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COVID-19 Special Education Q & A

This document is based on current guidance from federal and state agencies. For public education agency (PEA)-specific questions, please consult your entity's legal counsel for advice.

ADE-Approved Private Day Schools

Q: Will funding continue, for private day schools during the mandatory closure of all schools?

A: Funding for all publicly enrolled students flows between the state and the district/charter. Assurance of continued funding for private day school services would depend on the contractual agreements between each district and charter that is placing students at the private day school.

Q: Does the mandatory school closure apply to private day schools?

A: Maybe. The Arizona Department of Education (ADE) does not have authority over payments to private providers for students with disabilities who have an IEP through an LEA. LEAs are responsible for their students' IEPs and for providing FAPE to the students for whom they are responsible. However, ADE recognizes the need for continuity of services to students during the COVID-19 school closure, as well as the need for appropriate accommodations and modifications for SWD to access educational opportunities. School closure is not a complete shutdown of school operations and LEAs should plan for continuity in education and critical services during this time. Approved private day schools may also play a role in provision of services to SWD if they choose to continue school operations (e.g., online, distance learning). Service provision and funding for private day school services depends on the terms of contractual or business agreements between each LEA that is placing students at an approved private day school.

Arizona Online Instruction (AOI)

Q: AOI entities have been directed to stay open. If they are going to expand to full capacity but are not be able to serve all students in the PEA to go online for new instruction, does this put the AOI in jeopardy for not providing FAPE to all students with disabilities?

A: PEAs must ensure open enrollment practices/expansion of programs are not violating any state or federal regulations regarding discriminatory practices.

Q: If a PEA has a credit recovery program that is available to all students online and they plan to continue this program, is there a risk of not providing FAPE?

A: PEAs must ensure open enrollment practices/expansion of programs are not violating any state or federal regulations regarding discriminatory practices. PEAs must ensure that students with disabilities who are enrolled are provided a FAPE.



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Child Find

Q: Do we still need to complete/conduct 45-day screenings for any new students?

A: Timelines cannot be changed. If school is occurring, virtually or otherwise, these will need to be completed in accordance with the required timeline, including any necessary follow up.

Q: If we begin distance learning/online learning, will those days count as school days for the 15-school day parent request timeline for an initial evaluation?

A: Schools are currently closed, per [the Governor's order](#), therefore school day timelines do not resume until school resumes.

Q: For an initial evaluation, if assessments are needed, how do we conduct these?

A: ADE/ESS cannot indicate what is medically safe for a family or for specific students. If a school decides to provide assessments, they should be provided in accordance with the most [up-to-date CDC guidance](#). Additionally, assessment administration guides should be consulted for participation types allowing for valid results.

Q: If a parent contacts the school/PEA with a concern regarding a possible developmental delay or other concern(s) they have regarding their child do I have to conduct a 45- day screening during the school closure? (including preschool aged and home school children)

A: The PEA is obligated to complete a 45-day screening to address the parent's concern(s) in accordance with Arizona Administrative Code included below. Alternative means of completing screenings may be used where appropriate.

A.A.C. R7-2-401.D.5 and 6

5. Identification (screening for possible disabilities) shall be completed within 45 calendar days after:

a. Entry of each preschool or kindergarten student and any student enrolling without appropriate records of screening, evaluation, and progress in school; or

b. Notification to the public education agency by parents of concerns regarding developmental or educational progress by their child aged 3 years through 21 years.

6. Screening procedures shall include vision and hearing status and consideration of the following areas: cognitive or academic, communication, motor, social or behavioral, and adaptive development. Screening does not include detailed individualized comprehensive evaluation procedures.

Early Childhood

Q: Is there any exception to the in-by-3 timeline?

A: Per OSEP guidance, there are no exceptions to timelines at this time.



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Q: During mandatory school closures, would we be able to state “parent unavailable” as a reasonable exception to the in-by 3 timeline?

A: It depends. The PEA has to make efforts to meet the in-by 3 requirements. If the PEA has made efforts and the parent is refusing to participate, then that would meet the “parent unavailable” criterion.

Evaluations

Q: If we have had the parents’ permission to evaluate and the 60-day timeline was started before the mandatory school closure, what is our obligation? What are we to do?

A: Timelines are still in place. Arizona allows for a 30 -day extension, so this is an available option. Meetings can be held via alternative methods. [See OSEP guidance.](#)

Q: What about students in the middle of timelines?

A: Timelines cannot be extended, per OSEP. Meetings can be held via alternative means in order to ensure timelines can be met as best as possible. [See OSEP guidance.](#)

Q: If school does not resume, what happens to evaluations in progress?

A: Timelines cannot be extended, per OSEP. Meetings can be held via alternative means in order to ensure timelines can be met as best as possible. [See OSEP guidance.](#)

Q: If assessments are needed, how do we conduct these?

A: ADE is not in any position to indicate what is medically safe for a family or for specific students. If a school decides to provide assessments, they should be provided in accordance with the most [up-to-date CDC guidance](#). Additionally, assessment administration guides should be consulted for participation types allowing for valid results.

Q: How do I obtain parent signatures, when needed, during closure if we are not holding in-person meetings?

A: Parent signatures are only required in very specific cases under IDEA. Outside of these specific cases, if the PEA uses signatures to evidence parent participation, the PEA will need to determine how they plan to document parent participation during the closure.

Fiscal

Q: How will Maintenance of Effort be impacted? What allowances can/will be made?

A: Inquiries regarding flexibility or exceptions to Maintenance of Effort has already been forwarded to the Office of Special Education Programs (OSEP). ADE has no authority to waive the IDEA Maintenance of Effort testing requirements or grant waivers related to them. The only allowable exceptions that exist for Maintenance of Effort do not address situations such as the closure we are



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suddenly in. The federal government did issue guidance regarding ESEA Maintenance of Effort but has not provided clarity nor insight on IDEA Maintenance of Effort.

Q: Will there be additional funds to address costs during closure?

A: There are no additional funds that have been established for extra services during the closure. State funding has been maintained and the federal funding under the IDEA Entitlement grant has some increased flexibility during the time of the closure. For example, the federal grant can pay for cancellations for events due to closure of venues during this time. Additionally, staff can continue to be paid even though school is closed because of the closure that has been mandated.

House Bill 2910 (HB2910)

Q: Provision 7 of this bill includes the following language: ...public schools may deviate from statutory requirements related to special education programs. What does this mean?

A: Per IDEA and OSEP guidance, students with disabilities are still entitled to a free and appropriate public education. Any deviation from state statutory provisions related to special education must align with federal law set forth in IDEA at this time. Congress has not suspended IDEA and the federal mandates contained therein.

Individualized Education Programs (IEPs)

Q: Are we able to have students come to schools 2 times/week to receive services? If so, will we need to provide transportation to students that have transportation as part of their IEP?

A: ADE/ESS cannot indicate what is medically safe for a family or for specific students. Any services provided at school should be provided in accordance with the most [up-to-date CDC guidelines](#), as well as any additional [restrictions provided by the Governor](#). Transportation should be provided, again in accordance with CDC guidelines, if necessary, for the student to receive FAPE. Alternate means of service provision should be considered for students.

Q: Can we determine to meet student needs in ESY, rather than provide services during the closure?

A: Extended School Year (ESY) is a separate requirement that has to be considered for all students with disabilities. Extended school year services are not a substitute for compensatory services. If services are not provided due to safety concerns, a consideration of compensatory services would need to be completed and a plan outlined if needed. It may be appropriate to provide compensatory services over the summer, but this is a separate consideration from ESY.

Q: Can we do IEP meetings over the phone?

A: Yes, alternative participation for meetings is an option and is encouraged.



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Q: How do we provide progress reports?

A: Progress reports will need to be completed to the best of one's ability given closure scenarios. PEAs are encouraged to work on goals as best they can using alternative means, during the closure, and measuring progress based on this. PEAs are encouraged to implement IEPs to the extent possible and to utilize alternative means to measure progress on goals during the period of school closure.

Q: What are service minutes going to look like for specialized instruction?

A: SDI (specially designed instruction) should be provided in accordance with IEPs, as is possible and feasible, utilizing alternative means. The method by which services are delivered may look different and the use of alternative delivery instruction or methodology is encouraged. If it is not safe or feasible to deliver instruction to a student and provide a FAPE, then the team should consider compensatory education on an individual basis once school resumes.

Q: Are we allowed to use alternate methods of instruction to provide specially designed instruction (SDI)?

A: Alternate methods of instruction can and should be made available. The IDEA does not require that the IEP contain methodology or method of instruction unless necessary to provide a FAPE. If it is not safe or feasible to deliver instruction to a student and provide a FAPE, then the team should consider compensatory education on an individual basis once school resumes.

Q: If we provide packets for delivery of SDI, do we customize each student's packet to be focused on his or her IEP goals and would virtual delivery need to accompany the packet?

A: In order to be considered specially designed instruction (SDI), a packet would have to be individualized to meet the needs of the student as outlined in the student's IEP. However, the use of alternative means of instruction is encouraged and supported. Whole class packets must be accessible to students with disabilities and could provide enrichment or additional practice but would not be considered SDI.

Q: Will a student's special education and related services change due to closure?

A: To the extent possible students should be provided with the special education services outlined in the IEP. If it is not safe or feasible to deliver instruction to a student and provide a FAPE, then the team should consider compensatory education on an individual basis once school resumes.

Q: A school has a family that has refused service. What does the school need to do?

A: The school can document their attempts to provide services and continue to be ready willing and able to provide services.

Q: A PEA is providing services through virtual instruction. The student continually refuses to participate in the virtual instruction. What obligation does the PEA have to the student to provide additional support?



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A: To the extent possible, students should be provided with the special education services outlined in the IEP. If it is not safe or feasible to deliver instruction to a student and provide a FAPE, then the team should consider compensatory education on an individual basis once school resumes. The PEA should remain ready willing and able to provide services.

Q: If it is written in the IEP that a student has support from a paraprofessional, how would that be implemented?

A: Assistance from a paraprofessional is not SDI. Teams should determine whether the use of a paraprofessional or other adult support is necessary for the student to access the general education curriculum being provided by the school. If the student does not require additional adult support to access the general education curriculum being provided, then it would not be necessary to provide paraprofessional support in the student's home. If paraprofessional support is necessary in order for the student to access either the SDI or the general education curriculum, then compensatory educational services should be considered once school resumes.

Q: When considering students with significant disabilities and providing services in-home, aren't we putting students and families at risk for infection?

A: ADE/ESS cannot indicate what is medically safe for a family or for specific students. If a school decides to provide services in the home, services should be provided in accordance with the most [up-to-date CDC guidance](#).

Q: If we decide to provide distance learning opportunities does the IEP need to be addended?

A: Addenda to the IEP are not required until/unless there is a change in placement after school resumes. To the extent possible, students should be provided with the special education services outlined in the IEP. If it is not safe or feasible to deliver instruction to a student and provide a FAPE, then the team should consider compensatory education on an individual basis once school resumes.

Q: When going virtual for instruction, are we required to provide internet and/or computers to all students, if they do not have access?

A: All students should have access to any virtual learning opportunities provided by the PEA. ADE/ESS does not dictate how a PEA implements its virtual learning platform and PEAs should seek advice from legal counsel on issues related to access and equity in specific instances.

Q: Are compensatory services necessary for all students?

A: A general compensatory service plan for all students with disabilities is inappropriate. Compensatory education is dependent upon the individual needs of the student and cannot be one size fits all. If comp education is needed, it must be determined on an individual basis once school resumes.

Q: Can a general education teacher or other certificated personnel provide SDI during the school closure?



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A: The student's IEP that was in effect at the time of the closure remains in effect. If the IEP states that certificated staff, other than the special education teacher can provide the SDI then the same applies during any period of alternative instruction due to closure. If the IEP specifies that services must be provided by a special education teacher, then a special education teacher must provide the SDI.

Q: Does sending a draft IEP to a parent via email and soliciting input constitute alternative means of team participation?

A: IEP team participation with required team members is essential in IDEA. IDEA highlights parent participation in the IEP process as critical. If alternate means of participation through phone, video or otherwise are unavailable the PEA should consult their legal counsel on how best to proceed.

Q: Can we do IEP meetings over the phone?

A: Yes, alternative participation for meetings is encouraged and is an option. PEAs need to ensure that all required meeting participants are included.

Prior Written Notice (PWN)

Q: Are PWNs required during the closure?

A: Per IDEA 300.503, a PWN must be provided in the following circumstances: [\(1\)](#) proposals to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or [\(2\)](#) refusals to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. The provision of online or other distance learning opportunities is not considered a change in placement, and neither an IEP nor a PWN would be required. Students are still entitled to FAPE as defined by the IEP in effect when the school closure occurred. If it is not safe or feasible to deliver instruction to a student and provide a FAPE, then the team should consider compensatory education, on an individual basis, once school resumes.

Proportionate Share

Q: Do districts have to continue to offer proportionate share services during the closure?

A: It would not be feasible, nor is it required, for districts to continue proportionate share services during the closure. Proportionate share services vary between districts but generally rely on teaching staff within a district to provide services off-site. During this time of closure, this would go against the intent of closure for public and private schools. Additionally, districts are ultimately responsible for the scope of services offered and the time range for the school year. If the districts do not meet the spending obligation of proportionate share over the life cycle of federal funds for any given grant year, those funds may potentially be reverted to the federal government.



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Teletherapy

Q: Are we allowed to ask students to come to the school, so speech services can be provided via teletherapy?

A: Alternate means of service provision should be considered for students. [Consult CDC guidelines](#). By [executive order](#), Governor Ducey has authorized the use of Teletherapy services. Please consult your practice, licensing or credentialing association if you have specific legal questions related to the use of teletherapy. At this time, we cannot provide answers to questions regarding Medicaid reimbursement for services provided via teletherapy.

Q: We would like to complete speech teletherapy but are told that Medicaid will not reimburse. Is there a way to have Medicaid reimburse?

A: Alternate means of service provision should be considered for students. [Consult CDC guidelines](#). By [executive order](#), Governor Ducey has authorized the use of Teletherapy services. Please consult your practice, licensing or credentialing association if you have specific legal questions related to the use of teletherapy. At this time, we cannot provide answers to questions re: Medicaid reimbursement for services provided via teletherapy.

Q: Is there a confidentiality issue when providing teletherapy online to a group of students, rather than one-on-one?

A: FERPA does not apply as therapy is not an educational record. Teletherapists should follow any ethical guidelines associated with their therapist organizations. [See the additional FERPA information from OSEP](#). Please consult with legal counsel for an interpretation of the statutes and how they apply to your specific practice area.

Q: Are all PEAs required to provide teletherapy during school closures?

A: What services are provided by a PEA during the school closure is not mandated by ADE. PEAs must make reasonable efforts to provide a FAPE to students with disabilities, which may include the provision of teletherapy services as accessible and appropriate for an individual student. Please consult your practice, licensing or credentialing association if you have specific legal questions related to the use of teletherapy.

Q: Can a PEA choose to provide all therapies via teletherapy?

A: ADE does not mandate how a district provides a FAPE to students. Teletherapies can be utilized if it is feasible to do so and meets the needs of the individual student. PEAs must make reasonable efforts to provide a FAPE to students with disabilities, and teletherapies may be appropriate, if it is feasible to do so. Teletherapists should follow any ethical guidelines associated with their therapist organizations. If it is not safe or feasible to deliver instruction to a student and provide a FAPE, then the team should consider compensatory education on an individual basis once school resumes.



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Q: Do therapy services provided via telepractice count as IEP service minutes?

A: Teletherapy may be utilized to provide a FAPE to students. However, a student may still be owed compensatory education, which is determined on an individual basis, if teletherapy is not an effective method of service delivery for the student. Whether teletherapy is equivalent to in-school service delivery is dependent on the individual needs of the student. Teletherapists should follow any ethical guidelines associated with their therapist organizations. If it is not safe or feasible to deliver instruction to a student and provide a FAPE, then the team should consider compensatory education on an individual basis once school resumes.

Miscellaneous

Q: Should PEAs continue efforts to complete the parent satisfaction survey during the closure?

A: Yes, this is a general supervision requirement and therefore the timelines cannot be adjusted. PEAs should make all efforts possible to assist parents in completing the parent survey through alternative means as necessary and feasible.