

## ARCHIVE: COVID-19 Superintendent Call

March 23, 2020

The following are questions asked by directors of schools during this call and the point-in-time answers provided by the Department. For additional guidance and up-to-the-minute supports, please check the TDOE website for more information:

<https://www.tn.gov/education/health-and-safety/update-on-coronavirus.html>.

### Academics

- Do assignments for instruction to our students have to be mandatory or can they be optional?
  - **RESPONSE:** This is a local decision. The Department strongly encourages districts to maximize student learning opportunities, where viable. Please reference the Academics Toolkit for ideas and strategies, use your CORE offices for support, and look for a Distance Learning Guide to be posted later this week.

### Legal Requirements or Needs

- Can you provide guidance around using the “Waiver” code within EIS for the 180-day waiver?
  - **RESPONSE:** The district should use all remaining stockpile inclement weather days (SI) and stockpile professional development days (SP).

After all stockpile inclement weather and stockpile professional development days have been used, the district should code additional days of unexpected closure as “Commissioner Waived” through the remainder of any closure due to COVID-19 response efforts. The districts should submit calendar data through April 24th, per current closure guidance.

Based on the current guidance and waivers, there is not a need to code virtual learning days any differently at this time. All days in which students are not attending school should be coded as “Commissioner Waived.” The coding of these days should not preclude the district from starting any online instructional program.

### Special Populations

- What guidance or recommendations are available regarding planning instruction for all students while ensuring legal compliance for serving special populations?
  - **RESPONSE:** On March 21, 2020, the U.S. Department of Education (DOE) released additional guidance regarding serving students with disabilities. The

guidance stated that while many schools are choosing to move to virtual instruction, some educators have been reluctant to provide any distance instruction because they believe that federal disability law presents insurmountable barriers to remote education. DOE states that this is simply not true.

**To be clear: ensuring compliance with the Individuals with Disabilities Education Act (IDEA), † Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance instruction.**

**Schools should not opt to close or decline to provide distance instruction, at the expense of students, to address matters pertaining to services for students with disabilities.** Rather, school systems must make local decisions that take into consideration the health, safety, and well-being of all their students and staff. The Department is prepared to help school districts provide virtual instruction in a manner that is accessible to all students. For more information, refer to this toolkit for supporting special populations during school closure on TDOE's website.

- What is the statute code for staffing?
  - **RESPONSE:** Staffing questions are local decisions – the Department will send out a Staffing FAQ to give districts guidance on developing a personnel plan for each district to cover licensed and non-licensed employees. Districts need to include TN Code § 49-5-716 (2018) stating that "A teacher, including a teacher on preapproved leave or other type of leave, shall not be charged with a day of leave for any day on which the teacher's school or the school district is closed due to natural disaster, inclement weather, serious outbreak of contagious illness, or other unexpected event." Be sure that districts safeguard the rights of all employees while developing this plan. Federal guidance will be included in TDOE documents, including a link for the CDC guidance for workplaces and employers. The Department will send this to parents, teachers, and employees so they know how decisions are being made locally.
- For IEP meetings, can districts mandate that parents and/or children come in person to the school for districts to stay in compliance with IDEA?
  - **RESPONSE:** The IDEA requires that the child's IEP be reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revise the IEP, as appropriate. LEAs should make every attempt to conduct annual IEP team meetings during periods of school closure. However, IEP Teams are not required to meet in person while schools are closed. If there is a need to have an IEP meeting, the parent of a

child with a disability and a public agency may agree to use alternative means of meeting participation requirements, such as video conferences and conference calls. Further, if changes need to be made to the IEP, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. In addition, when conducting IEP Team meetings and placement meetings, the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation requirements, such as video conferences and conference calls. 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. IEP team meeting timelines may be extended only if: 1) The LEA has reasonably determined the use of virtual technology is not a suitable method of conducting the required meeting; or 2) Information necessary for the IEP team's deliberation is not attainable due to recommendations of the state or local health departments.

For more information, refer to [this toolkit](#) for supporting special populations during school closure on TDOE's website.

- How should districts who are closed and continuing to hold IEP meetings get signatures from participants? What do districts need to do for initial and re-evaluation meetings that require parent signatures?
  - **RESPONSE:** LEAs may choose to obtain electronic signatures for annual IEP, initial eligibility, initial consent, and/or re-evaluation meetings held virtually, provided that the LEA ensures that there are appropriate safeguards, consistent with the requirements in IDEA and the Family Educational Rights and Privacy Act (FERPA). Under FERPA, electronic consent may serve as written consent provided that the "Signed and dated written consent" includes a record and signature in electronic form that--"(1) Identifies and authenticates a particular person as the source of the electronic consent; and (2) Indicates such person's approval of the information contained in the electronic consent." 34 CFR §99.30(d).

Alternatively, LEAs may also choose to obtain parent signatures via US mail. This option may delay the attainment of the required signatures; however, as a reminder, once parents are provided written notice of any changes or updates to an IEP, the IEP may be implemented as proposed unless the parent requests mediation or due process within 14 days. In addition, the delay to attain initial consent for placement will not impact the delivery of services during school closures, as LEAs are not required to provide FAPE during school closures.

Districts should work with their local board attorneys to ensure their processes for obtaining consent comply with state and federal law.

- Are districts allowed to waive meetings with parent consent for annual IEPs like with making changes to IEPs with addendums?
  - **RESPONSE:** In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. In addition, when conducting IEP Team meetings and placement meetings, the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation requirements, such as video conferences and conference calls. These decisions must include the child's parent or guardian and meaningfully work towards ensuring that each child receives an IEP review commensurate with the intent of the law, and in the best interest of the child. Districts and schools are strongly encouraged to document decisions related to these re-evaluation timelines and maintain that decision-making rationale in the student's file.
- Can you give the location of a sample of a written change to an IEP?
  - **RESPONSE:** There is a template for an Individualized Student Support Plan in the [School Closure Toolkit: Special Populations](#) document on the TDOE website.
- If districts provide required educational opportunities online for high school students but only offer optional opportunities for elementary/middle school students, would this require the district to provide compensatory services for those elementary/middle school students that did not receive instruction?
  - **RESPONSE:** If elementary and middle schools are closed then there is no obligation for the district to provide IEP or 504 services during the period of closure for those students; however if a child does not receive services during a closure, a child's IEP team (or appropriate personnel under Section 504) must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost. If students are being provided optional enrichment activities during the period of closure, these activities should be made accessible to all students, including those with disabilities.
- When conducting IEP team meetings virtually, do the typical mandatory members of the IEP team need to be present (by phone or virtually)? With parent permission, could the IEP be updated without the usual participants?
  - **RESPONSE:** Certain members of the IEP team may be excused from an IEP meeting under specific conditions. These conditions will vary depending on whether the team member's area of expertise is going to be discussed or

modified in the meeting. The parent and the school system must both agree in writing that the member's attendance is not necessary. 34 CFR 300.321 (e)(1).

- Should schools be having virtual IEP meetings to change services to what can be provided while schools are not in session or is this referring to IEPs that are expiring?
  - **RESPONSE:** LEAs should make every attempt to conduct annual IEP team meetings that are due during periods of school closure by using alternative means of meeting participation, such as video conferences and conference calls. IEP meetings are not required to change the placement of special education services to a virtual setting as long as the services outlined on the IEP remain otherwise unchanged.
- Does this include annual IEP reviews?
  - **RESPONSE:** The IDEA requires that the child's IEP be reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revise the IEP, as appropriate. LEAs should make every attempt to conduct annual IEP team meetings during periods of school closure. There is some flexibility in this provision. For example, in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. In addition, when conducting IEP Team meetings and placement meetings, the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation requirements, such as video conferences and conference calls.

IEP team meeting timelines may be extended only if:

  - The LEA has reasonably determined the use of virtual technology is not a suitable method of conducting the required meeting; or
  - Information necessary for the IEP team's deliberation is not attainable
- What guidance does the Department have around flexibility for guidelines for initial eligibility, particularly related to learning disabilities, given the progress monitoring requirements?
  - **RESPONSE:** Yes, per guidance that can be found by [clicking here](#), initial evaluation timelines will be adjusted accordingly.
- How should districts handle referrals and requests for evaluation that were initiated before the school closure, but consent has not yet been obtained?
  - **RESPONSE:** Written consent is required prior to initiation of evaluations. For referrals that have been initiated but consent has not been obtained, every attempt should be made to meet virtually to discuss the concerns and initiate

an initial evaluation if agreed upon. The timeline for evaluations has been extended as indicated in another section of this guidance document.

- What is expected for students in the testing pipeline? Should districts create a non-eligibility document?
  - **RESPONSE:** No, the timeline for initial evaluations will be adjusted accordingly. 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 consents. These same principles apply to similar activities conducted by appropriate personnel for a student with a disability who has a plan developed under Section 504, or who is being evaluated under Section 504.
- Are schools required to send home progress reports during school closures due to the COVID-19?
  - **RESPONSE:** There is no requirement to send progress reports if schools are closed and they are not providing services. If, however, a school is providing distance learning and/or special education services, progress reports would need to be sent as usual.
- What sort of flexibility do districts have on the location of student files? Can staff remove them from the school given the limited access to the facility?
  - **RESPONSE:** Student files should be kept in a secure location that protects a student privacy according to FERPA. If an IEP team is unable to access student data necessary for an annual IEP meeting, the timeline for the annual review may be extended.
- Do schools need to hold an IEP meeting to change the placement of students that have multiple disabilities and will have difficulty accessing online services?
  - **RESPONSE:** IEP meetings are not required to change the placement of special education services to a virtual setting as long as the services outlined on the IEP remain otherwise unchanged. If a change to a student's services are being proposed, an IEP meeting must be held to discuss those changes and a prior written notice outlining any changes must be provided. As a reminder, students with IEPs who do not receive services may be eligible for compensatory services.
- Given challenges in providing virtual learning in rural areas with limited internet access, are districts required to provide instruction for the special education population if they are not also providing instruction for the general student population?
  - **RESPONSE:** If an LEA elects to close one or more of its schools and does not provide any educational services to the general student population, it is not required to provide services to students with disabilities during that same period.

- Can the Department provide more information about the special education toolkit?
  - **RESPONSE:** The Department will be updating and adding new guidance to the website every day, and the toolkit will be delivered to superintendents directly via email. The Department is also working on a broader FAQ document to be posted and emailed.
- What would services look like if all IEPs are updated to reflect distance learning?
  - **RESPONSE:** IEP meetings are not required if the only change is that services will be provided virtually, and the services outlined on the IEP remain otherwise unchanged (because this is not considered a change of placement). Additional guidance is forthcoming to clarify options for service delivery during school closures.
- Do schools need to do IEP meetings for all SPED students as delivery of service has changed?
  - **RESPONSE:** IEP meetings are not required if the only change is that services will be provided virtually, and the services outlined on the IEP remain otherwise unchanged (because this is not considered a change of placement). Additional guidance is forthcoming to clarify options for service delivery during school closures.
- If all remaining school days are waived and schools provide optional resources for parents to use with their children, am I correct that the only IEPs that need to be addressed are those that are expiring or in process?
  - **RESPONSE: LEAs should make every attempt to conduct annual IEP team meetings that are due during periods of school closure.** There is some flexibility in this provision. For example, in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the LEA may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. In addition, when conducting IEP Team meetings and placement meetings, the parent of a child with a disability and an LEA may agree to use alternative means of meeting participation requirements, such as video conferences and conference calls.