Extended School Closure Due to COVID-19
Special Education Question and Answer Document
(Revised 4/9/2020)

The department has developed this document to respond to questions that we have received regarding special education requirements during this unprecedented time. We will continue to provide updates as we receive more information. We would also like to encourage districts to provide learning opportunities so students can make educational progress despite the significant disruption of school closures. This includes providing students with disabilities access to these opportunities to the greatest extent possible. We also encourage districts to provide the services specified in the student’s individualized education program (IEP) to the extent possible based on the individual needs of the student during this public health emergency. If some services cannot be provided, the LEA must consider, whether and to what extent, compensatory services are required once the school reopens. These determinations must be made on an individual student basis.

Early Childhood

1. Will the Birth to 3 Program continue to make referrals to the LEA during the school closure order? (Added 3/25/2020)

   Yes. The Birth to 3 Program requirement that the referral for a child who has been determined potentially eligible for special education services be sent not fewer than 90 days before the child’s third birthday remains in effect. (34 CFR §303.209[b]).

2. Will the Birth to 3 Program continue to schedule transition planning conferences (TPCs) during the school closure order? (Added 3/25/2020)

   Yes. The Birth to 3 Program requirement that a transition planning conference (TPC) be held for a child who has been determined potentially eligible for special education services remains in effect. The TPC must be held not fewer than 90 days and not more than 9 months before the child’s third birthday. (34 CFR § 303.209[c]).

   The Birth to 3 Program has the option to conduct the TPC using virtual technology.

   The parent has the option to decline the TPC. The Birth to 3 Program, however, will refer the child as the child has been determined potentially eligible for special education services.
3. Does the evaluation need to be completed by a child’s third birthday during the school closure order if testing has not been started or completed? (Added 3/25/2020)

The LEA may extend the timeline for determining eligibility due to the child not being available for evaluation. When communicating with parents, the LEA should explain and document that the evaluation will be delayed due to the school closure order. The LEA should complete the evaluation as soon as possible after the public health emergency.

When completing the Indicator 12 Reporting, the reason provided for exceeding the third birthday for determining eligibility would be ‘Other' with the description “School closure due to COVID-19.”

4. What should be the projected IEP implementation date if a child referred from a Birth to 3 Program is found eligible for special education? (Added 3/25/2020)

For a child for whom the evaluation has been completed and the district is holding the IEP Team meeting at this time, the projected IEP implementation date would continue to be the child’s third birthday with the understanding that services would not begin until the school closure order is lifted.

Electronic (Signatures and Confidentiality)

1. Should concerns about the confidentiality of pupil records prevent an LEA from providing special education and related services using virtual technologies? (Added 4/2/2020)

The confidentiality provisions of IDEA, FERPA, and Pupil Records Law in section 118.125 of the Wisconsin Statutes do not prohibit the delivery of special education and related services through the use of virtual technologies. In general, the use of a virtual technology simply for the delivery of instruction or services poses a low risk of inadvertent risk of disclosure of personally identifiable information (PII) from student records and that risk can be mitigated by common sense measures. LEAs should keep parents informed of how virtual technology will be used to provide special education and related services, and what steps the LEA has taken to protect PII. LEAs may also consider seeking consent from parents to provide services virtually.

The U.S. Department of Education’s recommendations for safeguarding PII recognize that no system for maintaining and transmitting education records, whether in paper or electronic form is guaranteed safe from every hacker and thief, technological failure, violation of administrative rules and other cases of unauthorized access and disclosure. LEAs meet their obligations under FERPA by considering actions that mitigate risk and are reasonably calculated to Protect PII. See Letter to Tobias (2015).
For further information, please see DPI Guidance on Teleservice Considerations for Related Services during the Current Public Health Emergency.

2. What should IEP teams do about the IEP team meeting signature requirement—particularly for SLD evaluations? *(Added 4/2/2020)*

LEAs that wish to utilize electronic or digital signatures for consent may do so if they choose. The LEA should address important considerations such as whether the parties have access to email and whether there are any potential barriers to address. In the case of an IEP team meeting for the purpose of determining eligibility for special education, if the team determines electronic signatures are accessible, it is reasonable to document that the IEP team met virtually due to the public health emergency and electronically share a copy of the evaluation report with IEP team members. Electronic or digital signatures may be collected for an SLD evaluation to indicate agreement or disagreement with the eligibility determination.

**Evaluation**

1. How do we document that a student is not available for evaluation?

   There is no form to document an exception to the 60-day timeline. LEAs should be sure to communicate the situation to the parent, make a memo in the student’s file, and conduct the evaluation as quickly as possible once school resumes.

**Graduation**

1. Are there special considerations for students who will receive a regular high school diploma at the end of the school term or turn 21 before the end of the 2019-2020 school term? *(Added 4/2/2020)*

   Yes. Graduating with a regular high school diploma or reaching the maximum age of eligibility both result in a termination of a student’s eligibility for IDEA services. Procedurally, the student’s IEP team must meet to review the student’s status and issue the appropriate Notice of Graduation (P-3) or Notice of Ending Services Due to Age (P-4) a reasonable time before the student’s eligibility is terminated. The LEA must also provide the student a summary of performance prior to graduation or ending services due to age. As this is an issue of continued eligibility for services under IDEA, the department recommends LEAs make extra effort to complete these steps in a timely manner.

   Some IEP teams may have already provided a Notice of Graduation or Notice of Ending Services Due to Age to certain students. In these instances, LEAs should consider whether IEP teams should be convened to review the student’s status in light of the extended school closure.
LEAs may, but are not required to, delay awarding a regular high school diploma to a student who has met all graduation requirements, but have not obtained all of their IEP goals. School districts should consider this option if the extended school closing has significantly deprived the student of special education and related services (particularly transition services), and the IEP team determines additional services are appropriate.

LEAs may not deny a student who has met graduation requirements a diploma solely because the student is a student with a disability.

2. When a school board amends district policy to reduce the number of credits required to obtain a high school diploma or alters the coursework required to attain credits, will the diploma awarded to students meeting the amended requirements be considered a “regular high school diploma” under IDEA? (Added 4/2/2020)

Yes. As long as the amended policy applies to all students and meets the state mandated requirements found in section 118.33 of the Wisconsin Statutes, the diploma will be considered a “regular high school diploma” under IDEA. IEP teams should review the status of students nearing graduation in light of amended graduation policies.

IEPs (Documentation, Revisions, and Development)

1. May LEAs use the Notice of Changes to IEP Without An IEP Meeting (DPI Model Form I-10) form to make revisions to an IEP, including changes in placement?

Yes, necessary changes to IEPs, including changes in placement, stemming from the public health emergency may be made without an IEP team meeting using the Notice of Changes to IEP Without An IEP Meeting form (DPI Model Form I-10) if the parent agrees and if it is during the duration of the closure.

2. How should we be writing annual IEPs that we are conducting right now? Should they be written as if it is a normal school schedule? (Added 3/25/2020)

Yes, annual IEPs developed during the period a school is closed due to a public health emergency should be written to address the student’s disability-related needs when school resumes. If the IEP team determines there are additional supports or services the student needs to participate in the alternate mode of instruction offered during the period the school is closed due to a public health emergency those should be included in the IEP. Use the “duration” section in the program summary to indicate the conditions under which these services and supports will be provided. For example, an appropriate duration may be “for the period of time the school is closed due to the public health emergency.”
Parent Involvement

1. What should an LEA do if the IEP team cannot meet in person due to a public health emergency, and a parent does not want to conduct an IEP meeting virtually or via telephone and would rather postpone the IEP team meeting? How should this be documented? (Added 3/20/2020)

When IEP teams are unable to meet in person, LEAs must continue to take steps to ensure parents have the opportunity to meaningfully participate in IEP team meetings through participation via alternative means. However, some parents may not be comfortable meeting virtually or participating by phone. A parent may choose to allow the LEA to proceed with the meeting without them. In that circumstance, LEAs should document the parent’s wishes on the participation section on the cover page of the IEP and proceed with the meeting. However, if the parent makes clear their desire to participate in the meeting but prefers to wait until the meeting can occur in person, it is acceptable to wait to hold the meeting in person once school reopens. The department understands postponing an IEP team meeting may mean not meeting annual IEP timelines.

2. How can districts involve parents in IEP team decisions who do not have electronic access? (Added 3/25/2020)

The LEA must document at least three reasonable attempts using multiple methods to involve the parent. Examples of documentation include detailed records of telephone calls and the results of those calls, and copies of correspondence sent to the parent and any response received. Attempts to contact the parent may be made via email. If a parent does not have access to email, the LEA should attempt to contact the parent by telephone and certified mail. If the LEA is not successful in contacting the parent, the LEA should document the attempts and proceed as intended. The LEA should then notify the parent in writing of any IEP team decisions and offer to reconvene the IEP team when the parent is available to participate.

Placement

1. Is it considered a change of placement when an LEA provides on-line learning to students when the school building is closed to students during a public health emergency? (Added 3/20/2020)

No. LEAs currently offering educational services to all students through alternative means have changed their “mode of instruction.” Current OSEP guidance holds that a change in mode of instruction is not a change in placement requiring IEP team action. Therefore, LEAs do not need to use an I-10 or conduct an IEP team meeting if the LEA is providing on-line instruction to students. At this time, DPI recommends districts notify parents of students with IEPs how special education and related services will be delivered in light of changes to the LEA’s selected mode of
instruction. Changes to IEPs, with or without a meeting, are only required to address a student specific need as it relates to the instruction being provided to the LEA. For example, if a student needs additional supports to access the instruction.

Specially Designed Instruction (Including Distance Learning)

1. When a school is closed due to a public health emergency and no educational opportunities are being provided to students, must special education services be provided? (Revised 4/9/2020)

No. If a school is closed for an extended period of time under a public health emergency (generally more than ten consecutive school days) and learning opportunities are not being provided to students in regular education, then the local educational agency (LEA) is not required to provide services to students with disabilities during the closure. However, due to the extended nature of this school closure, this is not recommended. If an LEA can continue to provide learning opportunities and special education services during this time, they should continue to do so to the greatest extent possible. After the public health emergency has ended, LEAs must consider, on an individualized basis, whether and to what extent, compensatory services are required due to the closure.

2. When a school is closed due to a public health emergency and learning opportunities are not being provided to students in a district, can districts consider providing some special education services to some students? How should districts determine what services can or should be provided?

Yes. While an LEA is not required to provide services to students with disabilities during closures when it is not providing learning opportunities to students, schools can determine, on an individualized basis, whether to provide some services to minimize the long-term impact a disruption in educational services will have on some students with disabilities. When an LEA is aware that due to a student’s unique, disability-related needs, the student will likely experience significant regression due to the absence of the student’s educational program, providing some level of services can mitigate some of the student’s losses and reduce the need for expending excessive time and effort re-teaching the student when school resumes. School closures may prohibit the provision of services on a face-to-face basis, but LEAs should consider whether providing some services using an alternative format would be appropriate. To determine the services to be provided during the school closure LEAs may hold virtual IEP team meetings, or with parent agreement, use the Notice of Changes to IEP Without An IEP Meeting (DPI Model Form I-10) form to make revisions to an IEP.

3. When a school is closed under a public health order and learning opportunities are being provided must students with disabilities have access and should special
education services be provided? (Revised 4/9/2020 based on USDE OSERS Supplemental Fact Sheet, March 21, 2020)

Yes. LEAs must ensure that students with disabilities have equal access to these learning opportunities to the greatest extent possible and that supports provided are appropriately tailored to the individualized needs of the student. This may require using different instructional methodologies or different formats. LEAs should also consider how to continue to provide special education services consistent with the need to protect the health and safety of students and staff. Special education law allows for flexibility in determining how to meet the individualized needs of students with disabilities, and specially designed instruction and related services may be provided, if appropriate, through distance instruction. See USDE OSERS Supplemental Fact Sheet, March 21, 2020. If some services cannot be provided, IEP teams will need to determine on an individualized basis, whether and to what extent compensatory services are required.

4. What if the hours of instruction for all students are not the length of a typical school day (e.g., students are receiving three hours of on-line instruction each day)? (Revised 4/9/2020)

If the hours of instruction for all students are reduced, then the LEA should consider whether the amount of special education and related services should be adjusted in response to the revised school day. During the period of the public school closure, LEAs should consider how IEPs will be implemented during this time, document how and what services are being provided, and communicate this with the student’s parents.

In some cases, the student’s IEP may need to be revised. LEAs may, with parent agreement, use the Notice of Changes to IEP Without An IEP Meeting (DPI Model Form I-10) form to make revisions to the IEP or may hold virtual IEP team meetings.

5. When a school is closed, may IEP team meetings be conducted virtually or through conference calls?

Yes, in order to minimize contact with others, an IEP team meeting may be conducted through virtual technology or through a conference call. All required IEP team members should participate unless appropriately excused.

Specific Learning Disability (SLD) Eligibility Determinations

1. If interventions are needed for the purpose of an SLD evaluation, should district staff deliver SRBIIs virtually during school closures due to the emergency health order? (Added 4/9/2020)
During school closures due to the public health order, if interventions are needed to determine response to intervention for the purpose of an SLD evaluation, district staff should deliver the interventions virtually if the intervention can be delivered with fidelity. There are a limited number of scientific research-based interventions (SRBIs) that can be implemented virtually with fidelity. There are several factors that are beyond the control of the LEA during the public health emergency, which include: lack of staff trained in virtual assessments or virtual interventions, inability to observe students during interventions or instruction, inability to monitor fidelity, and inability to administer probes. If the IEP team can identify an SRBI that meets the standards of the SLD rule and can be implemented with fidelity, it can be considered (SLD FAQ #14, #43). If this is not possible, IEP teams and LEAs should work with parents to determine a timeline to extend the evaluation. If the IEP team determines that it has sufficient information to make an eligibility determination or if the additional information that needs to be collected can be done virtually (such as checklists or questionnaires, parent interviews), the IEP team can meet to determine eligibility.

2. For a student who is receiving interventions as part of an initial SLD evaluation, how should IEP teams address the need to extend evaluation timelines due to disruptions caused by the public health order? (Added 4/9/2020)

The IEP team first considers whether they have sufficient data to make a determination, and, if so, the IEP team should complete the evaluation using the data collected to date. In determining whether an IEP team has enough data, the intervention must be implemented long enough to expect a positive result, and the IEP trend line must be stable (SLD FAQ #43). Due to disruptions caused by the public health emergency, IEP teams may not have sufficient data to make a determination. If there is not enough data, the IEP team may extend the 60-day timeline with written parent agreement by using the M-3 form to document the extension and include a date when the evaluation will most feasibly be completed. Absent parental agreement, the evaluation timeline may be extended because the student is not available due to the public school closure. IEP teams should document the extension with a memo in the student's file in lieu of the M-3 form. It is likely that extensions to complete the evaluation will go into the next school year. Teams should consider which grade level to continue interventions and progress monitoring (SLD FAQ #38, #39).

Timelines

1. What about other timelines such as “15 business days to review existing data” and the annual review of the IEP?

LEAs should make every attempt to comply with the required timelines, including conducting annual IEP team meetings. The review of existing data can take place
with the required IEP team members outside of an IEP team meeting, and input gathered via email or phone call.

Annual IEP team meetings should be conducted through alternative means such as conference calls or virtual technology. However, during a school closure due to a public health emergency, IEP team meeting timelines may be extended only if:

- The LEA has reasonably determined the use of virtual technology is not a suitable method of conducting the required meeting; or
- Information necessary for the IEP team’s deliberation is not attainable due to recommendations of the state or local health departments.

2. Does the 15-business day timeline for notifying the parent regarding the need for additional testing continue in effect during the public health emergency? (Added 3/25/2020)

LEAs should make reasonable efforts to complete the review of existing data within 15 business days. The timeline may be extended if:

- The LEA has reasonably determined the use of virtual technology is not a suitable method for conducting the review of existing data; or
- Information necessary to the analysis is not obtainable due to recommendations of the state or local health departments.
- If an LEA is unable to meet the 15 business day timeline, the LEA should notify the parents of the reason for the delay.

3. Does the requirement that initial and reevaluations must be completed within 60 days of receiving parent consent still apply?

If a student is not available because the school is closed, the timeline may be extended. LEAs should maintain documentation as to why the timeline was extended, and communicate to the parent as to why the evaluation cannot be completed within the 60 days. If the IEP team determines that there is sufficient data to determine eligibility, then the IEP team should proceed to determine eligibility, and it would be appropriate to conduct the meeting through virtual technology or a teleconference.

We understand that information about the COVID-19 continues to change, and updated information will be posted on the DPI COVID-19 web page. The department will continue to update this document to address new questions, as well as when we receive additional information.