

# West Virginia Schools Re-entry Guidance for the Education of Students with Exceptionalities

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## **Introduction**

On March 16, 2020, Governor Jim Justice issued an emergency closure of all public schools, changing our education system overnight from a brick and mortar face-to-face model to a remote learning model. Students with disabilities receiving special education and related services continue to be entitled to procedural safeguards and a Free Appropriate Public Education (FAPE) as outlined in the *Individuals with Disabilities Education Act of 2004 (IDEA)* and West Virginia Board of Education (WVBE) *Policy 2419: Regulations for the Education of Students with Exceptionalities*. At this time, Congress has not granted authorization to the United States Department of Education (USED) to allow flexibilities or waivers to IDEA. Therefore, districts must continue to comply with all federal and state regulations and policies pertaining to students with exceptionalities. The following information focuses on re-entry, recovery, and the re-establishment of procedures, processes and protocols to provide the services our students with Individualized Education Programs (IEP) need to receive FAPE and meaningful benefit from their educational programs.

## **School Re-entry Scenarios: West Virginia Schools Re-entry Toolkit COVID-19 Guidance**

### **A. In-Person and/or Blended Instruction**

Scenarios for in-person instruction are designed to create options for counties to make local decisions that best meet the needs of their students. County superintendents working with stakeholders and boards of education will decide the structure of the school schedule. Whether it be reduced days each week or reduced hours each day, re-entry plans must engage all students in learning five days a week. If utilizing a blended model for learning, schools must consider developmental appropriateness of schedules and use of technology as well as equity and access to broadband.

### **B. Existing Virtual Options**

In 2017 legislation was passed allowing for districts to offer full-time virtual options to their students. Districts can establish their own virtual school program or can partner with other counties or the WVDE for virtual offerings. All West Virginia counties are to have a full-time virtual option in place no later than July 1, 2020. Because students participating in a virtual school option are considered public school students, counties will not lose state aid funding should a student elect to use this option. Counties should make certain that virtual school information is readily available to students and parents. In contemplating this option, consideration will need to be given to internet access and available technology. Click here for additional Virtual School information <http://wvde.state.wv.us/vschool/>.

### **C. Remote Learning (Emergency Closure Procedures)**

Districts must be prepared to implement full remote learning should it be required by the Governor. Full remote learning plans require students to complete school assignments and engage remotely five days a week. This will require the teacher and students to communicate regularly and develop a process for monitoring, reviewing and/or grading of student engagement activities.

## **Frequently Asked Questions (FAQs)**

**Q1: What Individualized Education Program (IEP) considerations should be addressed when planning for how special education and related services will be provided within the various re-entry scenarios?**

**A1:** See considerations for special education and related services for the various school re-entry scenarios below.

#### **» Scenario A: In-Person and/or Blended Instruction**

All students are engaged in learning five days a week, whether it be reduced days each week or reduced hours each day.

If a student with an IEP had been following a remote learning plan which included temporary measures for addressing IEP goals and services during an emergency school closure, that emergency plan would no longer be in effect when in-person and/or blended instruction resumes. The student's current IEP should continue to be followed as written.

If blended instruction is being provided during re-entry, IEP Teams should consider if there are any changes that need to be made to the student's current IEP in order to address the provision of services during those times when in-person instruction and/or the total educational minutes are reduced. If so, the IEP Team should schedule an IEP Team meeting for the purpose of making those changes, or the parent and the district may agree to not convene an IEP Team, and instead amend or modify the student's current IEP.

#### **» Scenario B: Existing Virtual Options**

If the parent of a child with an IEP applies for a virtual option during re-entry, an IEP Team meeting must be convened to discuss the request and to determine if a virtual option will meet the special education needs of the student, meet the provisions of FAPE, and also provide a meaningful benefit for the student.

If the IEP Team determines a virtual option is appropriate, the Team should revise the IEP to incorporate any services and supports needed to allow the student to make appropriate progress towards their educational goals and objectives within the virtual environment.

If the IEP Team determines a virtual option will not provide FAPE or meaningful benefit for the student to make appropriate progress, the IEP Team must determine appropriate placement options in the Least Restrictive Environment (LRE). Prior Written Notice (PWN) must reflect the decisions of the IEP Team.

» **Scenario C: Remote Learning (Emergency Closure Procedures)**

Districts must be prepared to implement full remote learning when an emergency school closure is required by the Governor. *Full remote learning plans require students to complete school assignments and engage remotely five days a week. This will require the teacher and students to communicate regularly and develop a process for monitoring, reviewing and/or grading of student engagement activities.*

Schools must ensure that students with an IEP have equal access to the same educational opportunities during an emergency school closure as the general student population, including the provision of FAPE.

IEP teams may develop Remote Learning Plans which could be implemented during an emergency school closure to allow the student to continue to make progress toward the goals and objectives in the IEP; and to continue to engage and be involved in the general education curriculum to the greatest extent possible.

The plan may include temporary modifications to the provisions in the student's IEP that are possible during an emergency school closure. These modifications may include the provision of special education and related services at an alternate location, the provision of online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities.

Creating a Remote Learning Plan before an emergency school closure occurs *gives the student's service providers and parent(s)/guardian an opportunity to discuss and reach agreement as to what temporary modifications to the provision of services that may be needed during the closure. The parent(s)/guardian should be made aware of the circumstances that would trigger the use of the Remote Learning Plan.*

**Q2: Is the District (LEA) required to provide a Free Appropriate Public Education (FAPE) to students with disabilities in each of the provided scenarios?**

**A2:** According to QUESTIONS AND ANSWERS ON PROVIDING SERVICES TO CHILDREN WITH DISABILITIES DURING THE CORONAVIRUS DISEASE 2019 OUTBREAK provided by the U.S. Department of Education (March 2020), which has not changed to date, "if an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504))."

Furthermore, an article titled, *Academic Supports For Students With Disabilities*, Brief No. 2, in EdResearch for Recovery (June 2020) brings attention to the landmark 2017 Supreme Court case of *Andrew F. v. Douglas County School District* as it establishes an even stronger legal standard, requiring special education to produce *'appropriate progress'* for a given student's needs.

**Q3: How are related services determined when a student participates in a virtual instruction program or virtual courses?**

**A3:** The IEP Team determines the special education and related services a student will need to make appropriate progress towards IEP goals. WVBE Policy 2419 states, "The term "related services" refers to transportation and such developmental, corrective and other supportive services required to assist an eligible student to benefit from special education as described in the IEP."

**Q4: What If the parent(s)/guardian disagrees with the IEP Team's decision regarding a virtual instruction program?**

**A4:** A Facilitated IEP Team meeting can be requested if mutually agreed upon by the parent(s)/guardian and the district to attempt to gain agreement on an appropriate IEP that will provide FAPE and allow the student to make appropriate progress. If this is not a successful option, the dispute resolution process provides additional options (i.e., mediation, state complaint or due process hearing).

**Q5: What is the procedure for transitioning from Remote Learning Plans to IEPs going forward?**

**A5:** When schools reopen for the 2020-2021 school year and are no longer under a mandated closure ordered by the Governor, special education and related services must be provided in accordance with current IEPs. The Remote Learning Plans provided during the emergency school closures will not meet the requirements of IDEA or WVBE Policy 2419: *Regulations for the Education of Students with Exceptionalities* moving forward. The IEP Team, including the parent(s)/guardian, should determine a meaningful timeline to convene the IEP Team meeting to assess individual student needs, progress, and/or loss of skills and ultimately determine if the IEP should be revised to reflect appropriate changes to services and supports. These additional services and supports due to the COVID-19 school closures will be referred to as COVID-19 Recovery Services.

**Q6: How do compensatory services and COVID-19 Recovery Services differ?**

**A6:** The Individuals with Disabilities Education Act (IDEA) 2004 considers compensatory services a remedy needed to account for the loss, regression, or failure to make progress as a result of the denial of a free and appropriate public education (FAPE) for an individual student with disabilities on behalf of the school/school system. Compensatory services are determined to address the noncompliance through the dispute resolution process (i.e., mediation, state complaint, or due process hearing). COVID-19 Recovery Services are specific services needed to make up for skills lost during COVID-19 closures. For more information on COVID-19 Recovery Services, please see the [COVID-19 Recovery Services versus Compensatory Services Brochure](#).

According to the United States Department of Education's COVID-19-related guidance, schools must make a case-by-case determination whether and to what extent compensatory services may be needed to make up for any regression or skills lost during COVID-19 school closures. In the unique situation faced due to the COVID-19 pandemic, both the United States Department of Education and the Office of Special Education Programs (OSEP) provide guidance that suggests that the IEP Teams determine whether and to what extent compensatory services may be warranted. The IEP Team's focus when considering compensatory services should be to review present levels of performance (pre- and post-COVID) and examining student progress toward IEP goals. The next step is evaluating, revising, adding and increasing IEP services of special education and related services to ensure that each student receives meaningful benefit to make appropriate progress.

**Q7: If the parent(s)/guardian chooses to homeschool their child, is the district responsible for providing related services or any other service(s) on the IEP?**

**A7:** No. According to WVBE Policy 2419: *Regulations for the Education of Students with Exceptionalities*, if a student is withdrawn to homeschool, he/she is exited from West Virginia public schools and is not eligible to receive special education or related services required by FAPE. If the student returns to school, an Eligibility Committee meeting will need to be held to reestablish eligibility for special education and related services. As a result, an IEP Team meeting will be conducted to determine the appropriate accommodations and special education and related services needed to provide FAPE.

**Q8: What process does an IEP Team follow when considering homebound services for an exceptional student who is unable to attend school temporarily because of an injury, illness, or health condition?**

**A8:** Based on a medical order, the student is determined to be high-risk or medically fragile. The IEP Team will conduct an IEP Team meeting to determine the most appropriate accommodations and special education and related services to provide FAPE and meaningful benefit for the student in an out-of-school environment. See WVBE Policy 2510: Assuring the Quality of Education: Regulations for Education Programs for information on Homebound/Hospital Services.

**Q9: How should districts address evaluations that were not able to be completed face-to-face during the forced school closures and plan for future evaluations to be completed within timelines?**

**A9:** The IDEA regulations have not been waived during remote learning. The district should determine a process for prioritizing various categories of evaluations listed below. The district should contact the parent(s)/guardian to determine a realistic and meaningful timeline for the completion of the evaluations. Districts may continue the assessment process prior to school re-opening, through Telehealth or face-to-face testing following all WVDE and DHHR guidance including social distancing, health and safety precautions when testing in a face-to-face setting. The USED Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities provides additional information on IDEA timelines.

Categories of evaluations are listed by recommended priority:

- » Students transitioning from West Virginia Birth to Three (IDEA Part C) to pre-school (IDEA Part B). These students must have their eligibility and IEP in place by their third birthday.
- » Initial evaluations for three-year-old students identified from screenings.
- » Students who are aging out of developmental delay eligibility (age six) that are being considered for additional eligibility categories.
- » Initial evaluations that are due within 80 calendar days excluding summer break.
- » Transfers from in-state schools who are in the initial evaluation process.
- » Additional evaluations requested by the Eligibility Committee or IEP Team which are due within 60 calendar days excluding summer break.
- » Re-evaluations, which are required at least every three years from the last Eligibility Meeting.

**Q10: What are the considerations for face-to-face evaluations?**

**A10:** When a district is considering face-to-face evaluations prior to schools reopening, safety precautions and protocols should be determined in accordance with guidance provided by the West Virginia Department of Education, West Virginia Department of Health and Human Resources, and the Center for Disease Control (CDC). Similar protocols may be used once schools reopen and students are receiving in-person instruction

**Evaluation Protocol**

**Scheduling**

- » Allow up to an hour between each evaluation for cleaning
- » Parking lot check-in and screening- must remain in vehicle until called to enter the building
- » Limited access to the building for families during evaluation (1 guardian, no siblings)
- » Personal Protective Equipment (PPE)
- » Personal face coverings during screenings, evaluations and when navigating the building
- » Clear masks and/or face shields available for all staff
- » Gloves used to interact with materials

**Sanitation**

- » Clean all testing manipulatives between each evaluation session
- » Use designated cleaning supplies provided by district
- » Change into new gloves after each evaluation session
- » No waiting areas within building
- » Use designated evaluation areas only
- » Evaluation areas sanitized after each use

**Screening**

- » Health and Travel Questionnaire
- » Temperature Scan
- » Building access log and disclaimer/release

**Evaluations**

- » 1:1 setting
- » Gloves at all times
- » Face coverings worn by examiner and student (when appropriate following WVDE, DHHR and CDC guidance)-only removed as needed when protected by separation of an acrylic barrier
- » Clear masks and/or face shields
- » Paper protocols (student written response packets) quarantined for appropriate timeframe to ensure no transmission of pathogens
- » Provide writing utensils for students to use (clean or dispose of prior to next evaluation session)

*\*If necessary consider a sound system to ensure instructions and responses are heard/recorded accurately.*

## **Resources**

- » *Center for Disease Control and Prevention: Schools and Childcare Programs*
- » *Office of Special Education and Rehabilitative Services (OSERS)*
- » *OSEP IDEAs that Work*
- » *Center on Online Learning and Students with Disabilities*
- » *National Center for Systemic Improvement*
- » *National Association of School Psychologists (NASP)*
- » *National Association of State Directors of Special Education*
- » *Council of Administrators of Special Education*
- » *Considerations for Special Education Administrators*
- » *Council for Exceptional Children*
- » *Council of Chief State School Officers*
- » *Tennessee Department of Education's Reopening of Schools Toolkit: Special Populations*

## **Disclaimer**

This guidance document cannot and does not provide any additional waivers or flexibility from compliance with either IDEA or WVBE Policy 2419: *Regulations for the Education of Students with Exceptionalities*, and Executive Orders, including the Stay at Home Order from the Governor, connected to the COVID-19 pandemic. Although the U.S. Department of Education (ED) has released guidance offering certain flexibility, no WVDE guidance should be interpreted as exceeding federal flexibility. Schools and school districts should review all matters concerning the provision of special education and related services obligations with their local board, administrators, and counsel. The questions and answers contained within this document are meant to serve as guidance for schools to provide special education and related services in compliance with IDEA regulations and WVBE Policy 2419 for School Re-entry Scenarios outlined in the West Virginia Schools Re-entry Toolkit COVID-19 Guidance.

