

GUIDANCE



Compliance with the Individuals with Disabilities Education Act and the Kansas Special Education for Exceptional Children Act during the COVID-19 Pandemic

Asterisks () indicate new or revised material added since the previous version of this document.

The Individuals with Disabilities Education Act (IDEA) and the Kansas Special Education for Exceptional Children Act require school districts to provide special education and related services to students with exceptionalities. The Kansas State Department of Education's (KSDE) Special Education and Title Services (SETS) team created this document to compile questions we are receiving and provide answers in a uniform and consistent manner. As you all are aware, this is a rapidly changing situation, and this document will be continually revised to provide the most up to date information.

Before we get into specific requirements and questions, when thinking about timelines and meetings that must occur, please first consider whether an activity to meet a timeline or a meeting can occur via phone or virtually. Many requirements can be met in this manner.

Special education timelines and requirements are set forth in statute, which was written and enacted by the United States Congress and the Kansas Legislature. The Kansas State Department of Education (KSDE) does not have the authority to alter or waive these statutory requirements and timelines.

Please note that the [Continuous Learning Plan Task Force Guidance](https://www.ksde.org/Portals/0/Communications/Publications/Continuous%20Learning%20Task%20Force%20Guidance.pdf?ver=2020-03-19-102225-707)¹, released by the Kansas State Department of Education, is simply guidance. When a district creates its own continuous learning plan it must balance this guidance with the requirements of special education law, as well as the context for its staff and students, including any guidance or requirements issued by state or local health officials.

This document is not intended to provide legal advice. For legal advice on your specific situation, please consult with the attorney representing your school district. Kansas State Department of Education staff are not permitted to provide legal advice.

¹ <https://www.ksde.org/Portals/0/Communications/Publications/Continuous%20Learning%20Task%20Force%20Guidance.pdf?ver=2020-03-19-102225-707>

A. Special Education Legal Questions

Question A-1. What special education and related services must be provided when a school is closed due to COVID-19, and is not yet providing any services to the general student population?

Answer A-1. When a school is closed due to a COVID-19 outbreak and is not yet providing any services to the general student population, the school is not required to provide a FAPE or any IEP services to children with exceptionalities.

Question A-2. What special education and related services must be provided to students with exceptionalities when a school is closed due to COVID-19, but is implementing its Continuous Learning Plan?

Answer A-2. When a school is closed due to a COVID-19 outbreak, but is implementing its Continuous Learning Plan, the school must ensure that each student with an exceptionality also has equal access to the same opportunities, including, to the greatest extent possible under these unprecedented circumstances, a free appropriate public education (FAPE). School districts must provide a FAPE consistent with the need to protect the health and safety of students with exceptionalities and those individuals providing education, specialized instruction, and related services to these students. In this unique and ever-changing environment, these exceptional circumstances may affect how all educational and related services and supports are provided. FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, through instructional materials sent home, or telephonically. The determination of how FAPE is to be provided may need to be different during the time when a school is closed and implementing its Continuous Learning Plan. As mentioned above, FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students. This guidance is consistent with and based upon the [Office for Civil Rights \(OCR\) and Office of Special Education and Rehabilitative Services \(OSERS\) Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities²](#) issued on March 21, 2020. Educators should read that document fully for more guidance regarding how to provide special education and related services in a distance learning environment.

The services and supports in a child's IEP prior to the implementation of the district's Continuous Learning Plan contemplated the traditional educational environment, which most students are no longer in. The child's IEP Team should think of the district's Continuous Learning Plan as the general education curriculum in place at this time. All services and supports are intended to support the child in accessing the general education curriculum with their nondisabled peers to the maximum extent appropriate. The child's IEP Team should develop a contingency learning plan to enable the child:

- (1) To advance appropriately toward attaining the child's annual IEP goals;
- (2) to be involved in and make progress in the general education curriculum (in this instance, the district's Continuous Learning Plan), or appropriate activities for children ages 3–5;
- (3) to participate in extracurricular and other nonacademic activities; and
- (4) to be educated and participate with their nondisabled peers to the maximum extent appropriate, in all of these activities (in this instance to participate in the continuous learning plan with their nondisabled peers). K.S.A. 72-3429(c)(4)

² <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

The child's IEP Team should think about the definition of specially designed instruction, in the context of the district's Continuous Learning Plan. "Specially designed instruction" means adapting, as appropriate to the needs of each exceptional child, the content, methodology or delivery of instruction for the following purposes:

- (1) To address the unique needs of the child that result from the child's exceptionality; and
- (2) to ensure access of any child with a disability to the general curriculum [in this instance, the district's Continuous Learning Plan], so that the child can meet the educational standards within the jurisdiction of the agency that apply to all children. K.A.R. 91-40-1(III).

The child's IEP Team should think about related services in the context of what specially designed instruction (special education services) means within the district's Continuous Learning Plan. Related services are developmental, corrective, and supportive services required to assist a child, who has been identified as a child with an exceptionality, to benefit from special education services. K.A.R. 91-40-1(ccc).

The child's IEP Team should think about supplementary aids and services, program modifications, and supports for school personnel in the context of "to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate" (in this instance to participate in the district's Continuous Learning Plan with their nondisabled peers). K.S.A. 72-3429(c)(4); K.A.R. 91-40-1(ttt).

Question A-3. How should schools proceed with special education and related services when schools resume normal operations next school year?

Answer A-3. Where, due to the COVID-19 outbreak and resulting closures of schools, there has been an interruption in providing IEP services, IEP teams must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations. Compensatory services may be necessary when there is a decline in the student's skills that occurred as a result of a student not receiving services during an extended school closure (or an extended student absence) caused by the COVID-19 outbreak. The student's IEP Team also must review the student's IEP and determine whether any other changes to the IEP are needed as a result of the extended absence from school. An IEP Team may consider using informal assessments or screenings to determine whether there have been changes in a student's performance. Information needed to make this determination will likely not be known until after the interruption in services has ended. Thus, the most appropriate time for the IEP Team to decide on compensatory education for the student would be when schools return to normal operations next school year.

Question A-4. Should all student IEPs be amended in response to special education and related services not being provided in accordance with a student's IEP during an extended school closure caused by the COVID-19 outbreak?

Answer A-4. No. IEP amendments must be individualized decisions, particular to the needs of each child. Missed services should be addressed as outlined in the [Answer A-3](#) above.

Question A-5. How does a school provide additional services when the Kansas State Department of Education's Continuous Learning Plan Guidance provides recommendations of daily maximum minutes for instruction at each grade level? How does that impact services outlined in an IEP for a student?

Answer A-5. Please note that the Continuous Learning Plan Guidance, is simply guidance. When a district creates its own continuous learning plan it must balance this guidance with the requirements of special education law, as well as the context for its staff and students.

Question A-6. Is it permissible to provide services to a child with an IEP through video conferencing with only one student and one staff member present on the video call?

Answer A-6. Nothing in the IDEA or Kansas Special Education for Exceptional Children Act prohibits one-on-one video conferencing between a staff member and a student. The initial guidance from the Continuous Learning Plan Task Force cautioned against this for liability and accountability reasons, with certain exceptions. Special education administrators should make local decisions on how to serve students as part of the district's Continuous Learning Plan and this can include 1:1 services. Administrators can consider precautions such as asking a caregiver to join the child or be in the same space with the child when the child is receiving 1:1 services. Many video conferencing systems (including Zoom) permit recording and an administrator could consider asking district educators to record 1:1 video meetings with a student. When making this decision, note that video recordings maintained by the school that contain information directly relating to the student could be considered education records under the Family Educational Rights and Privacy Act (FERPA; 34 C.F.R. § 99.3). An administrator could decide to use classified staff to join 1:1 video meetings with a child. Special education and other district administrators should make the decision for their district that they think is best for students and staff.

Question A-7. How should Pre-K child find screenings be conducted when a school is closed due to COVID-19?

Answer A-7. The IDEA and state special education law do not specify a required timeline for early childhood screenings. K.A.R. 91-40-7(a) and (b) require each local school board to adopt and implement policies and procedures for screening children younger than age 5. Those policies and procedures must include observations, instruments, measures, and techniques that disclose any potential disabilities or developmental delays that indicate a need for evaluation, including hearing and vision screening. These screenings should be done within a reasonable time in light of the unprecedented COVID-19 restrictions each local school district is facing. When conducting screenings, staff must be sure to follow local health department guidelines for appropriate social distancing, hygiene, and sanitizing any materials or instruments. Any screening that can be done virtually should be done virtually.

Question A-8. What should a school do if it cannot meet the **60 school-day timeline for initial special education evaluations** due to school closure or student illness/absence because of COVID-19?

Answer A-8. K.A.R. 91-40-8(f) requires a school to complete an initial evaluation within 60 school days of the date the school receives written parental consent for evaluation of the child. There are three exceptions to this timeline: a. the school can obtain written parental consent to an extension of time (K.A.R. 91-40-8(f)); or b. the parent repeatedly fails or refuses to produce the child for the evaluation (K.A.R. 91-40-8(g)(1)); or c. the child enrolls in a different school before the evaluation is completed and the parent and new school agree to a specific date by which the evaluation will be completed (K.A.R. 91-40-8(g)(2)).

Note that this timeline is 60 **school days**. School day is defined as “any day, including a partial day, that all children, including children with and without disabilities, are in attendance at school for instructional purposes” (K.A.R. 91-40-1(eee)). Thus, if a school is closed due to COVID-19 and not providing any services to the general student population, those days of closure are not counted in the 60-school-day timeline. However, once a school is implementing its Continuous Learning Plan, KSDE considers those days to meet the K.A.R. 91-40-1(eee) definition of school day; thus those days do count in the 60-school-day timeline.

If the school believes that it will not be able to meet the 60-school-day timeline for an individual student, the school should ask the parent for written consent to an extension of time (K.A.R. 91-40-8(f)). This request for consent to extend the time to complete an evaluation must be obtained on an individualized basis. It must not become a standard practice nor may standard language be inserted into every prior written notice provided to the parent when first asking for consent to evaluate. The consent must include a specific extension of time that can be calculated and is clear to all parties.

Question A-9. What should a school do if it is closed due to COVID-19 and cannot meet the obligation to have an IEP or an IFSP in effect for a **child transitioning from Part C to Part B** no later than the child’s third birthday?

Answer A-9. 34 C.F.R. §§ 300.101(b) and 300.124(b) require that an IEP or IFSP is developed and is being implemented by the third birthday of a child participating in Part C programs and who will participate in Part B preschool programs. There is no exception to this requirement. Either an IEP or IFSP must be developed and implemented by the child’s third birthday. To accomplish this, teams may conduct meetings virtually via telephone or videoconference.

Question A-10. How does school closure due to COVID-19 affect the school’s obligation to provide IEP services to **students who transfer within the state and from out of state**?

Answer A-10. Students with IEPs who transfer to a new school within Kansas or from out-of-state and enroll in the new school within the same school year must be provided with a free appropriate public education (FAPE) including services comparable to those described in the child’s IEP from the previous school district until the new school district adopts the child’s IEP from the previous school district, or develops a new IEP, or (in the case of an out-of-state student) conducts an evaluation (34 C.F.R. § 300.323(e), (f)). Schools should be careful to not introduce unreasonable logistical barriers on enrollment and keep in mind their obligation to provide FAPE to a student who has transferred into the school district.

If the school is closed due to COVID-19, and does not provide any educational services to the general student population, then the school would not be required to provide services to students with IEPs during that same period of time, including transfer students with IEPs (see [Answer A-1](#) above). Once a school is implementing its Continuous Learning Plan, the school must provide special education and related services as described in [Answer A-2](#) above. In addition, once a school resumes to normal operations next school year, an IEP Team would be required to make an individualized determination as to whether compensatory services are needed due to the missed services caused by the school closure (see [Answer A-3](#) above).

Question A-11. What should a school do if it cannot meet the requirement to **review and revise each IEP at least annually** due to school closure or student illness/absence because of COVID-19?

Answer A-11. 34 C.F.R. § 300.324(b)(1)(i) requires each school district to ensure that the IEP team reviews the child’s IEP not less than annually to determine whether the annual goals for the child are being achieved and to revise the IEP as appropriate to address any lack of expected progress toward the IEP goals and in the general education curriculum. There is no exception to this annual requirement. To accomplish this, teams may conduct meetings virtually via telephone or videoconference. Any required IEP team members that are unable to attend may be excused by written consent of the parent or written agreement between the parent and the school pursuant to the procedures outlined in 34 C.F.R. § 300.321(e).

Question A-12. As IEP Teams are meeting during COVID-19 closures and restrictions, what should the IEP include for the dates of services?

Answer A-12. 34 C.F.R. § 300.320(a)(7) requires that an IEP must include the **projected** date for the beginning of the special education and related services, and supplementary aids and services for the child, and program modifications or supports for school personnel. The IDEA does not define the term “projected,” however, projected generally means proposed, predicted or estimated. Therefore, because the start date for services is projected and not exact, this regulation has some flexibility. Further, the projected start date does not have to be a specific number, such as March 23, 2020. A projected start date can be a description that can be calculated and is clear to all parties, such as “this service is projected to start on the first day when school resumes and all children are in attendance at school for instructional purposes.” Note that data reporting requirements for SPEDPro are different than legal requirements for the contents of an IEP. For SPEDPro data reporting requirements, school districts must report actual dates that services are started and ended (see [Question and Answer B-1](#) below).

Question A-13. As IEP Teams are meeting to complete annual IEP reviews and to create initial IEPs during COVID-19 closures and restrictions, should the IEP be written based on the options that will be available for service with Continuous Learning Plans that districts will be developing, or should the IEP be written based on what the IEP Team would have offered as FAPE as if schools were in operation as normal?

Answer A-13. An IEP must be written to reflect the services, modifications, supports and placement that are reasonably calculated to provide a FAPE to the individual child. An IEP must not be written to accommodate a temporary situation or based on administrative convenience or lack of time and resources. However, as described in [Question and Answer A-5](#)³ within the United States Department of Education’s (USDE) document “Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak,” an IEP team may, but is not required to, create a contingency learning plan for a child that could be triggered and implemented during closure due to COVID-19. Such contingency learning plan may include the provision of special education and related services at an alternate location or the provision of online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, and may identify which services, if any, could be provided at the child’s home. If an IEP team chooses to create a contingency learning plan for an individual child, it is vitally important to specifically outline the conditions that would trigger the use of

³ <https://sites.ed.gov/idea/idea-files/q-and-a-providing-services-to-children-with-disabilities-during-the-coronavirus-disease-2019-outbreak/#Q-A-5>

the contingency learning plan and the conditions that would trigger the cessation/ending of the contingency learning plan. An IEP team could write the contingency learning plan in a Prior Written Notice (PWN). The contingency learning plan should be time limited and clearly stated as such.

Question A-14. If an IEP team creates a contingency learning plan to be triggered during school closure due to COVID-19, is notice needed? Must parent consent be obtained?

Answer A-14. Prior Written Notice (PWN) has broad application. A PWN must be given to parents whenever a school district proposes any change to any matter related to identification, evaluation, placement, or the provision of a FAPE, or when a school district refuses a parent's proposal regarding any of these matters (34 C.F.R. § 300.503). The United States Supreme Court has interpreted FAPE to mean an IEP reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances (Endrew F. v. Douglas County School Dist. RE-1, 580 U.S. ___ (2017)). In short, any change by a school district to the education program for a child with a disability requires a PWN.

In an emergency situation, where all children are to be served virtually for a period of time, serving an exceptional child virtually for that same period of time is not a substantial change in placement or material change in services and does not require consent. The district is simply responding to the Governor's Executive Order to close school buildings and move to continuous learning for the remainder of the school year. This was not a district or IEP Team decision. This is similar to a contingency plan being created for a student during the time a student is in a juvenile detention center or psychiatric residential treatment facility. The district did not act to place a student in that environment. The district is simply recording within the contingency learning plan the way in which it will provide special education services to the greatest extent possible (as described in [Answer A-2](#) and [Answer A-13](#) above) under the circumstances until the student returns to their typical educational environment. Because the decision to close school buildings was not the district's decision, any contingency learning plan developed for a student does not constitute a material change in services or a substantial change in placement.

Question A-15. If an IEP team decides to write a contingency learning plan in the IEP, would that require an IEP meeting or an amendment to modify the IEP?

Answer A-15. If an IEP team decides to write a contingency learning plan in an IEP rather than in a PWN or as a stand-alone document, an IEP meeting or an agreement to amend the IEP without a meeting would be required.

Question A-16. If IEP teams meet virtually during COVID-19 school closure, in order to conduct annual IEP reviews on time, how should parent consent be obtained for actions that require consent? Is verbal consent sufficient?

Answer A-16. 34 C.F.R. § 300.505 permits a parent to choose to receive PWN and procedural safeguards (parent's rights) by electronic mail communication if the school makes that option available. 34 C.F.R. § 300.9(b) states that "consent" means in part "...the parent understands and agrees in writing..." Thus, verbal consent is not permitted. However, the IDEA does not specify how written consent must be obtained. Therefore, schools that wish to utilize electronic or digital signatures for consent may do so if they choose. Options for electronic or digital signatures could include but are not limited to the use of applications such as HelloSign, DocuSign, Adobe Sign, or even a parent's email reply to a PWN stating that they consent to the proposed action in the PWN and provide their printed name as a signature.

Parents may provide consent with an electronic signature under three conditions: (1) The document identifies a particular person as the source of the electronic consent; (2) the document authenticates a particular person as the source of the consent; and (3) the document indicates such person's approval of the information contained in the electronic consent (34 C.F.R. § 99.30(d)). To meet condition one, the document must include a statement identifying the person providing the signature. For example, the document could include a statement such as: "I (Name of parent) am the parent of (Name of student), and I consent to: _____." To meet condition two, there must also be something to authenticate that the person sending the signature electronically is the person named in the document. That could be accomplished by requiring that a parent respond to the request for consent using their own e-mail address (where the consent form was sent). Or, a district could send the request for consent to the parent electronically, and protect it with a password known only to the sender and the parent. The fact that the parent is able to open the request for consent and send a response is reliable evidence that it is the named parent who is responding. The third condition would apply to any request for consent, whether hand-written or electronic. The document must describe the action for which consent is being requested and include a statement that the parent's signature means the parent is consenting to that action.

Question A-17. What should a school do if it cannot meet the requirement to **reevaluate each child with an exceptionality at least once every 3 years** due to school closure or student illness/absence because of COVID-19?

Answer A-17. K.S.A. 72-3428(h) and 34 C.F.R. § 300.303(b)(2) requires school districts to ensure that a reevaluation of each child with an exceptionality occurs at least once every 3 years, unless the parent and the school district agree that a reevaluation is unnecessary. There is no provision that allows for an extension of time. Further, it would be inappropriate and inconsistent with the law for the parent and school district to agree not to conduct a 3-year reevaluation because of administrative convenience or lack of time and resources. A school district would not be required to conduct a 3-year reevaluation only if one of the following occur: a. the parent refuses to provide consent for the reevaluation, or b. the parent and school district agree that the reevaluation is unnecessary. Whether a 3-year reevaluation would be unnecessary is an individualized determination and must be made based on the needs and unique circumstances of the child.

Note that, when appropriate, any reevaluation may be conducted based on a review of existing data, if the IEP team determines that no additional data are needed to determine continued eligibility and the child's educational needs. This review of existing data must be done by the IEP team and must include input from the child's parents (34 C.F.R. § 300.305(a)(2)). The IEP team may conduct this review without a meeting and without obtaining parental consent (34 C.F.R. § 300.305(b)). If the IEP team decides that no additional data are needed, parents must be notified of that determination, the reason for that determination, and the right of the parent to request an assessment to determine whether the child remains eligible and to determine the child's educational needs (34 C.F.R. § 300.305(d)).

Question A-18. Must reevaluations be completed within 60 school days like initial evaluations?

Answer A-18. The 60 school-day time frame applies to initial evaluations. 34 C.F.R. § 300.301(c)(1)(i)-(ii) states "**the initial evaluation** must be conducted within 60 days of receiving parent consent for the evaluation; or **if the state establishes a timeframe** within which the evaluation must be conducted, **within that timeframe.**" In Kansas, our initial evaluation timeline is 60 school days rather than 60 days because the state regulation establishes a 60 school-day timeline at K.A.R. 91-40-8(f).

Both the IDEA and the Kansas Special Education for Exceptional Children Act are silent on a required timeline for completing re-evaluations, except that re-evaluations must occur at least once every 3 years (with parent consent) unless the parent and school agree that a reevaluation is unnecessary (34 C.F.R. § 300.303(b)(2)). This means that the child's reevaluation must occur within 3 years from the date that the child's last evaluation was completed, provided that the parent gives consent for the re-evaluation. KSDE's guidance for the number of days a re-evaluation should take is that it should be a reasonable amount of time, and KSDE has traditionally adopted the 60 school-day timeline as a reasonable time for a reevaluation, unless there are unusual circumstances. **Regardless of the number of days that it takes to complete the re-evaluation, it must occur, with parent consent, within 3 years from the date of the child's last evaluation unless the parent and school agree that it is unnecessary.** Whether a 3-year reevaluation would be unnecessary is an individualized determination and must be made based on the needs and unique circumstances of the child.

Question A-19. How do schools handle the reevaluation of students identified with a developmental delay turning age 10 during a school closure due to COVID-19?

Answer A-19. Reevaluation of a child is not required before termination of a child's eligibility for services due to exceeding the age for eligibility (K.S.A. 72-3428(l)(2)). If a child who is turning 10 is only identified with developmental delay (DD) and no additional exceptionality is suspected, eligibility ends on the child's 10th birthday. For such a child, the school does not need parental consent to end services upon exceeding the age for DD eligibility (K.A.R. 91-40-27(a)(3)). However, the child find requirement remains. Therefore, if prior to the child's 10th birthday, there is reason to suspect that the child has another exceptionality under any other category, a reevaluation must be completed prior to the child's 10th birthday to make that determination. Many of these reevaluations may be conducted based on a review of existing data, without the need for additional assessments. If these evaluations are conducted based on a review of existing data, that review must be done by the IEP team and must include input from the child's parents (34 C.F.R. § 300.305(a)(2)). The IEP team may conduct this review without a meeting and without obtaining parental consent (34 C.F.R. § 300.305(b)). If it is determined that no additional data are needed to determine continued eligibility and the child's needs, parents must be notified of that determination, the reason for that determination, and the right of the parent to request an assessment to determine whether the child remains eligible under another category (34 C.F.R. § 300.305(d)).

Question A-20. How should a school handle the provision of IEP goal progress reports to parents during a school closure due to COVID-19?

Answer A-20. The regulations implementing the IDEA requires that each IEP includes a description of when IEP goal progress reports will be provided to the parents (34 C.F.R. § 300.320(a)(3)(ii)). If a child's IEP says that the progress report will be provided concurrent with the issuance of report cards or in the same manner and frequency as general education progress reports, then the IEP progress report would only need to be issued if report cards or general education progress reports are also issued. If the IEP says that the progress report will be provided in a different manner and frequency than general education progress reports or report cards, schools should make every effort to issue the IEP progress report in the manner required by the IEP.

Question A-21. Can parents and schools request special education mediation during a school closure caused by COVID-19?

Question A-21. Parents and schools can mutually agree to special education mediation and request a mediator from KSDE at any time. Due to COVID-19, beginning March 23, 2020, KSDE SETS staff will be working from home and cannot receive mail or deliveries at the KSDE office building. Any mediation requests mailed or hand-delivered to the KSDE office building during this time will be received and processed when KSDE staff resume working in the office building. In order to continue processing mediation requests during this time, KSDE is temporarily allowing mediation forms to be sent via email. Please note that any request for mediation must include completion of all three mediation forms, with signatures of both parties on any of the forms containing a signature line. Once operations resume as normal and KSDE staff are working in the office building, the normal mediation request procedure requiring mediation forms to be mailed or hand-delivered will resume.

Question A-22. Can individuals and organizations still send special education formal complaints to KSDE during a school closure caused by COVID-19?

Answer A-22. Individuals and organizations (complainants) can send special education formal complaints to KSDE at any time. However, formal complaints are officially filed when they are received by KSDE staff on the Special Education and Title Services Team (SETS). Investigations are opened on the day the complaints are filed. Due to COVID-19, beginning on March 23, 2020, KSDE SETS staff are working remotely and cannot receive mail or deliveries at the KSDE office building. Any formal complaints mailed or hand-delivered to the KSDE office building during this time will be officially filed and processed when KSDE staff resume working in the office building. In order to continue processing formal complaints during this time, KSDE is temporarily allowing complainants to send complaints via email. Emailed complaints will be filed and processed when KSDE staff open the email. Once operations resume as normal and KSDE staff are working in the office building, the normal complaint filing procedure requiring complaints to be mailed or hand-delivered will resume.

Question A-23. What happens with pending special education formal complaint investigations that started before school closures caused by COVID-19 but are not yet completed?

Answer A-23. Complaint investigations that are currently ongoing will continue and investigators will issue complaint reports as usual. Complaint investigators are in current communication with special education directors involved in open investigations in order to gather information about their district's closure, their level of access to documentation, and whether staff are available for interviews. With that information, KSDE will determine whether to permit an extension of the regulatory time limit for completing the complaint investigation due to exceptional circumstances with respect to each particular complaint pursuant to 34 C.F.R. § 300.152(b)(1)(i). If an extension of time is permitted to complete the investigation, both the school district and complainant will be notified.

Question A-24. If a school district with a closure caused by COVID-19 has been ordered to complete corrective action as the result of a special education formal complaint investigation, within what timeframe must the corrective action be completed?

Answer A-24. Each complaint report that finds a violation of special education law includes required corrective action with specific due dates. Complaint investigators will be mindful of the current COVID-19 restrictions when setting due dates during this uncertain time. In addition, K.A.R. 91-40-51(e)(1)(B)

provides that a school district can submit to SETS within 10 days of the date of the complaint report a written request for an extension of time to complete one or more of the corrective actions specified in the complaint report, together with justification for the request. Some school districts have outstanding corrective action required by complaint reports that were already issued prior to the current COVID-19 restrictions. For those school districts, the KSDE Dispute Resolution Coordinator will continue to monitor the completion of corrective action by their respective due dates. If it is apparent that any particular corrective action cannot be completed by the ordered due date, and the school district requests an extension of time, the KSDE Dispute Resolution Coordinator will work with the school district to permit a reasonable extension of time.

Question A-25. Can parents still file notice of special education due process during a school closure caused by COVID-19?

Answer A-25. A parent's notice of special education due process against a school district is filed when the school district **receives** the notice (34 CFR §§ 300.508(a)(1), (e), (f); 300.510(a),(b); K.A.R. 91-40-28(c), (d)(2); 91-40-30(a), (d)(1)). If a school district is closed and no staff are present, it is reasonable to conclude that the notice is not filed until such time when staff are present to receive the notice. The timelines for holding a resolution session and appointing a hearing officer would begin when school district staff receive the notice.

Question A-26. If a school district receives a notice of special education due process during a school closure caused by COVID-19, how would timelines for holding a resolution session and appointing a hearing officer be affected?

Answer A-26. The timelines for holding a resolution session and appointing a hearing officer would begin when school district staff receive the notice (for more on this see [Answer A-25](#) above). Those timelines are set forth in K.A.R. 91-40-28 for non-expedited due process and in K.A.R. 91-40-30 for expedited due process. Note that "day" means "a calendar day unless otherwise indicated as business day or school day" (K.A.R. 91-40-1(n)). "Business day" is defined as "Monday through Friday, except for federal and state holidays" (K.A.R. 91-40-1(i)). "School day" is defined as "any day, including a partial day, that all children, including children with and without disabilities, are in attendance at school for instructional purposes" (K.A.R. 91-40-1(eee)).

B. Special Education Data Reporting Questions

***Question B-1.** How should data be reported in the SPEDPro web application for the remainder of the 2019–20 school year?

***Answer B-1.** To this point the U.S. Department of Education has not provided states with direction for modification or changes to the FY 2020 data collection requirements in response to school building closure due to COVID-19. KSDE appreciates all of the recommendations and suggestions on ways to collect special education services during school building closure and the implementation of district Continuous Learning Plans (CLP). SETS and IT staff worked together and determined that the SPEDPro web application could not be redesigned to collect services provided to a student during district implementation of Continuous Learning Plan outside of the current data submission process.

As a result, KSDE offers two options for SPEDPro reporting for the remainder of the 2019–20 school year:

Option 1. KSDE encourages organizations to work with your local IEP vendors to update the MIS service table to account for ending of school-based services on the last day before school building closure, and resuming services beginning with the district's implementation of its Continuous Learning Plan through the end of the school year. Guidance previously presented regarding this option still applies:

1. Update district and building calendars in SPEDPro to account for days of school closure where no IEP services are provided.
 - a. Mark these days as not in session
2. Mark days of Continuous Learning as days in session (SPEDPro Calendar), through the completion of Continuous Learning.
 - a. In some cases, a new last day of school would be designated
3. Align student service end dates with school closures. Resume service dates with Continuous Learning, ending on the last day of service.
4. Service location of services during Continuous Learning
 - a. "A" for homebased support / Virtual support
 - b. "X" for indirect support
 - c. The actual location for face to face services.
5. Service frequency and duration of services during Continuous Learning
 - a. From the student's contingency learning plan (or other documents outside of the IEP)
 - b. From the Prior Written Notice informing the parent of the services and supports the child will receive during the district's implementation of its Continuous Learning Plan.
 - c. From the student's IEP
6. Resubmit student records for those students participating in Continuous Learning and receiving special education services.

Option 1 data can be submitted to SPEDPro through:

- A. The SPEDPro import process
- B. Manual entry / keyboard data entry in SPEDPro

Option 2. For organizations that are unable to account for services beginning with the district's implementation of its Continuous Learning Plan in SPEDPro reporting format, please complete the following steps:

1. Update District and building level calendars in SPEDPro by ending the school year on the last day before school building closure. SPEDPro User Guide page 11.
2. Truncate service end dates extending past the last day before school closure to the last day before school closure. SPEDPro User Guide pages 36-37.
3. Report all subsequent exits with the last day before school closure as the exit date.
4. Do not report additional special education services for FY2020

Option 2 data can be submitted to SPEDPro through:

- A. The SPEDPro import process
- B. Manual entry / keyboard data entry in SPEDPro

***Question B-2.** If my district chooses Option 1 above, what are some procedural options for modifying a student's SPEDPro records to align with the services a student is receiving during the district's implementation of its Continuous Learning Plan?

***Answer B-2.** Many IEP programs have a services table that lists special education services and exports this service data to the SPEDPro web application through an import process. This services table is not a legal component of a child's IEP. Many vendors design it for staff convenience. This services table must be updated to end school-based services that ceased with school building closure and resumed with the services a student is receiving during the district's implementation of its Continuous Learning Plan.

A student's services table must be updated with the services a student is receiving during the district's implementation of its Continuous Learning Plan through the remainder of the 2019–20 school year. Then these student records must be resubmitted through the import process.

For manual updates, SPEDPro has a truncate service end date tool (SPEDPro Users' Guide page 37) that will end all services as of the date of school building closure. The services a student is receiving during the district's implementation of its Continuous Learning Plan can be added using the Add service line tool in SPEDPro. See SPEDPro Users' Guide pages 32–34 for service line entry information.

If a parent declines special education and related services during the implementation of the district's Continuous Learning Plan this would be reported as services ending with school building closure. If the student is expected to continue in the 2020–21 school year, do not exit the student.

Verification 0169 – Because of school closure and the resumption of special education services, a gap in services is expected. Verification 0169 has been turned off for the remainder of the 2019–20 school year.

Verification 0148 – Because a parent declines special education and related services during the implementation of the district's Continuous Learning Plan, the IEP services would cease with school building closure. As a result, Verification 0148 has been turned off for the remainder of the 2019–20 school year.

Verification 0224 – Because school calendars have been shortened due to school closure, the OSEP Environment calculation denominator has been reduced. The reduction of school days may artificially change the OSEP Environment category. As a result, Verification 0224 has been turned off for the remainder of the 2019–20 school year.

Verification 0011 – Because school calendars have been shortened due to school building closure, some services may exceed the number of possible school days as originally reported if services extend past school building closure. This would trigger Verification 0011. Verification 0011 can be corrected. Ending the original services on the last day prior to school building closure and entering new services during the implementation of the district’s Continuous Learning Plan would resolve Verification 0011.

SPEDPro was not designed with our current learning situation in mind. To adapt and to continue to meet federal reporting requirements, KSDE encourages administrators to work with their IEP vendor to design a way to pull data from a student’s contingency learning plan (documented through a Prior Written Notice or other document) and format it so that it can be uploaded to SPEDPro. During this time of continuous learning you may have staff that are very capable and under-utilized compared to when students were learning in a traditional setting. Brainstorm creative ways in which you can use capable and under-utilized staff to assist with this data entry. For example, one district is using school psychologists whose workloads have lessened during school building closure, as well as capable paraprofessionals, to assist with data entry. To consider fiscal implications of using staff in different roles, please consult [Question and Answer C-6](#) below.

Please note this is not something that must be done immediately as data for the 2019–20 school year will be open through September 15, 2020.

***Question B-3.** Must IEPs be amended to reflect actual service minutes reported in SPEDPro?

***Answer B-3.** No. IEP requirements are different from data reporting requirements. IEP requirements are set in law. Data reporting requirements are set by the U.S. Department of Education and must reflect the services a student actually received. Plans for student learning must be developed based on student need and not driven by data reporting requirements.

For efficiency purposes, many electronic IEP systems are set up to automatically send the services for a student, through the services page (which is not a legal component of a child’s IEP), to the SPEDPro web application. Many districts have responded to continuous learning by creating individual plans for students with exceptionalities and documenting this through a Prior Written Notice (as described in [Answer A-2](#), [Answer A-13](#), and [Answer A-14](#) above).

If a district chose to document the services provided during the implementation of the district’s Continuous Learning Plan through a Prior Written Notice, then the district’s automated procedures around populating data in the SPEDPro web application are likely not useful during this time.

***Question B-4.** Are there changes to timelines for other special education data collections for this school year?

***Answer B-4.** Special education data reporting requirements are set forth in statute, which was written and enacted by the United States Congress or the Kansas Legislature, or in reporting requirements from the United State Department of Education. KSDE does not have the authority to alter or waive these data reporting requirements and has little ability to alter established timelines.

IDEA exiting data, collected in the SPEDPro web application, and discipline data, collected in the Discipline Data Collection of the KIAS web application, remain required for the 2019–20 school year and previously-established timelines remain in place.

For IDEA Indicator 11, collected in the KIAS web application, the current updated data timeline, for applicable districts, will remain in place. Individual districts can request an extension with a justification. Please contact Stacie Martin at smartin@ksde.org if you have questions.

For IDEA Indicator 12, collected in the KIAS web application, the current updated data timeline for applicable districts will remain in place. Individual districts can request an extension with a justification. Please contact Julie Rand at jrand@ksde.org if you have questions.

For IDEA Indicator 13, collected in the KIAS web application, the initial data collection opened as planned on April 1. The due date for the initial data collection has been extended to June 1, 2020. Individual districts can request an extension with a justification. Please contact Stacie Martin at smartin@ksde.org if you have questions.

For IDEA Indicator 14 the current timeline for applicable districts will remain in place. Individual districts can request an extension with a justification. Please contact Wendy Coates at wcoates@ksde.org if you have questions.

***Question B-5.** How should school staff conduct assessments to show exit outcomes for exiting preschoolers during school closure due to COVID-19? (Indicator 7: Early Childhood Outcomes)

***Answer B-5.** Local education agencies (LEAs) are federally required to complete early childhood outcome progress ratings on each preschooler aged 3 through 5 with an IEP, including speech-only IEPs (34 C.F.R. §§§ 300.120, 300.211, 300.601(b)(1)).

July 31, 2020, is the last date for submitting child outcome exit summary rating data for children permanently exiting a Part C or B program between July 1, 2019 and June 30, 2020, for all children who have been in a program for at least six months.

In an effort to assure data quality and completeness during COVID-19 school building closure and continuous learning, district staff should continue to gather evidence from the same assessment tools. A child's progress will be monitored through the implementation of each district's Continuous Learning Plan. Flexibility and adjustments can be made such as additional information gathered through parent report or informal assessment used to support the completion of the rating (e.g., virtual meetings, teleconferences, small groups, 1:1 meetings, etc.). For example, if a teacher completed an Assessment and Evaluation Programming System (AEPS) for the child right before spring break, every effort should be made to use this information to inform the exit rating. The Early Childhood Outcomes (ECO) ratings should still be made as a team of at least two professionals, who have already been monitoring the child's progress throughout year. Ratings should still be completed at the time the child exits the program.

If you have questions about collecting or reporting Indicator 7 data, contact Julie Rand at jrand@ksde.org.

C. Special Education Fiscal Questions

Question C-1. Will there be any waivers or additional exceptions for Maintenance of Effort (MOE) due to school closures?

Answer C-1. IDEA does not provide exceptions to IDEA Maintenance of Effort beyond those in specified in 34 C.F.R. § 300.204. Neither KSDE, nor USDE, have the authority to waive those requirements, but

KSDE will closely monitor the situation and notify local education agencies (LEAs) if Congress acts to provide relief to this requirement.

Question C-2. Will LEAs receive full categorical aid reimbursement for classified staff if they are unable to reach the full 1,116 hours due to an ordered school closure?

Answer C-2. KSDE's School Finance Team will provide districts additional details on how to request a waiver for the 1,116-hour requirement.

Question C-3. We use federal aid for some staff wages, including monies earmarked for special education services. Can we still use these federal monies if the services are not rendered?

Answer C-3. Federal funds may be used to pay for staff leave, including extraordinary leave, so long as the LEA applies leave policy and decisions consistently, without regard to funding source. (2 C.F.R. §§ 200.430, 200.431)

Question C-4. School closures will prevent the LEA from obligating federal funds within the 27- month obligation period. Can we request a no-cost extension for these funds?

Answer C-4. KSDE will seek approval from USDE's Office of Special Education and Rehabilitative Services (OSERS) to grant no-cost extensions to Kansas LEAs. LEA requests for a no-cost extension should be submitted to Christy Weiler at cweiler@ksde.org.

Question C-5. Will LEAs be able to claim categorical aid for classified staff who were providing special education and related services, even though they may be placed on leave or otherwise not providing services for some period of time as a result of the COVID-19 response?

Answer C-5. In response to the COVID-19 crisis, LEAs may continue to claim categorical aid for classified special education staff, regardless of whether the staff are able to work with students. Claims should be based on what the staff member would typically work under normal circumstances.

Question C-6. Will LEAs be able to claim categorical aid for classified staff that provide special education and related services under normal circumstances, even though they may now be temporarily performing, non-special education, but necessary duties as a result of the COVID-19 response?

Answer C-6. In response to the COVID-19 crisis, districts may continue to claim categorical aid for classified special education staff that must, on a temporary basis, perform other necessary duties, provided they are not needed and able to provide typical special education services. Claims for atypical service should be based on what the staff member would typically work under normal circumstances.

Question C-7. Will LEAs be able to claim categorical aid for classified staff that were providing special education and related services, but must remain on extended leave because their services are not required, even after schools begin offering continuous learning services?

Answer C-7. In response to the COVID-19 crisis, districts may continue to claim categorical aid for classified special education staff regardless of whether the staff are able to work with students. Claims should be based on what the staff member would typically work under normal circumstances.

***Question C-8.** How should a district complete time and effort reporting for a staff member that remains employed but is not currently working due to the COVID-19 crisis?

***Answer C-8.** If a staff member is on a form of administrative or extraordinary leave, rather than actually working typical hours, the LEA should reflect that leave in the LEA time and effort system. The leave is reimbursable through the proportional funds out of which that the staff member is typically paid.

***Question C-9.** How should an LEA reflect time and effort for a staff member that is temporarily performing atypical duties as a result of the COVID-19 emergency?

***Answer C-9.** In general, staff should continue to be paid out of the funds from which they were paid prior to the COVID-19 emergency, even if the staff duties are temporarily different due to the emergency. Personnel activity reports (PARs) or other time and effort logs should continue to be completed accordingly.

***Question C-10.** For agreements that were in place prior to the COVID-19 emergency, does the LEA need to continue to pay those contractors or those contracts with employees that were in addition to the normal school day?

***Answer C-10.** In general, LEAs should continue to pay its employees and contractors during the period of any disruptions or closures related to the COVID-19 emergency. This would include continuing to pay for all agreements with staff that may have multiple contracts with the LEA, including extra duty pay.

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