IEP teams should consider the individualized needs of the student and the impact of the student’s disability on their ability to access homebound instruction or distance learning. IEP teams should also consider whether the student requires assistive technology devices or services to access homebound instruction or distance learning opportunities. Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

**Q7: Must LEAs provide dedicated aides to assist students with disabilities during distance learning?**

**A:** If an LEA provides distance learning opportunities to all students, the supports and services required by a student’s IEP should be provided to the extent practicable, including dedicated aide services. When determining appropriate supports and services to be provided to a student with a disability through distance learning, the IEP team must consider the individualized needs of the student and should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services, including designating and providing dedicated aide services in the home. In instances where it is prohibitive or impracticable to provide in-person services due to health and safety concerns or directives from state or local authorities, the IEP team should consider alternative means of providing supports to the student or family, including the provision of remote or virtual supports, services, or instruction.

**Q8: May IDEA procedural timelines be extended?**

**A:** As a general principle, during this unprecedented national emergency, public agencies are encouraged to work with parents to reach mutually agreeable extensions of time, as appropriate. For further information, please refer to the [USED Supplemental Fact Sheet, p. 4-5](#).

**Q9: When must an LEA hold an IEP team meeting or complete an IEP amendment for a student to reflect a change in services or placement because of a student absence due to COVID-19?**

**A:** If a school or LEA is open, but a student with a disability is absent for an extended period of time (generally more than 10 consecutive school days) and is determined to need homebound services because of a medical problem (including exposure to or diagnosis of COVID-19), the IEP team should convene to determine the appropriate placement for the student and IEP services, as needed. ([OSEP Guidance Question A-2](#))

**Q10: If a school or LEA is closed, is it expected to still hold IEP team meetings?**

**A:** IEP teams are not required to meet in person while schools are closed. LEAs are encouraged to consider the appropriateness and feasibility of virtual meetings during a period of extended closure. As part of its considerations, the LEA should follow appropriate health and safety recommendations and guidelines related to COVID-19. If a virtual meeting is not possible, the LEA should convene the needed IEP team meeting as soon as possible after school reopens.

**Q11: What should an LEA do if it cannot hold IEP team meetings or provide special education or related services to students with disabilities during a period of extended closure?**

**A:** When the LEA reopens, LEAs and IEP teams should work expeditiously to address overdue student-level responsibilities, including but not limited to overdue initial evaluations, reevaluations, annual IEP reviews, and extended school year (ESY) eligibility determinations. IEP teams should convene to review the impact of the lapse in services for each student with a disability, including making an individualized determination as to whether compensatory services are needed. ([OSEP Guidance Question A-1](#))

**Q12: In the event of extended school closures due to COVID-19, are LEAs responsible for ensuring the timeliness of initial evaluations, reevaluations, and early childhood transitions?**

**A:** LEAs are encouraged to consider the appropriateness and feasibility of virtual meetings to ensure the timeliness of initial evaluations and reevaluations. If assessments or evaluation activities are available online or may be administered virtually or remotely, such activities should continue in a timely manner. 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 reopens. Evaluations and re-evaluations that do not require face-to-face assessments or observations may take place while schools are closed, so long as a student's parent or legal guardian makes the child available. IEP team meetings related to initial evaluations or reevaluations may be conducted virtually, as appropriate, including using other methods to ensure parent participation, including individual or conference telephone calls, and video or Skype calls. If a parent cannot or repeatedly refuses to participate in virtual meetings, the LEA is encouraged to document in the student's Communication Log in SEDS efforts to schedule meetings and parental refusal or inability to participate. Such documentation may later be used as evidence of noncompliance with timelines due to parental delay. If a virtual meeting is not possible, the LEA should convene the needed IEP team meeting as soon as possible after school reopens.

**Q13: What obligations do LEAs have for students attending nonpublic special education schools or programs?**

**A:** The guidance provided herein applies to all students enrolled in District of Columbia LEAs, including students attending nonpublic schools. OSSE expects that LEAs will collaborate with nonpublic schools to ensure equal access to educational opportunities, as appropriate. During the COVID-19 public health emergency, LEAs may submit a formal request that OSSE continue making tuition payments to a nonpublic special education school for up to thirty (30) calendar days from the date of a student LEA or school closure (pursuant to Chapter 28 of Title 5-A of the District of Columbia Municipal Regulations (5-A DCMR § 2821.15). Guidance related to students attending nonpublic special education schools or programs is available on OSSE's website [here](#).

**Q14: What obligations exist for LEAs pertaining to students placed in residential schools?**

**A:** OSSE has not been notified of any residential schools closing or evacuating District of Columbia students with disabilities. OSSE has been in communication with residential schools, and LEAs should also maintain contact with residential schools attended by students enrolled in that LEA.

**Q15: How does an extended closure of schools or extended period of remote work for OSSE affect the nonpublic placement process?**

**A:** OSSE will continue to receive referrals for the nonpublic placement process, including change in placement and change in location requests. Meetings will be held virtually, if possible, and otherwise rescheduled.

**Q16: What is the status of OSSE DOT transportation for students with disabilities needing transportation to LEAs or nonpublic schools?**

**A:** For more information on OSSE DOT's provision of student transportation, please refer to the guidance available [here](#).

**Q17: Will OSSE monitoring activities continue during a period of extended closure?**

**A:** Guidance related to OSSE monitoring during the COVID-19 outbreak in the United States is forthcoming.

**Q18: How should LEAs protect student confidentiality during this time?**

**A:** Please refer to the US Department of Education's Frequently Asked Questions guidance regarding obligations under the Family Educational Rights and Privacy Act (FERPA) during COVID-19, available [here](#).

**Questions?**

If you have questions relating to this guidance please contact the Division of Systems and Supports, K-12 policy team at OSSE.DSEpolicy@dc.gov.