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## COVID-19 Special Education Reentry 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.**

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**Child Find**

**Q: What are the hearing and vision requirements for child find (45-day screenings)? (Posted 8/14/20)**

**A:** Per A.A.C. R7-2-401.D.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. The Arizona Department of Health Services (ADHS) has additional hearing and vision requirements with which public schools must comply. PEAs often confuse hearing and vision screenings to be required as part of child find with those required by the ADHS – note that these requirements are different and ESS can only speak to child find hearing and vision screening requirements.

**Q: When does the 45-day screening timeline begin for students newly enrolled in the 2020–2021 school year? (Posted 7/30/20)**





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**A:** The screening timeline begins 45 calendar days after a student's date of entry into school, whether virtual or in-person, in accordance with the attending school calendar, which must begin no later than August 17, 2020.

**Q: When there is a concern noted on a 45-day screening, what additional requirements does the PEA have? (Posted 7/30/20)**

**A:** Whenever a concern is noted in any area, the PEA must document all follow-up per its board-approved child find policy. This is further outlined in [Arizona Administrative Code \(AAC\) R7-2-401 D.8.](#)

**Q: For an initial evaluation, if assessments are needed, how do we conduct these? (Updated 7/22/20)**

**A:** Evaluation requirements have not been waived regardless of how instruction is being delivered to students. ADE/ESS cannot indicate what is medically safe for a family or for specific students. If an IEP team determines assessments are needed, 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) (Posted 3/26/20)**

**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.*

**Q: Do we still need to complete/conduct 45-day screenings for any new students? (Posted 3/24/20)**





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**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.

### **Compensatory Educational Services**

**Q: Based on guidance that acknowledged that the quality of FAPE was impacted when all instruction went virtual [or distance learning] during the fourth quarter of 2019–2020, how can an IEP Team continue to allow a student to receive his/her related services, at the very least, virtually without risking additional compensatory services? (Posted 7/30/20)**

**A:** If it is determined that a student can only be provided a FAPE through in-person services, pursuant to EO 2020-51, the student may be eligible to receive on-campus, in-person instruction, as required, to provide a FAPE. If in-person instruction is not safe or feasible, then a FAPE should be provided to the greatest extent possible. Compensatory services may have to be determined for individual students if the PEA is unable to provide a FAPE. Please see additional questions and answers regarding parent refusal to have the child attend in-person, on-campus instruction or refusal to participate in online learning.

**Q: Who determines if an 8th grade student moving on to a high school district should receive an offer of compensatory educational services? (Posted 5/5/20)**

**A:** The provision of compensatory educational services is an equitable remedy that is appropriate when a PEA either failed or was unable to provide an enrolled student with a disability a FAPE. It would fall to the PEA in which the student was enrolled at the time of the failure or inability to provide a FAPE to make a determination as to whether or not compensatory educational services must be provided to the student and to deliver those services as appropriate.

**Q: A student received the same educational opportunities as all other students in the school. Data shows that s/he did not regress more than any other student. Does s/he need to be offered compensatory education? (Posted 5/5/20)**

**A:** In making an **individualized** determination as to whether a student is owed compensatory educational services, schools should consider a variety of factors, including, **but not limited to:** services provided during the period of school closure, ability of the student to access any services provided during the period of school closure, regression in skills, progress or lack of progress made on IEP goals, and parental input. It would be inappropriate to determine compensatory education based solely upon a comparative analysis of regression between individual students who may or may not be similarly situated.

**Q: If the PEA individualized the special education student's instruction toward his/her goals and offered related services, is the PEA responsible to offer compensatory services? (Posted 5/5/20)**

**A:** Not all students will need to be provided with compensatory educational services. However, it is acknowledged that despite best intentions, efforts, and creative solutions, there are some students who will not receive a FAPE over the course of the school closure. Therefore, PEAs



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will need to make individual determinations as to whether compensatory educational services will be owed due to the PEA's failure or inability to provide a FAPE.

**Q: Can a PEA offer compensatory educational services beginning this summer? (Posted 5/5/20)**

**A:** Yes, if it is allowable and safe to do so based upon executive order and federal, state, and local health and safety guidelines and protocols.

**Q: Can a PEA provide compensatory educational services after the normal school day? (Posted 5/5/20)**

**A:** Yes. Compensatory educational services may be provided during the regular school day; over school breaks; in intensive, targeted, individualized programs; or by outside service providers. If compensatory educational services are to be provided during the school day, the student's least restrictive environment cannot be altered due to the provision of the compensatory educational services. Because the provision of compensatory educational services is an equitable remedy, PEAs are encouraged to be creative in designing a plan to deliver compensatory educational services that meets the needs of the individual student in remedying the failure or inability of the PEA to provide a FAPE.

**Q: Is a PEA responsible to consider the provision of compensatory educational services if a student is newly enrolled (start of next year) and was not in the district during the time of closure? (Posted 5/5/20)**

**A:** No. The provision of compensatory educational services is an equitable remedy that is appropriate when a PEA either failed or was unable to provide an enrolled student with a disability a FAPE. Compensatory services provision falls to the PEA in which the student was enrolled at the time of the failure or inability to provide a FAPE to make a determination as to whether or not compensatory educational services need to be provided to the student and to deliver those services as appropriate.

**Q: Can a PEA provide compensation education throughout the school day during times a student is not already receiving special education services? (Posted 5/5/20)**

**A:** Compensatory educational services may be provided during the regular school day; over school breaks; in intensive, targeted, individualized programs; or by outside service providers. **If compensatory educational services are to be provided during the school day, the student's least restrictive environment, as documented in the IEP, cannot be altered due to the provision of the compensatory educational services.** Because the provision of compensatory educational services is an equitable remedy, PEAs are encouraged to be creative in designing a plan to deliver compensatory educational services that meets the needs of the individual student in remedying the failure or inability of the PEA to provide a FAPE.

**Q: If a PEA made special education services available, but the parent chose not to have his or her child participate, what is the PEA's obligation for compensatory services? (Posted 5/5/20)**



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**A:** Determination of the need for compensatory educational services is made on an individual student basis. PEAs are advised to document all efforts to provide a FAPE to students during the period of school closure as well as document parent and student contact and communication. Please consult your legal counsel for the best way to proceed in this specific circumstance.

**Q: How is the PEA required to document the provision of compensatory services? (Posted 5/5/20)**

**A:** PEAs may develop documentation policies regarding the provision of compensatory educational services and at this time, ADE/ESS does not have any suggested format. Determinations of the need for compensatory educational services are not an item that is included in a file review/monitoring and is not utilized for any federal reporting requirements. Prior written notices may also be used to document an offer of compensatory educational services or the determination that compensatory educational services are not required.

**Q: If parents have requested the full IEP team to be part of a compensatory education determination, should the PEA use an IEP meeting as the vehicle to make this determination? (Posted 5/5/20)**

**A:** Nothing in the IDEA prevents an IEP team from making a determination of the need for compensatory educational services.

**Q: Is there a timeline of when compensatory services must be completed? (Posted 5/5/20)**

**A:** At this time, there is not a timeline established by which compensatory educational services must be completed. The compensatory educational services delivery should be individualized and meet the unique needs of the student. If compensatory educational services are needed, parental input should be sought when developing the compensatory educational services plan.

**Q: When looking at the student's compensatory needs, can the school differentiate between needs resulting from the school's inability to provide the IEP services and needs the student may have developed because of the pandemic? (Posted 5/5/20)**

**A:** If a student's educational, social-emotional, or behavioral needs have changed to the degree that the student's ongoing services or supports are no longer sufficient to provide a FAPE, the student's IEP team should meet to determine if the current IEP requires revision to reflect the student's current needs (i.e., a student who did not have behaviors that impeded learning when school closed has now developed behaviors that impede his progress or a child has become markedly more anxious or depressed or has lost core academic skills previously learned). This is not the same as, or a substitute for, compensatory educational services nor will it be necessary in all cases.

**Q: Who should be part of the decision-making regarding compensatory services besides the parent? (Posted 5/5/20)**



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**A:** PEAs will need to decide who is responsible for determining the need for compensatory educational services. Nothing in the IDEA requires a specific individual to make or be involved in the determination.

**Q: Do compensatory services have to be provided by a special education teacher? (Posted 5/5/20)**

**A:** No. Compensatory educational services are not a contractual remedy but an equitable remedy. Compensatory educational services should be determined by looking at the totality of the circumstances for each student and determining the amount and type of service needed to remedy the educational deficits resulting from a failure to provide a FAPE. Schools have flexibility and can be creative in fashioning compensatory education offers.

**Q: If a public education agency (PEA) provided some services during the school closure, or only enrichment opportunities, must it assess the needs of individual students for compensatory education? (Posted 4/30/20)**

**A:** Yes. During the period of school closure related to COVID-19, emergency remote learning is being provided to all students as outlined in HB2910 and the Governor's executive orders. Per state and federal guidance and implementing regulations, PEAs are required to provide equitable access to general education opportunities **and** continue to provide a free and appropriate education (FAPE) to students with disabilities to the maximum extent possible. It is acknowledged, that despite best intentions, efforts and creative solutions, there are some students who will not receive a FAPE over the course of the school closure. Therefore, PEAs will need to make individual determinations, for each student, as to whether compensatory educational services will be owed due to the PEAs failure or inability to provide a FAPE.

**Q: Why must compensatory educational services be considered if the PEA provided some educational opportunities to students with disabilities? (Posted 4/30/20)**

**A:** Compensatory educational services are not expressly defined in the IDEA; however, courts [under the authority granted them in 20 U.S.C. § 1415(i)(2)(C)(iii) and 34 C.F.R. § 300.516(c)(3)] have long awarded compensatory educational services as an appropriate remedy under the IDEA when a student has been denied a FAPE. In the present circumstances, the purpose of compensatory services is to remedy the PEA's failure or inability to provide a child with a disability with appropriate services during the time that the child is (or was) entitled to a free appropriate public education.

**Q: Does a PEA have to provide the same amount (minute for minute) of service time missed from the IEP as compensatory educational services? (Posted 4/30/20)**

**A:** No. Compensatory educational services are not a contractual remedy, but an **equitable** remedy. It is designed to ensure that the student is appropriately educated within the meaning of the IDEA and as such "[t]here is no obligation to provide day-for-day or minute for minute compensation for time missed." [See Parents of Student W. v. Puyallup Sch. Dist., 31 F.3d 1489,](#)



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[1496-97 \(9<sup>th</sup> Cir.1994\)](#). Compensatory educational services should be determined by looking at the totality of the circumstances for each student and determining the amount of service needed to remedy the educational deficits resulting from a failure to provide a FAPE.

**Q: How should a PEA determine whether a student with a disability should receive compensatory education services? (Posted 4/30/20)**

**A:** Compensatory educational services should be determined by looking at the totality of the circumstances for each student, including parental input, and determining the amount of service, if any, needed to remedy the educational deficits resulting from a failure or inability to provide a FAPE. A formal IEP meeting is **not** required to make a determination of the need for, the amount or delivery of compensatory educational services. However, in looking at the totality of the circumstances, parental input should be solicited and considered. It is then incumbent upon the PEA to make an offer of compensatory educational services when the determination has been made that an individual student was not provided with, or the PEA was unable to provide services during the period of school closure that would constitute a FAPE for that student.

In determining whether a FAPE was provided during the time of school closure, the best source of data may be 4<sup>th</sup> quarter progress reports as this data is most likely to capture student performance during the closure itself. If 4<sup>th</sup> quarter progress reporting is not available, nothing in this guidance would prohibit a PEA from collecting data to assess the need for compensatory educational services during the summer break if it was safe and feasible to do so. In any event, it is recommended that PEAs collect data and solicit parental input no later than 30 school days of students returning to the school campus, to determine the need for compensatory services.

In making an individualized determination as to whether a student is owed compensatory educational services, schools should consider a variety of factors, including **but not limited to**; services provided during the period of school closure, ability of the student to access any services provided during the period of school closure, regression in skills, progress or lack of progress made on IEP goals, and parental input.

**Q: How should a PEA determine the amount of compensatory educational service time that is needed? (Posted 4/30/20)**

**A:** In making an individualized determination as to whether a student is owed compensatory educational services, schools should consider a variety of factors, including **but not limited to**; services provided during the period of school closure, ability of the student to access any services provided during the period of school closure, regression in skills, progress or lack of progress made on IEP goals, and parental input.

Compensatory educational services should be offered that will allow the student to continue to make progress in the general education setting, or to progress at an appropriate pace in light of the child's circumstances, once students may safely return to the school campus.

**Q: Must parents be involved in the determination of compensatory educational service provision? (Posted 4/30/20)**



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**A:** Yes. PEAs should solicit and consider parental input to determine whether compensatory educational services are needed and if necessary, how those services will be delivered.

**Q: Can a PEA offer all students summer school as compensatory educational services? (Posted 4/30/20)**

**A:** No. PEAs must ensure that **individualized** determinations are made related to the extent to which a student may require compensatory services. Schools should not create blanket rules offering a set amount of compensatory services to all students, or to subsets of students with disabilities, when they return to school campuses. In order to provide a FAPE, schools have an obligation to consider compensatory education for each student with a disability without the need for parents or guardians to file a state administrative complaint or a due process request for hearing.

**Q: Must all students with disabilities be provided with compensatory educational services? (Posted 4/30/20)**

**A:** No. PEAs must ensure that **individualized** determinations are made related to the extent to which a student may require compensatory educational services. In the present circumstances the purpose of compensatory educational services is to remedy the PEA's failure or inability to provide a student with a disability a FAPE during the time that the child is (or was) entitled to a FAPE.

**Q: If a parent refused the IEP services provided by the PEA in an alternative format during the period of school closure, must the PEA determine whether the student should receive compensatory educational services when the student did not participate or attend the services available? (Posted 4/30/20)**

**A:** PEAs are advised to document all efforts to provide a FAPE to students during the period of school closure as well as document parent and student contact and communication. Please consult your legal counsel for the best way to proceed in this specific circumstance.

**Q: Can parents refuse compensatory services? (Posted 4/30/20)**

**A:** Yes, parents can refuse an offer of compensatory educational services. It is recommended that PEAs document parental input in the determination of the need for compensatory educational services and the proposed plan to provide the services, as well as the parent's refusal of the services offered. Prior written notice may be sent to document an offer of compensatory educational services and the parent's refusal. If a parent refuses the offer, the PEA has met its obligation by making the compensatory educational services available.

**Q: If a parent refuses an offer of compensatory educational services, does the PEA have any further obligation? (Posted 4/30/20)**

**A:** Once the PEA has made the offer of individualized compensatory educational services, the parent should make the student available to receive the services offered. If a parent refuses the offer, the PEA has met its obligation by making the compensatory educational services available.





Updated 2/25/21

It is recommended that PEAs document parental input in the determination of the need for compensatory educational services and the proposed plan to provide the services as well as the parent's refusal. This may be done through a prior written notice.

**Q: Can the service minutes provided in the current IEP be reduced, if compensatory educational services are offered, to account for additional service time provided as compensatory educational services? (Posted 4/30/20)**

**A:** No. Compensatory educational services cannot interfere with the services the student is to receive under a current IEP. Compensatory services must be provided **in addition** to the services implemented in a current IEP. The delivery of the compensatory educational services cannot change the student's least restrictive environment.

**Q: Must an IEP meeting be held once school resumes if a student's needs have changed as the result of the school closure? (Posted 4/30/20)**

**A:** If a student's educational, social/emotional or behavioral needs have changed to the degree that the student's ongoing services or supports are no longer sufficient to provide a FAPE, the student's IEP team should meet to determine if the current IEP requires revision to reflect the student's current needs. (i.e. a student who did not have behaviors that impeded learning when school closed has now developed behaviors that impede his progress or a child has become markedly more anxious or depressed or has lost core academic skills previously learned). This is not the same as, or a substitute for, compensatory educational services nor will it be necessary in all cases.

**Q: When can compensatory educational services be provided? (Posted 4/30/20)**

**A:** Compensatory educational services may be provided during the regular school day, over school breaks, in intensive targeted, individualized programs, or by outside service providers. If compensatory educational services are to be provided during the school day, the student's least restrictive environment cannot be altered due to the provision of the compensatory educational services. Because the provision of compensatory educational services is an equitable remedy, PEAs are encouraged to be creative in designing a plan to deliver compensatory educational services that meets the needs of the individual student in remedying the failure or inability of the PEA to provide a FAPE.

**Q: Must an IEP meeting be held to determine the need for compensatory educational services? (Posted 4/30/20)**

**A:** No. IEP teams do not have to meet to determine if a student requires compensatory services, however parental input should be solicited and considered when determining the need for compensatory educational services and how the compensatory educational services will be provided.

**Q: Can a PEA provide ESY to all students instead of offering compensatory educational services? (Posted 4/30/20)**



Updated 2/25/21

**A:** No. Compensatory services should not be confused with extended school year services (ESY). ESY is designed to maintain skills over school breaks and prevent degradation of skills that will not be recouped within a reasonable time once school has resumed. The determination of the need for ESY services is a separate determination made in a student's IEP meeting.

Compensatory educational services are delivered when the PEA has failed or was unable to provide a FAPE to a student. In the current circumstance the failure or inability to provide a FAPE was due to school closure related to the COVID-19 pandemic.

**Q: What happens if a PEA does not have the time, forgets, or fails for any reason, to make individualized determinations of the need for compensatory educational services to the students it serves? (Posted 4/30/20)**

**A:** Parents retain their procedural safeguards and may file a state administrative complaint or file for a request for a due process hearing if their child is denied a free and appropriate public education, including the failure or inability of the PEA to provide a FAPE to the student during the time of an extended closure. However, it is not advised that PEAs wait until a parent submits a state administrative complaint or files a request for a due process hearing as this may further delay the provision of a FAPE and result in the need for additional compensatory educational services.

**Q: What happens if a parent disagrees with the PEA's offer of compensatory educational services? (Posted 4/30/20)**

**A:** Parents retain their procedural safeguards in the event their child has been denied a FAPE. Parental rights under the IDEA have not been waived. Additionally, it is recommended that an alternative dispute resolution process such as mediation be used to resolve disagreements related to the need for compensatory educational services or the amount of compensatory educational services offered.

**Q: What obligation does a PEA have to a student who was enrolled during school closure but has since withdrawn from school? (Posted 4/30/20)**

**A:** The provision of compensatory educational services is an equitable remedy that is appropriate when a PEA either failed or was unable to provide an enrolled student with a disability a FAPE. It would fall to the PEA in which the student was enrolled at the time of the failure or inability to provide a FAPE to make a determination as to whether or not compensatory educational services need to be provided to the student and to deliver those services as appropriate.

**Q: What obligation does the PEA have to a student with a disability who was enrolled at the time of the school closure but graduated or "aged out" before students return to campus for the 2020/2021 school year. (Posted 4/30/20)**

**A:** The provision of compensatory educational services is an equitable remedy that is appropriate when a PEA either failed or was unable to provide an enrolled student with a disability a FAPE. It would fall to the PEA in which the student was enrolled at the time of the



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failure or inability to provide a FAPE to make a determination as to whether or not compensatory educational services need to be provided to the student and to deliver those services as appropriate. School districts have flexibility and can be creative in fashioning compensatory educational services offers and the unique needs of the student should be considered. However, please consult with your legal counsel for advice related to specific factual circumstances.

**Q: If a parent refused services that were provided during the period of school closure, must the PEA make a determination as to the need for compensatory educational services or make an offer of compensatory educational services? (Posted 4/30/20)**

**A:** It is strongly recommended that PEAs document attempts to provide services that were accessible to the students, through alternative or virtual formats, and to record contact and communications with parents and students. Because the compensatory educational services framework is founded on the failure or inability of the PEA to provide a FAPE, a parent's refusal of services may excuse the PEA of its obligation to consider compensatory educational services. However, please consult with your legal counsel for advice related to specific factual circumstances.

### **Early Childhood**

**Q: Must a PEA provide in-person services for preschool children with disabilities? (Posted 8/6/20)**

**A:** It depends. IEP team decisions regarding what constitutes a FAPE are determined based on the student's needs as outlined in the IEP and not by the model of preferred instruction, either by the school or the parent.

**Q: If a student currently receives FAPE in a community education preschool program, must they be provided in-person services? (Posted 8/6/20)**

**A:** It depends. IEP team decisions regarding what constitutes a FAPE are determined based on the student's needs as outlined in the IEP and not by the model of preferred instruction, either by the school or the parent.

**Q: If in-person preschool is offered and a parent refuses to send his or her child, what is the PEA's obligation? (Posted 8/6/20)**

**A:** If FAPE cannot be provided in a virtual/online format, the IEP team can determine that in-person instruction is necessary to provide a FAPE. If the PEA stands ready, willing, and able to provide a FAPE to the student, then the PEA has no further obligation. PEAs are encouraged to consult their legal counsel to resolve questions related to specific students and cases.

**Q. Is there funding if preschool special education services are provided virtually during the period of building closures? (Posted 8/6/20)**



Updated 2/25/21

**A:** Yes. Preschool special education services that are provided virtually during the period of building closures can be funded through the DLP funding model. However, online/virtual preschool services must provide a student with a FAPE. IEP team decisions regarding what constitutes a FAPE are determined based on the student's needs as outlined in the IEP and not by the model of preferred instruction, either by the school or the parent. It should be noted that regular early childhood programs are already being provided in person at this time. If an inclusive environment is required by a child's IEP in order to provide a FAPE, the ability to provide an inclusive environment should be considered when determining whether a child should receive services virtually or in person.

**Q. Is there funding if preschool special education services are provided virtually for the entirety of the school year because a parent wants an online platform? (Posted 8/6/20)**

**A:** Yes. Preschool special education services that are provided virtually during the time in which the Governor's EO 2020-51 is in effect can be funded through the DLP funding model. However, online/virtual preschool services must provide a student with a FAPE. It should be noted that regular early childhood programs are already being provided in person at this time. If an inclusive environment is required by a child's IEP in order to provide a FAPE, the ability to provide an inclusive environment should be considered when determining whether a child should receive services virtually or in person.

**Q. What is the AzEDS reporting expectation for preschool students with disabilities attending in person and/or virtually? (Posted 8/6/20)**

**A:** Attendance for preschool students with disabilities must be recorded and reported accurately into AzEDS for every day of participation, regardless of whether attendance is in person or virtual. Please contact [ADE School Finance](#) for additional guidance regarding this topic.

**Q. If districts offer an online option for preschool students with disabilities, what is the minute/day commitment for funding? (Posted 8/6/20)**

**A:** The minute/day commitment for funding is outlined in A.R.S. § 15-901(A)(1)(a), which provides that a fractional student includes "a preschool child who is enrolled in a program for preschool children with disabilities of at least three hundred sixty minutes each week that meets at least two hundred sixteen hours over the minimum number of days. . ." ADE expects minutes to be reported every day in a week that a calendar is submitted for preschool students with disabilities.

**Q: Will a preschool student's LRE change if they are provided services in person but, due to health concerns, without typical peers present? (Posted 8/6/20)**



Updated 2/25/21

**A:** It depends. IEP team decisions regarding what constitutes a FAPE are determined based on the student's needs as outlined in the IEP and not by the model of preferred instruction, either by the school or the parent. It should be noted that regular early childhood programs are already being provided in person at this time. If an inclusive environment is required by a child's IEP in order to provide a FAPE, the ability to provide an inclusive environment should be considered when determining whether a child should receive services virtually or in person.

**Q: Following EO 2020-51, dated 07/23/2020, are PEAs allowed to operate in-person/on-campus preschool for students with disabilities prior to August 17? (Posted 7/30/20)**

**A:** Yes. Per EO 2020-51, developmental preschools, which provide services to children with disabilities, may provide services in-person, consistent with CDC and ADHS public health recommendations. Preschool children with disabilities whose free appropriate public education (FAPE) needs, as determined by individualized education program (IEP) teams, require in-person support must be provided specially designed instruction as soon as the child has entered school, in accordance with the attending school calendar, which must begin no later than August 17, 2020. Services must be provided in accordance with the CDC and DHS public health recommendations.

**Q: Can PEAs offer online/virtual preschool options even when in-person is allowed? (Posted 7/30/20)**

**A:** Yes, but only if online/virtual preschool services can provide a student with a FAPE. IEP team decisions regarding what constitutes a FAPE are determined based on the student's needs as outlined in the IEP and not by the model of preferred instruction, either by the school or the parent. PEAs are urged to research effective practices for preschool instruction and specially designed instruction prior to implementing this type of model as implementation of ineffective strategies may lead to failure to provide a FAPE.

**Q: Is there any exception to the in-by-3 timeline? (Updated 4/29/20)**

**A:** Per OSEP guidance, there are no exceptions to timelines at this time. There is currently a waiver under consideration by congress that may be forthcoming and may adjust or remove this timeline. You can [view the Secretary of Education's request](#).

**Executive Order EO 2020-44 dated June 29, 2020**

**Q: If a PEA has decided to move to a shorter school week (4 days from 5 days) does the student's IEP have to be addended? (Posted 7/22/20)**

**A:** It depends. Students need to be provided FAPE in accordance with their IEP. If the student's IEP is not reasonably calculated to provide a FAPE, given the change in school calendar, an adjustment to the IEP may be needed.

**Q: Given that PEAs may begin school in accordance with their school calendars virtually, how does this impact initial evaluation timelines? (Posted 7/22/20)**



Updated 2/25/21

**A:** It doesn't. IDEA and Arizona State Board Rule require initial evaluations to be completed within 60 calendar days of parental consent. There are no waivers to this requirement from Congress.

### **Executive Order EO 2020-51 dated July 23, 2020**

**Q: Are PEAs required to hold an IEP meeting for every student prior to the beginning of school? (Posted 7/31/20)**

**A:** No. An IEP meeting is not required prior to the start of school and the guidance in the Hot Topic is not intended to imply differently.

If the student's current IEP continues to provide the student a FAPE, a review/revision would not be necessary outside of the annual review requirement. The method/mode of instruction is not required to be included in the IEP unless the failure to provide the methodology would prevent a FAPE being delivered to the student. IEP meetings would only be necessary for those students whose needs have changed. If the current IEP can be substantially implemented and services delivered in either a distance learning or in-person environment, then an IEP meeting would not be required. Please see the [Considerations for Determining the Need for an IEP Meeting Tool](#) and the [Virtual Remote Learning Considerations Tool](#) posted on the [ESS SY 2020-2021 School Reentry webpage](#) for additional suggestions on how to determine the need for an IEP meeting

**Q: What if a parent refuses to meet to conduct the annual IEP review? (Posted 7/31/20)**

**A:** No waivers to the IDEA have been granted, therefore IEP meetings must be held in accordance with federal regulations. Per IDEA 300.322, each public agency must take steps to ensure that one or both parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed time and place. Alternate attempts to communicate and/or meet to discuss special education needs can be made virtually or by phone.

**Q: If the provision of a FAPE to a child requires in-person services, but the parent refuses to bring the student to an in-person site, can the PEA offer services (to the extent possible) in a virtual setting? (Posted 7/31/20)**

**A:** Nothing prohibits the provision of virtual services and, in fact, they can be very beneficial to students. However, if the PEA stands ready, willing, and able to provide in-person services, then the PEA has satisfied the required offer of a provision of a FAPE. Please consult your legal counsel for advice in specific student or IEP situations.





Updated 2/25/21

**Q: Does EO 2020-51 dictate and/or limit the location of in-person special education service delivery options? (Posted 7/31/20)**

**A:** No. Services can be provided to students in any location where it is safe and feasible to do so. It is not required that special education services be delivered in the same space where supervised learning opportunities may be provided as outlined in EO 2020-51. PEAs are encouraged to be creative in how they design in-person special education delivery services.

**Q: How does a PEA allocate staffing resources to provide in-person services? (Posted 7/31/20)**

**A:** Unfortunately, ADE cannot provide guidance regarding human resources, employment, or staffing issues beyond providing professional development activities. Please reach out to your internal HR departments and/or consult with your colleagues or legal counsel about staffing solutions.

**Q: Will the ADE/ESS monitor PEA decisions to provide services to individual students in either a distance learning or in-person model? (Posted 7/31/20)**

**A:** No. ADE/ESS does not second guess PEA decisions related to the method of instruction for individual students and will not be monitoring the implementation of distance learning or in-person learning. Parents who disagree with the provision of a FAPE for a student retain their procedural safeguards, and the process and procedure for exercising safeguards has not changed.

**Q: Can parents invoke procedural safeguards if the PEA does not believe that on-site instruction is necessary and if the parent believes it is? (Posted 7/31/20)**

**A:** Parents retain their procedural safeguards when they disagree with the identification, evaluation, placement, or provision of a FAPE to their child. PEAs should consult their legal counsel regarding student specific issues that may arise when determining the need for in person instruction and a FAPE.

**Q: Must the in-person support that is articulated in EO 2020-51 for students with disabilities be provided for the entire school day, every day? (Posted 7/31/20)**

**A:** No. The EO does not require full instructional days to resume in-person. If a student is unable to receive a FAPE in a distance learning/virtual environment and needs in-person services to be delivered to receive a FAPE, only those services would be required to be provided in an in-person environment. It is possible that a student would be learning in both virtual and in-person environments, dependent upon the needs of the student and upon the services outlined in the IEP. PEAs are encouraged to be creative in designing in-person instruction so that the safety of both students and staff remains a priority.

**Q: If a PEA has decided to begin online instruction for all students that continues beyond August 17, is the PEA still required to provide on-site services for students with disabilities, even if it is not providing in-person instruction for all students? (Posted 7/31/20)**



Updated 2/25/21

**A:** Yes, under EO 2020-51, PEAs must develop a way to deliver in-person services to those students with disabilities who cannot be provided a FAPE in a virtual/distance learning environment. This may be separate from the space where supervised learning opportunities are being provided, as outlined in the EO.

**Q: Must a PEA provide in-person services for preschool children with disabilities? (Posted 8/6/20)**

**A:** It depends. IEP team decisions regarding what constitutes a FAPE are determined based on the student's needs as outlined in the IEP and not by the model of preferred instruction, either by the school or the parent.

**Q: If a student currently receives FAPE in a community education preschool program, must they be provided in-person services? (Posted 8/6/20)**

**A:** It depends. IEP team decisions regarding what constitutes a FAPE are determined based on the student's needs as outlined in the IEP and not by the model of preferred instruction, either by the school or the parent.

**Q: If in-person preschool is offered and a parent refuses to send his or her child, what is the PEA's obligation? (Posted 8/6/20)**

**A:** If FAPE cannot be provided in a virtual/online format, the IEP team can determine that in-person instruction is necessary to provide a FAPE. If the PEA stands ready, willing, and able to provide a FAPE to the student, then the PEA has no further obligation. PEAs are encouraged to consult their legal counsel to resolve questions related to specific students and cases.

**Q. Is there funding if preschool special education services are provided virtually during the period of building closures? (Posted 8/6/20)**

**A:** Yes. Preschool special education services that are provided virtually during the period of building closures can be funded through the DLP funding model. However, online/virtual preschool services must provide a student with a FAPE. IEP team decisions regarding what constitutes a FAPE are determined based on the student's needs as outlined in the IEP and not by the model of preferred instruction, either by the school or the parent. It should be noted that regular early childhood programs are already being provided in person at this time. If an inclusive environment is required by a child's IEP in order to provide a FAPE, the ability to provide an inclusive environment should be considered when determining whether a child should receive services virtually or in person.

**Q. Is there funding if preschool special education services are provided virtually for the entirety of the school year because a parent wants an online platform? (Posted 8/6/20)**



Updated 2/25/21

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**Q. What is the AzEDS reporting expectation for preschool students with disabilities attending in person and/or virtually? (Posted 8/6/20)**

**A:** Attendance for preschool students with disabilities must be recorded and reported accurately into AzEDS for every day of participation, regardless of whether attendance is in person or virtual. Please contact [ADE School Finance](#) for additional guidance regarding this topic.

**Q. If districts offer an online option for preschool students with disabilities, what is the minute/day commitment for funding? (Posted 8/6/20)**

**A:** The minute/day commitment for funding is outlined in A.R.S. § 15-901(A)(1)(a), which provides that a fractional student includes "a preschool child who is enrolled in a program for preschool children with disabilities of at least three hundred sixty minutes each week that meets at least two hundred sixteen hours over the minimum number of days. . . ." ADE expects minutes to be reported every day in a week that a calendar is submitted for preschool students with disabilities.

**Q: Will a preschool student's LRE change if they are provided services in person but, due to health concerns, without typical peers present? (Posted 8/6/20)**

**A:** It depends. IEP team decisions regarding what constitutes a FAPE are determined based on the student's needs as outlined in the IEP and not by the model of preferred instruction, either by the school or the parent. It should be noted that regular early childhood programs are already being provided in person at this time. If an inclusive environment is required by a child's IEP in order to provide a FAPE, the ability to provide an inclusive environment should be considered when determining whether a child should receive services virtually or in person.

**Evaluations**

All provisions of IDEA are still in effect regardless of how instruction is being delivered to students. All students with disabilities need to be afforded a FAPE as outlined in their IEP and in accordance with IDEA.

**Q: Are hearing and vision screenings required for evaluations and/or IEPs? (Posted 7/30/20)**



Updated 2/25/21

**A:** It depends. Per the IDEA, hearing and vision screenings are only required when there is a concern brought forward by a MET/IEP team member during the evaluation and/or IEP process. The Arizona Department of Health Services (ADHS) has [additional hearing and vision requirements](#) with which [public schools must comply](#).

**Q: Are student observations a required as a part of the evaluation process? (Posted 7/30/20)**

**A:** It depends. Per the IDEA (300.305 a. 1. iii), observations from parents, teachers, and related providers should be considered as part of the review of existing data. Formal observations other than this may be required as part of professional practice. Practitioners should consult their local PEA policy on what additional requirements the PEA may have in place.

**Q: How should the MET address the consideration of educational disadvantage, given the impact of COVID-19 on all students? (Posted 7/30/20)**

**A:** METs should consider all potential impacts on student learning during the evaluation process. Because students with and without disabilities may have been impacted by a lack of instruction due to the prior school closure, it is unclear as to what impact, if any, this will have on eligibility determinations for individual students.

**Q: Can PEAs use data from RTI/MTSS as part of the review of existing data and potential eligibility determination? (Posted 7/30/20)**

**A:** Yes. METs should consider any and all information related to the student as part of the review of existing data and potential eligibility determination.

**Q: If a student who has transferred to a new school in the 2020-2021 school year (or matriculated to a union high school district) was in process of being evaluated and that evaluation was “paused” due to the school closure, which PEA is obligated to complete the evaluation? (Posted 7/23/20)**

**A:** It is important to know that evaluation procedures were not waived by Congress, and no exceptions were granted to PEAs regarding timelines under the prior closure. That said, both the sending and receiving PEAs have potential liability. The sending PEA's responsibility is specific to meeting timelines and ensuring a complete evaluation as outlined in the IDEA. The receiving PEA is to ensure FAPE is provided and student needs are being met. ADE/ESS encourages PEAs to work together, and in collaboration with parents, to complete evaluations in a timely manner and ensure students are afforded a FAPE. (IDEA300.301)

**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? (Updated 7/22/20)**



Updated 2/25/21

**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](#). See additional questions regarding transfer students for more information.

**Q: If assessments are needed, how do we conduct these? (Updated 7/22/20)**

**A:** Evaluation requirements have not been waived regardless of how instruction is being delivered to students. ADE/ESS cannot indicate what is medically safe for a family or for specific students. If an IEP team determines assessments are needed, 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: Is the 30-day extension for an evaluation calendar days or school days? (Posted 4/8/20)**

**A:** The extension of the evaluation timeline, allowable under the Arizona Administrative Code, is 30 calendar days.

**Q: Can a PEA have multiple 30-day extension? (Posted 4/8/20)**

**A:** Arizona Administrative Code states an additional 30-day extension can be agreed upon by the PEA and parents if it is in the best interest of the child. Only one 30-day extension is allowable by board rule.

**Fiscal/Data Management**

**Q: Is there an LRE rubric that helps PEAs determine how to report LRE for students with disabilities? (Posted 07/30/20)**

**A:** Yes, [reporting information](#) can be found on the ESS Data Management web page under the accordion labeled Tools & Resources → AzEDS SPED Codes

**Q: How will Maintenance of Effort be impacted? What allowances can/will be made? (Updated 7/30/20)**

**A:** Inquiries regarding flexibility or exceptions to Maintenance of Effort have 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 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 as it relates to COVID-19. The guidance that was issued by OSEP in the middle of June only reinforced the currently allowed exceptions or reductions that exist.

The following exceptions exist, as outlined in 34 CFR § 300.204:

- a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- b) A decrease in the enrollment of children with disabilities.



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- c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child -
    - 1) Has left the jurisdiction of the agency;
    - 2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
    - 3) No longer needs the program of special education.
  - d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
  - e) The assumption of cost by the high cost fund operated by the SEA under § 300.704(c).
- These exceptions can be used regardless of the circumstances due to COVID-19.

For further questions on this item, please [email the ESS Program Management Unit](#).

**Q: Will LEAs be receiving any additional funds to help cover compensatory services? (Updated 7/30/20)**

**A:** Extra funding will be coming shortly through a compensatory education claim fund to provide additional relief on top of the federal IDEA Entitlement Funds. This information will be released in August 2020 and will be located on the SY 2020–2021 ESS School Reentry Webpage.

**Q: Will there be additional funds to address costs during the closure? (Posted 3/31/20)**

**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.

**Q: Can we pay out staff who are listed on the IDEA Entitlement grant during the mandatory closure? (Posted 4/14/20)**

**A:** The Office of Management and Budget (OMB) issued a memorandum (M-20-17) that provides administrative, financial management, and audit reporting relief for recipients and applicants of federal financial assistance directly impacted by COVID-19. Recipients may continue to charge salaries and benefits to currently active federal awards consistent with the recipients' policy of paying salaries (under unexpected or extraordinary circumstances) from all funding sources. Recipients are required to maintain records and documentation to substantiate the cost, including reference to the recipients' salary policy.

**Individualized Education Programs (IEPs)**





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All provisions of IDEA are still in effect regardless of how instruction is being delivered to students. All students with disabilities need to be afforded a FAPE as outlined in their IEP and in accordance with IDEA.

**Q: If a student is attending school through an online platform, but the IEP team has determined that the student requires in-person services in order to be provided a FAPE, what is the PEA's obligation? (Posted 8/14/20)**

**A:** If FAPE cannot be provided in a virtual/online format, members of the IEP team, including the parent, can determine that in-person instruction is necessary to provide a FAPE. IEP meetings are not necessary for every student, however any changes to the IEP should be appropriately documented. If it has been determined that in-person services are needed to ensure a FAPE, then the PEA would be obligated to make in person services available to meet the individual needs of the student. PEAs are encouraged to consult their legal counsel to resolve questions related to specific students and cases.

**Q: If it is written in the IEP that a student has support services (such as paraprofessional support or nursing services) that may not be able to be implemented in an online format, what is the PEA's obligation? (Posted 8/14/20)**

**A:** Members of the IEP team, including the parent, can determine whether support services would still be required for that student to receive a FAPE. IEP meetings are not necessary for every student, however any changes to the IEP should be appropriately documented. PEAs are encouraged to consult their legal counsel to resolve questions related to specific students and cases.

**Q: Does the IDEA allow an IEP team to meet and revise the IEP to reduce a student's service minutes based solely on the instructional methodology or staffing resources of the PEA? (Posted 8/14/20)**

**A:** No. IDEA requires that each student's IEP be reviewed at least annually and revised as appropriate, based on the needs of the student. Students should be provided with the special education services outlined in their current IEPs. If it has been determined that in-person services are needed to ensure a FAPE, then the PEA should make in-person services available to meet the individual needs of the student. Reducing service minutes to fit a school-specific need is inappropriate and may result in a parent exercising their procedural safeguards. Parents retain the right to exercise their procedural safeguards, including filing a state complaint, requesting mediation, filing a request for a due process hearing, or filing a complaint with the Office for Civil Rights if they disagree with the provision of a FAPE being offered to their child.

**Q: If any part of the IEP specifically (goals, accommodations, support services) is written for implementation in a brick-and-mortar setting, what is the PEA's obligation? (Posted 8/14/20)**

**A:** Members of the IEP team, including the parent, must determine whether those items would still be required or if they ought to be amended in order for that student to receive a FAPE.



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IEP meetings are not necessary for every student, however any changes to the IEP should be appropriately documented. PEAs are encouraged to consult their legal counsel to resolve questions related to specific students and cases.

**Q: Should transportation be provided if it is determined that the student requires in-person services in order for the student to receive a FAPE? (Posted 8/14/20)**

**A:** Yes. If the IEP team determines that transportation, as a related service, is needed in order to provide a FAPE, then transportation must be provided.

**Q: Can a PEA require all students with disabilities to receive all services in person, regardless of whether their IEPs can be implemented in a virtual format? (Posted 8/14/20)**

**A:** No. The provision of a FAPE is based upon the individual needs of the student. Members of the IEP team, including the parent, should determine whether the student requires in-person instruction in order to receive a FAPE. If the IEP can be implemented virtually and a FAPE can be provided, then the option for the student to receive services virtually should remain available. Parents retain the right to exercise their procedural safeguards, including filing a state complaint, requesting mediation, filing a request for a due process hearing, or filing a complaint with the Office for Civil Rights if they disagree with the provision of a FAPE being offered to their student.

**Q: Can a PEA require all students with disabilities, regardless of individual needs, to receive all services virtually or through remote learning? (Posted 8/14/20)**

**A:** No. EO-2051 specifically requires PEAs to have an in-person option available for the delivery of special education services to those students who require in-person instruction in order to receive a FAPE. Determinations as to which students require in-person instruction in order to receive a FAPE should be individualized and be based upon the needs of the student and the services outlined in the IEP. Parents retain the right to exercise their procedural safeguards, including filing a state complaint, requesting mediation, filing a request for a due process hearing, or filing a complaint with the Office for Civil Rights if they disagree with the provision of a FAPE being offered to their student.

**Q: Should PEAs make universal decisions regarding how IEP services are implemented for all students with disabilities who may be participating in virtual instruction? (Posted 8/6/20)**

**A:** No. Provision of FAPE is made on an individualized basis, and student needs drive the development of the IEP. Thus, services should be implemented as written in each student's IEP.

**Q: If a parent refuses in-person services, must the IEP team review and revise the student's IEP? (Posted 8/6/20)**

**A:** The IEP team can determine that in-person instruction is necessary to provide a FAPE. If the PEA stands ready, willing, and able to provide a FAPE to the student, then the PEA has no



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further obligation. Thus, there would be no need to review/revise or amend a student's IEP. PEAs are encouraged to consult their legal counsel to resolve questions related to specific students and cases.

**Q: Is an addendum to an IEP necessary if the services, goals, etc. imply they will be implemented in a brick-and-mortar setting? (Posted 7/30/20)**

**A:** It depends. If the existing IEP cannot be implemented and/or does not afford the student a FAPE in a virtual setting, then the IEP may need to be amended or revised. The IEP may be amended by consent of the team members without the need for an IEP meeting or the IEP team may need to convene to revise the IEP as appropriate.

**Q: Can an IEP team determine a student needs to be schooled in-person, rather than virtually, in order to be afforded a FAPE? (Posted 7/30/20)**

**A:** Yes. If FAPE cannot be provided in a virtual/online format, the IEP team can determine that in-person instruction is necessary to provide a FAPE. If the PEA stands ready, willing, and able to provide a FAPE to the student, then the PEA has no further obligation. PEAs are encouraged to consult their legal counsel to resolve questions related to specific students and cases.

**Q: Can we do IEP meetings over the phone? (Updated 7/22/20)**

**A:** Yes, alternative participation for meetings is encouraged.

**Q: Should IEP services be determined based on school schedule, staff availability, or other administrative concerns? (Updated 7/22/20)**

**A:** The services included in the IEP should address the needs of the individual student and be reasonably calculated to allow the child to make meaningful educational progress in light of the child's circumstances. Staffing and school schedules do not dictate the services the child requires.

**Q: Does the PEA need to provide a student with AT (high and/or low tech) in their home for virtual educational opportunities? (Updated 7/22/20)**

**A:** Teams should determine whether the use of the student's AT is necessary for the student to access the general education curriculum being provided by the school. Teams should also consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and the full range of needs, including opportunities for direct instruction in the child's language and communication mode.

If the student does not require AT for communication or to access the general curriculum, then it would not be necessary to provide AT in the student's home. If AT is necessary in order for the student to access either the SDI or the general education curriculum, then the IEP team needs to ensure the student has access to the needed AT.



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**Q: Do progress reports require signatures? (Posted 5/5/20)**

**A:** The IDEA does not require that progress reports be signed. If the PEA has a policy that requires signatures on progress reports, please consult your school's legal counsel or administration for further guidance.

**Masks**

**Q: Can we require all students to wear a mask or cloth face covering if they are attending school in person? (Posted 7/22/20)**

**A:** Rules for wearing masks are developed at the PEA level in compliance with county, city, and/or town ordinances as well as AZDHS and CDC guidance. Students with disabilities are still to be afforded reasonable accommodation under the Americans with Disabilities Act, and they are still entitled to receive a FAPE. PEAs should consult their legal counsel to determine the appropriateness and/or reasonableness of accommodation in a specific situation.

**Q: Are masks or cloth face coverings required if students with disabilities are being provided with on-campus or in-person instruction? (Posted 7/22/20)**

**A:** Rules for wearing masks are developed at the PEA level in compliance with county, city, and/or town ordinances as well as AZDHS and CDC guidance. Students with disabilities are still to be afforded reasonable accommodation under the Americans with Disabilities Act, and they are still entitled to receive a FAPE. PEAs should consult their legal counsel to determine the appropriateness and/or reasonableness of accommodation in specific situations.

The Arizona Department of Health Services offers the following:

*Schools and childcare facilities should encourage use of cloth face coverings when physical distancing cannot be maintained. Be sure to check for any local ordinances that may require cloth face coverings. Face coverings may be challenging to wear all day and are more important in times when physical distancing is difficult. Individuals should be frequently reminded not to touch the face covering and to wash their hands frequently. Ensure proper use of cloth face coverings by educating staff and children on the proper wearing and care of their face covering when it is taken off, such as while eating.*

*Cloth face coverings should not be placed on:*

- *Children younger than 2 years old*
- *Anyone who has trouble breathing or is unconscious*
- *Anyone who is unable to remove the cloth face covering without assistance*
- *Anyone with severe cognitive or respiratory impairments*



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**Q: Can a student with disabilities be denied access to on-campus, in-person instruction or transportation if he/she cannot currently comply with policy requiring masks or cloth face coverings? (Posted 7/22/20)**

**A:** Students with disabilities who have difficulty wearing a mask, or for whom wearing a mask is not advised by health experts, cannot be categorically denied enrollment or attendance on a school campus or denied access to transportation. Students with disabilities are still to be afforded reasonable accommodation under the Americans with Disabilities Act, and they are still entitled to receive a FAPE. PEAs should consult their legal counsel to determine the appropriateness and/or reasonableness of accommodation in specific situations.

**Online/Virtual Instruction**

**Q: Is there a difference between online and virtual instruction? (Posted 7/30/20)**

**A:** These terms are often interchangeable and essentially infer instruction is being provided using technology and not in a typical brick-and-mortar classroom. Both likely occur away from a school campus and encompass multiple methods of instructional delivery.

**Q: If a PEA is offering online instruction for all students, in accordance with the EO, and the parent refuses to allow their child to participate in the online instruction, what is the PEA's obligation? (Posted 7/30/20)**

**A:** If the IEP team determined FAPE can be provided in a virtual/online format, then the PEA can indicate that they stand ready and able to provide a FAPE to the student and the PEA has no further obligation. PEAs should consult their legal counsel to resolve individual student issues. Parents/guardians retain their procedural safeguards should they disagree with the decision of the IEP team. In the event this may impact attendance requirements, please consult the PEA board rules and policy related to student attendance and enrollment criteria set by the PEA.

**Q: What is Arizona Online Instruction (AOI)? (Posted 7/30/20)**

**A:** [Arizona Revised Statute \(ARS\) 15-808](#) defines AOI and explains the requirements associated with an AOI.

**Q: If a student's IEP placement is an ADE-approved private day school, and the student was unenrolled from the private day school during the time of the emergency COVID closure and provided online/virtual learning by the placing PEA, does that student return to a private day school once the private day school resumes in-person instruction? (Posted 7/30/20)**

**A:** Yes. The student must be provided a FAPE as outlined in his/her IEP, including placement. Continued virtual/online learning is not equivalent to the in-person instruction provided by a private day school. If the student's needs have changed from the IEP that was current at the time of COVID closure, the IEP team must reconvene and develop an IEP that provides a FAPE with existing information.



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**Q: If the student is placed at an ADE-approved private day school, but the parent refuses to allow the student to attend, what is the PEA's obligation for provision of FAPE? (Posted 7/30/20)**

**A:** If FAPE cannot be provided in a virtual/online format then the IEP team can determine that in-person instruction is necessary to provide a FAPE. If the PEA stands ready, willing, and able to provide a FAPE to the student, then the PEA has no further obligation. PEAs are encouraged to consult their legal counsel to resolve questions related to specific students and cases.

**Q: If the student requires transportation to attend the private day school placement, and he/she cannot currently comply with any policy for transportation requiring masks or cloth face coverings, what is the PEAs obligation to provide FAPE? (Posted 7/30/20)**

**A:** Students with disabilities who have difficulty wearing a mask, or for whom wearing a mask is not advised by health experts, cannot be categorically denied enrollment or attendance on a school campus or denied access to transportation. Students with disabilities are still to be afforded reasonable accommodation under the Americans with Disabilities Act, and they are still entitled to receive a FAPE. PEAs should consult their legal counsel to determine the appropriateness and/or reasonableness of accommodation in specific situations.

### **Private Day Schools**

**Q: Can an ADE-approved private day school be open to provide services to IEP team placed students? (Posted 7/30/20)**

**A:** At this time, ADE private day school approvals for the 2020—2021 school year apply to entities that can provide in-person services after August 17, 2020. Private day sites approved for virtual placement before the August 17, 2020 date will be indicated with a special notation in the approval spreadsheet. Approvals are still taking place at this time.

The only exceptions are compensatory services and extended school year services under certain circumstances.

While the Executive Order prohibits classes from being convened on campus, it may be possible to provide in-person services, based upon the needs of the individual child, in a manner that is safe and feasible, adhering to all health and safety guidelines from the State and/or other local bodies, as well as the Centers for Disease Control and Prevention (CDC). Please consult the legal counsel for your district/charter to determine how to implement your ESY program or compensatory educational service delivery plans if either requires a private day school. This information was provided on July 10, 2020. Service locations for the current year for compensatory services or extended school year can use the approval from the prior year as a stand-in at this time.

While district and charter schools must have an in-person option available within the PEA for students, there is no requirement for private day schools. If private day schools choose to open for in-person classes after August 17, 2020, PEAs may have to seek alternative placements for





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students who require in-person services to ensure that FAPE is provided adequately as determined by the IEP team.

ESS does not normally approve virtual programs for private day schools, but since this scenario may potentially come up soon, ESS wanted to provide clarification ahead of time.

### **Students Enrolled at Residential Treatment Centers on an Educational Voucher**

#### **Q: Are PEAs required to submit documentation for students on an educational voucher at an RTC? (Updated 7/30/20)**

**A:** Yes, PEAs are required to complete an HSD Application as outlined in A.A.C. R7-2-404 which states that “appropriate documentation of eligibility for special education and provision of services, if applicable, shall be included.” PEAs who fail to submit documentation run the risk of being responsible for the educational costs until they meet all the requirements outlined in the administrative code and A.R.S. 15-1183 (completing screening, identification procedures, and review of placement). For further questions regarding educational vouchers, PEAs should [email the ESS Vouchers Unit](#).

### **Telehealth**

#### **Q: Can a student who is enrolled and virtually attending a PEA in Arizona continue to receive speech services online? (Posted 2/25/21)**

**A:** Yes. There is no Arizona statutory provision that would bar a properly credentialed Speech-Language Technician (SLT) and Speech-Language Pathologist (SLP) from providing speech services via an online platform. For the provision of online services to a student enrolled in a PEA in Arizona, but temporarily located out of state, SLPs and SLTs should consult their licensing board and legal counsel to check for any licensing/credentialing implications.

#### **Q: Can a student who is enrolled and attending a PEA in Arizona virtually, but is temporarily outside of the state, receive speech services from a SLP in that state? (Posted 2/25/21)**

**A:** It depends. **Note:** ADE does not have the authority to determine what other state education agencies or licensing agencies require for students residing in their state to receive services from someone outside of the state. Therefore, PEAs are encouraged to consult with their legal counsel to determine the best course of action in these situations. Although ADE does not have oversight responsibility or legal authority to tell districts who may provide services to students temporarily located out of state, there is no prohibition in Arizona statute that would prohibit a student enrolled in an Arizona PEA, but temporarily located out of state, from receiving services from a properly credentialed provider in that state. If an out-of-state provider delivers services to an AZ student located in AZ, he/she must meet the following criteria. Speech-Language Technicians (SLTs) and Speech-Language Pathologists (SLPs) must hold **both** a current license from the Arizona Department of Health Services (AZDHS) and a current professional non-teaching certificate from the Arizona Department of Education (ADE). Speech-Language Pathology Assistants (SLPAs) are only required to hold a current license



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from AZDHS. PEAs are encouraged to consult with their legal counsel to determine the best course of action in these situations.

**Q: How do I know if the speech provider is licensed and/or certified in Arizona? (Posted 2/25/21)**

**A:** You may confirm the AZDHS license by entering the holder's name in the [AZDHS's Care Check Portal](#). District and charter school human resource administrators may confirm the ADE certificate through the Certification Portal via their ADE Connect account.

**Q: Are SLPAs and COTAs allowed to provide teletherapy? (Posted 4/14/20)**

**A:** Please consult your PEA's legal counsel and the practitioner's licensing organization. Many PEAs are already providing services by SLPs via teletherapy.

**Q: Is there a confidentiality issue when providing teletherapy online to a group of students, rather than one-on-one? (Posted 3/26/20)**

**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: Can a PEA choose to provide all therapies via teletherapy? (Posted 3/26/20)**

**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.