

To: Directors of schools, directors of special education, assessment specialists, advocacy groups

From: Theresa Nicholls, assistant commissioner, special populations

Date: January 14, 2021

**Subject: Reminders for serving students with disabilities during COVID-19**

Due to the rising cases of COVID-19 across the state, many local education agencies (LEAs) are implementing their continuous learning plans (CLPs) to ensure students continue to receive instruction during this time. As a reminder, none of the LEA requirements of the Individuals with Disabilities Education Act (IDEA) have been waived. The department would like to provide these additional reminders regarding the provision of special education services during this time:

### **Child Find**

The LEA must continue its child find efforts in accordance with state and federal law, **including the provision of general education interventions** (e.g., Response to Instruction and Intervention) to determine whether a student is suspected of having an educational disability, including a specific learning disability (SLD). Universal supports, as well as behavior and academic interventions, should be in place for students, and school teams should identify at-risk students and provide interventions for both in-person and remote learners.

School teams should consider all relevant information and solicit additional information as needed to make an informed decision regarding whether there is sufficient reason to suspect a disability. A referral is appropriate if you suspect that an **educational disability** is the reason for underperformance or demonstration of potential need for specialized instruction. All parent requests for an evaluation should be considered within a timely manner, and all evaluation criteria and eligibility guidelines still apply.

See the RTI<sup>2</sup> COVID Considerations FAQ document [here](#).

### **Early Childhood Transition**

It is imperative that children with disabilities who have turned three receive the services they need during this critical time in their development. Due to social distancing guidelines, the department recognizes that transition related activities for some children may be delayed; however federal guidance found in the [USDOE Supplemental Fact Sheet](#) requires that districts make all reasonable efforts to continue to complete all Part C to B transition related activities to the extent possible. These activities include participating in transition planning conferences, obtaining parental consent for evaluation, completing a comprehensive evaluation, determining eligibility, and—for those eligible—developing and implementing an IEP by the third birthday.

### **Evaluation Timelines**

Tennessee State Board of Education Rule 0520-01-09-.24 extending initial evaluation timelines only applied to certain initial evaluations initiated during the **2019-20 school year** to account for extended school closures related to COVID-19. Therefore, LEAs are still required to complete all initial evaluations

initiated in the 2020-21 school year within 60 calendar days from the time of initial consent. The IDEA only permits extensions to the 60-day timeline for three student specific reasons:

1. For SLD evaluations, there is written mutual agreement on an extended timeframe by the child's parents and a group of qualified professionals.
2. The parent repeatedly failed or refused to produce the child for the evaluation.
3. The child enrolls in another school district after the timeframe has begun and a determination of eligibility was not completed by the school district that commenced the initial evaluation process; the succeeding district is making sufficient progress to ensure completion of the evaluation; and the parent/legal guardian and the succeeding district agree on a specific timeframe within which the evaluation will be completed.

As long as the school continues its efforts to complete the evaluation to the best of its ability, an extension to the timeline may be requested if a student illness or quarantine imposed by the family results in a parent repeatedly failing to produce the child for the evaluation. The LEA must include documentation in their request of attempts to complete testing with repeated denials by the family to provide access to the student.

The following are **not acceptable** reasons for a timeline extension—per the IDEA—and will not be approved:

1. other COVID-related complications unrelated to the acceptable reasons noted above;
2. staff shortages or staff absences, including shortages or absences due to staff illness or quarantine;
3. school and/or student is participating in remote instruction;
4. school-imposed absences, including suspensions and student quarantine;
5. school breaks and holidays;
6. challenges with scheduling the eligibility meeting; or
7. unreturned forms and rating scales.

As a reminder, timeline extension requests only apply to initial evaluations and need not be submitted for re-evaluations.

If the IEP team has made reasonable efforts but fails to complete testing within the 60-day timeline, the LEA should either:

1. complete the evaluation as soon as possible; or
2. convene a meeting to determine eligibility with the evaluation data that is available. If the available data does not establish that the disability standards have been met, this will result in a non-eligibility determination.

If the school has completed the evaluation but after multiple attempts is unable to obtain parental participation (e.g., in person, virtual, or phone) in the eligibility determination meeting, the school should either:

1. meet to determine eligibility as soon as possible; or

2. meet without the parent to determine the student's eligibility. (Note that the initial provision of special education and related services CANNOT commence without the parent's written consent).

### **Special Education Service Provision**

The LEA must implement student IEPs, including those for preschool-aged children, as they are written, regardless of whether a student is participating in remote or in-person instruction unless there is written agreement by the IEP team, **including the parent**, to implement a contingency plan during periods of remote learning. This contingency plan is a document developed to outline what services will be provided to a student during cyclical or intermittent movement between physical and virtual education. It is **developed by the IEP team**, referenced in the IEP, and becomes part of the IEP. The plan is only implemented when the specified conditions outlined arise.

If a student is unable to access services remotely, the IEP team should convene to determine how the LEA will continue to provide FAPE. The team should consider whether a change in placement is warranted and should review the full continuum of alternative placements required by IDEA.

### **Compensatory Services**

Compensatory services are services that should be provided to a student to elevate him or her to the position he or she would have otherwise occupied had the services not been delayed or postponed. It is an appropriate equitable remedy designed to deliver services that a student should have received in order to be provided a free appropriate public education (FAPE).

Decisions regarding the need for compensatory services are determined individually and must be based on empirical, qualitative, and predictive data. It is especially important during periods of remote instruction that appropriate documentation is maintained in the student's file to inform decision making related to the need for compensatory services. Documentation could include, but is not limited to, the following:

- service logs;
- data and assessments regarding student progress;
- parent contact logs; and
- logs regarding student attendance or engagement in remote instruction/service delivery.

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