

DATE: May 2020

TO: District Administrators, CESA Administrators, CCDEB Administrators, Directors of Special Education and Pupil Services, and Other Interested Parties

FROM: Barbara Van Haren, Assistant State Superintendent
Division for Learning Support

SUBJECT: Additional Services due to Extended School Closures

On March 13, 2020, the Wisconsin Department of Health Services, under the direction of the governor, issued a public health emergency order closing all school buildings for in-person pupil instruction and extracurricular activities beginning on March 18, 2020. Subsequent orders extended the closure through June 30, 2020. During this extended school closure, the Department of Public Instruction (DPI) encouraged Local Educational Agencies (LEAs) to provide remote learning opportunities so that students could continue to make educational progress. This included providing students with disabilities access to these opportunities and providing the services specified in each student's individualized education program (IEP) to the greatest extent possible.

We recognize the significant efforts LEAs have made to allow for continuity of learning during this time, and that they have used a variety of approaches. We also recognize that some specially designed instruction, related services, and supplementary aids and supports could not be provided or were not as effective, which may have resulted in a regression of skills or impacted the student's ability to make progress. Therefore, in some cases, students with IEPs will require additional services because of the extended school closure. The decisions about these services, including the extent and duration required, must be made on an individual basis in a collaborative manner, and the services must supplement and not supplant the student's existing educational program. In making these decisions, services should not and cannot be practically replicated minute by minute. (*Reid v. District of Columbia*, 401 F.3d 516 [D.C. Cir. 2005]). Furthermore, additional services are not automatically required if a student did not receive all of the services as specified in the student's IEP. Rather, it is an individualized determination based on what additional services are required to address regression in skills, and to accelerate the progress needed to account for the impact of the extended school closure. In determining whether and to what extent additional services are required, the ability of the student to recoup skills should be considered. Additional services also cannot be provided in a more restrictive placement and must be determined in accordance with the least restrictive environment requirements.

Throughout this document, we refer to these services as "additional services" and not

“compensatory education.” “Compensatory education” is typically awarded in an Individuals with Disabilities Education Act (IDEA) complaint decision or by a hearing officer as a result of an LEA’s failure to provide a free appropriate public education (FAPE) to a student with a disability. In this case, school buildings were closed by state order as a result of the public health emergency. Additional services may, therefore, be required to address the disruption of educational services due to this public health emergency. This is not what we traditionally think of as “compensatory education.” Therefore, we chose to use the term “additional services” as a more accurate description.

Finally, we recognize that circumstances could change due to the unpredictability of COVID-19, or that the United States Department of Education could release further guidance, which may necessitate revisions to this document. The guidance also does not constitute legal advice and LEAs are always encouraged to consult with legal counsel when determining how to proceed in a particular situation.

1. What factors should LEAs consider in determining whether additional services are required to students with IEPs as a result of the COVID-19 extended school closure?

In determining whether and to what extent additional services are required, IEP teams should consider whether there has been a regression in skills and the extent to which the student failed to make progress toward their IEP goals and in the general education curriculum. ([USDE, September 29, 2009, Guidance on Flexibility and Waivers for SEAs, LEAs, Postsecondary Institutions, and Other Grantee and Program Participants in Responding to Pandemic Influenza \(H1N1 Virus\)](#)). The most effective way to determine whether a student has regressed or failed to make progress is to examine the student’s progress on IEP goals from the last source of data before schools closed (last progress report or data collected) and compare that data to the student’s current progress. In addition, the LEA should consider the student’s progress compared to the progress of all students during the extended school closure. If progress is slower than their peers during this time, then the LEA should consider whether the student requires additional services and/or interventions through an equitable multi-level system of supports. If there is no progress data available, then the LEA should review the student’s current skill level as compared to grade-level expectations. The IEP team should also consider whether the student requires new services and supports that were not previously provided to assist with successfully re-entering the school environment. These might be necessary, for example, if the student has mental health needs or became significantly disengaged in the learning process during the extended school closure. See [Coronavirus and Schools: Compensatory Services in a Post-Pandemic World, April 13, 2020](#).

The analysis should focus on determining what additional services are required to lessen the impact of the school closure so the student can continue to make progress that is appropriate given the student’s unique circumstances. This may require providing additional services to address any regression of skills and to accelerate progress such that the student can continue to make appropriate gains. In determining whether and to what extent additional services should be provided, the IEP team should consider whether or

not it is reasonable for the student to regain the skill and make appropriate progress within a certain amount of time without the need for the services. However, if the student's performance is significantly below where it was when schools were closed due to the emergency order, additional services would be required.

Much of the analysis will be contingent on whether the student was able to learn effectively through remote instruction, and on the extent and quality of the special education services provided during the extended school closure, as well as whether the IEP goals could be addressed through remote learning. The IEP team should also consider the amount of review and other activities that will be provided to all students to address the loss of instructional time; and consideration of information from the LEA's equitable multi-level system of supports will also be vital in making these determinations.

2. How is the determination for additional services due to extended school closure different from an extended school year analysis (ESY)?

Although regression and ability to recoup are important factors for determining both ESY and additional services required due to the extended school closure, ESY is a predictive analysis based on how the student has fared in the past during periods of breaks in instructional time. In determining whether additional services are required, the IEP team must consider the actual impact of the extended school closure on the student's ability to retain skills and make progress toward their IEPs goals and in the general education curriculum. In doing so, the previous provision of ESY services may be critical information in determining the intensity of additional services that might be required to address the impact of the school closure. However, a student may still require additional services due to the extended school closure even if that student has not previously received ESY services. The need for ESY and the need for additional services are two separate determinations.

3. What steps should LEAs take to prepare for making these determinations?

Just as IEPs are focused on a student's individual needs, a determination of whether and to what extent additional services are required should be based on specific facts about the student and their circumstances. IEP teams should consider information and data collected prior to and during the school closure, including observations and information provided by parents, and on-going data collected after the student is able to receive in-person instruction and assessment. This may include selecting tools that can be used more frequently and are more sensitive to small changes over shorter periods of time. A reevaluation might also be warranted if the LEA or parent believes that the student's disability-related needs have changed due to the extended school closure, or to gather additional information on the student's current levels of academic and functional performance.

Information and data collected from a variety of sources will guide the IEP team in determining whether additional services are required, and if so, will promote the development of an individualized plan. Important information to collect and consider

includes the following:

- The amount of instruction and special education services provided to the student during the closure, and information from any data collection or tracking of student progress during this time. This may also involve collecting information from childcare providers for pre-school age children.
- Information and observations from parents and other family members about the student's ability to access remote learning opportunities and special education services during the school closure period, and how engaged the student was in the learning process. LEAs may consider using an optional tracking sheet for parents to document this information.
- The student's level of academic and functional performance, including levels of performance on all IEP goals prior to the school closure as compared to the student's current level of performance. Information from sources such as progress reports, informal and formal assessments, and observations from teachers, parents, and related services providers may be used to collect this information.
- The student's progress in the general education curriculum in comparison to age/grade level peers. The regular education teacher's input will be important as they will have observations and data for all students. The regular education teacher will also have information about what review and other activities are being provided to all students to address the impact of the school closure, and the LEA's equitable multi-level system of supports.
- The student's prior need for and extent of ESY services, and information about the student's previous ability to recoup skills and make progress after extended breaks in instruction, such as during the summer.

Finally, IEP teams should be prepared to discuss possible scheduling options, which might include providing the additional services through an extended school day or during the summer, and whether, as a result, transportation services might be required. The IEP team should also ensure that the additional services are provided in the least restrictive environment for the particular student.

4. What are the procedures LEAs should follow in determining if additional services are needed?

LEAs may conduct an IEP team meeting to determine whether and to what extent additional services are needed for a student with a disability. ([USDOE, March 12, 2020, Questions and Answers on Providing Services to Children with Disabilities during the Coronavirus Disease 2019 Outbreak](#)). "Other" would be identified on I-1 Form (Notice of the Meeting of the Individualized Education Program Team) and "Consideration of additional services due to the extended school closure" would be specified as a purpose of the meeting.

LEAs and parents may also choose to make changes to the IEP without an IEP team meeting and document the agreement regarding additional services on the I-10 Form. The use of this form for this purpose is permitted in light of the public health emergency, and

would be used to capture the LEA's and parent's agreement after a meaningful discussion as to the nature and extent of the additional services. The I-10 Form should include documentation of the data used in reaching this agreement and a description of the services. Documentation of the additional services should be clearly labeled "additional services due to extended school closure" in the program summary of the IEP and include the frequency, amount, location, and duration of the services.

5. What is the timeframe for determining whether additional services are needed?

Determinations about whether and to what extent additional services are required should be made as soon as possible after sufficient data has been obtained to make the determination and no later than the first six months of the 2020-21 school term. In prioritizing these determinations, LEAs should first consider those students who did not receive special education services during the school closure or were unable to access the services provided, and students with newly identified needs that require additional services for a successful return to school. For these students, if the IEP team has sufficient data to make a determination regarding additional services, the IEP team may consider meeting prior to the beginning of the school year, and if feasible, starting the services during the summer.

For other students, the determination regarding additional services should be made when students are able to receive in-person instruction. ([USDOE, March 21, 2020, Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#)). This will provide an opportunity for the LEA to collect in-person data, either informally or formally, on the student's present level of academic achievement and functional performance. It will also be an opportunity to recoup skills and measure progress before determining whether and to what extent the student needs additional services. For students who will graduate with a regular high school diploma or reach the age of 21 at the end of the current school term, the determination should occur prior to the beginning of the 2020-21 school term.

6. How should LEAs document in the student's IEP what additional services are required?

The LEA should document the additional services in the program summary of the student's IEP. Clearly label the services "additional services due to extended school closure" and include a description of the service (e.g., specially designed instruction in reading comprehension), and the frequency, amount, location and duration of the services. State the services in the IEP so the level of the LEA's commitment of resources is clear to the parents and other IEP team members. Duration of the additional services should be provided within the timeframe of the annual IEP, which may include during the summer.

7. Must LEAs consider whether additional services are required for those students who graduated with a regular high school diploma or reached 21 during the extended school closure?

Yes. LEAs should consider whether additional services are appropriate for students who are going to graduate or reach the maximum age of eligibility at the end of the current school term. Unlike other students who will be returning to school when school resumes, these students are not expected to return for the 2020-21 school year and are not subject to compulsory school attendance requirements. Therefore, LEAs should first determine, in consultation with the adult student or guardian, if the student is willing to participate in additional services. If the student is unwilling to participate, the LEA should document this fact and need not take any further action. If the student is willing to participate or would like further information about services that may be appropriate, the LEA should move forward with an IEP team meeting to consider the need for additional services.

In considering the need for additional services, the IEP team should examine the effect of the school closure on the student's progress towards achieving their most recent 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. Additional services should be designed to address any lack of expected progress due to the school closure. In the event the IEP team determines additional services are appropriate for the student, such services do not create a new or additional period of IDEA eligibility for the student. Additional services are allowable expenses for state categorical aid and Part B flow-through grants. Funding available under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) may also be used.

Consideration of additional services for graduated students or students who have reached the maximum age of eligibility should be given priority given their unique circumstances and would be made before the beginning of the 2020-21 school year.

8. Should LEAs consider whether additional services are required due to a delay in determining eligibility for special education due to the COVID-19 public school closure?

Yes. During extended school closures, LEAs are permitted to extend the 60-day timeline for determining eligibility when assessments were unable to be conducted due to the public health emergency and the closure of school buildings. LEAs should maintain documentation as to why the timeline was extended, and communicate to the student's parent as to why the evaluation could not be completed within the 60 days. The LEA should complete the evaluation as soon as possible when in-person assessments can be conducted.

Upon completion of an evaluation where the student is determined to be eligible for special education, during the IEP team meeting to develop the student's IEP, the team should consider whether, due to the delay in completing the evaluation, the student requires additional services. In making this determination, the IEP team should consider the impact of the delay in the student's ability to make progress in the general education curriculum.

9. May LEAs use funding available under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in providing these services?

Yes. In addition to the standard special education funding sources available to school districts, CARES Act, Elementary and Secondary School Emergency Relief Fund (ESSERF), formula funds may also be used for special education costs incurred to prevent, prepare for, and respond to the coronavirus. Accordingly, LEAs may use these funds for the following expenses:

- Activities to address the unique outreach and service delivery needs of students with disabilities. (H.R.748 § 18003[d][4]).
- Planning for and coordinating during long-term closures to ensure special education services continue to be provided consistent with Federal, State, and local requirements. (H.R.748 § 18003[d][8]).
- Educational technology (including hardware, software, and connectivity) for students with disabilities who are served by the LEA that supports regular and substantive education interaction between students and instructors (which may include assistive technology or adaptive equipment). (H.R.748 § 18003[d][9]).
- Planning and implementing activities related to summer learning and supplemental after school programs, including providing classroom instruction or online learning during the summer months to address the needs of students with disabilities. (H.R.748 § 18003[d][11]).

These funds will remain available through September 30, 2022. Therefore, LEAs may use these funds any time prior to September 30, 2022, including when school would not normally be in session such as during evenings, weekends, summer months, or other breaks.

10. What options are available if a parent disagrees with the IEP team's determination of additional services?

If a parent disagrees with the IEP team's determination of additional 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 resolutions options may be found on the Department of Public Instruction's [Special Education Team webpage](#).

For questions related to additional services during extended school closures, please contact the [DPI Special Education Team](#) at (608) 266-1781. For more information related to education during the COVID-19 crisis, please visit the [Department of Public Instruction website](#) and the [Special Education Team webpage](#).