

COVID-19 Special Education Question and Answer Document

(Revised 11/4/21)

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 anticipated school operations would be temporarily affected, and schools would resume normal operations in the near future. Unfortunately, new variants continue to appear and the threat of COVID-19 remains. This is an ongoing crisis and we must be responsive and flexible. We continue to reissue and build on this guidance as our knowledge of the pandemic evolves.

We continue to emphasize that as LEAs use different instructional strategies in response to the ongoing pandemic, they must have in place 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 contingency plans in the IEP in case, for example, classroom, school, or district closures are necessary again during the school year.

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. When thinking through decisions about placements, 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.

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. Regardless of the COVID-19 pandemic, or the instructional strategy utilized, students with disabilities remain entitled to FAPE. We have revised this guidance once again in order to include information from the United States Department of Education (USED), Office of Special Education and Rehabilitative Service (OSERS) [Return to School RoadMap](#) (September 30, 2021). Our guidance will continue to evolve as our knowledge

grows, but our commitment to supporting Wisconsin students, families, educators and our LEAs remains steadfast.

Table of Contents

[A. Additional Services](#)

[B. Compensatory or Recovery Services](#)

[C. Early Childhood](#)

[D. Electronic \(Signatures and Confidentiality\)](#)

[E. Equitable Services](#)

[F. Evaluations](#)

[G. Evaluations for Specific Learning Disability \(SLD\)](#)

[H. Extended School Year \(ESY\)](#)

[I. Graduation](#)

[J. IEPs \(Documentation, Revisions, and Development\)](#)

[K. Mitigation Strategies](#)

[L. Parent Involvement](#)

[M. Placement](#)

[N. Progress Reports](#)

[O. Return to School](#)

[P. Specially Designed Instruction\(Including Distance Learning\)](#)

[Q. Timelines](#)

[R. Transportation](#)

A. Additional Services

1. How should additional services be determined if a student has only received virtual learning? *(Revised 9/9/21)*

If a student continues to receive virtual learning, 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 were to be made 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.

B. Compensatory or Recovery Services

1. What is the difference between compensatory or recovery services and additional services? *(Added 4/1/21)*

[Additional services](#) are special education and related services to address a lack of progress or regression during the spring 2020 emergency school closure and any subsequent failure to recoup academic or functional skills when school resumed in September 2020. When considering if a student needs additional services, the IEP team addresses the [impact of schools being closed from March 18, 2020, through June 30, 2020](#). These determinations should have been made within the first six months of the 2020-2021 school year.

Both “compensatory “ and “recovery” are terms used interchangeably, and for the purpose of this COVID-19 Special Education Question and Answer document, refer to special education and related services required for those students who did not receive a free appropriate public education (FAPE) after spring 2020. By the start of the 2020-21 school year, the statewide emergency school closure order was lifted; however due to circumstances related to the pandemic, some students did not receive or were unable to access some of their special education services necessary to receive FAPE. Some students, for example, may not have received a required service during this time. Other students may have been provided virtual services, but the virtual services were ineffective in allowing the students to make sufficient progress towards their IEP goals and in the general education curriculum. In some cases, eligibility for special education was delayed because evaluations were not completed. In all of these cases, LEAs must determine on an individual basis if compensatory or recovery services are required because the student did not receive FAPE for all, or for a portion, of the school year.

2. How do we determine if a student requires compensatory or recovery services? *(Revised 10/21/21)*

IEP teams must consider any adverse impacts of the COVID-19 pandemic on each student with a disability. To determine if a student needs compensatory or recovery services, the LEA may use the analysis outlined in the department’s [Information Update Bulletin 20.01](#). IEP teams should consider the extent to which the student failed to make progress toward their IEP goals and in the general education curriculum due to lack of FAPE. In doing so, IEP teams should review and consider IEP implementation, the services provided and the effectiveness of these services, the student’s present levels of academic achievement and functional performance, data on the student’ progress, including the rates of progress prior to the pandemic, and parent input. The IEP team should also consider the services the student received prior to the pandemic. IEP teams may want to gather input from previous teachers and service providers to gather knowledge of the student’s skills and progress levels before and during the pandemic. The IEP team should also consider whether the student has any new or different needs than those determined prior to

the pandemic. [See USDE OSERS Return to School Roadmap, September 30, 2021, Questions D-1, D-4, and D-5.](#)

If it is determined a student requires compensatory services, the services should be clearly labeled as such in the program summary of a student's IEP and include frequency, amount, location, and duration of the services. The decisions about the extent and duration required must be made on an individual basis, and the services must supplement and not supplant the student's existing educational program.

3. How can compensatory or recovery services be funded? *(Added 4/1/21)*

Compensatory education must be provided by appropriately licensed staff in accordance with a student's IEP at no cost to the family. Compensatory or recovery services are allowable expenses for state categorical aid and Individuals with Disabilities Education Act (IDEA) Part B flow-through grants. Federal stimulus funds available under the Elementary and Secondary Schools Emergency Relief Fund (ESSERF) under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA Act), and the American Rescue Plan Act (ARPA) may also be used. See the department page for more information on [CRRSA funds](#).

4. Can compensatory or recovery services be provided to students with disabilities who have graduated with a regular diploma or reached the age of 21? *(Revised 10/21/21)*

Yes, as local educational agencies are conducting individualized education program (IEP) team meetings for those students who will be graduating with a regular high school diploma or reaching the age of 21, attention must be given as to whether compensatory or recovery services are required due to the effects of the pandemic on the provision of FAPE. In considering the need for compensatory or recovery services, the IEP team should examine the student's progress towards achieving their annual IEP goals. IEP teams should pay particular attention to matters associated with the student's transition to postsecondary education or training, employment, and independent living. These decisions must be individualized. If it is determined that compensatory or recovery services are required, the adult student or guardian should be in agreement as to when they will be provided. The department recommends that these services be provided as soon as possible, but there is no timeline as to when they must be provided.

IDEA Part B formula grants can be used for compensatory or recovery services provided after the student has graduated or reached the age of 21. Federal funds available under the CARES Act (GEER and ESSER I), CRSSA Act (ESSER II) and ARP Act (ESSER III) are earmarked for costs related to special education compensatory or recovery services (regardless of graduation or student age). State special education categorical aid is generated through special education-related positions and specialized transportation, and is not based on individual student-provided services. Licensed individuals providing special education compensatory or recovery services would qualify for categorical aid reimbursement (regardless of graduation or student age). [USDE OSERS Return to School Roadmap, September 30, 2021, Question D-10.](#)

5. May additional services or recovery services be provided during summer months? *(Revised 10/21/21)*

Yes. Additional services or recovery services may be provided during the summer. For some students, summer may be the ideal time to provide these services. For other students, summer may bring a much-needed break from learning and stressors related to the COVID-19 pandemic. Decisions about when to provide these services must be made on an individual basis in a collaborative manner with the parent of the student following meaningful discussion as to the nature and extent of these services needed to address the student's disability-related needs. If the LEA and parent cannot agree on the provision of these services during the summer months, the parent may contact the LEA's Director of Special Education to express their concerns or request a facilitated IEP team meeting, which would allow a neutral third-party to help facilitate further discussion. The parent may also use the other dispute resolution options available under IDEA.

If a parent agrees with the LEA's offer to provide these services during the summer months, and then the student is absent for a prolonged period, the LEA must convene an IEP team meeting to discuss the student's additional or recovery services and determine if it is necessary to modify the program. See [IDEA Complaint Decision 21-007](#). However, if the student still does not attend even after modifications or additional attempts to engage the student have been provided, the LEA is not generally obligated to provide the services at a later date.

6. Must IEP teams consider compensatory or recovery services for students whose transition services or pre-employment transition services may have been disrupted by the COVID-19 pandemic? *(Added 10/21/21)*

Yes. IEP teams should address any need for compensatory or recovery services related to school closure or an inability to fully implement a student's transition plan. If the student is not making expected progress toward their transition goals, the IEP team should revise, as appropriate, the student's postsecondary transition plan to address the lack of progress. [See USDE OSERS Return to School Roadmap, September 30, 2021, Questions F-1 and F-2.](#)

7. What if a parent disagrees with the determination of compensatory services? *(Added 10/21/21)*

If a parent disagrees with the IEP Team's determination of compensatory services, the parent may choose to contact the LEA's Director of Special Education to express their concerns, or request a facilitated IEP team meeting, which would allow a neutral third-party to help facilitate further discussion. This request may be made through [Wisconsin's Special Education Mediation System](#). A parent may also request mediation, file an IDEA complaint, or request a due process hearing. More information about these dispute resolution options may be found on the Department of Public Instruction's [Special Education Team webpage](#).

8. Under what circumstances might compensatory services be necessary? *(Added 11/4/21)*

Provision of compensatory services is an equitable remedy used to address a LEA's failure or inability to provide FAPE to a student with a disability. Some situations that would require an IEP team to consider compensatory services include, but are not limited to, if a special education evaluation and eligibility determination was delayed, if the services provided during the pandemic were not appropriate to meet the student's needs, if the student's IEP was not implemented, or if transition services were not provided. This list is not exhaustive. There may be other situations where the LEA did not or was unable to provide FAPE, thus requiring consideration of compensatory services. [See USDE OSERS Return to School Roadmap, September 30, 2021, Question D-6.](#)

C. 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 8/6/20)*

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 8/6/20)*

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 8/6/20)*

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..

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, LEAs should be able to conduct an evaluation around the availability of the student.

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 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 8/6/20)*

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 contingency plan for services and document it in 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.

6. If a child is below compulsory school age and the parent does not want them to receive in-person services because of an underlying medical condition, how should the LEA proceed? *(Revised 10/21/21)*

In some cases, a child's individual medical needs 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 child's situation, and determine the child's placement while providing FAPE. In these situations, the IEP team should include a team member who, at the discretion of the parent or the LEA, has knowledge or special expertise about, including whether COVID-19 prevention and risk reducing strategies may be needed. Wis. Stat. § 115.78(1m)(f). Individuals that may have this knowledge include the school nurse, school health service staff, or the student's pediatrician or health care professional. The LEA must seek parental consent prior to inviting an individual who is not employed by the LEA. Wis. Stat. § 118.125(2).

If a parent or other member believes that COVID-19 prevention strategies are necessary for the provision of FAPE, the IEP team must consider whether and to what extent such measures are necessary, based on student-specific information, which may include medical or health records, diagnostic or other evaluative data, or information documented by medical or health professionals. If the IEP team determines that COVID-19 prevention and risk reduction measures are necessary in order for the student to receive FAPE (and those prevention measures constitute special education, related services, supplementary aids and service or program modifications and supports for school personnel) they must be included in the child's IEP. Local policies that have the effect of improperly limiting the ability of the IEP team to address the school-related health needs of a student with a disability, of the ability of the group of knowledgeable persons to propose an appropriate placement in the LRE for students with disabilities who have school-related health needs, would be a violation of IDEA. 34 C.F.R. § 300.201. [See USDE OSERS Return to School Roadmap, September 30, 2021, Section C.](#)

The IEP team must avoid predetermining placement and ensure that a full continuum of placement options are discussed, the thoughts of all 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. s 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 LRE requirements, which includes consideration of the health and safety concerns of the student. In making these determinations, information from the parent about student needs should be given significant consideration. If the parent disagrees with the placement decision, 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>.

In Wisconsin, compulsory school attendance begins at age six. Students may enroll in a home-based private educational program (often called "homeschooling") instead of a public or private school under the compulsory school attendance law. Since children under age six are not subject to the compulsory school attendance law, it is not possible to enroll a child in a homeschool program for four- or five-year-old kindergarten. If the child will not reach age six on or before September 1, it is not necessary to submit the paperwork to enroll the child in a homeschool program for that school year. If you have more questions about home-based private education, see <https://dpi.wi.gov/parental-education-options/home-based>. For information on how to report environment codes for students with disabilities, see <https://dpi.wi.gov/sites/default/files/imce/sped/pdf/covid-resources-virtual-earning-ed-env.pdf>.

D. 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 4/2/20*)

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. [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 11/12/20)*

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. For more information, see [OSEP's Procedural Safeguards Q&A, question one](#).

3. How should an LEA respond to a request for education records during periods of school closure? *(Added 4/20/21)*

If the parent asks to inspect and review specific documents from the child's education records while school buildings are closed during the pandemic, the school and parent should work together to identify mutually agreeable options for access to the education records. For more information, see [FERPA and Virtual Learning During COVID-19, March 30, 2020](#).

E. Equitable Services

1. May a district meet the equitable service requirement by only providing virtual services to parentally placed private school students? *(Added 10/8/20)*

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.

F. 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 4/15/21*)

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 compensatory services in the future.

For reevaluations, the IEP Team, based upon a review of existing data, may determine that no additional assessments are required, and may proceed to determine eligibility. The review of existing data must be sufficiently comprehensive to determine whether the student continues to have a disability and their disability-related needs. The review of existing data may occur without a meeting.

2. How can data be collected virtually when completing an evaluation if an IEP team determines it cannot safely collect data in person? (*Revised 8/27/20*)

Informal and formal data collection can be completed in a variety of ways if virtual learning is being utilized. 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 4](#)). 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.

3. 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 8/13/20*)

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 school closure during the pandemic 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 statewide school 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.

4. Should standardized norm-referenced assessments required for a comprehensive evaluation be completed virtually if they cannot be conducted in person? *(Revised 8/27/20)*

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 [Guidance for COVID-19 Prevention in Schools](#), which contains guidance for using PPE, hygiene, cleaning, disinfecting, signage, and appropriate distancing. See [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 or 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."

5. 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 under-representation 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."

G. 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 8/6/20*)

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 student is engaged in virtual learning and interventions are needed for the purpose of an SLD evaluation, how should scientific research-based interventions (SRBIs) be delivered? (*Revised 9/9/21*)

District staff, 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 8/6/20*)

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 a school closure, would the district have to start the intervention over when in-person learning is allowed? *(Added 8/6/20)*

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 [Evaluation Section, Question 2](#)). 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 teams 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 a school closure be considered "lack of appropriate instruction" in terms of SLD evaluations? *(Added 8/6/20)*

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 teams 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 school closure due to the pandemic 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 8/13/20)

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 2 and 4; Evaluations for SLD Questions 1 and 2](#)).

7. If a student is engaged in virtual learning, may progress monitoring be completed virtually when conducting an SLD evaluation? *(Added 9/10/20)*

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](#)).

8. If a student is engaged in virtual learning, should an IEP team conduct the required academic achievement assessment virtually when conducting an SLD evaluation? *(Added 9/10/20)*

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. 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. For more information about the SLD rule, see [Frequently Asked Questions about Making SLD Eligibility Determinations](#).

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](#)).

9. If a student is engaged in virtual learning or in-person observations are not safely possible due to COVID-19, may the required observations for an SLD evaluation be completed virtually? *(Added 9/17/20)*

If SRBIs or instruction are being completed virtually (see [SLD Evaluations, 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 or 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](#) pp. 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 Evaluations, 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](#)).

H. Extended School Year (ESY)

1. How should IEP teams address extended school year services? *(Revised 10/21/21)*

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. ESY determinations are made through the IEP team process, and must be individualized and based on the specific needs of the student. 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. IEP teams should continue to use their professional judgement and predictive data to consider whether a student requires ESY services. ESY services may be provided during the normal school year, during school breaks, or vacations where appropriate to meet the student's needs. If a public health order does not allow the LEA to conduct in-person learning, ESY services must be provided through virtual learning. A student may receive both ESY and compensatory services. [See USDE OSERS Return to School Roadmap, September 30, 2021, Questions E-1 and E-2.](#)

I. 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 8/6/20)*

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 compensatory 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 4/2/20)*

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 5/14/20)*

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.

J. IEPs (Documentation, Revisions, and Development)

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

The student’s IEP must be developed to provide FAPE and it must be implemented as written. If revisions are required, the IEP team should meet to develop an IEP that provides FAPE for the student. 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. In order for the LEA to provide prior written notice, the parent must receive an updated copy of the IEP prior to implementation. If the LEA makes the option available, the parent may choose to receive the prior written notice, procedural safeguards, and a finalized copy of the IEP through email. 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.

To help ensure the continued provision of FAPE, the IEP team can develop a contingency plan for when circumstances require a change from in-person learning. Developing a contingency plan as a proactive measure gives the LEA and parents an

opportunity to reach agreement as to what circumstances would trigger the use of the student’s contingency plan and the services that would be provided. LEAs should prioritize equity, exercise flexibility, think creatively, collaborate with parents and comply with IDEA and applicable civil rights laws to respond to a student’s emerging needs. If a contingency plan is included in the IEP, it must be designed to provide FAPE and be based on the individual needs of the student. Having one contingency plan for all students across a district does not account for the unique disability-related needs of each student. [See USDE OSERS Return to School Roadmap, September 30, 2021, Question A-3.](#)

It is important to keep in mind that regardless of the way in which instruction is provided, a student’s ambitious and achievable goals will likely remain unchanged. Below is an example of how different learning environments may be documented in the student's specially designed instruction program summary. These changes should be considered for all areas of the program summary—including specially designed instruction, 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 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 or if the student is quarantined for more than x days.

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 or if the student is quarantined for more than x days.

2. What happens to students receiving IEP services if in-person learning is prohibited by a health order? *(Added 8/6/20)*

If the student’s IEP includes a contingency plan that covers this situation, the LEA may provide notice to the parent that they will implement the contingency plan and begin 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*. Use of the I-10 form cannot take the place of the annual IEP team meeting, and the parents must be provided a copy of the updated IEP.

3. If an LEA offers a virtual option, must this option be available to students with disabilities? *(Revised 10/21/21)*

Yes. School districts must ensure that students with disabilities have the same opportunity to participate in the virtual option as students without disabilities. A public school may not deny participation in or deny the benefits of any curricular activity to a student because of the student’s disability. See Wis. Stat. § 118.13; 34 CFR § 104.4. Therefore, school districts must ensure sufficient resources are available to provide students with disabilities needed special education services and supports virtually. School districts must also ensure policies or procedures concerning virtual options do not have the purpose or effect of denying students with disabilities the right to participate in or benefit from virtual programming. Virtual programs/options that are not charter schools must still meet requirements under state law, including the requirements under Wis. Stats. § 121.02 (School

District Standards). The requirements in Wis. Stat. chs. 115 to 121 do not apply to charter schools except when explicitly noted.

Students with disabilities participating in the virtual option also have educational rights and protections afforded under the Individuals with Disabilities Education Act (IDEA). These rights cannot be diminished or compromised. This includes the right to receive a free appropriate public education (FAPE), which includes receiving all supports and services the IEP team determines are necessary to address the student's individualized disability-related needs. See [Dear Colleague Letter OSERS/OSEP August 5, 2016](#) and [USDE OSERS Return to School Roadmap, September 30, 2021, Question G-2](#). FAPE for students participating in the virtual option for the 2021-22 school year must be determined through the IEP team process and must be based on the individual student's disability-related needs. Participation in the virtual program cannot be contingent upon a parent agreeing to a reduction of services. Rather, FAPE must be provided regardless of the location and mode of instruction.

Each student's IEP team must determine whether participation in the virtual program is appropriate to meet the student's disability-related needs. If so, whether special education services will be provided virtually or in person. If in-person services are required, IEPs must also consider whether transportation is required as a related service. For some students, the IEP team might determine the virtual option is not appropriate given the student's disability-related needs. For other students, special education services and supports can be provided entirely through the virtual option. A district's virtual program must have sufficient resources to allow the IEP team to make these decisions.

The department has developed a resource titled [Online and Blended Learning for Schools and Educators](#) to assist districts when considering virtual learning options.

4. May an I-10 form be used to make changes in placement? *(Revised 9/07/21)*

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. 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.¹ The changes made using an I-10 form are for the same dates as the original IEP. A copy of the I-10 must be given to the parents before the changes are implemented in order to provide prior written notice. 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.

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.

¹ September 2022: Please note that with the beginning of the 2022-23 school year, the I-10 form may no longer be used for changes in placement. An IEP team meeting is required for changes in placement.

5. Are students residing in jails and detention centers entitled to a free appropriate public education (FAPE) during a pandemic? *(Added 5/13/21)*

Students residing in jails and detention centers are entitled to FAPE during a pandemic. Generally the LEA where the jail or detention center is located is responsible for ensuring students residing in such facilities receive FAPE. When a jail or detention center administrator has adopted pandemic-related restrictions that prevent in-person instruction, the responsible LEA should work with the administrator to provide virtual instruction. If virtual instruction cannot be provided or the student cannot receive FAPE through virtual instruction alone, the responsible LEA through an IEP team meeting or through the use of the I-10 form must make an individualized compensatory services determination for each student once the administrator lifts the restriction and provide any compensatory services deemed necessary.

LEAs receiving students released from jails or detention centers should also make reasonable efforts to determine whether such students missed instructional services as a result of pandemic-related restrictions while in the jail or detention facility. In instances where a student did miss instructional services, the LEA through an IEP team meeting or through the use of the I-10 form must make an individualized compensatory services determination and provide any compensatory services deemed necessary. For more information on determining additional services, see [DPI Information Update Bulletin 20.01](#).

6. How should an IEP team address the adverse impact of educational disruptions caused by the COVID-19 pandemic when developing, reviewing or revising an IEP? *(Added 10/21/21)*

When developing, reviewing or revising a student's IEP, the IEP team should consider any adverse impacts of the COVID-19 pandemic on the student's access, engagement and progress towards their IEP goals and in the general education curriculum. This includes updating the student's present levels of academic and functional performance, identification of any new needs the student may have whether or not commonly related to the student's disability category, and revising the student's IEP to address any regression or lack of progress.

With so many students receiving special education and related services through a variety of instructional methodologies during the last two school years it is critically important that the IEP team also consider any adverse impacts of the COVID-19 pandemic on each student with a disability. This includes a discussion of whether the student may have any new or different needs than had been determined prior to the pandemic including, but not limited to communication needs, access to assistive technology devices and services, secondary transition, behavioral needs related to increased stress, anxiety, depression, fear, or physical isolation or considerations if the student is experiencing post-COVID conditions. The IEP team must also consider any mitigation efforts needed for the student to receive FAPE. [See USDE OSERS Return to School Roadmap, September 30, 2021, Section C, D, and F.](#)

K. Mitigation Strategies

1. If a student with disability has one or more underlying medical conditions that put them at increased risk of severe illness due to COVID-19, how should the LEA proceed? *(Added 10/14/21)*

The provision of FAPE in the LRE for some children with disabilities may require that the IEP address appropriate preventative and risk-reducing strategies, such as wearing masks or other personal protective equipment, and sanitizing; or, when necessary, avoiding shared use of personal and educational items, such as markers, rulers, and classroom materials. See 34 C.F.R. § 300.116(d).

When discussing the provision of FAPE in each student's unique circumstances, the IEP team should include a team member who, at the discretion of the parent or the LEA, has knowledge or special expertise about the child, including whether COVID-19 prevention and risk reducing strategies may be needed. Wis. Stat. § 115.78(1m)(f). Individuals that may have this knowledge include the school nurse, school health service staff, or the child's pediatrician or health care professional. The LEA must seek parental consent prior to inviting an individual who is not employed by the LEA to the Meeting. Wis. Stat. § 118.125(2).

If a parent or other member believes that COVID-19 prevention strategies are necessary for the provision of FAPE, the must consider whether and to what extent such measures are necessary, based on student-specific information, which may include medical or health records, diagnostic or other evaluative data, or information documented by medical or health professionals. If the determines that COVID-19 prevention and risk reduction measures are necessary in order for the student to receive FAPE (and those prevention measures constitute special education, related services, supplementary aids and service or program modifications and supports for school personnel) they must be included in the student's IEP. Local policies that have the effect of improperly limiting the ability of the IEP team to address the school-related health needs of a student with a disability, or to determine an appropriate placement in the LRE, would be a violation of IDEA. 34 C.F.R. §300.201. [See USDE OSERS Return to School Roadmap, September 30, 2021, Section C.](#)

For more information on a student cannot return in the fall due to an underlying medical condition, see [Question O-2](#).

2. 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 9/17/20)*

Disability-related accommodations in an IEP pertaining to facial coverings must be determined by a student's IEP team. If a student with a disability has difficulties wearing a mask, the IEP team should consider what supports or accommodations the student requires. These might include, for example, another type of facial covering or additional breaks with wearing a mask. 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.

3. What if a district's facial covering policy does not address a student's disability-related need? *(Added 9/30/21)*

Some students are immunocompromised or for another reason are particularly vulnerable to COVID-19. Under the IDEA, students with IEPs are entitled to receive a FAPE in the LRE. Additionally, students with disabilities are entitled to reasonable accommodations under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. Whenever there are questions about the impact of a school policy or practice on a student with a disability, the IEP team should reconvene as soon as possible to consider and determine the services and accommodations the student requires. Each student's IEP must include the special education services the student needs in order to enable the student to advance appropriately toward their annual IEP goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with their nondisabled peers. If the IEP team determines a student requires an accommodation such as staff working in close proximity to the student to wear facial coverings, it should be included in the student's IEP and provided as described. Likewise, if a student with a disability has difficulties wearing a mask, the IEP team should consider what supports or accommodations the student requires. These might include, for example, another type of facial covering or additional breaks with wearing a mask. Just as with any accommodation or protective measure, staff are required to comply with the requirements of the IEP. Similarly, just as they might when creating accommodations to any district policy or practice for an individual student, districts may have to take precautions in certain areas or classrooms to protect the student. For example, if a student has a severe nut allergy, a district might create "nut free zones" in the school and classrooms. [See USDE OSERS Return to School Roadmap, September 30, 2021, Section C.](#)

4. How should a district proceed if there is a state or local law, rule, regulation, or policy that prohibits or limits COVID-19 prevention and risk reduction strategies in an educational setting and is inconsistent with IDEA's requirement to ensure a continuum of educational placements related to placement in the LRE? *(Added 10/21/21)*

The IDEA was created, in part, to eliminate the exclusion of students with disabilities from public school classrooms.

LEAs must make available a continuum of alternative placements to meet the needs of students with disabilities consistent with their IEPs. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 C.F.R. § 300.115.

State or local laws, regulations, rules, or policies related to IDEA must conform to its purposes. Therefore, they may not result in the exclusion of, or prevention of, an eligible student with a disability from being educated in the regular classroom with appropriate supplementary services and with their nondisabled peers when such educational placement is appropriate to that student's individual needs. State or local laws, regulations, rules, or policies that prevent or improperly limit IEP teams from making individualized decisions under IDEA or that effectively prohibit the provision of needed supplementary aids and services generally would not conform to the purposes of IDEA. IEP teams must be able to appropriately address the in-person school-related health needs of a student with a disability with underlying medical conditions, including using COVID-19 prevention and risk reduction strategies. [See USDE OSERS Return to School Roadmap, September 30, 2021, Section C.](#)

L. Parent Involvement

1. May IEP team meetings be conducted virtually? *(Revised 10/21/21)*

Yes. 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. [See USDE OSERS Return to School Roadmap, September 30, 2021, Question B-3.](#)

The IEP team meeting must be scheduled at a mutually agreed upon time and place. 34 CFR § 300.322(a)(2). 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 10/21/21)*

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. [See USDE OSERS Return to School Roadmap, September 30, 2021, Section C.](#) 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 and are uncomfortable attending in-person IEP meetings? *(Added 3/25/20)*

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.

M. Placement

1. Must a student's IEP team consider least-restrictive environment factors when making placement decisions in light of COVID-19 considerations? *(Added 10/21/21)*

Yes. In all cases where a student's IEP team is considering placing a student in a more restrictive environment to address COVID-19 considerations the team must first consider whether education in regular classes can be achieved satisfactorily with the use of supplementary aids and services. Restrictive environments include those environments where the student does not have meaningful opportunities to be educated and interact with nondisabled peers. [See USDE OSERS Return to School Roadmap, September 30, 2021, Section G.](#)

2. 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 9/10/20)*

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 is used to document agreement and provide parent(s) notice of changes to an IEP without an IEP team meeting. Form I-10 also serves as prior written notice of the date the changes were agreed upon and when the changes take place. 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. Use of the I-10 form cannot take the place of the annual IEP team meeting.

3. 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 8/6/20)*

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.

4. What steps must a LEA take when a student is receiving services in an alternate setting as a result of a disciplinary change of placement and the alternate setting becomes unavailable due to COVID-19 restrictions? *(Added 11/12/20)*

The LEA has an obligation to provide FAPE to students receiving services in an alternate setting as a result of a disciplinary change of placement. The IEP must be reasonably calculated to enable the student to make appropriate progress both in the general education curriculum and toward the annual IEP goals. If the alternate setting becomes unavailable, the LEA must ensure the student’s IEP team meets to determine a setting where the services can continue. IEP teams may consider virtual settings as appropriate.

5. Must in-person special education services be provided in the home during the COVID-19 pandemic if the student is unable to access services virtually or outside the home? *(Revised 10/21/21)*

Yes. Each local educational agency (LEA) must ensure that a [continuum of placements](#) is available to meet the needs of students with disabilities for special education and related services. Homebound services are a part of the continuum. A student with a disability who requires in-person specially designed instruction and related services in the home in order to make progress towards their IEP goals and in the general education curriculum, must receive in-person homebound services as part of a free and appropriate public education (FAPE). [See USDE OSERS Return to School Roadmap, September 30, 2021, Question G-2.](#)

A district may not have a policy that precludes a student who requires in-person services from receiving FAPE such as, all students who are homebound receive only virtual instruction (or packets). Whether a student requires in-person instruction is an individualized determination made by a student's IEP Team. Working in conjunction with local and state health department recommendations and absent health department orders forbidding in-home services, the district must determine how to provide in-person homebound services, if required, during the pandemic while ensuring the safety of students, families and staff. This may include such considerations as the location of services (a room separated from other family members, outdoor setting when possible, etc.) and provision of proper personal protective equipment, to name a few.

For more information, please refer to the [Return to School section, Questions 1 & 2.](#)

N. Progress Reports

1. How should progress be monitored if virtual instruction is provided? (*Revised 9/9/21*)

FAPE must 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 prioritize monitoring student progress, regardless of the way in which instruction is provided, and act quickly to revise a student's IEP, if the student is not making sufficient progress.

The department has developed a [resource](#) to guide IEP teams in measuring progress when moving between in-person, hybrid, or virtual learning environments.

2. If in-person services are prohibited under a health order, how should LEAs measure student progress? (*Revised 8/6/20*)

Progress must be measured and reported as specified in the student's IEP. If this is not possible because of a 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.

O. Return to School

1. What happens if a student receives IEP services in-person and needs to be quarantined? (*Revised 9/30/21*)

If a student with a disability contracts or is exposed to COVID-19 and cannot participate in their current learning environment, 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. School districts should carefully monitor student absence and consider the impact on progress and performance and determine how to ensure the continued provision of FAPE in order for the student to continue to progress and meet the annual goals in their IEP. Whether an interruption in special education services constitutes a denial of FAPE is an individual determination that must be made on a case-by-case basis. Letter to Clarke, 107 LRP 13115 (OSEP 2007). If the student is absent from school for a prolonged period of time, it may be appropriate for the LEA to reconvene the IEP team to determine if it is necessary to revise the student's IEP or placement. Letter to Balkman, 23 LRP 3417 (OSEP 1995). If the quarantine lasts more than 14 consecutive calendar days, the IEP team must meet to discuss the change of placement and impact of the quarantine on FAPE and how to provide services ([Question M-1](#)).

If the student is available for learning (virtual or other) and if the student's IEP has a contingency plan addressing quarantine, this portion of the IEP must be implemented with notice to the parent. If the IEP does not contain a contingency plan specific to the situation, the LEA, in consultation with the parent, must promptly 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. If the change in services will last less than 14 consecutive calendar days, a change in placement has not taken place and the IEP does not need to be updated. The department strongly suggests the IEP team add contingency plans to the IEP to address the need for future quarantine.

2. What happens if a student cannot return in the fall due to an underlying medical condition? (*Revised 10/21/21*)

In some cases, a student's individual medical needs 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 while providing FAPE. In these situations, the IEP team should include a team member who, at the discretion of the parent or the LEA, has knowledge or special expertise about, including whether COVID-19 prevention and risk reducing strategies may be

needed. Wis. Stat. § 115.78(1m)(f). Individuals that may have this knowledge include the school nurse, school health service staff, or the student's pediatrician or health care professional. The LEA must seek parental consent prior to inviting an individual who is not employed by the LEA. Wis. Stat. § 118.125(2).

If a parent or other member believes that COVID-19 prevention strategies are necessary for the provision of FAPE, the must consider whether and to what extent such measures are necessary, based on student-specific information, which may include medical or health records, diagnostic or other evaluative data, or information documented by medical or health professionals. If the determines that COVID-19 prevention and risk reduction measures are necessary in order for the student to receive FAPE (and those prevention measures constitute special education, related services, supplementary aids and service or program modifications and supports for school personnel) they must be included in the student's IEP. Local policies that have the effect of improperly limiting the ability of the to address the school-related health needs of a student with a disability, of the ability of the group of knowledgeable persons to propose an appropriate placement in the LRE for students with disabilities who have school-related health needs, would be a violation of IDEA. 34 C.F.R. § 300.201. [See USDE OSERS Return to School Roadmap, September 30, 2021, Section C.](#)

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 LRE requirements, which includes consideration of the health and safety concerns of the student. In making these determinations, information from the parent about student needs should be given significant consideration. If the parent disagrees with the placement decision, 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>.

For more information on how LEA's should proceed when a student has one or more underlying medical conditions that put them at increased risk of severe illness due to COVID-19, see [Question K-1](#).

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 8/6/20)

The department recognizes the tremendous difficulty in determining learning environments, given evolving guidance and the 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. 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 10/8/20)*

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.

5. What is the district's obligation to provide FAPE if the student's special education teacher or service provider is quarantined for COVID-19? *(Added 10/29/20)*

The district continues to be responsible for providing FAPE to the student when the student's special education teacher or service provider is quarantined for COVID 19. The district should consider alternative means of providing special education and related services to the student to meet the student's disability-related needs during the time the teacher or service provider is in quarantine. The district may consider assigning other appropriately licensed teaching staff or service providers to provide

the student's special education and related services during the time the staff member is quarantined. This may include providing virtual learning through digital, analog, synchronous, asynchronous, or hybrid instructional models (see [Learning Environment Considerations](#)), whereby the teacher or service provider is available through virtual means. The district may consider providing an educational assistant to support the student in person while their teacher or service provider delivers virtual instruction or teleservice during the quarantine. If the services were previously provided in-person and now will be virtual and the change will last for more than 14 calendar days, this is a change in placement requiring an IEP team meeting to revise the student's IEP or, with parent agreement, use of the I-10 Form to document the revision, unless there is a contingency plan within the student's IEP addressing these circumstances. If some services cannot be provided or if virtual services do not meet the disability-related needs of the student, the student's IEP team will need to determine whether and to what extent compensatory services are required.

P. 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 8/6/20)*

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 10/21/21)*

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 compensatory services are required. See [USDE OSERS Return to School Roadmap, September 30, 2021, Section D](#).

3. If instructional time for all students is no longer the length of a typical school day or school week, can special education services be reduced proportionally? *(Revised 10/21/21)*

LEAs may not apply a standard or formulaic approach in determining special education services for a particular student. Special education services must be made on an individualized basis, and an LEA may not proportionately reduce the services in a student's IEP based on the reduction in the hours of instruction affecting all students. LEAs must ensure that the student's IEP is implemented and the student continues to receive FAPE so that the student may make progress both in the general education curriculum and toward IEP goals that are appropriate in light of the student's circumstances.

The department recommends the use of contingency plans within IEPs to account for the potential changes to instructional time and shifts to virtual learning that could arise as a result of the threat posed by the COVID-19 pandemic. See [USDE OSERS Return to School Roadmap, September 30, 2021, Question A-3](#). If the student's IEP includes a contingency plan designed to provide FAPE under these potential circumstances, then the plan may be implemented, as needed, with notice to the parent. The contingency plan may look different from the program summary for in-person learning or typically scheduled instructional time. 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. Use of the I-10 form cannot take the place of the annual IEP team meeting, and the parents must be provided a copy of the updated IEP. See also [Graduation section, Question 1](#).

4. 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? *(Revised 10/21/21)*

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 the IEP team, in making a placement decision, does not address the school-related health needs of an eligible child with a disability who is at increased risk of severe illness from COVID-19, the parent may wish to contact the LEA's Director of Special Education. The parent may also utilize IDEA's dispute resolution options-mediation, due process, and state complaint. See [USDE OSERS Return to School Roadmap, September 30, 2021, Question C-9](#). More information on dispute resolution options is available at <https://dpi.wi.gov/sped/dispute-resolution>.

Q. 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 8/6/20)*

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 8/6/20)*

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 compensatory services in the future.

R. Transportation

1. What is the district's obligation to provide specialized transportation for students during the pandemic? *(Added 9/8/21)*

If the IEP team determines in-person services are required, they must also consider whether the student requires specialized transportation as a related service. The district is responsible for providing a FAPE, and the student must be able to access all of 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

district 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 specialized transportation requirements, see [Bulletin 18.01](#).

In addition, state law requires districts to provide transportation for students (including four and five-year-old kindergarteners) to the nearest public school the student is entitled to attend if the pupil lives two or more miles from the nearest public school. Wis. Stat. § 121.54(2). For more information about general transportation, see the [Pupil Transportation page](#).

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.