

Services for Students with Disabilities During School Restart 2020-21

Questions and Answers for Districts

As new information is made available, the MDE Office of Special Education will post additional guidance to this Q&A list.

1. FAPE (Documentation)

Should school districts maintain documentation regarding the provision of services students were offered during school closures?

This documentation should be kept on file for all students. It will be vital when making determinations regarding the provision of compensatory services. All services and efforts, including phone calls, mailings, learning packets, etc., offered during school closures should be documented.

2. FAPE (IEP Recovery Services)

Any need for IEP Recovery Services related to school closure or inability to fully implement a student's IEP should be addressed on a case-by-case basis. Districts should collect student data to determine any student progression or regression on annual IEP goals. This data can be used to inform IEP Committee decisions and assist in compensatory service decisions.

a. What are IEP Recovery Services?

IEP recovery services are equitable remedies designed to repair educational and functional deficits resulting from school closures during the COVID-19 pandemic. In determining IEP Recovery Services, the Mississippi Department of Education (MDE) employs a qualitative approach that is intended to place a student in the same position they would have been in if services had been provided, rather than to account for the exact amount of service minutes identified on the Individualized Education Program (IEP).

b. What happens if a parent disagrees with the school district's offer of IEP recovery services?

Parents are still entitled to IDEA's procedural safeguards when they disagree with IEP recovery services offered to address COVID-related interruptions or loss in services. Parents may therefore use IDEA's dispute resolution processes, mediation, state complaint, and/or due process complaint, to challenge a decision about IEP recovery services. Whether a parent agrees or disagrees, school districts should issue prior written notice (PWN) to inform parents about determinations regarding IEP recovery services. In addition to the other required content, the PWN should explain why the school district is making/or refusing to make the offer and describe the information that served as the basis for this determination in sufficient detail.

c. How should schools calculate the *amount* of IEP recovery services related to COVID-19?

IEP recovery services must be sufficient to allow the student to recoup lost skills and continue to make progress on IEP goals. Parents and schools are encouraged to consider creative and innovative ways to address regression or loss of skills that carefully consider a student's individual circumstances, including strengths, impact of disability on learning, and stamina. For example, providing targeted, one-on-one tutoring or instruction, combined with adjustments based on frequent progress monitoring, may allow a student to recover lost skills and make progress in less time. This does not preclude the IEP team from recommending more intensive services for a student, even if the need may be related entirely or partially to disruptions of in-person instruction resulting from COVID-19.

d. Should the LEA provide IEP recovery services if a parent refused services that were provided during the period of school closure?

School districts should document all attempts to provide services, including contact and communication with parents and students. A parent's refusal of services may excuse the school district from its obligation to consider or provide IEP recovery services, depending on the individualized circumstances. The inability to access the services offered, however, would not be considered a refusal. Similarly, the student's inability to benefit from the services offered would not be considered a refusal.

3. FAPE Class Size: (> 50% IEP enrollment)

Are districts allowed to place students in classrooms which results in greater than 50% IEP student enrollment?

By exceeding the 49% limit of IEP students in a general classroom, the class becomes a special education class. There may also be issues with teacher certification, time and effort and the provision of FAPE.

4. FAPE (Equitable Services)

If the LEA offers formalized educational services through traditional, hybrid, and/or distance learning models to the general student population, would the LEA be required to provide the same services to students with disabilities?

Yes. The methods an LEA uses to provide educational opportunities to the general student population during a school closure must also be available to students with disabilities. This is to ensure equal access to the same opportunities available to general education students, including the provision of FAPE. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA). Each student's IEP Committee must make decisions about the provision of services based on individual student needs. SEAs, LEAs, and schools 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 Individualized Education Program (IEP) developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504). It is important to note that if educational services are being delivered to students in any form, those services must be provided to **all** students,

including students who don't have access to technology at home and students receiving special education services.

5. FAPE (Delivery Models-Traditional, Hybrid or Distance Learning)

When an LEA determines the method(s) they will use to provide instructional services what should happen?

The student's IEP Committee will determine how the required IEP services will be provided and develop or amend the IEP as necessary. Each student's special education needs should be determined on an individual basis and outlined in the student's IEP. Accessible technology may afford students, including students with disabilities, an opportunity to have access to high-quality educational instruction, especially when continuing education must be provided through hybrid or distance learning. Many of the online learning options available to districts have accommodations embedded in lessons. Special education and related services can be delivered online or telephonically. Taking into account the varying delivery models districts may choose to implement, schools may not be able to provide all services in the same manner they are typically provided. However, many disability-related modifications and services may be effectively provided online. These may include, for instance, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing. Service delivery methods must be considered on the basis of individual student needs.

6. Timelines (IEP Committee Meetings)

How should districts communicate with parents concerning individual IEP meetings?

Neither a waiver nor an extension of timelines has been issued by the United States Department of Education, Office of Special Education Programs (USDE OSE). Districts should plan to meet with IEP committees, including parents, in-person or virtually, to address student-specific needs resulting from the district decision to utilize traditional, hybrid or distance learning models. Notification can be made using U.S. mail, email or documented telephone calls.

7. Timelines (Evaluation and Eligibility)

Will MET meetings and evaluation timelines be extended or waived?

Neither a waiver nor an extension of timelines has been issued by the United States Department of Education, Office of Special Education Programs (USDE OSEP). Therefore, initial evaluation team reports must be completed within the 60-day mandated timeline as prescribed in the Individuals with Disabilities Education Act (IDEA), with any notations regarding nonstandard test administration included. The method of conducting an evaluation team report review and signature collection should be documented in a prior written notice. Reviews of the evaluation team report can be completed using an in-person meeting, virtual format or via telephone. Participation and required signatures can be documented via email attachment, standard mail, scanned signature, photograph of the signature or any other electronic means. Face-to-face evaluations, if required, can be conducted using CDC recommendations at

district discretion. Any delay in meeting timelines should be documented appropriately. 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. As is the case with a typical reevaluation, a district may choose to conduct a records review. This allows the district to update the evaluation without needing to conduct face-to-face assessments and observations.

8. Timelines (Expired and Updated IEPs)

Will there be a waiver of annual IEP review dates which were required prior to school reopening?

Neither a waiver nor an extension of timelines has been issued by the United States Department of Education, Office of Special Education Programs (USDE OSEP). A valid IEP must be in place before school begins regardless of the model the district chooses (traditional, hybrid or distance learning). Documentation of attempts to conduct timely IEP annual reviews should be maintained. IEP meetings may be completed in-person, virtually or via telephone. Participation and required signatures can be documented via email attachment, standard mail, scanned document, photograph of the signature or any other electronic means, and the method of IEP team review and signature collection should be documented in a prior written notice form.

9. IEP (Committee Members Required)

Must all required IEP Committee members participate in an IEP Committee meeting?

Yes. All required IEP Committee members must be present. Any revisions to the IEP should be made based on the decisions of the IEP Committee. If any IEP Committee members cannot be a part of the decision-making process, then the procedures for excusing IEP Committee members should be followed. (300.321)

10. IEP (Signatures)

Are signatures required on the Notice of Committee Meeting? How should signatures be obtained for the IEP and Prior Written Notice?

Signatures are not required on the Notice of Committee Meeting. The Notice of Committee Meeting should document all participants invited to the IEP meeting as well as who is sending the Notice. Signatures are not required on the IEP; however, if your district requires signatures, you must follow your district policies. The IEP must document who attended the meeting. A signature is only required on the Prior Written Notice if the parent waives the 7-day period prior to the implementation of any changes made during the IEP meeting. If meetings are being held via technology or alternate means of communication, and a signature cannot be obtained, agreements and consent to waivers can be documented by the IEP Committee. Digital signatures are acceptable.

11. IEP (Homebound)

What will happen to my child's services if schools reopen, but my child is sick at home? How should districts address the provision of homebound services?

Students who are sick and who need to stay home for more than 10 days may need to receive

homebound instruction. The IEP committee must meet to determine how to provide services for the student. Homebound services should continue when possible without risking the health and safety of the student, student's family, or service provider. IEP Committees can make decisions about how best to provide those services using in-person, virtual, or telephonic meetings or the amendment process if applicable. The IEP Committee must make an individualized determination whether and to what extent services may be needed as well as the method(s) of delivery of instruction.

12. IEP (Amendments)

Can the amendment process be used to revise IEPs?

Yes. IEP Committees may choose to revise IEPs via an amendment. The amendment process requires that all proposed revisions to the IEP be documented on the amendment form. Any revisions must be made with parent input. If the parent is not in agreement with the proposed change or does not choose to use the amendment process, then you must hold an IEP meeting. Once the revisions have been agreed upon by the IEP Committee the revisions must be documented on the IEP and a copy of the revised IEP should be given to all members of the IEP Committee and the parents.

13. IEP Implementation (Hybrid or Distance Learning)

Is student confidentiality being violated if group instruction or services is provided via Zoom or some other platform and family members or others come into the room?

According to FERPA guidelines regarding a student's Personally Identifiable Information (PII), school officials (including teachers) should take every precaution to ensure that a student's private information is not shared with those who are not invested in the student's education. Best practice is to follow each district's policy and/or guidelines for distance learning. Speech-Language Pathologists and Audiologists may refer to the MS Speech-Language-Hearing Association's [guidelines for telehealth](#).

14. IEP Implementation (Services)

What constitutes Special Education Services?

Services are any special education or related services that are outlined on the IEP. This includes special education services such as specially designed instruction and related services, including, but not limited to, speech/language services, occupational therapy, and physical therapy.

15. IEP Implementation (Delivery of Services)

What does delivery of services of mean?

Delivery of services is the method by which services are provided to students. This may include, but is not limited to, 1:1 instruction, whole group instruction, and small group instruction, virtual or online education, teletherapy, distance instruction, or telephonically as well as online options for data tracking and documentation. Please note that with the use of hybrid instruction or distance learning, technology itself may impose a barrier to access or where educational materials simply are not available in an accessible format. Educators must still meet their legal obligations by providing children with disabilities equally effective alternate access to the curriculum or services provided to other students.

16. IEP Implementation (Provision of Related Services)

Must school districts require related services to be provided in-person?

Methods involving the provision of services should be considered on a case-by case basis and provided at the discretion of the district in accordance with CDC guidelines.

17. IEP Implementation (Transportation)

Must school districts provide transportation for students when traditional and hybrid models are being implemented?

Districts should carefully consider the health and safety of related service providers, students, and their families in accordance with CDC guidelines. If districts are providing traditional or hybrid instruction and the student requires transportation, then the IEP should reflect this service and it should be implemented. Districts may explore arranging a reimbursement model with parents to transport their child(ren) who require special transportation to and from school.

18. Preschool (Provision of Services)

How should districts address the provision of itinerant services for 3- to 5-year olds?

The IEP committee should consider the needs of the individual student when designing an instructional program. Instruction should proceed using the CDC guidelines. Services should continue to be provided in the child's Least Restrictive Environment (LRE) as determined by the IEP Committee. The Committee should keep in mind that some sites where preschoolers may traditionally be served may not be available due to closures or limited seat numbers.

19. Preschool (First Steps)

How should districts handle referrals for students transitioning from Part C to B?

If an evaluation of a student with a disability requires a face-to-face assessment or observation, the evaluation may be delayed until it is determined by your district that all safety and health concerns have been resolved. Evaluations that do not require face-to-face assessments or observations may take place while schools are closed as long as a student's parent or legal guardian consents. Current information (as defined in MDE procedures) provided by Part C can also be used as part of the evaluation. Secretary of Education Betsy DeVos has recommended to Congress that services continue to be provided by Part C until a child can be evaluated by Part B. However, this recommendation has not been approved by Congress, nor has a funding mechanism been put in place for these services to be provided. This guidance may change if Congress approves this recommendation, but as of September 21, 2020, there is no timeline for approval.

20. Fiscal (Semi-Annual Certification)

What is the recommended procedure for completing and signing semi-annual forms?

Semi-annual forms should be completed and signed by the supervisor and employee. Digital signatures will be accepted.

21. Fiscal (Proportionate Share)

If there are unexpended funds remaining (FY19 Function code 2190 and Function code 1295 for FY20), what is the guidance for LEAs regarding the amount to be expended for parentally placed private school children with disabilities?

Three months before grant eligibility expires:

- A. The LEA shall have documentation that timely and meaningful ongoing consultation has taken place throughout the year to ensure parentally placed non-public school children with disabilities can meaningfully participate; and,
- B. At that time, if the LEA is in compliance with Child Find, consultation, and other IDEA equitable service requirements, the LEA may use the unexpended funds to pay for other allowable Part B expenditures for the same LEA using the following procedures:

1. Funds must be moved through an approved revision process;

2. LEAs must upload documentation of consultation that was ongoing throughout the program (for FY19 extension and FY20 the LEAs must be collecting this documentation beginning now through June 30, 2021); and,

3. LEAs must upload a signed letter from each non-public school representative showing that ongoing consultation took place and that the non-public schools are aware and in agreement that the unexpended proportionate share funds will be used by the LEA to pay for other allowable part B expenditure for the LEA.

22. Updated Fiscal Timelines

Grant Award Year FY19 (FFY18)	July 1, 2018 – June 30, 2019
Grant Award Period of Availability	July 1, 2018 – extended to September 30, 2021
Carryover Period of Availability	July 1, 2019 – extended to September 30, 2021
Carryover Year	July 1, 2019 – extended to June 30, 2021
Deadline for Obligation of Funds	Extended to September 30, 2021
Liquidation of Funds	Extended to December 2021

Grant Award Year FY20 (FFY19)	July 1, 2019 – June 30, 2020
Grant Award Period of Availability	July 1, 2019 – September 30, 2021 (27 months)
Carryover Period of Availability	July 1, 2019 – September 30, 2020 (15 months)
Carryover Year	July 1, 2020 – June 30, 2021
Deadline for Obligation of Funds	September 30, 2021
Liquidation of Funds	December 2021