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The Nebraska Department of Education's Office of Special Education has put out guidance to special education directors and providers and it is posted on the Special Education Services page of the NDE's website, www.education.ne.gov/sped. The Nebraska Department of Education recognizes that school districts are working to provide educational opportunities to ALL students and in light of the recent [Supplemental Fact Sheet](#) distributed by the U.S. Department of Education stating:

Ensuring compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance instruction,

The Office of Special Education has provided some answers to frequently asked questions. Please know that this list is not exhaustive, please reach out to the contacts listed with additional questions as they arise.

What should special education services (e.g., specially designed instruction (SDI)) and related services look like during the Covid-19 epidemic and school attendance center closure.

If the district continues providing education opportunities to students during the closure, this includes provision of special education and related services, too, as part of a continuity in learning plan. This requirement ensures students with and without disabilities are treated equitably and is required by federal and state anti-discrimination laws, including Title II of the ADA, Section 504 of the Rehabilitation Act, and the IDEA.

District leaders should consider the use of accessible distance technology, the use of small groups of students with disabilities and access to nondisabled peers, instructional phone calls, and other curriculum-based activities. District staff and staff from other

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impacted agencies and facilities should be included in planning efforts, as they bring expertise regarding services to students with disabilities, which can be embedded through the district plan. There may be “exceptional circumstances” that could affect how a particular service is provided, which may result in a later need to provide compensatory education.

If the district is not providing educational services to students during the closure, then there is not a requirement to provide special education services during the same time period. Districts will want to consider special education needs on a case-by-case basis during the closure to address health and safety needs of students with disabilities.

Districts should communicate the expectation and plan to meet with Individualized Education Program (IEP) teams, including parents, when school resumes, to address student-specific needs resulting from the closure. This might include discussions of compensatory education and extended school year (ESY) services, made on a case-by-case basis. Any need for compensatory services related to school closure or inability to fully implement a student's IEP will be addressed after school resumes. When educational services are provided, districts will want to collect progress data for IEP goals in order to inform parents and IEP teams and assist in compensatory service decisions later.

For students with special health care needs as identified by IEPs, 504 plans, health care plans, and the student's parents, districts should address those needs on a case-by-case basis.

- There is no defined or correct delivery method that will equitably meet the needs of all students. Districts need to be flexible and consider employing a variety of delivery options.
- Districts should prioritize health and safety of students, staff, and communities. Districts should identify and acknowledge service delivery limitations, as well as the need for districts to “make every effort to fully implement a student's IEP or 504 plan” once school resumes. This requirement to “make every effort...” does not allow a

district to decline all services to students with an IEP and only offer compensatory services at a later date.

- As district leadership plans for rollout of educational services during school closures, they should consider, address, and communicate equity needs for students with disabilities (with IEPs and 504 plans), English learners, students from low-income families, those placed in-private facilities inside the state and in other states, those receiving preschool services, and those served in community school-to-post school transition programs, home/hospital placements, and state and county facilities.
- Districts should understand that parents of students with IEPs are concerned about district plans and whether those plans consider or appropriately address the needs of their child.
 - Districts should consider the need and methods to provide proactive and ongoing communication with parents of students with disabilities. Districts should identify communication channels to and from parents and ensure there are real-time opportunities for questions and concerns to be responded to and needs addressed.
 - Districts should clarify their expectation and plan to meet with IEP teams, including parents, when school resumes to address student-specific needs resulting from the closure. This might include discussions of compensatory education and extended school year (ESY) services made on a case-by-case basis. Any need for compensatory services related to school closure or inability to fully implement a student's IEP will be addressed after school closures end.

What does direct instruction mean in the use of a distance learning model during the COVID-19 emergency?

Instruction may be provided by special education staff, including related service providers. Districts will need to address translation and interpreting needs for students and families when developing and providing instructional materials.

This can occur through a variety of means consistent with the distance learning section of this document. This includes:

- Paper packets or worksheets, which could be distributed daily by bus route or collected several times a week at a central location
- Textbooks
- Telephone instruction
- Online resources (take into account availability of broadband)
- instruction via the school's e-learning platform

This can also include platforms such as Skype, face time, and Zoom.

Districts will need to address translation needs for students and families when developing and providing instructional materials.

If a district is going to provide distance learning only to certain grade levels—for example, only to seniors so they can accrue credits towards their graduation—is the responsibility of Free Appropriate Public Education (FAPE) only applicable for that grade level, or is it for all students?

- If services are being provided by the district to select grade levels, then IEP services should also be provided to students in those grades to avoid discrimination under Section 504 and Title II.

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 COVID19?

- 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).

What will happen to students with IEPs and especially kids in level 3 programs? Parents feel they don't have the supports to keep kids at home safely.

- Once distance learning instruction begins for all students in districts, this also includes students on IEPs in all instructional settings, including those students in Level 3 programs.

For related special education providers (speech, occupational therapy (OT)), does the platform for video chat (zoom, Skype, blink, etc.) need to be Health Insurance Portability and Accountability Act (HIPAA) and Family Educational Rights and Privacy Act (FERPA) compliant?

- FERPA requirements and HIPAA privacy rule requirements contain similar provisions governing privacy, access and disclosure. However, in the school setting, FERPA, rather than the HIPAA privacy rule, applies to student information and student privacy. This includes information maintained by health-related service providers such as speech-language pathologists and occupational therapists when they are working for or on behalf of the school to provide services to students. [More information about the application of FERPA and HIPAA to student health records is available from the US Department of Education.](#)
- FERPA requires that schools cannot disclose private data or personally identifiable information from a student's education

record without consent or an eligible exception. Education records means all records that are directly related to an individual student and that are maintained by an educational agency (school) or someone acting for the school.

- If the school is providing services to a student in a way that does not disclose private information from the student's record, then the law does not apply. However, if the school has concerns that use of a video platform to provide services could contain and thus could reveal personally identifiable information, then the school should use a platform that incorporates security measures to ensure that private data is encrypted and that it cannot be accessed by individuals who do not have authority to access the data. Taking these steps will help the school comply with FERPA which requires schools to protect private data with appropriate security safeguards.
- Schools can also address privacy concerns by informing parents about the proposed services and platform for delivery and seeking parent consent.

When and if we are amending services minutes for distance learning, can this be the special education teacher connecting daily over the phone with the parent and/or student on the activities provided for special education services and also a check in on how things are going with the general education instruction/work as well?

- Yes, that is correct.

In the event that a school is closed for an extended period of time, would an IEP Team be required to meet? Would an LEA be required to conduct an evaluation of a student with a disability?

- IEP Teams are not required to meet in person while schools are closed. IEP Teams may continue to work with parents and students with disabilities during such school closures and offer advice, as needed. If an evaluation of a student with a disability requires a face-to-face meeting or observation, the evaluation would need to be delayed until school reopens. Evaluations and reevaluations that do not require face-to-face assessments or observations may take place while schools are closed, if the parent consents. These

same principles apply to similar activities conducted by appropriate personnel for a student with a disability who has a plan developed under Section 504 or who is being evaluated under Section 504.

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 (Part C to Part B transition)?

- 34 C.F.R. 300.101 (b) and 34 C.F.R. 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.

What are the district and Services Coordinator's responsibilities upon receiving new Part C referrals? Must we conduct Intake, evaluation and assessment procedures using virtual/technology methods?

- The Co-Leads recommend that the Services Coordination (SC) office ensures referrals are received and make phone contact with families in a timely fashion. The SC should explain to the family that the district and/or SC offices are closed and are unable to provide home visits at this time due to the COVID-19 outbreak, but will initiate the evaluation and assessment procedures once the restrictions are lifted. The SC should inform families of the anticipated length of time this may take, and the SC should periodically contact the family to update them on the progress of the timeline.

If a referral is made for an infant/toddler with a diagnosed condition, can the team conduct an Interim IFSP via virtual means in order to initiate service provision?

- If the district agrees that it is likely that the infant/toddler is eligible per Rule 52, and is willing to participate in an Interim IFSP meeting to initiate services, then the Services Coordinator (SC) may contact the family and offer to conduct the Interim IFSP meeting via technology (Phone or video capabilities). If parent agrees, the SC will document this in the CONNECT narrative. Prior to the meeting, the SC would send a blank copy of the IFSP to the family for their review/preparation. The SC would lead the meeting and draft the contents of the Interim IFSP. After the meeting, the SC will send the finalized version of the IFSP to the family for review and ask the family to respond “yes” or “no” to consenting to the provision of services as written on the Interim IFSP. The SC will need to print off the emails in which the parents indicated a response to the IFSP service provision and place in the child's SC file for record keeping. Additionally, the Interim IFSP service page will need to reflect that the services will be provided in an “alternate method” as chosen by the parent, aligned to the OSEP memo – and determine an approximate period of time the alternate method(s) will be utilized (i.e. start date of 3/19/20 and end date of 5/19/20). The SC/IFSP team will need to inform the family that once the restrictions are lifted, the team will proceed with the evaluation, assessment procedures and the Initial IFSP.

Districts and SC offices are asking for clarification on conducting Initial MDT and Initial IFSP meetings *since the evaluation and child/family assessment process was completed prior to the outbreak and the MDT/IFSP meeting is scheduled to occur during the outbreak period.*

- The Co-Leads recommend that the Initial MDT and Initial IFSP meeting be conducted via technology (phone or video capabilities) if parent agrees to this alternate method. If parent agrees, the Services Coordinator (SC) will document this in the CONNECT narrative. The district should draft the MDT report and send to the parent prior to the MDT meeting in order for the parent to review, ask questions and provide input during the meeting. The district should ask the parent if they agree to the eligibility decision so they know how to proceed with the

meeting. The district will finalize the MDT report after the meeting and send to parent via email, and ask the parent to respond to the email as "yes" or "no" regarding their agreement to the MDT eligibility decision. The team would then conduct the IFSP meeting in a similar manner. Prior to the meeting, the SC would send a blank copy of the IFSP to the family for their review/preparation. The SC would lead this portion of the meeting and draft the contents of the IFSP. After the meeting, the SC will send the finalized version of the IFSP to the family for review and ask the family to respond "yes" or "no" to consenting to the provision of services as written on the IFSP. The SC will need to print off the emails in which the parents indicated a response to the MDT decision and IFSP service provision and place in the child's SC file for record keeping. Additionally, the IFSP service page will need to reflect that the services will be provided in an "alternate method" as chosen by the parent, aligned to the OSEP memo – and determine an approximate period of time the alternate method(s) will be utilized (i.e. start date of 3/19/20 and end date of 5/19/20). Then, the services will need to be listed again on the service page with an approximate start and end date for the natural environment setting (i.e. home or child care) (example: start date of 5/20/20 and end date of 9/18/20).

Districts and SC offices are asking for clarification regarding holding periodic, and annual IFSP meetings.

- The Co-Leads recommend that districts and Services Coordinator offices conduct Periodic and Annual IFSP meetings via technology (phone or video capabilities) if parent agrees to this method. The Co-Leads understand that the services on the IFSP are end dated and may require a Periodic or Annual IFSP to be conducted in order to enter a new start date and obtain parental consent for continuity of Part C service provision. Procedurally, the SC would lead the IFSP meeting and draft the contents of the IFSP. After the meeting, the SC will send the finalized version of the IFSP to the family for review and ask the family to respond "yes" or "no" to consenting to the provision of services as written on the IFSP. The SC will need to print off the emails in which the parents indicated a response to the IFSP service provision and place in child's file for record keeping. Additionally, the IFSP service page will need to reflect that the services will be provided in an "alternate method"

as chosen by the parent, aligned to the OSEP memo – and determine an approximate period of time the alternate method(s) will be utilized (i.e. start date of 3/19/20 and end date of 5/19/20). Then, the services will need to be listed again on the service page with an approximate start and end date for the natural environment setting (i.e. home or child care) (example: start date of 5/20/20 and end date of 9/18/20).

- If the parent declines to hold a meeting at this time in light of the COVID-19 situation, then the SC will need to explain to the family that IFSP services will not be able to continue. If the parent still does not want to conduct a meeting in order to continue with IFSP/Part C services, then the SC should document this in the CONNECT narrative and send the HHS-6 Notice of Action closing the case. The SC will need to inform the district who will provide a written notice informing the family that the IFSP services will end per their request. The family should be informed about how to re-contact the EDN program if and when they'd like to resume services.

Is it ok for the Services Coordination agency to remain open and continue to provide SC services (either in person or via alternate methods) during the COVID-19 outbreak, even if the district is closed and is not providing IFSP services?

- Yes, it is acceptable for the Services Coordination (SC) agency to continue to provide SC services even if the district is closed, as long as the family continues to engage with the SC via phone, text, email, etc. This allows the family to receive SC services and routine updates on timelines related to district service provision, etc.

OSEP Resources:

- [COVID-19 information and resources page](#)
- [OSEP Supplemental Fact Sheet](#)
- [Q-and-A on providing services to children with disabilities during coronavirus outbreak](#)
- [Additional information from ASHA related to telepractice and telesupervision for SLPs](#)
- [List of online resources compiled by United Nations Educational, Scientific and Cultural Organization \(UNESCO\)](#)

Mental Health Resources:

- [National Association of School Psychologists \(NASP\) Preparing for Infectious Disease Epidemics: Brief Tips for School Mental Health Professionals](#)