

**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 June 26, 2020

On March 23, 2020, Governor Northam, closed all public and private schools through the end of this school year due to this unprecedented COVID-19 pandemic. On June 9, Governor Northam announced a phased reopening of schools which gradually permits in-person instruction to resume while prioritizing the health and safety of students and staff. 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. Are schools reopening for the 2020-2021 school year?

A. All public and private schools were closed until the end of the 2019-2020 school year. For the 2020-2021 school year, there is a phased reopening plan in place which gradually permits in-person instruction to resume while prioritizing the health and safety of students and staff. Local school divisions have the flexibility to implement plans based on the needs of their localities, within the parameters of the Commonwealth's guidance. Entry into each phase is dependent on public health gating criteria, corresponding with the Forward Virginia plan. Community mitigation strategies (e.g. physical distancing, enhanced cleaning, etc.) will be necessary across all phases to decrease the spread of COVID-19.

Q. Are early childhood special education services being provided?

A. Public school divisions are required to provide new instruction to all students in the 2020-2021 academic year, regardless of phase or instructional formats implemented by the school division. The phased reopening plan allows school divisions to have discretion on how to operationalize within each phase. Below is a summary of the phases and opportunities for in-person instruction. School divisions may be more limited in their in-person instructional offerings than the phase allows.

- **Phase One:** Remote learning is the dominant method of instruction, school divisions may elect to provide in-person instruction for special education programs and child care for working families with strict social distancing
- **Phase Two:** Phase One plus school divisions may elect to provide in-person instruction to preschool through third grade students, English learners, and summer camps in school buildings
- **Phase Three:** School divisions may elect to provide in-person instruction to all students that can be accommodated with strict social distancing measures in place, which may require alternative schedules that blend in-person and remote learning for students
- **Beyond Phase Three:** School divisions will resume "new-normal" operations under future guidance

Regardless of the phase, school divisions will be responsible for the free appropriate public education (FAPE) of its students eligible for special education services with an individualized

education program (IEP), or for students entitled to FAPE under Section 504, consistent with any plan developed to meet the requirements of Section 504.

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 does offer exceptions to meeting the eligibility evaluation 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. The Office of Civil Rights 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.”

With this in mind, local school divisions are to develop a plan to support maintaining timelines. They are to consider the phase, opportunities for in-person administration, the effectiveness of gathering information given any limitations to data collection and 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.

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

A. There are evaluations that may be completed within the sixty-five business day timeline using remote means. Evaluations that do not require in-person assessments or observations may take place as long as a student’s parent or legal guardian consents. The phased reopening plan makes it possible for school divisions to administer in-person assessments. Phase 1 makes allowable, with approval of the superintendent, for students to access the school building for critical instructional needs, such as accessing a secure assessment, if all health, safety and physical distancing measures are adhered to. It is up to each LEA to make a determination whether children may be evaluated in-person in a public school building.

Regardless of whether the LEA administers assessments in-person, LEAs should make a good faith effort to complete relevant components of the evaluation, to the extent practicable, given limitations on school closures and in-person evaluations. Eligibility evaluations always begin with a review of existing data, and on the basis of that review, the team may identify any additional data that is required. If more data is required to determine eligibility, the team may identify data that can be obtained through remote means, or for some divisions, through in-person administration. 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. An evaluation of children referred from Part C is an area where it may be feasible to utilize existing data and if needed, gather data remotely, to determine the presence of a disability and need for special education and related services.

When a referral for a young child or from Part C is received, the following steps may be implemented.

Existing Data: Eligibility evaluations begin with a review of existing data, and on the basis of that review and input from the child’s parents, the team may determine that existing data is sufficient and no additional data is required and 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. Existing data may include:

- any previous evaluations and information provided by the parents;
- developmental information, including videos of the child;
- observations by providers; and
- for children referred from Part C, the existing individual family service plan (IFSP), evaluation data (early intervention reviews child progress every 6 months), and with parent consent, notes from Early Intervention sessions.

Data Obtained through Remote Means: 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 what data may be obtained through remote means, including:

- observations by teachers or eligibility team members;
- social and developmental information from parents;
- telephonic or virtual interviews with parents, teachers, or providers;
- functional activities supported by parents that can be observed and provide data;
- formal assessments administered virtually;
- hearing and vision screening; and/or
- for children referred from Part C, with parent consent, interviewing Early Intervention providers and observing Early Intervention sessions.

When completing an evaluation using remote means, there are several areas of consideration outlined below.

Hearing Screenings: For initial eligibility determination, a hearing screening is required. There may be existing hearing screening data from the child’s pediatrician or for a child referred from Part C, available from Part C, with parent permission. Because of the commonality of Otitis Media and fluctuating conductive hearing loss, it is recommended that if using a previously conducted hearing screening during this time of social distancing, it was completed within the past two months. Use of otoacoustic emissions (OAE) may be used as a screening to determine if a child has a hearing loss is greater than 25–30 decibels (dB) or blockage in the outer or middle ear. A study by Lancaster *et.al.* (2008) suggested that school hearing screenings may be provided by an audiologist using telehealth technology. Prior to conducting hearing screenings using teleservices, professionals should consider the interactive software and other technology requirements, training and support required for the facilitator, and other factors.

Observations: Since an observation of a child less than school age is to be conducted in an environment appropriate for a child of that age, a home observation may be

appropriate. Careful consideration must be given to the activities observed as they will need to indicate if there is an educational impact and need for specially designed instruction. This will require observing a variety of functional and play-based activities and may require completing multiple observations to get a thorough and accurate view of the child. Utilizing an observation form that outlines behavioral markers in such areas as interest, attention to task, interactions, behavior, motor, social-emotional, and communication may help provide structure to the observation.

Formal Assessments: According to the *Evaluation and Eligibility for Special Education and Related Services: Guidance Document*, there are a variety of assessment tools that can be used during an evaluation. These tools should be used to gather information about the child in the functional, developmental, and academic areas. Assessment tools include various types of tests, curriculum-based measures, rating scales, inventories, questionnaires and interviews, and dynamic assessment methods.

There are multiple assessment tools that may be administered remotely in a standardized manner using adult raters for young children. The Center for IDEA Early Childhood Data Systems (DaSy) developed the Norm-Referenced Assessment Tools for Children Birth to Age Five Years with Potential for Remote Administration for Eligibility Determination . It provides a list of standardized and norm referenced measures that may be used remotely. Before conducting assessments remotely, professionals should consider a number of factors including:

- Can the assessment be validly and reliably administered virtually? Assessments must be administered in the manner in which they were developed and validated. While tests can be administered remotely, they become non-standard administration. The ability to report standard scores is impacted as the test is not being given in the way it was normed. The tests can still be very helpful to show strengths and weaknesses and highlight needs, however. If adaptations are made for remote administration, there must be high-quality evidence that such adaptations produce results that are similarly reliable and valid to the face-to-face administration. Any such adaptations should be documented in the evaluation report. Inclusion of strengths and weaknesses rather than scores for non-standard administration is recommended.
- What are the technology requirements and conditions in the home? Ensure the existing technology supports administration of the assessment. Assessments should be administered remotely only on platforms designed for that purpose. Appropriate training to use the technology may be needed for both the examiner and any individual at home who assists the student. Examiners should report the conditions of the assessment situation.
- Will the data be accurate? When obtaining data through remote means, it is important 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. Even when appropriate supports are available, examiners should still identify and report any concerns regarding the student's level of anxiety, disruptions during the testing session, etc.

- What is the availability of an auxiliary examiner in the home and manipulatives/materials? To complete an assessment remotely, a person in the home will need to be available, willing and able to complete assessment activities that are indicated by a member of the evaluation and have the needed materials readily available in the home. Any material substitutions must be reported and considered when determining the validity and reliability of the administration.
- What are the Virginia licensure regulations and standards of practice? Ethical obligations must be fulfilled in addition to any regulatory and best practice requirements.

In-person Administration: It is up to the LEA to make a determination whether children may be evaluated in-person in a public school building. This decision may be made for the entirety of the LEA, should a superintendent not grant approval, or on an individual basis. All decisions should be based on the ability to maintain health and safety guidelines for all involved and address any concerns of the family. Considerations may include the age of the child; health of the child, family members, and evaluator(s); assessment requirements and ability to maintain social distancing; comfort of the student interacting with a person wearing a mask; and the reliability and validity of the assessment administered under these circumstances. In the event LEAs move forward with in-person evaluations, teams should carefully consider the components of the evaluation that can be completed remotely and those that require live administration. Implement health and safety guidelines and work with the family to outline the procedures to be followed from the time the family enters the building until the time they leave.

Evaluation Cannot be Completed: After collecting data through remote (or in-person) 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. 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 LEA should contact the parents in order to:

- Communicate that completion of the evaluation must be delayed until normal operation resumes.
- Develop a plan with the parents that reflects completing the evaluation as soon as possible.
- Determine any interventions and supports that will be provided in the interim.
- Document communication with parents regarding the plan for the evaluation to be completion when normal operations resume. Carefully document all stages of this process, from the receipt of initial consent to what remains for completion in order to finish the evaluation as required.

Parent Concerns: If parents have concerns and/or do not consent to evaluation, divisions are to respect the parents' wishes and address the concerns. Teams may be able to gather data through parent interviews and offer support and strategies for at-home intervention that may be completed by parents. This process can build rapport, provide comfort to students and their families, and results can inform an eventual educational evaluation.

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 an in-person assessment and/or observation that were not possible due to the COVID-19 pandemic. If an in-person assessment and/or observation is offered and the parent is not comfortable and does not produce their child for the 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?

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.

Q. What happens to children who will be turning 3?

A. It should be expected that referrals may continue to be sent from Part C to Part B. School divisions should take all reasonable efforts to comply with the requirement to determine eligibility and develop the child'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 may be working from home or have modified responsibilities. Similarly, many early intervention personnel are working from home. It is possible that the referral contact and/or process has or will change. Changes may occur anytime, including the start of the summer or the new school year. 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 factors 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.