

**Kentucky Department of Education
Office of Special Education and Early Learning
Frequently Asked Questions Related to COVID-19**

1. If parents decline services completely or request limited services during this time, how do you recommend districts respond?

If a parent disagrees with the provision of a particular special education or related service and the parent and public agency agree that the child would be provided with a free appropriate public education (FAPE) if the child did not receive that service, the admissions and release committee (ARC) should remove the service from the child's individual education program (IEP). Since the parents agree to this action, there would be no basis for using the procedures in Subpart E of the regulations to require the service to be provided to the child.

If the parent and public agency disagree about whether the child would be provided FAPE if the child did not receive a particular special education or related service, the parent may use the due process procedures in Subpart E of the regulations to obtain a ruling that the service with which the parent disagrees is not appropriate for their child.

If the parent continually refuses services, the local educational agency should document attempts to provide services and the parent's refusal.

2. Is going beyond 10 days of non-traditional instruction (NTI) considered a change of placement?

No. This is a change of location and it's affecting all students during this time.

3. Do we need to hold an ARC meeting for every special education student upon return to school to discuss compensatory education?

Districts should hold ARC meetings as usual to review the Individual Education Program (IEP) and determine what services are needed. Some will happen naturally as annual reviews are due, and some may need to be scheduled sooner to revise the IEP and/or offer compensatory services. Local school districts should always schedule ARC meetings if students are not making adequate progress.

4. How should districts provide paperwork to families after virtual ARCs?

Districts may choose to use "snail mail" to send documents to parents. If districts choose to utilize email for communication and parents consent to email communication, districts should ensure that secure email protocols are utilized. Some recommendations are listed below.

- Obtain signed parent permission prior to sending documents containing PII.
- Password-protect any documents containing PII prior to sending them through email. DO NOT send passwords in the same email with the protected document. Always call the parent or, less ideally, send the password in a separate email.

- Use encryption software to encrypt the document or the email.
- The video-conference tool with Microsoft Teams, which is provided by the Kentucky Department of Education (KDE) to school districts, includes security standards required by KDE. This software also can transfer documents to video-conference participants. Of course, proper use by district staff to ensure district computers are connected to a secure network and only authorized participants join the video conference is a local district responsibility.

Reach out to your district's technology department for additional guidance. It may be worthwhile to become familiar with more than one option, as it is unlikely that any single option will work for all parents.

- Encrypt the file before emailing using the following programs.
 - Adobe Acrobat – Some versions can encrypt/password protect PDFs, but is not free.
 - MS Word – Can encrypt/password protect the document and it is included with recent versions of MS Office. While Word, by default, is editable, it can be saved as read only or with limited editing.
 - WinZip and other encryption applications – Can encrypt/password protect files. WinZip is not free, but free/shareware alternatives exist, such as 7-Zip.
 - If a district chooses to use one of these software solutions, it should ensure that any contract with the software provider includes proper data security protocols and that the software provider doesn't own or otherwise have any rights to use the data.
- Encrypt the email sent
 - The latest versions of Microsoft Office 365 ProPlus and Microsoft Webmail allow for users to send encrypted, password-protected email. Other options can increase security further by requiring multi-factors authentication or prevent the email from being forwarded.
 - Gmail allows users to send a protected email that allows the sender to require the recipient to enter a code sent via text to a mobile phone. However, the sender needs to know the recipient's mobile number. It can also prevent email from being forwarded.
 - Again, if a district chooses to use one of these software solutions, it should ensure that any contract with the software provider includes proper data security protocols and that the software provider doesn't own or otherwise have any rights to use the data.

Other resources and guidance

- [Video from USED - Email and Student Privacy](#)
- [Video from Microsoft: Office 365 Essentials: Office Message Encryption](#)
- [Microsoft and FERPA Document](#)

Districts also may consider encryption software or using the United States Postal Service for mailing documents.

5. How do we get virtual signatures to get consent to send IEPs electronically?

E-signatures in Kentucky must meet the requirements of KRS Chapter 369 to be accepted by a government agency. "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. The following statutes are applicable to the acceptance of electronic signatures. Districts should consult their board counsel for specific legal advice regarding acceptance of electronic signatures.

KRS 369.107 Legal recognition of electronic records, electronic signatures, and electronic contracts.

- (1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- (2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- (3) If a law requires a record to be in writing, an electronic record satisfies the law.
- (4) If a law requires a signature, an electronic signature satisfies the law.

KRS 369.109 Attribution and effect of electronic record and electronic signature.

- (1) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.
- (2) The effect of an electronic record or electronic signature attributed to a person under subsection (1) of this section is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

369.118 Acceptance and distribution of electronic records by governmental agencies.

- (1) Except as otherwise provided in KRS 369.112(6), each governmental agency of this state, **in compliance with standards established by the Commonwealth Office of Technology**, shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.
- (2) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (1) of this section:
 - (a) **The Commonwealth Office of Technology, giving due consideration to security, may specify the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;**
 - (b) **If electronic records must be signed by electronic means, each governmental agency, giving due consideration to security, may specify the type of electronic signature required, the manner and format in which the electronic signature must be**

affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(c) The Commonwealth Office of Technology and the Department for Libraries and Archives, giving due consideration to security, may specify control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(d) Each governmental agency, giving due consideration to security, may specify any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(3) Except as otherwise provided in KRS 369.112(6), KRS 369.101 to 369.120 does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

The Kentucky Department for Libraries and Archives has a document that gives e-signature recommendations at this link.

<http://kdla.ky.gov/records/Documents/Electronic%20Signature%20Recommendation%20Version%201.pdf>

The Commonwealth Office of Technology Standards for e-signatures can be found at the following link.

https://cgp.ky.gov/sites/COTPUBDOCS/Standards/KITS_Report.pdf

6. Is it permissible to wait until school is back in session to send ARC paperwork since we can't go into office to mail?

Ideally, districts would provide the ARC paperwork immediately. If that is not possible due to the public health crisis, districts should capture in the conference summary that minutes were shared by reading aloud or through virtual methods, then explain that paper copies will be provided as soon as possible when staff have access to the building. Districts also should determine whether they can make provisions for staff to enter the building and mail paperwork in a timely manner. It is recommended to inform the parents / guardians when they can expect to receive the paperwork.

7. Will Kentucky Early Childhood Data System (KEDS) data be collected for 2019-2020?

The KDE is working with KEDS/University of Kentucky, Human Development Institute to survey districts regarding assessment. Districts will be asked if they have completed any assessments, what is their percentage of completed assessments (if any) and if the district has provided NTI for regular preschool curriculum. KEDS has opened its Spring Data Window (April 1-May 31) for uploading of assessment data if it is available. More information will be shared as it becomes available.

8. Many evaluations need behavior observations to triangulate data. How do we meet the 60-school day deadline?

Don't delay the evaluation based on a behavior observation, especially if you have enough data to make the determination. Consider how to obtain the data through alternate means. Think about asking families or caretakers to conduct the observation or conduct an observation virtually. Conduct the ARC to determine if you have enough data.

The ARC also determines if there is insufficient data to make a decision. If you don't have enough data, there must be a plan for obtaining it as soon as school resumes. If eligibility determination is delayed due to COVID-19, districts should provide compensatory services to make up for the delayed services.

9. Can the Preschool Partnership Grant (PPG) be extended due to having to cancel events and close childcare facilities?

After the district has completed its final report for Northern Kentucky University and the KDE is notified, the grantee will receive the last 25% payment of PPG funds. The district then has until Sept. 30 to expend those funds. Any requests for an extension to spend the funds after the Sept. 30 deadline would be handled on a case-by-case basis.

A district's final expenditure report should be sent to Nicole Crosthwaite at the KDE once the funds have been completely expended. Also, if activities of the grant are to be changed (for example, any in-person trainings being canceled, changed or modified), the grantee should notify the School Readiness Branch.

10. What is the expectation for Occupational Therapists (OTs) to provide services?

It is the same as all other services – provide the services using alternative means as necessary, think creatively, document and communicate.

11. Do districts need to send IEP progress reports if the district is not sending report cards?

707 KAR 1:320, Section 5, provides:

(13) An IEP shall include a statement of:

- (a) How the child's progress toward meeting the annual goals will be measured; and
- (b) When periodic reports on the progress the child is making toward meeting the annual goals, (which may include the use of quarterly or other periodic reports concurrent with the issuance of report cards) will be provided.

707 KAR 1:320, Section 5 is consistent with requirements in 34 CFR 300.320. As such, districts should review student IEPs to determine when period reports on the program the child is making toward meeting the annual goals is to be provided. If the IEP indicates these progress reports will be provided concurrent with the issuance of report cards, and the district is not issuing report cards for any students, then the district would not be required to send period progress reports for students with disabilities until report cards for all students resume.

12. Should we conduct ARC meetings in order to meet timelines and document what we can't do? How will we remedy that?

Yes, keep as close to business as usual as you can. Make determinations if you have enough data. Document the plan for how to remedy concerns and noncompliance once school resumes.

13. Do missed services need to be documented?

Yes. It will make things easier to determine the amount of compensatory education that may be needed once school resumes.

14. If a student has one hour of reading resource on his or her IEP, what would be a comparable time during at-home learning?

If you can provide services virtually for one hour per day, that's great. If that's not feasible, make determinations for students on an individual basis. A blanket answer cannot be given without having more information. Feel free to call or email KDE staff to discuss further.

15. If progress monitoring is included in NTI packets, how do we collect them?

Work with your local health department and be creative with alternatives. Districts could possibly use smart phone pictures, email or phone calls. Use the district procedure for collecting NTI information, packets, work, etc.

16. If IEP goals are specific to dealing with peers, how do we handle that?

Consider using a sibling as a peer, if possible. Districts may need to document that no peers are available and consider interaction with a caregiver as evidence. If documentation can't be obtained, compensatory education may be needed when school resumes. Regional special education cooperatives can assist, so reach out to them.

17. How to provide counseling services to students who have it on their IEPs?

Think creatively about alternative means to provide services, communicate frequently and document services provided or missed carefully.

18. Can parents request additional services because their child is not at school.

This is an ARC decision. Parents may request an ARC meeting to discuss this.

19. How should we handle parent referrals at this time?

The ARC should still convene and move forward as much as possible. Make decisions if you have enough data. It is not recommended to delay referrals.

20. Can we count time spent speaking with parents about providing services, and how to access platforms and activities as services provided to the child?

No. Services on the IEP are for the child and not the family. IDEA counts minutes with families and minutes with the child separately.

21. Can we get consent for billing of Medicaid services outside of ARC meetings since families may now qualify?

34 CFR 300.154 provides:

(d) *Children with disabilities who are covered by public benefits or insurance.*

(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency—

(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;

(iii) May not use a child's benefits under a public benefits or insurance program if that use would—

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of benefits or insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(iv)(A) **Must obtain parental consent, consistent with § 300.9, each time that access to public benefits or insurance is sought; and**

(B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

§ 300.9 Consent.

Consent means that—

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

Neither 34 CFR 300.154 nor 34 CFR 300.9 require that consent for billing Medicaid be obtained in the context of an ARC meeting. As such, districts should take care to comply with the requirements set forth above but may obtain consent for Medicaid billing outside the ARC meeting.

22. What happens if districts do not meet timelines for evaluations? Will there be flexibility?

The IDEA does not specifically address a situation in which elementary and secondary schools are closed for an extended period due to exceptional circumstances, including a pandemic. In the event of extended school closures, the school district remains responsible for providing a FAPE to its students with IEPs.

If a local school district elects to utilize Kentucky's NTI program to provide educational opportunities to the general student population, then the district also must ensure that students with disabilities have equal access to the same opportunities, including the provision of FAPE.

NTI days are considered instructional days and must be included for purposes of determining compliance with IDEA timeline requirements, including those related to special education and outlined in 707 KAR 1:320 and 707 KAR 1:340.

In situations in which missing a timeline is unavoidable, the ARC must make individual determinations for remedying the noncompliance which, may include compensatory education to make up for any skills that may have been lost because the student did not receive educational benefit.