

## Purpose

On Tuesday, July 14, 2020, Governor Cooper announced that school buildings would re-open using the guidelines for Plan B. However, Phase 2 (Safer at Home) requirements are still in effect for the next three weeks. Under Phase 2, school buildings are closed.<sup>1</sup>

As public schools prepare to re-open it is important that the EC Division (ECD) provide updated guidance regarding the provision of a free appropriate public education to children with disabilities. Guidance, issued prior to this document, was offered as a result of the sudden school closures that occurred nationally and was expressly intended to assist local education agencies (LEAs) in adapting to communication provided by the federal government, state government and the NC Department of Public Instruction during the crisis experienced in the Spring of the 2019-2020 SY.

At this time, the ECD has the opportunity to provide more clarity about how to move forward with re-opening and the implementation of individualized education programs (IEPs). Therefore, guidance issued by the ECD specifically addressing issues in the Spring of the 2019-2020 SY should not be generalized to the beginning of the 2020-2021 SY even though some circumstances may be similar.

## Key Points

Federal Regulations and State *Policies* – No changes

- Child Find – The initial referral, evaluation, and placement process must occur within 90 days.
- Part C to Part B Transition – Evaluation, eligibility determination and an appropriate Individualized Education Program are to be implemented by a child's 3<sup>rd</sup> birthday.
- IEPs – review must occur at least annually; and, should take place when there is a lack of progress toward meeting the IEP goals and lack of progress in the general curriculum, if appropriate; if there was a reevaluation or if information provided by the parents requires a review. See 34 CFR 300.324(b).

## Individualized Education Programs (IEPs)

The following citations are from the IDEA regulations.

Key Points

- **§300.323 IEPs must be in effect at the beginning of the school year.**
- **§300.324 Development, review and revision of the IEP.**
  - The development and annual review of an IEP must be conducted at an IEP Team meeting and the IEP Team may revise the IEP between annual review dates. (34 CFR 300.324(a) and (b))
  - Agreement. In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. 300.324(a)(4)
    - (ii) If changes are made, the public agency must ensure that the child's IEP Team is informed of those changes.

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<sup>1</sup> [Staying Ahead of the Curve Infographic](#)

- Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4), by amending the IEP rather than redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 300.324(a)(6)
- **§300.328 Alternative means of IEP meeting participation are permitted.**
  - The parent of a child with a disability may agree to use alternative means of meeting participation, such as video conferences and conference calls.

As indicated in the current guidance from the Office of Special Education Programs, it is expected that the implementation of a child's IEP may look different during the time of school closures and re-opening. It is important that the IEP accurately reflect the special education and related services that the child is being provided for the upcoming school year.

The current re-opening plan for NC public schools is Plan B: Moderate Social Distancing. However, school districts may choose a more restrictive re-opening plan (Plan C: Remote Learning) and parents may choose remote learning instead of in-person instruction for their child.

### **Initial or Annual Review IEPs**

At the initial or annual review of the IEP, the IEP Team should develop the IEP based on the child's unique needs and in light of the child's current circumstances, including a parent's choice to enroll their child in the LEA but select the remote learning option rather than in-person instruction.

Therefore, any new initial or annual IEPs should consider the child's present level of academic achievement and functional performance, appropriate goals; supplemental services and supports; special education and related services to enable the child to attain their goals and make progress in the general curriculum according to the district's re-opening plan and/or a parent's choice to enroll their child in the LEA but select the remote learning option rather than in-person instruction at the time the IEP is developed.

### **Addendum IEPs**

It is likely that Plan B and Plan C Re-Opening requirements and a parent's choice to select the remote learning option rather than in-person instruction for their child will impact the implementation of a child's current IEP in some way. On the next page, you will find a few scenarios to help identify circumstances for which the IEP will need to be revised (addendum) and the options available to support the IEP Team in adapting to those circumstances in an efficient manner. These scenarios are not intended to cover all the variables possible when individualized decisions must be considered; rather, the intent is to provide a framework for reasonable decision-making.

In every scenario it is vital to clearly communicate with the parents to inform them that depending on potential changes in the pandemic and guidance from the North Carolina Department of Health and Human Services, the Governor and the State Board, their child's IEP or the delivery of IEP services may be impacted.

Scenario	Addendum		NOTES
	IEP Meeting	Amendment without IEP Meeting	
The only change to service delivery is the “location”. (School building vs. Remote)	<i>An IEP meeting is not required because the IEP can be delivered as written. All that has changed is the location of where services will be provided.</i>		
The only change to service delivery will be the frequency of services as a result of change to a school schedule for all students. (A/B schedule, A/B schedule + remote learning, etc.)	This is an option, but an addendum is required.	This is an option, but parent agreement (for not having an IEP meeting) and an addendum are required.	<i>This is considered a revision to the IEP; therefore an addendum is needed.</i>
The delivery of services in the IEP or the IEP itself will be <i>substantively</i> different than originally planned during Plan B or Plan C. (goals, accommodations, services and supports, etc.)	The IEP Team should meet to discuss a review/revision to the IEP in order to ensure FAPE is being delivered according to the child’s unique circumstances.	<u>This is not an option</u> because the IEP Team must determine the appropriate offer of FAPE given the child’s unique circumstances.	

## Special Education and Related Services

### Key Points

- An analysis of a student’s current performance must be considered in light of progress documented at the time of school closures (March 13, 2020), progress documented during remote learning including parental input (Spring 2020), and progress data gathered upon return to school (Fall 2020).
- Present levels of academic achievement and functional performance should be updated based on the analysis of these data.
- Students may require:
  - *Additional or more intensive services*, referred to as compensatory services in the OSEP Q&A document<sup>2</sup>, the IEP team determines is required for the student to receive FAPE based on the child’s PLAAFP as a result of a lack of progress, if any, during school closures and remote learning.
  - *Different* specially designed instruction (accessing technology, etc.) and related services (parent training) based on the student’s unique needs in light of the district’s re-opening plan and/or a parent’s choice to enroll their child in the LEA but select the remote learning option rather than in-person instruction.

<sup>2</sup> [Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak \(March 2020\)](#)

## Evaluations

### Key Points

- LEAs should provide communication to families in the initial evaluation/reevaluation process about when face-to-face evaluations may be conducted.
- LEAs may conduct evaluations virtually, if doing so does not compromise the validity of the assessment results.
  - The Early Childhood Technical Assistance Center (ECTA) has released guidance on potential assessments for remote administration. *Norm-Referenced Assessment Tools for Children Birth to Age Five Years with Potential for Remote Administration for Eligibility Determination* can be found here:  
[https://ectacenter.org/~pdfs/events/Assessment\\_Tool\\_Table.pdf](https://ectacenter.org/~pdfs/events/Assessment_Tool_Table.pdf)
- LEAs may not make unilateral decisions regarding stopping the initial evaluation timeline or unilateral decisions regarding whether or not initial referrals will be accepted or rejected during the time of school closure and re-opening. Each of these decisions shall be individualized, determined within the context of an IEP Team meeting and documented through the use of the Prior Written Notice.
- In cases where there is sufficient existing data to determine eligibility and develop the IEP, the IEP Team should do so in order to address the student's unique needs in a timely fashion. If the evaluations needed solely for programming purposes can be conducted safely, then the IEP Team is encouraged to do so.
- LEAs may conduct face-to-face evaluations according to Plan B for the re-opening of schools, with consideration given to DHHS guidance<sup>3</sup>, re-opening resources from NCDPI<sup>4</sup> and in alignment with the local re-opening plan.
  - Part C to Part B Evaluations
    - If the location in which the evaluation is to be conducted is a:
      - Non-school community site – DHHS Childcare Center Guidelines should be followed
      - School-based LEA site – DHHS Strong Schools NC Public Health Toolkit should be followed
      - Childcare center - DHHS Childcare Center Guidelines should be followed
      - Non-School LEA site - DHHS Childcare Center Guidelines should be followed
- Eligibility determinations must be made using multiple sources of data. While it is understood that the school closures will require a more careful analysis when ruling out a “lack of appropriate instruction”, IEP Teams should consider the instruction provided to the student prior to school closures and the student's response documented at the time of referral; the instruction provided during school closures and the student's response; and the child's performance on all the required screenings and evaluations for the suspected disability(ies). Furthermore, parent interviews may play a critical role in documenting a student's response to instruction during remote learning.

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<sup>3</sup> Strong Schools NC Public Health Toolkit (K-12) <https://files.nc.gov/covid/documents/guidance/Strong-Schools-NC-Public-Health-Toolkit.pdf>

<sup>4</sup> Lighting Our Way Forward: NC Guidance on Re-Opening K-12 Public Schools  
[https://drive.google.com/file/d/11qO4\\_1\\_P2xUvI3iem0fRE2mRswajY22t/view](https://drive.google.com/file/d/11qO4_1_P2xUvI3iem0fRE2mRswajY22t/view)

## Resources

The EC Directors' padlet will continue to be updated as new information/guidance is developed. However, the organization of the padlet will reflect the collection of resources and guidance provided prior to July 1, 2020, that applies to the school closures of the Spring of 2020, and the guidance and resources that are being provided from July 1, 2020, going forward for the re-opening of schools in the Fall of 2020. Additionally, a new FAQ will be started to address the guidance for the 2020-2021 school year.

The following information is provided from resources developed by the National Center of Systemic Improvement, the official technical assistance center of the Office of Special Education Programs (OSEP).

### **Virtual IEP Meetings**

[Tip Sheet](#)

[Infographic: Participating in Virtual Meetings](#)

[Sample Virtual IEP Meeting Agenda](#)

### **Evidence-Based and Promising Practices to Support Continuity of Learning**

[Practices and Resources to Support Parents and Families](#)

[Practices and Resources to Support Teachers](#)

[Practices and Resources to Support Related Service Providers](#)

### **Important Websites**

[National Center on Systemic Improvement](#)

[Early Childhood Technical Assistance Center](#)

[IDEAs that Work](#)

[Office of Special Education and Rehabilitative Services](#)

[U.S. Department of Education](#)