

**Virginia Department of Education, Office of Early Childhood and Department of
Behavioral Health and Disability Services**
Transition from Early Intervention to Early Childhood Special Education FAQ
Last Updated on May 20, 2020

On March 23, 2020, Governor Ralph Northam, closed all public and private schools through the end of this school year due to this unprecedented COVID-19 pandemic. This FAQ document provides answers to commonly asked questions related to the transition from Early Intervention to Early Childhood Special Education.

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Report to Congress

Q. Does the Secretary of Education report to Congress change the transition requirements from Part C to Part B?

A. On April 27, 2020, the U.S. Secretary of Education, Betsy DeVos, released a report to Congress, recommending the extension of IDEA Part B transition evaluation timelines such that calculation of a timeline obligation shall resume no later than the day on which health and safety factors allow for face-to-face meetings to resume and the toddler is able to be evaluated. The report also recommended authorization for Part C services to continue during the delayed Part B transition evaluation timeline so that a toddler may continue to receive Part C services after a child's third birthday and until a Part B evaluation is completed and an eligibility determination made. These are the Secretary's recommendations for Congress to consider. There has been no change in transition requirements for Part C or Part B at this time. Unless or until Congress acts to implement these recommendations, Part C should continue to send referrals to Part B.

Early Intervention

Q. Is the Virginia Department of Behavioral Health and Disability Services providing early intervention services to infants and toddlers with disabilities during the COVID-19 outbreak?

A. All local early intervention systems continue to operate at some level. Many local systems are no longer providing in-person services or visits. Where appropriate and feasible, telehealth is

being used for eligibility determination, assessment for service planning, initial and annual IFSP meetings, IFSP reviews, and IFSP services (including service coordination). With the exception of initial assessments for service planning, the term *telehealth* includes services delivered by phone (audio) or through videoconferencing (audio-visual) technology. Telehealth delivery of initial assessments for service planning must be conducted using videoconferencing (audio-visual).

School Closures

Q. How long are schools closed?

A. All public and private schools have been closed until the end of the school year.

Q. Are early childhood special education services being provided?

A. If a school closure causes educational services for all students to pause within a school or division, then the school/division is generally not required to provide services to the affected students eligible for special education services during that same period of time. Since schools are now closed through the end of the year, the Virginia Department of Education has advised that school divisions should consider options and ideas to engage students in reading, thinking and learning. Creating such opportunities should be done with careful consideration of providing equitable access and support for a variety of students. Such positive proactive strategies are designed to continue engagement in learning and are not a form of instruction/instructional day.

The Governor has left it up to school divisions to develop a local response during the period of school closure. If a school division does offer instructional services by alternative means to its students, the division will remain responsible for the free appropriate public education (FAPE) of its students eligible for special education services with an individualized education program (IEP). Accessible technology may afford students, including students with disabilities, an opportunity to have access to high-quality educational instruction during an extended school closure, especially when continuing education must be provided through distance learning.

Once school resumes, the school must return to providing special education and related services to students with disabilities in accordance with the student's IEP, or for students entitled to FAPE under Section 504, consistent with any plan developed to meet the requirements of Section 504. Additionally, after an extended closure, divisions are responsible for reviewing how the closure impacted the delivery of special education and related services to students eligible for special education services. Additional specific guidance will be provided to division level special education directors.

Q. Will timelines for special education and will the state or federal calendar be adjusted?

A. At this time, there is no guidance from the U. S. Department of Education's Office of Special Education Programs (OSEP) regarding the waiver of federal timelines related to special education compliance. OSEP has been clear in the past there is no waiver for natural disasters.

OSEP does offer exceptions to meeting the timelines: a) A parent and school division may agree in writing to extend the 65 business day timeline to obtain additional data that cannot be obtained within the 65 business days or b) the parent repeatedly fails or refuses to produce the child for the evaluation. (Parents are not required to produce their child for evaluation during the pendency of any Stay at Home Order.) Further, OCR has provided guidance that “If an evaluation of a student with a disability requires a face-to-face assessment or observation, the evaluation would need to be delayed until such activities can be completed.” Evaluations and re-evaluations that do not require face-to-face assessments or observations may take place while schools are closed, so long as a student’s parent or legal guardian consents. In addition, amendments to IEPs may be made without a meeting, and meetings may always be conducted virtually.

With this in mind, local school divisions are to develop a plan to support maintaining timelines. They are to consider the effectiveness of gathering information in a virtual format and to document clearly if a delay occurs, the nature and extent of the delay, and the plan to move as quickly as possible to prevent any further delay. Local Directors of Special Education or the LEA designee should be consulted for local and school based guidance.

Q. How are initial evaluations completed for preschool parent referrals or for children referred from Part C to Part B?

There may be evaluations able to be completed within the sixty-five business day timeline. Evaluations that do not require face-to-face assessments or observations may take place while schools are closed, as long as a student’s parent or legal guardian consents. Eligibility evaluations always begin with a review of existing data, and on the basis of that review and input from the child’s parents, the team may identify any additional data that is required. If the team determines that existing data is sufficient and no additional data is required, the team may move forward to discuss and determine eligibility. Teams should consider the sources of existing data available to document each of the eligibility criteria questions, including information about the educational impact and need for specially designed instruction. If any required data is not available or cannot be gathered to answer each of the eligibility criteria questions, the team may need to extend the timeline.

The evaluation process begins with reviewing existing data which may include:

- any previous evaluations and information provided by the parents;
- for children referred from Part C, the existing individual family service plan (IFSP) and evaluation data (early intervention reviews the child's IFSP and progress toward outcomes every 6 months based on ongoing assessment information); and
- observations by teachers or providers.

Based on existing data it may be determined there is a sufficient and valid body of evidence to determine eligibility. If not, the team may determine if data may be obtained through remote means, including:

- gathering information in a virtual format for hearing and vision screening;

- for children referred from Part C, interviewing Early Intervention providers, with parent consent;
- completing observations by teachers or providers;
- obtaining social and developmental information from the parents;
- conducting telephonic or virtual interviews with the parents, teachers, or providers; and/or
- conducting other evaluations in a virtual format only if the evaluation procedure has been approved for virtual use, the appropriate licensing agency has approved such process, and the evaluator has been appropriately trained.

When obtaining data through remote means, it is important to be aware of the validity and reliability concerns associated with virtual assessment and to consider that any new assessment data will be gathered during this unprecedented time. Professionals should consider the impact of changes to daily routines and anxiety on children, their families and caregivers, and school personnel. After reflecting on the individual child and family circumstances, professionals may determine it is appropriate to gather data remotely and may gather evaluation components remotely.

Before conducting assessments remotely using standardized and norm referenced measures, professionals should consider a number of factors including:

- whether an assessment can be validly and reliably administered virtually,
- norming and standardization of the instrument,
- technology requirements and availability in the home,
- availability of trained auxiliary examiner in the home for manipulatives/materials, and
- any Virginia licensure regulations and standards of practice including ethical obligations (i.e., training of examiner).

After collecting data through remote means, if the team has enough information to determine the student eligible without further evaluation, it may determine the child eligible and develop an IEP. Even if the LEA isn't able to conduct an in-person evaluation, for children who were referred from Part C, it may be that a recent evaluation was provided that meets the LEA's criteria and is sufficient, along with other information, to enable the team to find the child eligible. However, if the team does not have sufficient information to find the child eligible, part of the evaluation may need to be delayed until the LEA can complete the in-person portion of the evaluation. The team should document this determination, and advise the parent that the evaluation will be completed and the team reconvened when schools are reopened.

Q. What reasons should be documented as the basis for an evaluation being delayed until the evaluation can be conducted in person?

A. School divisions should document that the evaluation was not completed or conducted due to the need for face-to-face assessment and/or observation that were not possible due to the COVID-19 pandemic. Parents are not required to produce their child for evaluation during the

pendency of any Stay at Home Order. If parents later refuse to produce their child for evaluation, school divisions should document the reason for the refusal, including whether the refusal is due to the COVID-19 pandemic.

Transition from EI to ECSE

Q. Does EI continue to send referrals to the Local Education Agency while schools are closed?

A. As indicated in a previous response, all local early intervention systems continue to operate at some level at this time. As long as local early intervention systems have the means (phone, fax, secure email, U.S. mail) to send notification/referral to the local school division and DOE, they are expected to do so. If the local early intervention system has no means by which to send notification/referral, then those circumstances must be documented in the child's EI Record and the notification/referral sent as soon access to a means of transmitting the notification information is accessible.

Q. Does a referral to a Local Education Agency require a parent signature?

A. A referral to a Local Education Agency is done by transmitting each child's name, parent's name(s), address, phone number and birth date to the child's LEA of residence. Sending a referral does not require written consent from the parent. However, a referral or notification will not be completed if a parent disagrees in accordance with the opt-out procedures specified in the Infant & Toddler Connection of Virginia Practice Manual. If a parent does opt-out, the early intervention service coordinator (or other individual) will provide documentation in the child's EI record.

Q. Can EI services be extended to children receiving services past age 3?

A. Both Federal and State Regulations require that an IEP is developed and is implemented by the third birthday of a child participating in Part C programs and found eligible for Part B preschool programs. At this time, there has been no guidance from the U.S. Department of Education offering an exception or indicating that early intervention services may continue past the child's third birthday. However, this question has been submitted to OSEP for clarification.

Q. What happens to children who turn 3 from now to the end of the school year?

A. It should be expected that referrals may continue to be sent from Part C to Part B. Schools should take all reasonable efforts to comply with the requirement to develop the student's plan and may avail themselves of the opportunity to ensure participation at meetings via alternate means, including telephone or videoconference. As noted above, at this time, there is no guidance from OSEP regarding the waiver of federal timelines related to special education compliance. Please see the question on "Timelines" above for more information.

Q. What about Transition Conferences?

A. Since IFSP meetings may continue, the transition conference may also be held. Regulations require the LEA to participate in transition planning conferences arranged by the designated local early intervention agency. Temporary policies in place during the COVID-19 public health emergency allow that IFSP meetings (including transition conferences) may be held via telehealth, by phone or video-conference. In the instance that the local school division representative cannot participate in any of these ways, then the division is to provide written information about early childhood special education services to the family and a contact name and phone number where the family may call with questions about school services.

Q. Are the procedures for referrals to the Local Education Agency (LEA) the same?

A. Many school division personnel are working from home, have modified responsibilities, or may not be working at this time. Similarly, many early intervention personnel are working from home. It is possible that the referral process has or will change. School division and early intervention representatives should communicate regarding their current status and any changes to practices and procedures.

The local early intervention system and LEA must work together to ensure a smooth and timely transition. Therefore, the following must be reviewed and confirmed at the local level:

- The person who sends the notification/referral from the local early intervention system;
- The person who receives the notification/referral at the LEA;
- How the information will be sent to the LEA; and
- Whether the referral information will be sent individually or in batches.

Q. What if a referral from Part C to Part B is late?

A. OSEP recognizes that there are reasons that a referral may be late due to reasons that are beyond the control of the local early intervention system and/or LEA. These include:

- withdrawal of parental consent, the child moved, or any extenuating circumstance;
- the parent failed or refused to make the child available;
- parent refusal to provide consent caused delays in evaluation or initial services (e.g., referred less than 65 business days prior to age of eligibility); or
- child referred to Part C less than 90 days before the third birthday.

During the COVID 19 public health emergency, instances in which the referral is late due to a local early intervention system closing or having no means by which to send the referral are also considered beyond the control of the local early intervention system and the LEA.

If a referral is sent late due to any of these reasons, the local early intervention system is to clearly communicate the reason for the late referral when it is sent.

Communicating with Families

Q. What should Part C service coordinators be communicating to families about the timing of transition during the COVID-19 public health emergency?

A. Families continue to have the option of pursuing transition to preschool special education services through the local school division at age 2 (by September 30) or age 3. To ensure families can make an informed decision when considering whether to transition at age 2, service coordinators need to be aware of and explain to families the status of their local school division. At this time all public and private schools are closed through the end of this school year.