

## COVID-19 Special Education Question and Answer Document (Revised 10/8/2020)

The department originally developed this document on March 18, 2020, to respond to questions that we have received regarding special education requirements from Local Education Agencies (LEAs) when school buildings were closed because of statewide orders for COVID-19. At that time, we assumed school operations would be temporarily affected, and schools would resume normal operations for the 2020-21 school year. Unfortunately, the threat of COVID-19 remains. This is an ongoing crisis and we must be responsive and flexible. We reissue this guidance as our knowledge of the pandemic evolves.

The most significant update to our previous guidance is to emphasize that as LEAs use different instructional strategies in response to the ongoing pandemic, they must have in place for the 2020-21 school year an individualized education program (IEP) for each student with a disability that is reasonably calculated to enable the student to make progress both in the general education curriculum and toward their IEP goals that is appropriate in light of the student's circumstances. The IEPs must be implemented as written, and IEP teams may want to consider including in the IEP contingency or conditional plans in case, for example, school or district closures are necessary again during the school year, or for those LEAs beginning the school year providing virtual instruction, when the students are able to return to the school building for in-person instruction.

Decisions about the nature and extent of IEP services must be made based on the unique disability-related needs of the student, in partnership with families with special consideration for the health needs of the student and their families. IEP teams must keep the needs of the student front and center and work creatively to consider the student's present levels, the effects of their disability, their disability-related needs, develop ambitious and achievable goals, develop services to match those goals, and consider the appropriate placement regardless of how the services will be delivered.

As stated in the Office of Special Education Program's (OSEP) [supplemental fact sheet](#), special education law allows for flexibility in determining how to meet the individual needs of students with disabilities, and the determination of how a free appropriate public education (FAPE) is to be provided may need to be different in this time of public health emergency. This guidance will continue to evolve as our knowledge grows, but our commitment to supporting Wisconsin students, families, educators and our LEAs remains steadfast.

Throughout this document, we refer to different strategies LEAs are using to provide services to their students throughout the school year. We are using language from the

[Education Forward](#) guidance: in-person learning, physically- distanced learning, and virtual learning. Virtual learning includes analog (paper/phone/pencil learning), synchronous learning (teaching and learning occurs at the same time or “live”), and asynchronous learning (teaching and learning occurs at different times). Physically-distanced learning includes an educational model that has both in-person and virtual learning (commonly referred to as a “hybrid model”). When thinking through decisions about these different strategies, students with disabilities must be considered equally for opportunities for in-person, physically -distanced, and virtual learning environments and may not be treated differently based on their membership in a protected class.

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## A. Additional Services

1. How should additional services be determined if a student is beginning the 2020-21 school year receiving virtual learning? *(Added 7/23/2020)*

If a student continues to receive virtual learning at the start of the 2020-21 school year because of the COVID-19 pandemic, the district must still make a determination whether the student requires additional services due to the public health emergency school closure order of March 2020. These determinations should be made as soon as possible and no later than within the first six months of the start of the 2020-21 school year. While our additional services guidance discusses making these decisions when a student returns to in-person learning, if the student is not able to return in that way, LEAs and parents should discuss how to gather information necessary to the determination of additional services. This may include utilizing methods that work for progress monitoring in the virtual environment. To determine if additional services are needed, the district should assess the student’s current level of progress towards the student’s IEP goals and in the general

curriculum compared to the student's progress at the time of the closure (or the last available progress report). See [Information Update Bulletin 20.01 Additional Services Due to Extended School Closures](#) for more information.

2. When does the six month timeframe for determining whether additional services are needed begin? *(Added 7/23/2020)*

[Bulletin 20.01](#) states, "determinations about whether and to what extent additional services are required should be made as soon as possible after sufficient data has been obtained to make the determination and no later than the first six months of the 2020-21 school term."

For the purposes of this determination, school term refers to the start of instruction for the 2020-21 school year, whether through virtual or in-person learning.

## **B. Early Childhood**

1. Will the Birth to 3 Program continue to make referrals to the LEA if either the Birth to 3 Program or the LEA is under a state or local health order not to provide in-person learning? *(Revised 8/6/2020)*

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]). The compliance indicator continues to measure the percentage of children referred by the Birth to 3 Program prior to age 3 who are found eligible and have an IEP developed and implemented by their third birthday.

2. Will the Birth to 3 Program continue to schedule transition planning conferences (TPCs) if either the Birth to 3 Program or the LEA is under a state or local health order not to provide in-person learning or limiting the size of group gatherings? *(Revised 8/6/2020)*

Yes. The Birth to 3 Program requirement that a transition planning conference (TPC) be offered to parents for a child who has been determined potentially eligible for special education services remains in effect. With parent approval, the TPC must be held not fewer than 90 days and not more than nine months before the child's third birthday. (34 CFR § 303.209[c]). The compliance indicator continues to measure the percentage of children referred by the Birth to 3 Program prior to age 3 who are found eligible and have an IEP developed and implemented by their third birthday.

The Birth to 3 Program may conduct the TPC using virtual or other distance technology and the LEA must participate in TPCs. (Wis. Stat. § 115.77 [1m][c]).

The parent may decline the TPC and the TPC will not occur. The Birth to 3 Program will refer the child to the LEA as the child has been determined potentially eligible for special education services whether or not a TPC takes place.

3. How are evaluation timelines and reporting for students transitioning from Birth to 3 programs affected during the COVID-19 pandemic? *(Revised 8/6/2020)*

In most cases, IEP teams continue to follow the same timelines and must determine if a student is eligible for special education within 60 days after the LEA receives parental consent to evaluate the student or prior to the child's third birthday, whichever comes first. The compliance indicator continues to measure the percentage of children referred by the Birth to 3 Program prior to age 3 who are found eligible and have an IEP developed and implemented by their third birthday. LEAs must make every effort to conduct the evaluation virtually.

If parents refuse to make their child available for evaluation and do not make their child available more than 30 days prior to the child's third birthday, LEAs may extend the timeline due to the child not being available. When communicating with parents, the LEA should explain the delay and document that the evaluation will be delayed due to their refusal to make the child available. The LEA should complete the evaluation as soon as possible when the parent makes the child available for evaluation. When completing the Indicator 12 Reporting, the reason provided for exceeding the third birthday for determining eligibility would be 'Other' with the description "Parent refused/failed to produce child for evaluation after repeated attempts." If the child is available for evaluation more than 30 days prior to their third birthday, the LEA has sufficient time to complete the evaluation prior to the child's third birthday.

If the student is under a quarantine order or is medically unable to be evaluated, the LEA should inquire as to the future availability of the student. In most cases, quarantine orders are short-term and last no longer than 14 days and LEAs should be able to conduct an evaluation around the availability of the student. In the limited situation where the LEA reviews the child's individual circumstances and the data needed to conduct an appropriate evaluation and determines it is impossible to conduct the evaluation virtually or through alternative means, the LEA can select 'Other' with the description "In-person evaluation needed but not allowed due to COVID-19 quarantine" (or, as applicable, "medical excuse") when completing the Indicator 12 Reporting.

If the LEA is under a state or local health order and cannot conduct the evaluation in-person, the LEA must review the child's individual circumstances. In the limited situation where the LEA reviews the data needed to conduct an appropriate evaluation and determines it is impossible to conduct the evaluation virtually or through alternative means, the LEA can select 'Other' with the description "In-person evaluation needed but not allowed due to COVID-19" when completing the Indicator 12 Reporting.

If the child is not available for evaluation, there is no form to document an exception to the timeline. LEAs should be sure to communicate the situation to the parent, make a memo in the child's file, and conduct the evaluation as quickly as possible.

4. What should LEAs do with evaluations that were delayed because assessments could not be completed during the statewide order closing schools for in-person learning in spring 2020? *(Added 8/6/2020)*

As with all evaluations that may have been delayed during the statewide in-person learning closure in spring 2020, the expectation is that LEAs complete the assessments and conduct the IEP team meeting to determine the child's eligibility as soon as possible and in a timely manner. LEAs and parents must consider the impact of the delay on the student and whether the student needs [additional services](#) as a result of the delay.

If consent for assessments has been received, LEAs should communicate when assessments will take place to the parent and schedule the IEP team meeting, virtually or through other means, if necessary. If consent to conduct assessments has not been received, the district must maintain documentation of at least three reasonable attempts to provide informed consent for assessments. 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 mail.

5. What should be the projected IEP implementation date if a child referred from a Birth to 3 Program is found eligible for special education and how should IEP teams write services for early childhood students during this time? *(Revised 8/6/2020)*

For a child for whom the evaluation has been completed, the projected IEP implementation date would continue to be the child's third birthday. If the child's evaluation is conducted during the summer months, the projected IEP implementation would be the first day of the school term. Keep in mind that the implementation date must be after the parent receives a final copy of the IEP and placement notice.

LEAs are encouraged to proactively discuss a plan for services within the context of the IEP should the district's delivery of services (such as in-person learning to virtual) need to change throughout the school year. For examples on how services could be written, see the IEP section of this document. The LEA must begin providing services once the parent provides consent for initial provision of services.

### **C. 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 learning? *(Added 4/2/2020)*

The confidentiality provisions of the Individuals with Disabilities Education Act (IDEA), the Family Educational Rights and Privacy Act (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 learning. In general, the use of virtual learning poses a low risk of inadvertent disclosure of personally identifiable information (PII) from student records and that risk can be mitigated by common sense measures. LEAs must keep parents informed of how virtual learning 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. May districts use electronic or digital signatures to obtain signatures from parents? *(Revised 8/6/2020)*

Districts that wish to utilize electronic or digital signatures for consent may do so if they choose. The district 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 acceptable, it is reasonable to document that the IEP team met virtually and electronically share a copy of the evaluation report with IEP team members. Electronic or digital signatures may be collected for a Specific Learning Disability (SLD) evaluation to indicate agreement or disagreement with the eligibility determination.

#### **D. Evaluations**

1. How are evaluation timelines followed during the COVID-19 pandemic? How do we document that a student is not available for in-person evaluation? *(Revised 8/6/2020)*

In most cases, IEP teams must determine if a student is eligible for special education within 60 days after the LEA receives parental consent to evaluate the student. There are limited exceptions to the 60-day timeline in Wisconsin Statutes section 115.78(3)(b) and 34 CFR § 300(1)(d), including when the student’s parent repeatedly fails or refuses to make the student available for testing.

If parents refuse to make their child available for in-person evaluation, LEAs must review the student’s individual circumstances. In the limited situation where the LEA reviews the data needed to conduct an appropriate evaluation and determines it is impossible to conduct the evaluation virtually or through alternative means, the

failure to make the student available for testing exception applies. The LEA should document the parent's refusal.

If the student is under a quarantine order or is medically unable to be evaluated, the LEA should inquire as to the future availability of the student. In most cases, quarantine orders are short-term and LEAs should be able to conduct an evaluation around the availability of the student. In the limited situation where the LEA reviews the student's individual circumstances and the data needed to conduct an appropriate evaluation and determines it is impossible to conduct the evaluation virtually or through alternative means, the failure to make the student available for assessment exception applies. The LEA should document these circumstances.

If the LEA is under a state or local health order and cannot conduct the evaluation in-person, the LEA must review the student's individual circumstances. In the limited situation where the LEA reviews the data needed to conduct an appropriate evaluation and determines it is impossible to conduct the evaluation virtually or through alternative means, the LEA may use the failure to make the student available for assessment exception.

If the student is not available in-person for evaluation, there is no form to document an exception to the 60-day timeline. LEAs must communicate the situation to the parent, document the circumstances in the student's file, and conduct the evaluation as quickly as possible once the student is available in-person. The LEA will also need to consider whether the delay in the evaluation will cause the student to need [additional services](#) in the future.

2. How should LEAs handle evaluations that were delayed due to students not being available for in-person instruction during school closures? How should the LEA proceed if it is continuing virtual learning in the fall? *(Revised 8/6/2020)*

The department strongly encourages districts to complete all evaluations as soon as possible. The statewide order closing school buildings to in-person learning expired on June 30, 2020. As of July 1, 2020, each LEA must follow county or local health orders concerning in-person contact. LEAs must determine, on an individual student basis, how to complete assessments in a manner that is safe for the student and staff, and in compliance with local orders. Please see the [COVID-19 Information for School Health Services](#) page for information on infection control and mitigation at the school level. If the assessment cannot be completed in-person at the school, district staff may consider conducting the assessment at an alternate location. LEAs should work with families to determine how best to conduct assessments, complete evaluations, and maintain documentation regarding timeline extensions, if needed. When the evaluation is complete, if the student qualifies for special education, the IEP team must determine whether [additional services](#) are required due to the delay in completing the evaluation.

3. How can data be collected virtually when completing an evaluation if an IEP team determines it cannot safely collect data in person? *(Revised 8/27/2020)*

Informal and formal data collection can be completed in a variety of ways if the LEA is utilizing virtual learning. It is important to document how and when data was collected. For formal data collection tools and standardized assessments, IEP teams must discuss and document whether the results may have been impacted by adaptations to how a data collection tool was designed to be administered (see Evaluation Question 5). It is also important to note how a student performed in a traditional classroom setting, and how they have adapted to a virtual setting.

Possible ways to collect data include:

- Observing the child during a whole class virtual instruction live or recorded;
- Provide parents with a behavioral data collection tool and coach them how to use it;
- Provide student with a behavioral self-monitoring tool and coach them how to use it;
- Present information to the student from the assessment virtually; and
- Conduct parent and teacher checklists, questionnaires, and interviews via phone, mail, or online.

IEP teams must consider multiple sources of data when conducting a comprehensive evaluation.

4. If there is a school closure order or the district is continuing virtual instruction due to COVID-19, do LEAs still have a child find responsibility? (*Added 8/13/2020*)  
LEAs have an ongoing child find responsibility even in light of a school closure order or an LEA continuing virtual instruction due to COVID-19. The LEA must continue to process all special education referrals. School districts are required under state and federal special education law to locate, identify, and evaluate all resident students with disabilities who have not graduated from high school with a regular high school diploma. School district staff who reasonably believe a student has a disability must refer the student for a special education evaluation. The child find obligation is an affirmative one. (34 CFR § 300.111[a][1][i]; Wis. Stat. § 115.77[1m][a]). In light of disruptions in learning related to COVID-19, it will be important to consider each student's circumstances. In the case that there was no suspicion of the disability before the pandemic/school closure or shift to all virtual learning, the student may be struggling in the response to the difficulty of this new situation. The delays observed causing suspicion of a disability may be situational and not a disability. LEA staff should work together to determine appropriate general education supports that can be utilized to ensure the student is accessing instruction. IEP teams will need to analyze all of the student's academic and functional data prior to, during, and after the closure in order for IEP teams to determine if there is an exclusionary factor or other circumstance that is the primary reason for the student's delays or if the delay is due to a disability.
5. Should standardized norm-referenced assessments required for a comprehensive evaluation be completed virtually if they cannot be conducted in person? (*Revised 8/27/2020*)



The results of a student's performance on standardized assessments that were designed and normed in a face-to-face format will likely be impacted when administered under different conditions such as virtual administration. LEAs should first determine if the assessment can be administered in-person and in accordance with safety guidelines from the LEA's local health department. The CDC has issued [Considerations for Schools](#), which contains guidance for using PPE, hygiene, cleaning, disinfecting, signage, and appropriate distancing. See also [COVID-19 Information for School Health Services page](#) for information on infection control and mitigation at the school level.

If it is not feasible to administer assessments or other evaluation materials in accordance with the instructions provided by the publisher and the LEA's local health department, the IEP team may consider if the assessment can be administered virtually. Districts should check to see if the publisher of the assessment has provided any guidance regarding adaptations in administration of assessment, scoring, and interpretation procedures. Any temporary guidelines offered by developers/publishers would not apply once assessments would be able to be conducted as intended in face-to-face format. If the IEP team determines that the assessment will be conducted virtually, they must document the extent to which there were variations in administration from standard conditions and how the results of the assessment may have been impacted by the non-standardized administration. This can be documented on the Evaluation Report (DPI Model Form ER-1) under Section II. "Information from Additional Assessments and other Evaluation Materials."

6. If an evaluation requires one or more standardized norm-referenced assessments, how should scores be interpreted if the assessment is conducted virtually due to COVID 19? *(Added 9/10/20)*

If it is not feasible to administer standardized assessments or other evaluation materials as part of a comprehensive special education evaluation in accordance with the instructions provided by the publisher and requirements from the LEA's local health department, the IEP team could consider administering the assessments virtually and interpret the scores with caution. It is important to remember that standardized assessments are only one component of a comprehensive special education evaluation and are never the only factor used to determine eligibility and need for special education. Multiple sources of data must be considered when determining eligibility including observations, work samples, parent teacher and student interviews and informal and formal formative and summative assessments. Comparing data from before, during and after the school closure or the shift to virtual instruction will also be important for IEP teams to consider.

Standardized assessment scores collected virtually should be interpreted with caution if the assessment does not include normative data for virtual assessment administration, or if other non-standardized practices are used, such as wearing cloth facial coverings during administration. If a standardized assessment is administered without adhering to all standardized procedures, this does not

necessarily mean the assessment is completely invalid. Results can still be reported and interpreted by the IEP team, provided any non-standardized administration activity during the assessment is documented in the evaluation report and the IEP team considers and discusses how the results of the assessment may have been impacted by the non-standardized administration.

For example, the evaluation report could document that an in-person 1 on 1 assessment was administered with both the test administrator and student wearing cloth facial coverings due to required COVID-19 infection mitigation and control: *Based on observations during the assessment, this likely impacted the student's ability to clearly hear and understand the directions and prompts, as well as the test administrators ability to clearly hear and understand student verbal responses. Results of this assessment should be interpreted with caution, as the standard scores are likely an underrepresentation of the student's actual ability.* The IEP team may document the extent to which there were variations in administration from standard conditions on the Evaluation Report (DPI Model Form ER-1) under Section II. "Information from Additional Assessments and other Evaluation Materials."

## **E. Evaluations for Specific Learning Disability (SLD)**

1. If there is a public health emergency order in effect due to the COVID-19 pandemic that closes schools to in-person learning, and interventions are needed for the purpose of an SLD evaluation, should district staff deliver scientific research-based interventions (SRBIs) virtually during the school closure? (*Revised 8/6/2020*)

District staff may deliver the interventions virtually if the intervention can be delivered with fidelity. There are a limited number of SRBIs that can be implemented virtually that meet the standards of the SLD rule and can be implemented with fidelity ([SLD FAQ #14](#) and [#43](#)). Districts should contact their local vendors to see if updates to the SRBI have been made to deliver the intervention with fidelity in a virtual setting. 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](#) and [#43](#)).

If an intervention has been started in-person, but there is not a way to deliver the SRBI virtually with fidelity, then the LEA should consider whether another intervention could be delivered virtually to address the specific area of delay. The data collected during the incomplete intervention cannot be used to determine whether the student demonstrated insufficient progress as defined in the rule, since the intervention was not implemented with fidelity ([SLD FAQ #22](#)). If it is not possible to deliver any intervention virtually, IEP teams and LEAs should work with parents to determine a timeline to extend the evaluation and complete the evaluation as soon as the necessary data can be collected. 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 was or is not available due to a public school closure and the

district is unable to deliver interventions virtually or in-person. IEP teams should document the extension with a memo in the student's file in lieu of the M-3 form.

2. If a public health emergency order is not in effect and a school continues to provide virtual learning due to the COVID-19 pandemic and interventions are needed for the purpose of an SLD evaluation, how should scientific research-based interventions (SRBIs) be delivered? (*Revised 8/6/2020*)

If a district is continuing to deliver instruction virtually due to the COVID-19 pandemic and interventions are needed to determine response to intervention for the purpose of an SLD evaluation, district staff, along with parental input, should consider if a student may be able to receive the SRBIs in-person if they can be done in accordance with safety guidelines from the LEA's local health department.

If in-person delivery is not possible, district staff should deliver the interventions virtually if the intervention can be delivered with fidelity. There are a limited number of SRBIs that can be implemented virtually that meet the standards of the SLD rule and can be implemented with fidelity ([SLD FAQ #14](#) and [#43](#)). Districts should contact their local vendors to see if updates to the SRBI have been made to deliver the intervention with fidelity in a virtual setting. 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](#) and [#43](#)).

If in-person delivery is not safely possible and there is not a way to deliver the SRBI virtually with fidelity, IEP teams and LEAs should work with parents to determine a timeline to extend the evaluation and complete the evaluation as soon as the necessary data can be collected. In this case, 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. It is possible for an intervention to be started one year (e.g. in spring) and be completed the following year. Teams should consider which grade level to continue interventions and progress monitoring ([SLD FAQ #38](#) and [#39](#)) and complete the interventions and the evaluations as soon as an intervention can be safely delivered in-person or virtually with fidelity ([SLD FAQ #14](#) and [#43](#)).

3. If a public health order disrupts interventions for a student in an initial SLD evaluation, how should IEP teams address the need to extend evaluation timelines? (*Revised 8/6/2020*)

The IEP team first considers whether data collected from SRBIs implemented prior to the disruption is sufficient 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 trend line must be stable ([SLD FAQ #43](#)).

Due to disruptions caused by a 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 was or is not available due to a public school closure or the district is unable to deliver interventions virtually or in-person. IEP teams should document the extension with a memo in the student's file in lieu of the M-3 form. It is possible for an intervention to be started one year (e.g. in spring) and be completed the following year. Teams should consider which grade level to continue interventions and progress monitoring ([SLD FAQ #38](#) and [#39](#)) and complete the interventions and the evaluations as soon as the public health order has been lifted or an intervention can be safely delivered in-person or virtually with fidelity ([SLD FAQ #14](#) and [#43](#)).

4. If an intervention was started with a student prior to the school closures in the spring of 2020, would the district have to start the intervention over when in-person learning is allowed? (*Added 8/6/2020*)

This will need to be determined on a case-by-case basis. Considerations would include, how much time was spent in the intervention, how much data was collected during the intervention process, and how the student was responding to the intervention prior to the school closure. If a student was close to completing the intervention, and there is enough data to establish a reasonable trend line, it would be appropriate to use that data whenever school resumes ([SLD FAQ #43](#)). IEP teams should also consider whether interventions can be delivered virtually if it is determined that there is not enough data from interventions (see Evaluations Section, Question 3). In a situation where interventions were not able to be delivered during the closure, as many interventions are not able to be implemented with fidelity in a virtual environment, the IEP team, including the child's parent, will need to review and discuss the available data and determine a plan for completing the evaluation. This may include a written agreement between the LEA and parent to extend the evaluation timeline.

In general, the IEP team should consider the progress monitoring data that was collected during the SRBI prior to the school closure. Rather than considering whether to "start the intervention over," the IEP team could consider a review of data collected to date to determine how to proceed with the interventions and evaluation. This would include data and information related to the school closure, such as information provided by the parent and student input regarding mental health challenges, the student's level of engagement in virtual learning.

5. Should the disruption in learning associated with the school closures in spring 2020 be considered "lack of appropriate instruction" in terms of SLD evaluations? (*Added 8/6/2020*)

The IEP team decision of whether exclusionary factors apply, such as lack of appropriate instruction, is made on a student-by-student basis. The consideration of exclusionary factors requires extensive discussion. As a reminder, exclusionary

factors are applied as the last portion of the SLD rule. Meaning that only after all of the other criteria have been established and met, would the IEP team then have a discussion about exclusionary factors. The SLD rule does not allow for IEP teams to proactively apply exclusionary factors and make predeterminations. The role of the IEP team is to determine whether the exclusion is the primary reason for the insufficient progress and inadequate classroom achievement. The presence of an exclusionary factor alone is not sufficient for finding a student ineligible. The team must have a discussion around how great that factor is relative to the other findings within your comprehensive evaluation.

To determine whether the referred student received appropriate instruction in the area(s) of concern identified, the IEP team reviews both student-specific and grade level information for all students in the same grade as the student being evaluated. The IEP team should consider the progress monitoring data that was collected during the SRBI prior to the school closure. The IEP team must consider a review of existing data to determine how to proceed with the interventions and evaluation. This would include data and information related to the school closure, such as information provided by the parent and student (if appropriate) regarding the student's academic progress and level of engagement in virtual learning.

In addition to progress monitoring once SRBIs resume, the team should consider other components of a comprehensive evaluation to be used in identifying any exclusionary factors that may be present, including the student's behavior and mental health factors due to the school closure. The IEP team should be prepared to consider the SRBI progress monitoring data collected before the school closure in comparison to that collected upon reopening. A decreased rate of progress when school resumes in comparison to the pre-closure progress may indicate the student is experiencing challenges in their transition back to school. Further, performance data before, during, and after the school closure for all students in the same grade level as the referred student may help establish what core instruction was provided or lacking during the school closure period.

If there was no suspicion of the disability before the pandemic/school closure or shift to all virtual learning, the student may be struggling in the response to the difficulty of this new situation. It may be situational, not a disability. LEA staff should work together to determine appropriate general education supports that can be utilized to ensure the student is accessing instruction.

6. When there is an agreement between the parent and IEP team to extend the evaluation timeline due to reasons related to COVID-19 (see Evaluations for SLD Questions 1-4), how will IEP teams avoid languishing or unnecessary delay of completing special education SLD evaluations? (*Added 8/13/2020*)

Neither state nor federal law limits the amount of time for which an evaluation may be extended. However, timeline extensions may not be used to unnecessarily delay special education evaluations. The Office of Special Education Programs (OSEP) has clarified that a district's failure to provide interventions as part of a district's

multi-level system of support cannot be used to deny or delay special education referrals. Although the parent and school may agree in writing to extend an initial SLD evaluation timeline in order to continue interventions and collect related progress monitoring data, a special education referral cannot be denied or delayed to allow a school to implement, or finish implementing an intervention. If an eligibility decision is delayed because data needed by the IEP team were not collected in a manner consistent with the rule or because the LEA unnecessarily delayed the implementation of SRBIs and collection of progress monitoring data following an SLD referral, the LEA may be required to consider whether compensatory services are needed if the student is found eligible (see [SLD FAQ #9, #10, #12, and #13](#)). It will be important for districts to make sure that when a parent and IEP team agree to extend the evaluation timeline due to reasons related to COVID-19 that the IEP team determines a plan to move forward in completing the evaluation within the date agreed upon. If information needed for a special education evaluation cannot be obtained in-person, LEAs are encouraged to consider whether interventions can be implemented with fidelity virtually or safely by other means based on health department guidelines and whether other information needed can be obtained virtually or in an alternate way (see Evaluation Section, Questions 3 and 5; Evaluations for SLD Questions 1 and 2).

7. Can the significant discrepancy method be used to complete SLD evaluations? *(Added 8/27/2020)*

No. Under Wisconsin's SLD Rule, the use of the significant discrepancy method is prohibited. There are a limited number of exceptions when the significant discrepancy method may be used, such as conducting initial evaluations for parentally placed private school students, and students receiving home-based private education. Please refer to our existing [SLD FAQ #71 and #72](#) for further information.

8. If a district is continuing virtual learning due to COVID-19, may progress monitoring be completed virtually when conducting an SLD evaluation? *(Added 9/10/2020)*

Progress monitoring data used by IEP teams must be collected in a manner consistent with the rule. Within the Wisconsin SLD rule, progress monitoring is defined as "a scientifically based practice to assess pupil response to interventions." (Wis. Admin. Code § PI 11.02[10]). Progress monitoring requires the use of scientifically based tools called probes to measure progress. Probes are "brief, direct measures of specific academic skills, with multiple equal or nearly equal forms, that are sensitive to small changes in student performance and that provide reliable and valid measures of pupil performance during intervention." (Wis. Admin. Code § PI 11.02[9]). Districts should consider if progress monitoring can be done in person and in accordance with safety guidelines from the LEA's local health department. If in-person delivery is not possible, district staff should complete progress monitoring virtually if the progress monitoring tool can be implemented in accordance with the progress monitoring standards of the SLD rule. IEP teams should be able to assume data were collected for the purpose of making an SLD eligibility decision in

accordance with state and federal requirements (see [SLD FAQ #27](#) and [#35](#)). If in-person delivery is not safely possible and there is not a way to complete progress monitoring virtually in accordance with the rule, IEP teams and districts should work with parents to determine a timeline to extend the evaluation and complete the evaluation as soon as the necessary data can be collected. In this case, 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 (see [SLD FAQ #9](#)).

9. If a district is continuing virtual learning due to COVID-19, should an IEP team conduct the required academic achievement assessment virtually when conducting an SLD evaluation? *(Added 9/10/2020)*

Wisconsin's SLD rule requires that intensive intervention must occur before inadequate classroom achievement can be assessed and that assessments must be individually administered, norm-referenced, valid, reliable, and diagnostic of impairment in the area of potential specific learning disabilities. Only scores from tests that meet the requirements specified in the SLD rule may be used when considering the inadequate classroom achievement criterion. The LEA must ensure that assessment(s) used to determine inadequate classroom achievement are technically adequate and reflective of the area(s) of concern identified at referral (see [SLD Technical Guide](#), p. 50-51). The IEP team should first consider whether the assessment can be delivered in-person in accordance with the LEA's local health department's guidelines. If in-person administration is not possible, an LEA may consider administering a virtual assessment if the virtual assessment meets the characteristics of the assessment in the SLD rule (see [SLD Technical Guide](#), p. 51). If the academic achievement assessment cannot be safely completed in-person or virtually in accordance with the SLD rule, IEP teams and districts should work with parents to determine a timeline to extend the evaluation and complete the evaluation as soon as the necessary assessment can be completed. In this case, 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 (see [SLD FAQ #9](#)).

10. If a district is continuing virtual learning due to COVID-19 or in-person observations are not safely possible due to COVID-19, may the required observations for an SLD evaluation be completed virtually? *(Added 9/17/2020)*

If SRBIs and/or instruction are being completed virtually due to reasons related to COVID-19 (see [SLD Evaluation](#) Question #2), then an IEP team may consider whether virtual observations can be conducted according to the SLD rule requirements. In addition, if in-person observations are not safely possible during in-person SRBIs or instruction due to COVID-19, then conducting observations virtually may be considered. Wisconsin's SLD rule requires a minimum of two systematic observations related to the area(s) of concern, during routine classroom instruction (general education core instruction/universal instruction) and during at least one of the SRBIs (see [SLD FAQ #55](#)). Although the term "systematic

observation” is not specifically defined by Wisconsin rule, it refers to a method of measuring classroom behaviors related to a student’s learning from direct observation in a natural setting (see [SLD Technical Guide](#) pg. 59-62). If observations cannot be conducted because SRBIs cannot be safely conducted in person and there is not an SRBI that can be delivered virtually with fidelity (see [SLD Evaluation Question #2](#)), then IEP teams and LEAs should work with parents to determine a timeline to extend the evaluation and complete the evaluation as soon as the necessary observations can be completed. In this case, 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 (see [SLD FAQ #9](#)).

## F. Extended School Year (ESY)

1. How should IEP teams address extended school year services for the summer?  
(Revised 8/6/2020)

Extended school year services are special education and related services provided pursuant to an IEP, beyond the limits of the school term, to students who require such services to receive FAPE. In most cases, the purpose of ESY services is to address significant regression during an interruption in services and slow recoupment of skills after services resume. The ESY analysis has not changed, and IEP teams should continue to use their professional judgement and predictive data to consider whether a student requires ESY services. If there is a public health order that does not allow the LEA to conduct in-person learning, ESY services must be provided through virtual learning.

## G. 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 school term?  
(Revised 8/6/2020)

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* (DPI Model Form P-3) or *Notice of Ending Services Due to Age* (DPI Model Form 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 prior to the end of the school term.

If the LEA has already provided a Notice of Graduation and the situation changes, the IEP team may reconvene to review the student’s status.



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 a public health order prohibiting in-person learning 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.

3. What date do you use on the Notice of Graduation if the school year ends earlier than expected? What if the graduation ceremony date changes? *(Added 5/14/2020)*

The *Notice of Graduation* (DPI Model Form P-3) or *Notice of Ending of Services Due to Age* (DPI Model Form P-4) should identify the date on which the student will no longer be eligible under IDEA. This would generally be the last day that schools are in operation for the attendance (either in-person or virtual learning) of students in the school year, other than for operation of summer classes. The date of the LEA’s graduation ceremony is not relevant to these notices.

## **H. IEPs (Documentation, Revisions, and Development)**

1. How should IEP teams plan for the 2020-21 school year given the possibility of additional school closures or changes? *(Revised 10/8/2020)*

The student’s IEP must be developed to provide FAPE, and it must be implemented as written during the 2020-21 school year. If revisions are required, the IEP team should meet to develop an IEP that provides FAPE for the student during the 2020-21 school year. Alternatively, the parent and the LEA may agree to make those changes without an IEP team meeting and these may be documented using the Notice of Changes to IEP Without an IEP Meeting (DPI Model Form I-10) form. If the parent requests an IEP team meeting, an IEP team meeting must be held. The parent must receive an updated copy of the IEP prior to implementation. As a reminder, amendments to the IEP using the Notice of Changes to IEP Without An IEP Meeting (DPI Model Form I-10) form cannot take the place of an annual IEP team meeting.

IEP teams are encouraged to consider and incorporate contingency plans in the

student’s IEP should the district’s way in which instruction is provided change throughout the school year. If contingency plans are included in the IEP, they must still be designed to provide FAPE and be based on the individual needs of the particular student. It is important to keep in mind that regardless of the way in which instruction is provided, the ambitious and achievable goals we want the student to achieve likely remain unchanged. Below is an example of how different learning environments may be documented in the student's special education section. Keep in mind these changes should also be considered for all areas of the program summary—including related services, supplementary aids and services, and program modifications and supports—should the change in learning environment take place:

100% in-person or 100% virtual learning-student receives services in-person but IEP Team anticipates that could change to 100% virtual should it become necessary

Special Education/ Specially Designed Instruction	Amount	Frequency	Location	Duration
Self-advocacy instruction	15 minutes	2x week	Special education resource room	When school is open for in-person instruction
Self-advocacy instruction (virtual, through Google Meet)	15 minutes	2x week	Special education	If the school closes for in-person instruction

Physically Distanced Learning-student receives services both in-person and virtually  
on a rotating schedule

Special Education/ Specially Designed Instruction	Amount	Frequency	Location	Duration
Speech language therapy (in-person session)	15 minutes	2x week	Special education speech therapy room	On days the student attends in-person
Speech language therapy (articulation drills via video chat)	10 minutes	2x week	Special education	On days the student attends school virtually

2. What happens to IEPs if in-person learning is prohibited by a health order? (Added 8/6/2020)

If the student's IEP includes a contingency plan that covers this situation, then the LEA may implement the contingency plan, and provide notice to the parent that they are doing so. The LEA continues to be required to provide FAPE that allows the student to make appropriate progress both in the general education curriculum and toward their IEP goals. LEAs must consider the change on the impact of FAPE and if changes to the IEP are needed, the LEA must conduct an IEP team meeting, or with parent agreement, use the I-10 form, *Notice of Changes to IEP Without An IEP Meeting*.

3. How should IEPs be developed when LEAs offer parents the choice between in-person instruction and virtual instruction? (Added 8/27/2020)

Parents of students with disabilities must have access to the same options as parents of students without disabilities and the LEA must provide FAPE to individual students whether the parent has elected in-person or virtual instruction. A student's IEP must describe the specially designed instruction, related services, and supplementary aids and services necessary for the student to receive FAPE regardless of the mode of instruction selected by the parent.

An IEP team may determine that a student participating in parent choice virtual instruction needs certain in-person services in order to receive FAPE. In those circumstances the IEP team should explore options for providing those services consistent with health and safety orders and guidelines. The services should be documented in the student's IEP with the frequency, amount, location and duration specified as required. See [DPI Bulletin 10.07](#). If the parent refuses to make the student available for any specified in-person services, the LEA should consider and document the parent's concerns related to in-person instruction and other options for addressing those concerns. The LEA should provide the parents a prior written notice documenting the parent's concerns and the LEA's response. The LEA should make clear that it will provide the specified in-person services when the parent makes the child available. Irrespective of the student's participation in in-person services, the remainder of the student's IEP must be implemented as written.

4. What is an I-10? How and when can it be used during the COVID 19 pandemic? (Added 10/8/2020)

Districts may use Form I-10, *Notice of Changes to IEP Without an IEP Team Meeting*, with parent agreement, to make changes to an IEP without reconvening the student's IEP team meeting at any time after the student's annual IEP team meeting. It can only be used when parents and districts agree to make the changes outside of a meeting. The changes made using an I-10 form are for the same dates as the original IEP. The I-10 form and process does not replace the requirement for the IEP team to meet at least annually to develop the IEP and determine the student's placement.

Under typical circumstances, Wisconsin law does not allow districts to use the I-10

to make changes to a student's placement. Changes in placement typically require a meeting of the student's IEP team. However, during the COVID-19 pandemic, the department has allowed the use of an I-10 in situations involving temporary placement changes or clarifications necessitated due to interruptions caused by school closures or changes from in-person to distance learning. For example, districts may wish to create contingency plans within student's IEPs to clarify the amount and frequency of the services a student will be provided if the school must switch between in-person and distance learning due to changing local health conditions. Such a discussion includes changes to the student's placement, but given the public health crisis and with parent agreement, a district could choose to make the changes without holding an IEP team meeting.

Any time a parent does not agree to making changes outside of the meeting, the district must hold an IEP team meeting to consider the changes. An I-10 cannot be used if district staff are unable to contact a parent to obtain agreement.

## I. Parent Involvement

1. What are your suggestions for holding in-person IEP team meetings? *(Added 8/6/2020)*

The IEP team meeting must be scheduled at a mutually agreed upon time and place. (34 CFR § 300.322[a][2]). The LEA and the parent have the flexibility to conduct IEP team meetings using alternative methods of participation, such as video or telephone conferencing. (34 CFR § 300.328). These flexibilities remain in place during the public health crisis so if the parties agree, the department encourages the use of these virtual IEP team meeting practices.

If the virtual option is not mutually agreed upon and there is no state or local public health order prohibiting the team from meeting in person, the department recommends collaborating with local public health authorities to ensure those standards are being met. Other recommendations include using physically distanced practices in conducting IEP team meetings such as holding the meeting in a space large enough to allow for proper physical distancing, or having some members participate virtually to limit the number of individuals present. There are a number of additional suggestions applicable to mitigating health concerns of in-person IEP team meetings in the [School Health Services Infection and Mitigation Plan](#).

2. What should an LEA do if there is a health order prohibiting in-person meetings 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? *(Revised 8/6/2020)*

The LEA and the parent have the flexibility to conduct IEP team meetings using alternative methods of participation, such as video or telephone conferencing. (34 CFR § 300.328). These flexibilities remain in place during the public health crisis. When IEP teams are unable to meet in-person under any circumstances, 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. The LEA should reach out to the parent to discuss why they are not comfortable and address any barriers that may exist. 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, and then hold a meeting with the parent as soon as possible.

3. 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.

## **J. Placement**

1. Is it considered a change of placement for students with IEPs when a district decides to provide instruction in a different way in order to promote student and staff safety, but in-person learning is not prohibited due to a state or local health order? *(Revised 9/10/2020)*

Yes, it is a change of placement if a LEA decides to conduct classes using physically distanced or virtual learning and this change will last longer than 14 consecutive calendar days. LEAs must discuss the continuum of options available and ensure the least restrictive environment (LRE) requirements are met. This discussion may be done through an IEP team meeting, or with parent agreement, through the Notice of Changes to IEP Without An IEP Meeting (DPI Model Form I-10). Form I-10 has traditionally been used to document agreement and provide parent(s) notice of changes to an IEP without an IEP team meeting. Form I-10 also served as prior written notice of the date the changes were agreed upon and when the changes would take place. LEAs that use form I-10 for this purpose do not need to complete an updated placement page (form P-2). However, when the I-10 is used to change placement as permitted during COVID-19, Form P-2 Determination and Notice of Placement must be updated to align with the revisions documented in the I-10 and used as prior written notice of the change in placement. The I-10 takes the place of the IEP team meeting cover page in this instance. If the IEP includes a contingency plan that accounts for changes of placement, then the district may proceed with

implementing the contingency plan following this notice to the parent. An IEP team meeting, an I-10, or a P-2 would not be required each time the mode of instruction changes in accordance with the contingency plan.

2. Is it considered a change of placement when an LEA provides virtual learning to students when in-person learning is prohibited because of a state or local health order? *(Revised 8/6/2020)*

No. It is not a change of placement if the IEP is able to be implemented in the same education environment. For example, if the student was receiving educational services in the general education environment, and continues to do so through virtual learning, it would not be considered a change in placement. Because this would be considered a change in the “mode of instruction” for all students, and there is no continuum of placement options available, LEAs do not need to use an I-10 or conduct an IEP team meeting if the IEP can be implemented as written and FAPE will be provided. LEAs must notify parents of students with IEPs how special education and related services will be delivered in light of changes to the mode of instruction.

3. A district is providing related services in the district or at a neutral site and allowing parents to opt for virtual learning. A parent has opted for virtual learning, but will receive related services in the district or at a neutral site. Who provides transportation for the related services? *(Added 8/27/2020)*

If the IEP team determines that some related services will be provided in-person, then the IEP team determines if transportation is also required as a related service. The district is responsible for providing FAPE, and the student must be able to access their special education and related services. Transportation is included as a related service when the IEP team determines it is necessary for the student to benefit from special education. This decision is based on the individual needs of the student. The public agency must ensure that any transportation as a related service is provided at public expense and at no cost to the parent(s). Parent(s) cannot be required to provide transportation. However, if the IEP team determines a parent will provide the transportation required as a related service and it is documented in the IEP, the parent is entitled to reimbursement for the transportation costs. For more information about transportation requirements, see [Bulletin 18.01](#).

## **K. Progress Reports**

1. What should districts do for students for whom, even after reasonable efforts to find ways of measuring student progress, it was not possible to adequately measure progress toward IEP goals during the time in-person learning was prohibited under a health order? *(Revised 8/6/2020)*

The [additional services bulletin](#) includes steps to follow to measure progress and determine additional services for any students where it was not possible to adequately measure progress towards IEP goals when in-person learning was prohibited in spring 2020. Collect this information and conduct IEP teams to

determine the necessary additional services as soon as you have the necessary information.

Moving forward, LEAs must prioritize monitoring student progress, regardless of the way in which instruction is provided. The expectation for the 2020-21 school year is that FAPE will be provided to students through IEPs reasonably calculated to enable the student to make progress both in the general education curriculum and toward their IEP goals that is appropriate in light of the student's circumstances. LEAs must monitor progress carefully and act quickly to revise a student's IEP, if the student is not making sufficient progress.

2. If in-person services are prohibited under a health order, how should LEAs measure student progress? *(Revised 8/6/2020)*

Progress must be measured and reported as specified in the student's IEP. If this is not possible because of the public health order, the IEP team must meet to discuss this and determine how to measure and report the progress and revise the IEP accordingly, or with parent's agreement, revise using the I-10 form.

## **L. Return to School**

1. What happens if a student needs to be quarantined due to the student or a family member testing positive for COVID-19? *(Revised 8/6/2020)*

If a student with a disability contracts or is exposed to COVID-19 and cannot participate in their current learning environment, the LEA must discuss with the parent whether the student is medically excused or whether the student is available for virtual learning in quarantine. In doing so, the LEA should review their local plan created for addressing COVID-19 related circumstances to ensure a continuity of learning and that all students are equitably served.

If the student is medically excused from school programming, the absence (or the portion of the absence that is medically excused) falls under the LEAs general policy for medical absences.

If the student is available for virtual learning and if the student's IEP has a contingency plan that covers these circumstances, this portion of the IEP should be implemented with notice to the parent. If the IEP does not contain a contingency plan, the LEA, in consultation with the parent, must consider what services such as virtual learning, teleservices, instructional telephone calls, and other curriculum-based instructional activities, should be provided. The LEA should document those alternative services provided.

On the first school day after the 14th calendar day the student has been absent from their current learning environment without a medical excuse, the LEA must discuss the student's needs and the provision of FAPE with the parent, unless the student's IEP includes a contingency plan that can be implemented. LEAs must discuss the

impact of the learning environment on the student's FAPE through an IEP team meeting, or with parent agreement, through the *Notice of Changes to IEP Without An IEP Meeting* (DPI Model Form I-10) form or at an IEP team meeting.

2. What happens if a student cannot return in the fall due to an underlying medical condition or having susceptible family members in the household? (*Added 7/16/2020*)

In some cases, a student's individual medical needs or the medical needs of immediate family members will put them at such an increased risk that there may be concerns about in-person learning even with reasonable precautions in place. Under these circumstances, it is important for the IEP team to meet, discuss the student's situation, and determine the student's placement. We also encourage district staff to include the school nurse as part of the IEP team and/or seek permission from the parent to invite the student's physician to participate in the IEP team discussion. (Wis. Stat. § 115.78[1m][f]). The IEP team must avoid predetermining placement and ensure that a full continuum of placement options are discussed, the thoughts of all IEP team members are considered, and the decision is carefully documented. Services may be delivered in a variety of ways that meet the student's needs, including, but not limited to: virtual learning, teleservice, services provided in the home or at a remote site, or services provided in the school environment. IEP teams could also decide to use physically distanced learning with some virtual learning and other services, such as physical therapy or occupational therapy, be provided in-person with precautions. The IEP Team must make a placement decision based on the student's individualized needs and in accordance with the least restrictive environment requirements, which includes consideration of the health and safety concerns of the student and their family. In making these determinations, information from the parent about student and family health needs should be given significant consideration. If the parent disagrees with the placement decisions, the parent may use the special education dispute resolution options available under state and federal special education law. For more information about the dispute resolution options, see <https://dpi.wi.gov/sped/dispute-resolution>.

3. What if we need to limit the number of students we can serve in each classroom or the amount of mixing classes to preserve social distancing and minimize risk? (*Added 8/6/2020*)

The department recognizes the tremendous difficulty in determining learning environments, given evolving guidance and shifting landscape. When thinking through decisions about learning environments, students with disabilities must be considered equally for opportunities for in-person, physically distanced, and virtual learning environments and may not be treated differently based on their membership in a protected class.

If there are public health limitations on the amount of mixing between cohorts of students, LEAs will need to consider flexible ways of programming to stay within the health requirements while also continuing to provide FAPE and meet least



restrictive environment (LRE) requirements. LEAs may want to provide services in new ways, such as through having related service staff push-in to the general education classroom rather than relying on self-contained models.

4. When a student with a disability is unable to wear a face covering, may the LEA require the student to produce documentation from a medical professional to the IEP team in order to qualify for a medical exemption? *(Added 9/17/2020)*

Disability-related accommodations in an IEP pertaining to facial coverings must be determined by a student's IEP team. The IEP team may not require the student to produce a note from a medical professional in order to identify a necessary accommodation. Notes from medical professionals may provide useful information for an IEP team to consider in making this determination; however, such a note is not required.

For individuals who will be interacting with students who are not wearing face coverings, LEAs should review [the department's guidance on appropriate personal protective equipment](#) under these circumstances.

5. What is the district's responsibility when a student with a disability has periods of extended unexcused absences? For example, what if a student does not register for school or log in to access virtual instruction? *(Added 10/8/2020)*

Districts are required to have policies and procedures in place addressing student attendance for both in-person and distance instruction. For additional information, see [COVID-19 Attendance Recommendations](#). These policies and procedures should be followed consistently for all students, including students with disabilities. Districts are responsible for providing a free, appropriate public education (FAPE) to students with disabilities residing within the district. When a student with a disability does not attend school regularly district staff must make multiple attempts to reach out to families using different methods to contact families to determine why a student is not attending. The district may utilize a variety of staff members, including school social workers, to determine the whereabouts of students. When a district successfully makes contact with a student's family, the district should discuss the student's attendance and schedule an IEP team meeting to address the student's absenteeism in order to ensure the district continues to meet its obligation to provide the student FAPE.

If a district, after diligent efforts, is unable to locate a student or make contact with a family, the district should look to its attendance policies, procedures and practices to determine next steps. Districts should maintain thorough documentation in the student's file about efforts made to locate the student.

## M. Specially Designed Instruction (Including Distance Learning)

1. If a school closes for instruction for one or two days for all students to allow staff to prepare to transition to a new way of providing instruction, similar to a snow day closure, do special education services need to be provided during that closure? *(Added 8/6/2020)*

No. If a school is closed for a short period of time and learning opportunities are not being provided to students in regular education, then the LEA is not required to provide services to students with disabilities during the closure. However, LEAs and parents are encouraged to proactively plan for services should the district's way of providing instruction change throughout the school year.

2. When a school is providing virtual learning, 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 the student's IEP is implemented and that FAPE continues to be provided. 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 virtual learning. 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 additional services are required.

3. 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 virtual learning each day)? *(Revised 8/6/2020)*

LEAs must ensure that the student's IEP is implemented and continues to receive FAPE so that the student may make progress both in the general education curriculum and toward their IEP goals. If the student's IEP includes a contingency plan for virtual learning that is designed to provide FAPE, then the plan may be implemented with notice to the parent. The contingency plan may look different from the program summary for in-person learning. If the IEP needs to be revised to reflect the change in circumstances, an IEP team meeting should be held or 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.

4. May IEP team meetings be conducted virtually or through conference calls? *(Added 3/18/2020)*

Yes, the LEA and the parent have the flexibility to conduct IEP team meetings using alternative methods of participation, such as virtual or telephone conference

conferencing. (34 CFR § 300.328). These flexibilities remain in place during the public health crisis. All required IEP team members should participate unless appropriately excused.

5. What should families do if they are concerned that the way in which instruction is being provided is not a good fit for their student’s learning style? *(Added 5/7/2020)*

Families are encouraged to contact their student’s school and request an IEP team meeting to discuss possible alternatives consistent with public health orders, district and health and safety guidelines. IEP team meetings may be held virtually or on the telephone.

If a parent disagrees with the determination regarding services, parents may utilize any of the three dispute resolution options under state and federal special education law: mediation, IDEA state complaints, or due process hearings. More information on dispute resolution options is available at <https://dpi.wi.gov/sped/dispute-resolution>.

## **N. Timelines**

1. If in-person learning is prohibited due to a public health order, does that impact timelines such as “15 business days to review existing data” and the annual review of the IEP? *(Revised 8/6/2020)*

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, so a health order would likely not affect the ability to review existing data within 15 business days. Likewise, annual IEP team meetings may be conducted through alternative means such as conference calls or virtual technology.

2. If in-person learning is prohibited due to a public health order, does the requirement that initial and reevaluations must be completed within 60 days of receiving parent consent apply? *(Revised 8/6/2020)*

Yes. If there is sufficient data to determine eligibility, then the IEP team should proceed to determine eligibility. It would be appropriate to consider meeting through virtual technology or a teleconference.

In most cases, IEP teams must determine if a student is eligible for special education within 60 days after the LEA receives parental consent to evaluate the student. There are limited exceptions to the 60-day timeline in Wisconsin Statutes section 115.78(3)(b) and 34 CFR § 300(1)(d), including when the student’s parent repeatedly fails or refuses to make the student available for testing.

If the LEA is under a public health order and cannot conduct the evaluation in-person, the LEA must review the student’s individual circumstances. In the

situation where the LEA reviews the data needed to conduct an appropriate evaluation and determines it is impossible to conduct the evaluation virtually or through alternative means, the LEA may use the failure to make the student available exception.

If the student is not available in-person for evaluation, there is no form to document an exception to the 60-day timeline. LEAs must communicate the situation to the parent, document the circumstances in the student's file, and conduct the evaluation as quickly as possible once the student is available in-person. The LEA will also need to consider whether the delay in the evaluation will cause the student to need [additional services](#) in the future.

## O. Equitable Services

1. May a district meet the equitable service requirement by only providing virtual services to parentally placed private school students? *(Added 10/8/2020)*

Parentally placed private school students do not have an individual right to receive some or all of the special education and related services they would receive if enrolled in the public schools. Under the IDEA, a school district is obligated to provide parentally placed private school students as a group an opportunity for equitable participation in the special education services it has determined, after conducting the required consultations, to make available. (34 CFR §§ 300.130-144). How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities is determined during the consultation process. (34 CFR § 300.134[d]). Thus, the LEA could determine special education services would only be provided virtually to private school students through its consultation with the private schools.

*We understand that information about 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.*