



# COVID19 and Special Education in Texas

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There is no defined or correct method to adequately and equitably meet the needs of all students in an unprecedented event such as the current COVID 19 pandemic response. LEAs 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, LEAs should prioritize health and safety of students, staff, and communities. LEAs should identify and acknowledge service delivery limitations, as well as the need for LEAs to make reasonable efforts to fully implement a student's IEP once school resumes. This requirement to "make every effort..." does not allow a LEAs to decline all services to students with an IEP and only offer compensatory services at a later date. Below are a few considerations:

- As LEA leadership plans for educational services during school closures, they should consider, address, and communicate equity needs for students with disabilities, placed by the LEA in private facilities, those receiving preschool services, and those served in transition programs and home/hospital placements,
- LEAs should provide proactive and ongoing communication with parents and families of students with disabilities. LEAs should identify communication channels to and from parents and families and ensure there are real-time opportunities for questions and concerns to be responded to and needs addressed.
- LEAs who are applying temporary changes to locations, schedules, etc. should inform parents of the temporary nature and proceed with reasonable efforts in providing FAPE until permanent actions are determined.
- If there are unavoidable deviations from legally established timelines, LEAs should document in the student's folder all reasonable efforts made to follow timelines.
- LEAs should also consider ways to use distance technology to the extent possible to provide child find, hold initial and annual ARD committee meetings, and/or evaluation/eligibility meetings, if the LEA members and parents are available but not able to attend in person. Continuing to complete ARD committee and evaluation/eligibility meetings will help decrease the workload when school resumes. If required members of the committee and/or parents are not available or believe their participation is impacted by the lack of an in-person meeting, LEAs should document the reason and complete the activity in a timely manner following the ending of school closures.
- When school resumes, ARD committees should address student-specific needs resulting from the closure. This might include discussions of compensatory education and extended school year (ESY) services made on a case-by-case basis. Any need for compensatory services related to school closure or inability to fully implement a student's IEP will be addressed by ARD committees after school closures end.
- LEAs may wish to create a template document that assists school staff in documenting decisions made, why timelines were exceeded, and documentation of participation and consent through

temporary alternate methods, such as email or notes. LEAs should **not** create a standard form that is not individualized and applied to all files and activities.

- In planning for school closure and the potential distance delivery of educational services (including special education and related services), LEA and school staff will want to prioritize decisions and actions based on health and safety first, communication with staff and families, and then consider requirements of IDEA and state law.

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## FAPE and the Provision of Services

### **FAPE Q1: Do Local Education Agencies (LEAs) have flexibility regarding the provision of a Free and Appropriate Public Education (FAPE) to students receiving special education services in times of emergencies such as the COVID-19 pandemic?**

**FAPE A1:** No. Neither state nor federal law provide flexibility to LEAs in times of emergency regarding their obligation to provide FAPE to students receiving special education services. If an LEA closes its schools because the functioning or delivery of educational services is disrupted and does not provide any educational services 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). In addition, the Annual Review and Dismissal (ARD) committee would be required to make an individualized determination as to whether compensatory services are needed to make up for any skills that may have been lost because of an extended school closure.

If schools are closed, but the LEA continues to provide educational opportunities to the general student population during the closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. The LEA must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP.

### **FAPE Q2: What are options for how LEAs provide a free and appropriate public education (FAPE) to students with disabilities when a school goes to a digital/virtual learning platform for all students?**

**FAPE A2:** LEAs 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 LEA 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 provide during this time, the student's ARD committee 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. LEAs 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.*

### **FAPE Q3: Is the LEA required to provide ancillary instructional, and/or related services when a school goes to a digital/virtual learning platform for all students?**

**FAPE A3:** Yes. If a student’s IEP requires the provision of ancillary instructional, and/or related services, the LEA is responsible for providing these services. In many cases, services such as speech and language therapy or special education counseling may be able to be effectively provided in a virtual environment. LEAs should plan carefully to ensure that the services can be provided effectively and that the students in question are able to effectively access them. LEAs should also carefully consider any implications related to privacy and the Family Educational Rights and Privacy Act (FERPA).

In other cases, it may be necessary to provide services in face-to-face environments. If the provision of these services results in an effective change in placement for the student, the change will need to be decided upon by the ARD committee and documented appropriately in the student’s IEP. LEAs should carefully consider implications for staffing and travel if ancillary instructional and/or related services providers would need to be physically available for students.

**FAPE Q4: While LEAs are required to implement IEPs and provide FAPE, what if the LEA cannot fully implement the IEP during the current COVID 19 pandemic response?**

**FAPE A4:** If an LEA cannot provide services necessary for the provision of FAPE in either a face to face or virtual environment, the LEA should document carefully what services were not able to be provided to each individual student. This documentation must be detailed enough to enable the ARD committee to later make determinations regarding what compensatory services need to be provided to individual students. LEAs should plan for effective communication with families regarding any services that cannot be provided during the COVID 19 pandemic response.

**FAPE Q5: Can an LEA provide a learning environment at the school or designated site for students who cannot have their learning needs met virtually?**

**FAPE A5:** Yes. When an LEA identifies learning needs that cannot be met virtually, they may decide to offer educational opportunities at a designated site, subject to ARD committee decision. If this results in a change in location, the change must be documented in the student’s IEP. LEAs must ensure that the learning environment is clean, disinfected, and safe for students and staff to work.

When providing these services, the LEA would be required to meet all aspects of each student’s IEP. This would mean that appropriately credentialed/certified academic and related services and support providers would need to be available to provide services to students. Additionally, if the student’s IEP includes (or is amended to include) transportation as a related service, the LEA would be required to provide it.

**FAPE Q6: If an LEA remains open, or reopens its schools but a state or local emergency authority prohibits students with special health care needs from returning to school for a specified period of time, what is the LEA’s obligation for its students who receive special education services who are impacted by the prohibition?**

**FAPE A6:** An LEA subject to such a prohibition is nevertheless required to provide FAPE to students with disabilities impacted by the prohibition. If the prohibition from returning to school is an emergency measure not to exceed 10 consecutive school days, the LEA should provide virtual instruction or otherwise grant the student access to educational instruction as discussed above.

If the emergency directive will, or is anticipated to extend beyond 10 consecutive school days, in addition to providing virtual or other educational services, the ARD committee must meet to consider the need for a change in placement in accordance with 34 CFR 300.115 - 300.116, taking into account the heightened health

and safety needs, criteria and considerations in determining whether a homebound, or other placement along the continuum of alternative placements is the appropriate placement for the student. [Refer to the OSEP guidance from March 12, 2020.](#)

**FAPE Q7: Are LEAs required to continue services to students identified, and receiving services for dyslexia and currently being served by special education or under Section 504 of the Americans with Disabilities Act (ADA)?**

**FAPE A7:** Yes. As described in the March 12<sup>th</sup>, 2020 guidance from OSEP, LEAs must make reasonable efforts to provide FAPE to students **served by special education or served under section 504** even in extreme circumstances such as the current COVID 19 pandemic response. LEAs who are not able to provide the necessary level of services for any reason, should document carefully what should have been provided and was not to allow for effective decisions regarding compensatory services to be made by ARD committees and Section 504 teams when the situation gets back to normal.

As with any student receiving intervention services through a student support team or other general education intervention program, LEAs should carefully consider the needs of students receiving interventions for dyslexia outside of special education or Section 504 when planning to move to virtual or other non-traditional models during the COVID 19 pandemic response.

**FAPE Q8: Should LEAs continue to provide services, or conduct evaluation activities during mandatory school closures or shelter in place orders?**

**FAPE A8:** LEAs should comply with all statewide or local orders. This includes but is not limited to school closures and shelter in place orders. As with all decisions made during the COVID 19 pandemic response, school staff will want to prioritize actions based on health and safety first, communication with staff and families, and then consider requirements of IDEA and state law regarding special education.

**FAPE Q9: Should LEAs continue to provide services to students served by special education who are already receiving homebound services due to a significant health concern?**

**FAPE A9:** LEAs should prioritize the health and safety of students, staff, and communities in all decisions regarding service provision. As with all other situations, there may be options available to provide instructional and related services to students receiving homebound services leveraging technology and other more non-traditional methods. Reasonable efforts should be made to provide students with FAPE and LEAs should carefully document what was not able to be provided during the COVID 19 pandemic response. This documentation must be detailed enough to enable the ARD committee to later make determinations regarding what compensatory services need to be provided to individual students. LEAs should plan for effective communication with families regarding any services that cannot be provided during the COVID 19 pandemic response.

## Evaluations

**Eval Q1: Are LEAs still held to timeline requirements regarding Full and Individual Initial Evaluations (FIIE) in light of potential changes to school calendars and schedules due to the COVID-19 pandemic?**

**Eval A1:** Yes. Please refer to the [March 19<sup>th</sup> School Finance FAQ, available here.](#) In situations in which LEAs are “Closed, Preparing” or “Closed, Temporary,” state evaluation timelines halt as these timelines are based on

school days. In situations in which LEAs are “Closed, instructing” or “Open,” the 45 school-day timeline requirements of Texas Education Code sec. 29.004 apply.

On March 16<sup>th</sup>, 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.

**Eval Q2: What if a student’s triennial evaluation date is not met due COVID 19 pandemic response related issues?**

**Eval A2:** LEAs should proceed with completing reevaluations within timelines. Missed triennial evaluations should be completed as soon as possible.

If there are deviations from legally established timelines, LEAs should document in the student’s folder all reasonable efforts made to follow timelines.

**Eval Q3: What if early childhood transition services and timelines have been affected due COVID 19 pandemic response related issues?**

**Eval A3:** School closure dates are not applicable for Part C ECI to Part B IDEA evaluation timelines, and LEAs should make reasonable efforts to expedite timelines once school resumes, so as not to delay provision of services and FAPE if the student is determined eligible. If there are deviations from legally established timelines, LEAs should document in the student’s folder all reasonable efforts made to follow timelines.

**IEPs and ARD Committees**

**IEP Q1: What flexibility do LEAs have in the process required to adjust an individual student’s existing IEP in times of emergencies such as the COVID 19 pandemic?**

**IEP A1:** If it is determined that an IEP needs to be changed or adjusted, LEAs should continue to follow local policies. The ARD committee may meet by teleconference or other means (if all members are able) to determine if some, or all, of the identified services can be provided through alternate or additional methods. Once the school reopens, the ARD committee must determine whether, and to what extent, compensatory services are needed. As stated in A1, if an LEA is providing educational opportunities to the general student population, the LEA is also required to provide the services and accommodations needed for students with disabilities to have an equal opportunity to participate in the virtual model of delivery.

School boards might consider reviewing their local policies regarding the allowable process to amend an IEP without convening the full ARD committee in specific circumstances (TASB EHBAB (LOCAL)). Changes to these policies could be enacted locally on a temporary basis as part of the current COVID 19 pandemic response to allow for a broader local application of the amendment process allowed by IDEA. Any specific change to local policy must still comply with federal and state law, and strong, timely communication with families regarding any such changes is imperative.

**IEP Q2: Are LEAs still held to the 30 calendar day timeline requirements regarding initial eligibility determination, IEP, and placement decision ARD committee meetings upon completion of an FIIE in times of emergencies such as the COVID 19 pandemic?**

**IEP A2:** Yes. Requirements related to the 30-calendar day timeline for initial eligibility determination, IEP, and placement decision ARD committee meetings still apply. The ARD committee may meet by teleconference or other means (if all members are able) when necessary, to meet this required timeline. If there are deviations from legally established timelines, LEAs should document in the student’s folder all reasonable efforts made to follow timelines.

**IEP Q3: What if a student’s annual Admission Review and Dismissal (ARD) date is not met due to school closures or other COVID 19 pandemic response related issues?**

**IEP A3:** If there are deviations from legally established timelines, LEAs should document in the student’s folder all reasonable efforts made to follow timelines.

New  
3/26/2020

**IEP Q4: Should ARD committees move forward with special education eligibility decisions if an FIE has not yet been completed due to concerns over the current COVID 19 pandemic response?**

**IEP A4:** No. Special education eligibility determinations for students should not be made without consideration of all relevant data points that would be provided in an FIE. Eligibility decisions, and any subsequent IEP development decisions require consideration of all relevant data in order to ensure that sound decisions are made in the best interest of the student [34 CFR 300.306]. LEAs should continue to provide all appropriate general education interventions and supports to struggling students while they are going through the referral process and eligibility determinations are being made. To reiterate what is stated elsewhere in this document, LEA and school staff will want to prioritize decisions and actions based on health and safety first, communication with staff and families, and then consider requirements of IDEA and state law.

New  
3/26/2020

**IEP Q5: Is a student receiving special education services required to complete an Individualized Graduation Committee (IGC) process, or does the ARD committee continue to make educational decisions, including decisions related to required performance on academic assessments and graduation?**

**IEP A5:** A student receiving special education services is not subject to the requirements of an IGC. A student's ARD committee determines whether a student is required to achieve satisfactory performance on an EOC assessment and qualifications to graduate.

**General Questions**

New  
3/26/2020

**Gen Q1: Are LEAs required to continue to support access to IDEA B non-ed funds during the current COVID 19 pandemic response and resulting school closures?**

**Gen A1:** LEAs should continue to support access to appropriate non-ed funds to students for whom they are appropriate. For more information about non-ed funds, see the [TEA Q&A on Non-Ed Funds](#).

New  
3/26/2020

**Gen Q2: Is there anything that LEAs should do differently regarding SHARS billing in light of the COVID 19 pandemic response?**

**Gen A2:** Yes, in light of the current situation, HHSC will require the following information to support payments for 2019-2020:

- Start and end dates for school closures,

- Start and end dates of instructional services provided during school closure (if appropriate),
- Evidence of the implementation of the IEP for students with disabilities if instructional services were provided during closure

For SHARS program questions related to services for students please contact Angela Foote at [angela.foote@tea.texas.gov](mailto:angela.foote@tea.texas.gov) and (512) 463-6639.

For SHARS Billing related questions please contact Brittney Taylor at [Brittney.Taylor@hsc.state.tx.us](mailto:Brittney.Taylor@hsc.state.tx.us).

New  
3/26/2020

**Gen Q3: Will timelines or flexibilities be provided to LEAs reporting data for State Performance Plan (SPP) Indicators?**

**Gen A3:** These reporting and submission requirements will not be adjusted. LEAs are encouraged to keep detailed records concerning LEA closures and student absences. Detailed records may include but are not limited to LEA calendars/closures, student attendance records, Early Childhood Intervention (ECI) closures, comprehensive records of phone calls made or attempted, and copies of correspondence sent to/from parents or ECIs. LEAs can provide clarifications of any missed timelines through the data clarification process during the SPP data collection extension period in August 2020.

For additional guidance please see [QUESTIONS AND ANSWERS ON PROVIDING SERVICES TO CHILDREN WITH DISABILITIES DURING THE CORONAVIRUS DISEASE 2019 OUTBREAK](#) published by the United States Department of Education (ED), Office for Civil Rights (OCR), and Office of Special Education and Rehabilitative Services (OSERS) on March 12, 2020 and the [SUPPLEMENTAL FACT SHEET](#) published by the United States Department of Education (ED), Office of Special Education Programs (OSEP) on March 21, 2020