



New Hampshire

Department of Education

Technical
Assistance

Subject: Special Education Requirements to Support Remote Instruction

Legal Reference: Emergency Order #48 Pursuant to Executive Order 2020-04 as Extended by Executive Orders 2020-05, 2020-08 and 2020-09

This Technical Advisory provides further guidance regarding the Governor's Emergency Order #48 pertaining to Special Education Requirements to Support Remote Instruction.

The purpose of Emergency Order #48 is to ensure that all eligible students with disabilities receive Extended School Year services and Compensatory Services they may require in order to receive a Free and Appropriate Public Education ("FAPE") as a result of the impacts of remote instruction and support on their Individualized Education Programs ("IEPs") and that these needs are assessed in a timely manner. The COVID-19 pandemic has created disruptions for all students, but in many cases those disruptions are most acute for students receiving special education services.

1. Paragraph One of Emergency Order #48 does not require that all IEP meetings be held in June, only that that they be completed no later than June 30, 2020.

Emergency Order #48 does not impose a requirement that IEP meetings to assess Extended School Year ("ESY") services must take place between the issuance of the Order and June 30, 2020, nor does it require a duplication of effort if such an IEP meeting has already taken place.

Any IEP team meeting that was held after the transition to remote instruction and support necessitated by Emergency Order #1 and which considered whether a student with a disability required ESY services to receive a FAPE satisfies the requirement of paragraph one of Emergency Order #48. That is, any team meeting held between March 15, 2020 and June 30, 2020, which addressed ESY is in conformity with the Order. A team meeting held prior to March 15, 2020 *may* be compliant, if the school offered the parent an opportunity for an IEP team meeting to reconsider the student's eligibility for ESY (see section 3 below).

2. Paragraph Two of Emergency Order #48 does not require that an IEP meeting be held *within the first thirty days of the 2020-21 school year, but simply no later than 30 days after the commencement of a district's 2020-21 school year.*

As with paragraph one, paragraph two of the Order does not require schools to hold IEP meetings that are redundant to meetings that have already been held. Any IEP meeting held since the commencement of remote instruction and support (i.e., March 15, 2020) that addresses the possible need for Compensatory Services for the 2020-21 school year necessitated by remote instruction and support complies with the requirement of the Order. For schools who have not yet held such meetings, there is no requirement to wait for the start of school to do so. Such meetings can be held before the school year begins, any time up to 30 days after the commencement of the school's school year.

Note that this means that the same IEP meeting—if it addressed both ESY services and the possible need for Compensatory Services for the 2020-21 school year—might satisfy both paragraphs one and two of Emergency Order #48, so long as it addressed the impacts of remote instruction and support. This is true for meetings held both before and after Emergency Order #48 was issued.



New Hampshire

Department of Education

Technical
Assistance

- An IEP team meeting held prior to the advent of remote instruction and support meets the requirement of Paragraph One of Emergency Order #48 if the school offers the parent an opportunity for an IEP team meeting to reconsider whether the child requires ESY in light of the impact of remote instruction and support and the parent declines that meeting offer. In addition, the parent and school may agree to amend an IEP to provide ESY services without convening a full IEP team meeting in accordance with 34 CFR 300.324(a)(4).**

If an IEP team has not yet met and made a determination regarding ESY, an IEP meeting must be held pursuant to the timelines set forth in Emergency Order #48.

If an IEP team meeting was held *prior* to the start of remote instruction and support, which considered ESY services, this meeting may be deemed compliant with Emergency Order #48's timeline for ESY team meetings pursuant to the following conditions: The school has documented communication with the parents regarding whether the child requires ESY services to receive a FAPE as a result of remote instruction and support and the school has informed the parent that if they disagree with the school's determination that ESY services are not required that the parent has the right to request an IEP team meeting by June 30, 2020.

The school may facilitate an amendment without an IEP team meeting pursuant to 34 CFR 300.324(a)(4) by providing the parent with ESY service options and offering the parent the opportunity to propose a different amendment to the IEP. If the parent and the school do not agree to an amendment following the school's offer to facilitate an IEP amendment without a team meeting, then the school must hold an IEP team meeting by June 30, 2020. However, the school may ask the parent to excuse certain team members from such a meeting if their participation is not necessary to determine whether the child requires ESY to receive a FAPE, in accordance with 34 CFR 300.321(e), and may ask the parent to waive the 10-day notice requirement.

For assistance or to address questions or concerns, contact:

Rebecca Fredette

Phone: (603)271-6693

Email: Rebecca.Fredette@doe.nh.gov

June 10, 2020