



Presents
KY-SPIN's Update COVID19 -FAQ HCBS
Waiver, KDE FAQ and More
Webinar 4/28/20

KY-SPIN

(Special Parent Involvement Network)
Parent Training & Information (PTI)
Center

Funded by the U.S. Dept. of Education under IDEA since 1988 when Kentucky first received a PTI. KY-SPIN Parent Center provides training, information and support for children and youth with all types of disabilities (birth through 26 years old), their parents, families, and professionals.



We do NOT:
Act as Attorneys

We DO:



- ♥ Empower Families to Effectively Advocate for their Children
- ♥ Provide peer support to help families access needed information and resources
- ♥ Lend a listening ear

Together we can accomplish great things for our children!



None of us have all the answers, we are all working through this pandemic and adjusting as we go.

Kentucky Cabinet for Health and Family Services

COVID-19 Frequently Asked Question
for Medicaid 1915(c) Home and
Community Based Services Waivers
(4/24/20 Update)



When a participant is receiving therapies through telehealth, can a PDS employee bill for providing hands-on services needed to complete the telehealth visit at the same time the telehealth therapy is taking place?

Yes, if the assistance is necessary for the participant and they would be unable to receive the service via telehealth without it. The need for assistance and the type of assistance provided should be documented in the service notes. Participants should be given the option to participate in remote therapies. The service should be person-centered, meaningful, and related to established goals. The service should also occur over a span of time that is appropriate and agreeable to the participant, who should be asked how long he or she wishes to engage in or is able to participate in remotely delivered programming.



[UPDATED: COVID-19 FAQ for 1915\(c\) HCBS Waivers \(4/24/2020\)](#)

Can virtual activities, such as touring attractions or accessing religious services/classes online, be billed as CLS when it furthers goals and objectives on the participant's plan?

Yes, this is allowed if the activity meets the service definition, is person-centered, meaningful, and related to established goals, and the service provider has an active role in facilitating the viewing if necessary. Participants should be given the option to participate in virtual activities, which should occur over a span of time that is appropriate and agreeable to the participant, who should be asked how long he or she wishes to engage in or is able to participate in the activity.

[UPDATED: COVID-19 FAQ for 1915\(c\) HCBS Waivers \(4/24/2020\)](#)



A graphic of a white sign with the words "Safety first" in black, bold, sans-serif font. The sign is pinned to a surface with a red pushpin at the top right corner. The background of the slide features abstract blue geometric shapes on the right side.

Safety first

Can CLS services be provided in the community if practicing social distancing?

No. DMS asks any community-based activities normally provided within CLS be suspended to reduce the risk of spreading COVID-19 and observe state and federal guidance on social distancing. CLS services may be allowed to support a participant with outdoor exercise, if it is completed following social distancing standards including six feet of separation from others (beyond the direct care worker) and is part of visits where the participant is receiving emergent care. Outdoor exercise should not be the primary reason for the visit.

[UPDATED: COVID-19 FAQ for 1915\(c\) HCBS Waivers \(4/24/2020\)](#)

For CLS, are participants/staff allowed to go for walks in the neighborhood or in local parks that are open?

Yes, CLS services may be allowed to support a participant with outdoor exercise, such as taking a walk, if it is completed following social distancing standards including six feet of separation from others (beyond the direct care worker) and is part of visits where the participant is receiving emergent care. Outdoor exercise should not be the primary reason for the visit.



Can PPE be obtained using Goods and Services?

Yes, this is allowed during the state of emergency.



Can Goods and Services be approved without a letter from a doctor during the state of emergency?

Yes, DMS is allowing some items to be provided without a letter during the state of emergency. This includes non-specialized items such as incontinence supplies. Specialized items or items that require a fitting, such as hearing aids, glasses or dental work, would still need a letter to be approved.

[UPDATED: COVID-19 FAQ for 1915\(c\) HCBS Waivers \(4/24/2020\)](#)

If agency staff, such as Direct Support Professionals, are laid off during the state of emergency, do they have to go through the hiring process again when the agency resumes their employment?

DMS does not consider pre-existing employees who were laid off due to the state of emergency as “new hires.” The agency should have their own policies in place for re-introducing returning employees at the end of the state of emergency.

[UPDATED: COVID-19 FAQ for 1915\(c\) HCBS Waivers \(4/24/2020\)](#)



Can a PDS employee provide medication administration to a participant who switched from traditional services to PDS due to the closure of their Adult Day Health Care?

No, as medication administration assistance is considered to be a skilled nursing service. The participant's ADHC is allowed to provide nursing services via telehealth to make sure required medications are taken and/or to remind the participant to refill medication planners.



PDS representatives are supposed to be seen in the home once per quarter. How should this be handled during the state of emergency?

In order to comply with social distancing guidelines and reduce the spread of COVID-19, DMS does not recommend conducting in-person visits at this time. The support broker/service advisor should document that this requirement could not be met due to the state of emergency.



Will participants have their Medicaid financial eligibility extended during the state of emergency?

Yes, there is an automatic 3-month extension for all cases due for renewal of financial eligibility during the state of emergency. For questions about Medicaid financial eligibility, call the Department for Community Based Services (DCBS) at (855) 306-8959. DCBS has extended the hours of operation for its call center due to the state of emergency. Phone lines are open 8:00 a.m. to 4:30 p.m. Eastern Monday through Friday and 9:00 a.m. to 1:00 p.m. Eastern on Saturdays.



If a participant receives a stimulus check, will it be counted as income? If so, will it affect their Medicaid eligibility?

For questions about Medicaid financial eligibility, call DCBS at (855) 306-8959. DCBS has extended the hours of operation for its call center due to the state of emergency. Phone lines are open 8:00 a.m. to 4:30 p.m. Eastern Monday through Friday and 9:00 a.m. to 1:00 p.m. Eastern on Saturdays.



Important COVID-19 Education Guidance Regarding Children/Youth With Disabilities



PRESS RELEASE

U.S. Secretary of Education Betsy DeVos today reaffirmed her long-held position that individualized education must take place for all students, including students with disabilities. As a result, the Secretary is not recommending Congress pass any additional waiver authority concerning the Free Appropriate Public Education (FAPE) and Least Restrictive Environment (LRE) requirements of the Individuals with Disabilities Education Act (IDEA), reiterating that learning must continue for all students during the COVID-19 national emergency.

While not advising any waivers to the core tenets of IDEA, the Department is requesting that Congress consider additional flexibilities on administrative requirements under the Perkins Act, the Rehabilitation Act of 1973, and the IDEA.

Secretary DeVos Reiterates Learning Must Continue
for All Students, Declines to Seek Congressional
Waivers to FAPE, LRE Requirements of IDEA
(4/27/20)

KDE encourages 'good faith effort' in working with exceptional children during NTI Press Release 4/27/20



Kentucky Department of Education
(KDE) Office of Special Education and
Early Learning (OSEEL) Frequently
Asked Questions Related to
COVID-19 (4/21/20)



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.

**Kentucky
Department
of
Education** Office of Special
Education
and Early
Learning [Frequently Asked
Questions
Related to
COVID-
19](#) 4/21/20

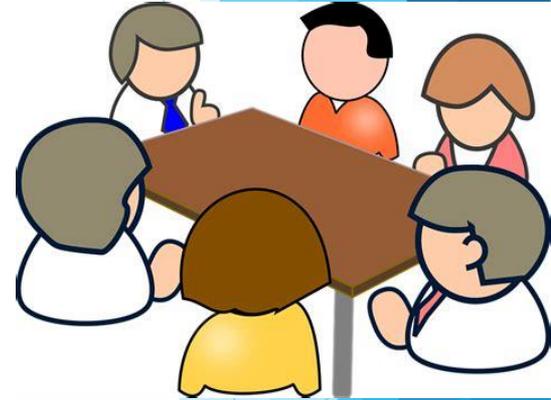
Is going beyond 10 days of non-traditional instruction (NTI) considered a change of placement?

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



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.



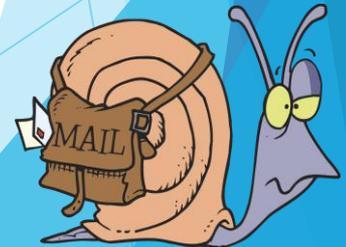
How should districts provide paperwork to families after virtual ARCs?

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.....

Kentucky
Department
of
Education
Office of Special
Education
and Early
Learning [Frequently Asked Questions Related to COVID-19](#) 4/21/20



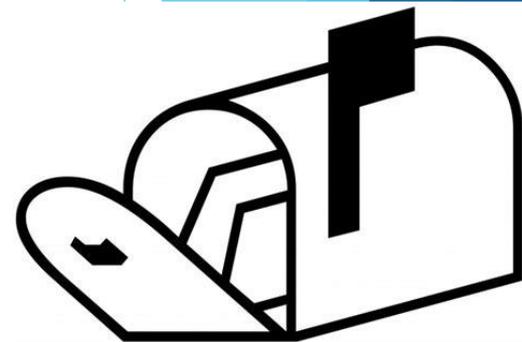
How do we get virtual signatures to get consent to send IEPs electronically?

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.....



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.



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.

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.



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.

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.

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.

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.

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.



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.

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.



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.

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.



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.



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.

Kentucky Protection and Advocacy (P&A) – Non-Traditional Instruction for Students with Disabilities Tips for Parents

1. Communicate
2. Review
3. Document
4. Negotiate
5. File



Additional Education Guidance

- ▶ **Kentucky Department of Education (KDE)** [Non-Regulatory Guidance Regarding the Implementation of the Non-Traditional Instruction Program \(NTI\) for Students with Individual Education Programs \(IEPs\) During Novel Coronavirus Pandemic](#) {Please review additional non-regulatory guidance previously provided by US ED's Office of Special Education Programs. [ED Non-Regulatory Guidance issued in 2018](#) & [Additional information](#)} (March 11, 2020)
- ▶ **U.S. Department of Education:** [Questions and Answers on Providing Services to Children with Disabilities During the COVID-19 Outbreak](#) (March 12, 2020)
- ▶ **U.S. Department of Education:** [Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#) (March 16, 2020)
- ▶ **U.S. Department of Education:** [OCR Short Webinar on Online Education and Website Accessibility Webinar \(Length: 00:07:08\)](#) (March 16, 2020)
- ▶ **Kentucky Department of Education:** [KDE's OSEEL Letter to Parents of Students with IEPs During COVID-19](#) (Reference in the letter: [OSEP Letter to Pergament, December 2013](#)) (March 17, 2020)
- ▶ **US Department of Education:** [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#) (March 21, 2020)



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Please complete our evaluation at the end of
the webinar.

Thank you!