



Guidelines for Providing Special Education Services During the COVID-19 Pandemic

Updated April 21, 2020

*This **Special Education COVID-19 Q & A** guidance document has been re-organized by topic and each question has a number.*

Listed below are the question numbers and topics that provide updated and/or new guidance since the last version of the Special Education COVID-19 Q & A was published. Click each link to jump directly to the new or updated guidance.

[Section 2, Question 3 – Waivers](#)

[Section 3, Question 8 - School Closure](#)

[Section 3, Question 27 - Transfer Students](#)

[Section 14, Question 13 - Confidentiality, PII and Email](#)

[Section 14, Question 14 - Confidentiality, Electronic Signatures](#)

[Section 14, Question 15 - Confidentiality, Recording Virtual Classes](#)

[Section 17, Question 1 - Return from Soft Closure](#)

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[Section 17, Question 3 - Extended School Year](#)

[Section 18, Question 4 - Progress Monitoring](#)

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The guidance provided in this document is not intended to and does not provide legal advice. For legal advice on a specific situation please consult with the attorney representing your school district or charter school.

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Section 1: Child Find

1 How do school closures affect districts' child find obligations?

School districts have an ongoing child find obligation to locate, identify and evaluate students suspected of having disabilities. Similar to summer break, school closure due to the COVID-19 virus does not cause the child find obligation to cease. However, it may be necessary to postpone child screenings due to the virus.

Section 2: Waivers of IDEA Requirements

1 Can the SDE provide flexibility on timelines for annual reviews, reevaluations and initial eligibilities?

No, the SDE does not have authority to waive IDEA timelines or requirements. On March 21, 2020 OCR/OSEP issued joint guidance through a Supplemental Fact Sheet on IDEA timelines but

did not indicate that required timelines can be waived. The language below is quoted directly from fact sheet:

Individualized Education Programs (IEPs)

If a child has been found eligible to receive services under the IDEA, the IEP Team must meet and develop an initial IEP within 30 days of a determination that the child needs special education and related services. 34 C.F.R. § 300.323(c)(1).

IEPs also must be reviewed annually. 34 C.F.R. §300.324(b)(1). However, parents and an IEP Team may agree to conduct IEP meetings through alternate means, including videoconferencing or conference telephone calls. 34 C.F.R. §300.328. Again, we encourage school teams and parents to work collaboratively and creatively to meet IEP timeline requirements.

Most importantly, in making changes to a child's IEP after the annual IEP Team meeting, because of the COVID-19 pandemic, the parent of a child with a disability and the public agency may agree to not convene an IEP Team meeting for the purposes of making those changes, and instead develop a written document to amend or modify the child's current IEP. 34 C.F.R. §300.324(a)(4)(i).

Initial Eligibility Determination

An initial evaluation must be conducted within 60 days of receiving parental consent under IDEA, or within the state established timeline within which the evaluation must be conducted. 34 C.F.R. § 300.301(c). Once the evaluation is completed, IDEA does not contain an explicit timeline for making the eligibility determination but does require that the IEP be developed in accordance with 34 C.F.R. §§ 300.320-300.324 (34 C.F.R. § 300.306(c)(2)).

Reevaluations

A reevaluation of each child with a disability must be conducted at least every three years, unless the parents and the public agency agree that a reevaluation is unnecessary 34 C.F.R. § 300.303(b)(2). However, when appropriate, any reevaluation may be conducted through a review of existing evaluation data, and this review may occur without a meeting and without obtaining parental consent, unless it is determined that

additional assessments are needed. 34 C.F.R. §300.305(a). *A Supplemental Fact Sheet Addressing the Risk of COVID-19* (OCR/OSEP 3/21/20).

2 Because we are meeting with parents by means other than face-to-face, it is more difficult to obtain parent signatures. Can school staff obtain parent signature for Medicaid consent orally at this time?

No. Schools are required by federal law to obtain written parental consent prior to accessing Medicaid on behalf of the child. 34 CFR 300.154(d)(2)(iv).

3 Are we okay to write on the IEP and/or Eligibility Report that the parent participated by phone or do we need a signature?

Schools are required by federal law to obtain prior written consent from the parent for an initial evaluation, reevaluation (unless an exception applies) and for initial placement in special education. 34 CFR 300.300. These requirements have not been waived, although there is flexibility on how the parent signature is received, including by electronic signature.

Additionally, some Idaho school districts require eligibility team members to sign the Eligibility Report. In this case, best practice would be to obtain team member signatures for the Eligibility Report, unless not feasible to do so. If signatures are not obtained, the attempts to obtain signatures should be documented.

Section 3: Free and Appropriate Public Education (FAPE)

OSEP Guidance

On Saturday, March 21, 2020, the Office for Civil Rights (OCR) and the Office for Special Education and Rehabilitative Services (OSEP) issued a joint guidance entitled *A Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*. It is important for school personnel to read the entire Supplemental Fact Sheet for a complete understanding of the guidance provided. The language below sets forth quotes from the Supplemental Fact Sheet.

1 OCR/OSERS addressed what it viewed as a “serious misunderstanding” regarding the provision of virtual education:

“At the outset, OCR and OSERS must address a serious misunderstanding that has recently circulated within the educational community. As school districts nationwide take necessary

steps to protect the health and safety of their students, many are moving to virtual or online education (distance instruction). Some educators, however, have been reluctant to provide any distance instruction because they believe that federal disability law presents insurmountable barriers to remote education. This is simply not true. (Emphasis original). We remind schools they should not opt to close or decline to provide distance instruction, at the expense of students, to address matters pertaining to services for students with disabilities. Rather, school systems must make local decisions that take into consideration the health, safety, and well-being of all their students and staff.

To be clear: ensuring compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance instruction.” (Emphasis original).

2 OCR/OSERS provided further guidance regarding FAPE:

“School districts must provide a free and appropriate public education (FAPE) consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students. In this unique and ever-changing environment, OCR and OSERS recognize that these exceptional circumstances may affect how all educational and related services and supports are provided, and the Department will offer flexibility where possible. However, school districts must remember that the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.”

National Emergency and the Provision of Educational Services

3 OCR/OSERS acknowledged that schools may not be able to provide all services in the manner they are typically provided:

“The Department understands that, during this national emergency, schools may not be able to provide all services in the same manner they are typically provided. While some schools might choose to safely, and in accordance with state law, provide certain IEP services to some students in-person, it may be unfeasible or unsafe for some institutions, during current emergency school closures, to provide hands-on physical therapy, occupational therapy, or tactile sign language educational services. Many disability-related modifications and services

may be effectively provided online. These may include, for instance, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing.”

Federal Law Allows Flexibility

4 OCR/OSERS emphasized that federal disability law allows for flexibility:

“It is important to emphasize that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities. The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency. As mentioned above, FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students. Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services – or even making decisions about how to provide services - IEP teams (as noted in the March 12, 2020 guidance) must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.”

The Provision of Distance Instruction to Students with Disabilities

5 OCR/OSEP identified various ways in which distance instruction can be made accessible to students with disabilities:

“Finally, although federal law requires distance instruction to be accessible to students with disabilities, it does not mandate specific methodologies. Where technology itself imposes a barrier to access or where educational materials simply are not available in an accessible format, educators may still meet their legal obligations by providing children with disabilities equally effective alternate access to the curriculum or services provided to other students. For example, if a teacher who has a blind student in her class is working from home and cannot distribute a document accessible to that student, she can distribute to the rest of the class an inaccessible document and, if appropriate for the student, read the document over the phone to the blind student or provide the blind student with an audio recording of a reading of the document aloud.

The Department encourages parents, educators, and administrators to collaborate creatively to continue to meet the needs of students with disabilities. Consider practices such as distance instruction, teletherapy and tele-intervention, meetings held on digital platforms, online options for data tracking, and documentation. In addition, there are low-tech strategies that can provide for an exchange of curriculum-based resources, instructional packets, projects, and written assignments.”

School Closure

6 Our district has/is considering closing school because of COVID-19. Must educational services be provided to special education students if schools are closed?

No. “If an LEA closes its schools to slow or stop the spread of COVID-19, and does not provide educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during the same period of time.” Q & A COVID-19 Guidance (OSEP 3/20), Q/A A-1.

7 Our district has/is considering closing school buildings because of COVID-19 and providing educational opportunities through on-line programs. Must on-line educational services be provided to special education students?

Yes. “If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. . . SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each child with a disability can be provided the special education and related services identified in the student’s IEP [or Section 504 plan].” Q & A COVID-19 Guidance (OSEP 3/20), Q/A A-1.

8 Our district is considering having the last day for new assignments/activities to be 2 weeks prior to the end of our school year. If gen ed teachers are able to do this and students are considered “done with school,” would we still be obligated to continue to provide SPED services until the end of the school calendar year?

Students with disabilities must be provided equal access to educational services. If a district shortens its school year and does not provide any educational services to the general student population, it would not be required to provide services to students with disabilities during that same period of time. Once school resumes, students’ IEP teams would be required to make an

individualized determination as to whether compensatory services are needed under applicable standards and requirements. Q &A COVID-19 Guidance (OSEP 3/20)Q/A A-1.

Compensatory Education

9 What is compensatory education for a student?

Compensatory education is defined as an appropriate equitable remedy designed to deliver services to a student that should have been received to provide FAPE. The particular form of compensatory education will vary on a case-by-case basis. “There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” *Parents of Student W v. Puyallup School District*, 21 IDELR 723 (9th Cir. 1994).

10 Once school is back in session after a school closure, do special education students have a right to compensatory education?

Once school is back in session, students’ IEP teams and 504 teams “would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.” Q & A COVID-19 Guidance (OSEP 3/20), Q/A A-1.

11 Do different requirements come into play depending on how long school is closed?

OSEP looks at whether the closure is for an “extended period of time” which is generally more than 10 consecutive school days. “If a child does not receive services after an extended period of time, a school must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.” Q & A COVID-19 Guidance (OSEP 3/20), Q/A A-2.

12 If school is in session, but a student with disabilities is absent for an extended period of time due to being infected with COVID-19, what must occur if no special education and related services were provided?

“If a child does not receive services after an extended period of time, a school must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.” Q & A COVID-19 Guidance (OSEP 3/20), Q/A A-2.

- 13 At this time our school district is not providing educational services for any student population although staff would like to send learning packets home. Can we send learning packets home that won't be graded or required (much like summer packets) even though some students may not be able to fully access the materials because they may need materials read aloud or their parent may need to do the activities with them?**

If learning packets are provided to all students for continued learning opportunities, the district must ensure that students with disabilities also have equal access to the same opportunities, including the provision of a free appropriate public education (FAPE). To the greatest extent possible, districts must ensure that each student with a disability can be provided the special education and related services identified in the student's IEP. To meet this obligation, staff must look at the individual needs of a student and what the student's IEP provides for appropriate instructional supports and services. Staff must consider whether each student with disabilities can access the information in the learning packets, and if not, whether additional supports are necessary to complete the work. It is an individual determination based on the needs of each student.

- 14 Is compensatory education the same as Extended School Year (ESY) services?**

No, compensatory education is very different from ESY services.

Compensatory Education

Compensatory education is defined as an appropriate equitable remedy designed to deliver services to a student that should have been received to provide a free appropriate public education (FAPE). The particular form of compensatory education will vary on a case-by-case basis. "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W v. Puyallup School District*, 21 IDELR 723 (9th Cir. 1994).

It is important to understand that compensatory education must not take away from or replace existing special education services. In determining appropriate compensatory education due to school closure, the IEP team must review a student's IEP, determine what educational services the student didn't receive due to school closure, and determine the educational services (compensatory education) needed to ensure the student receives FAPE.

Once the compensatory education for a particular student is identified, a plan should be discussed and developed identifying how the educational services will be provided. Various discussions may include: Is there existing free time during the school day to provide the services? Should the school day be lengthened? Should the school week be lengthened? Should the school year be lengthened, going into summer? Should the compensatory education be provided during the next school year, and if so, how?

Make sure prior written notice is provided to the parent in a timely fashion, setting forth the IEP team's determination regarding compensatory education, and if possible, include the plan developed to provide the compensatory education.

Extended School Year (ESY)

The goal of ESY services is to assist students with disabilities with the emergence and maintenance of specific IEP goals addressed during the school year. ESY services must be considered in light of the totality of the circumstances. Decisions regarding ESY services must be based on student performance data and written documentation, and the services must be clearly described in a student's IEP. For a further discussion of ESY criteria please refer to the Idaho Special Education Manual 2018, Chapter 5, p. 79-81.

15 What is the cleanest pathway to cover ourselves during long-term closures if we don't provide services to students beyond a written notice indicating that services would resume when school is back in session due to the Coronavirus?

If educational services are not provided to all students, services are not required to be provided to students with disabilities. In this scenario, the written notice should also indicate that the IEP team will convene once school is back in session to review what, if any, compensatory services might be needed for an individual student.

16 If we have parents who are completely disengaged with assisting us with supporting their students, I would have teachers document their efforts to assist the students. However, aren't their serious concerns with putting the burden of educating students onto the parents even if we provide educational materials? Other than documenting our efforts how else can we insulate and protect ourselves under the circumstances?

While all parents are being asked to assist in the education of their children at this time since most schools have been closed or are only providing limited services due to the COVID-19 virus, students with disabilities continue to have additional rights. Schools must ensure that students

with disabilities have equal access to the same opportunities as nondisabled students, including the provision of FAPE, to the greatest extent possible. If it is not possible to provide equal access, or the provision of FAPE, the IEP team must take that into account when determining whether compensatory education is appropriate.

17 What is the cleanest pathway to protect ourselves if we proceed with an emphasis on remote learning? Is there really a clean pathway here since this is the most likely direction of our district?

It is important to ensure that staff is documenting the efforts being made to provide each student with equal access and the provision of FAPE, on an individualized basis.

18 Will IEP teams have to meet on every student once school is back in session to determine if there is a need for compensatory education? If schools are not back in session until fall 2020, do teams need to make a determination on compensatory education at that time, or do we just start the new school year?

The determination as to whether compensatory education is appropriate, and if so, what it will be, must be made on an individualized basis by each student's IEP team. Some of the scenarios that could come into play include:

- Schools remained open and students with IEPs received FAPE as identified on their IEPs. An IEP team meeting to discuss compensatory education is not required.
- Schools closed and some educational services were provided to all students. Students with IEPs continued to receive all the special education and related services identified in each student's IEP. An IEP team meeting to discuss compensatory education is not required.
- Schools closed and some educational services were provided to all students. Students with IEPs received some, but not all, of the special education and related services identified in each student's IEP. An IEP team meeting should be held to discuss the student's progress, whether compensatory education is appropriate, and if so, what the compensatory education will be.
- Schools closed and no educational services were provided to students. An IEP team meeting should be held to discuss the student's progress, whether compensatory education is appropriate, and if so, what the compensatory education will be.

Whenever school is back in session, whether it is spring or fall 2020, the IEP teams should begin communicating with parents regarding convening IEP team meetings to discuss compensatory education. In the event a parent indicates they are not interested in compensatory education, a written notice should be provided to the parent outlining the offer to meet and the parent's decision on the matter. Q & A COVID-19 Guidance (OSEP 3/20), Q/A A-1; *Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students* (OCR 3/16/20).

- 19 If a student graduates or ages out (turns 21 this semester) during the time of school closure or alternate service delivery, is the IEP team obligated to meet once school resumes to consider compensatory education for that student, even though the student may no longer be attending school?**

Yes. Remember, the purpose of compensatory education is to provide an appropriate remedy designed to deliver services to a student that should have been received to provide FAPE and will vary on a case-by-case basis. *Parents of Student W v. Puyallup School District*, 21 IDELR 723 (9th Cir. 1994).

20 Compensatory Education for Early Childhood Special Education

Pursuant to the guidance from OCR, if a preschool student does not receive services after an extended period of time, the student's IEP team must make an individualized determination whether and to what extent compensatory services are needed.

- 21 If a parent declines services within the hours that services can be reasonably provided is their child eligible for compensatory services?**

It depends. There may be a variety of reasons that a parent declined services during the soft closure of schools. Unless the parent indicates they do not want compensatory education once school is back in session the student's IEP team "would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements." Q & A COVID-19 Guidance (OSEP 3/20) QA A-1.

Contingency IEPs

- 22 Do we need to amend all IEPs (and 504 plans) to include a contingency plan for school closure which may include homework packets and e-learning and also make sure we change the location of services to online?**

No, all IEPs do not need to be amended to include a contingency plan. The OSEP guidance provides that “IEP teams may, but are not required to, include distance learning plans in a child’s IEP that could be triggered and implemented during a selective closure due to a COVID-19 outbreak.” The guidance further states: “Creating a contingency plan before a COVID-19 outbreak occurs gives the child’s service providers and the child’s parents an opportunity to reach agreement as to what circumstances would trigger the use of the child’s distance learning plan and the services that would be provided during the dismissal.” Q & A COVID-19 Guidance (OSEP 3/20), Q/A A-5.

23 If school is closed, can a student’s IEP team consider a distance learning plan in the student’s IEP as a contingency plan?

“Yes. IEP teams may, but are not required to, include distance learning plans in a child’s IEP that could be triggered and implemented during a selective closure due to a COVID-19 outbreak.” Q & A COVID-19 Guidance (OSEP 3/20), Q/A A-5.

Extended School Year Services

24 In light of the soft closure being extended to the end of the [school] year, I’m wondering how should we proceed with discussions around ESY discussions at our Annual Reviews with the current uncertainty? Are there alternative models or options to consider if we need to change our approach during the summer?

ESY services continue to be required and must be made available to assist those students with disabilities with emergence and maintenance of specific IEP goals, as determined by the IEP team. Each IEP team will need to discuss the ability of the district to provide the ESY services identified. Factors to take into consideration include the current status of soft school closures as ordered by the Idaho Board of Education and each local school district, and if necessary, the ability of staff to provide ESY services through an alternative mode of delivery. Provide Written Notice to parents regarding the decisions made. If the circumstances are such that ESY services cannot be provided, Written Notice should set forth the reasons why.

25 We have many students who have been identified as needing ESY services during long school breaks. If schools are closed for 4 weeks or more, do we need to consider whether those students need ESY during the break?

OSEP has not provided any guidance on ESY services, other than to make it very clear that compensatory education is not ESY. Further, during OSEP's webinars and in its written guidance, there has been discussion of providing compensatory education to make up for the lack of certain services during school closures due to the COVID-19 virus, there has been no discussion that ESY must be a consideration. Q & A COVID-19 Guidance (OSEP 3/20).

Transfer Students

- 26 Our district was recently informed that a student is moving into our district and will be transferring to one of our schools in the next few weeks. With the district's schools currently in a soft closure, must we enroll the student? Does it make a difference whether the student is transferring from an in-state or out-of-state school?**

The Idaho Board of Education's order for a "soft closure" of schools has resulted in regular school not being in session, and the school day being redefined from in-person school operations to school operations that use on-line, virtual, or distance learning. Since some educational services continue to be provided to all students, the timelines discussed below pertaining to transfer students (both in-state and out-of-state) must be met to the extent feasible, as the administrative rules do not provide a waiver of timelines. It will be important to document staff attempts to request and receive education records from the prior school, communicate with parents regarding the transfer process, and provide Written Notice to parents when required. As a reminder, the student transfer provisions include:

In-State Transfer Student

When a student with a current IEP transfers from one Idaho school district to another, the student is entitled to continue to receive special education services. The new school must request the eligibility documents and current IEP within 2 school days from the student's previous school. Within 14 calendar days the new school must request the full educational record of the transferring student from the prior school. Manual 2018, p. 90-91. The new school district may accept and implement the existing IEP or may convene an IEP team meeting to develop a new IEP. If a new IEP cannot be developed within 5 school days, or if the district wishes to reevaluate the student, an interim (short-term) IEP must be implemented pending development of a standard IEP. IDAPA 08.02.03.109.04.e.

Out-of-State Transfer Student

When a student with a current IEP transfers from an out-of-state school, a copy of the student's most recent eligibility documentation and IEP must be requested within 2 school days. Within 5 school days of receipt of the eligibility documentation and IEP, the school shall determine if it will adopt the existing eligibility documentation and IEP. If the school disagrees with the existing eligibility determination, or if documentation is not available within a reasonable time period, consent for an initial assessment shall be sought. While the assessment and evaluation is in process, the school may implement an interim IEP if the parent agrees. If the parent does not agree to an interim IEP, the student shall be placed in general education. IDAPA 08.02.03.109.04.f.

- 27 We received a new transfer student for whom we have not yet received records. Mom says that she thinks the student is on an IEP. Do we wait to provide services once we know there is an IEP and have it in our hands so we know what we need to provide for services? Mom was unclear on what had been done and what area it is in. She doesn't have a copy handy that she can provide me.**

In the event the records are not received in a timely fashion, the school should offer to evaluate the student, as the district has been informed the student has a disability. The evaluation timelines should be followed, to the extent feasible. Written Notice and procedural safeguards must be provided to the parent.

Section 5: Special Education Evaluation & Reevaluation

- 1 What should we do if we are in the middle of an initial evaluation and school is closed?**

The Idaho Special Education Manual 2018 (Manual) addresses this issue: "The time between receiving written consent for initial assessment and eligibility determination cannot exceed sixty (60) calendar days, **excluding periods when regular school is not in session for five (5) or more consecutive school days.**" (Emphasis added) Chapter 4, Section F, p. 36.

Additionally, in unusual circumstances, all parties may agree in writing to an extension of the 60-day period for an initial assessment. Manual, Chapter 4, Section F, p. 36.

- 2 What should we do if we are in the middle of a reevaluation and school is closed?**

March 16, 2020, the Office for Civil Rights provided guidance on this issue. The guidance provides:

“IEP teams are not required to meet in person while schools are closed. If an evaluation of a student with a disability requires a face-to-face assessment or observation, the evaluation would need to be delayed until school reopens. Evaluations and re-evaluations that do not require face-to-face assessments or observations may take place while schools are closed, so long as a student’s parent or legal guardian consents.” *Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students* (OCR 3/16/20).

3 So if we needed face-to-face for an evaluation but could not do it because of COVID-19 closure would we get consent when school is back in session and test? Would a new eligibility meeting and new three-year timeline begin at that time? Would a new IEP meeting and new IEP be developed at that time?

The school closure doesn’t change the three-year reevaluation timeline or the annual IEP review dates. Please review the IDEA Timelines discussion set forth in the *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* (OCR/OSERS 3/21/20).

4.1 Is the State Board of Education’s (SBE) "soft closure" considered a school closure for 60-day timeline purposes, even if an LEA is delivering some sort of ongoing educational opportunities for all students during the soft closure?

4.2 For initial evaluations, when we are providing distance instruction/learning opportunities to students it seems school may be considered “open” even though our buildings are closed. Could you provide some clarification on what this means with regard to the state guideline that doesn’t count 5+ consecutive school days in the 60-day timeline for initial evaluations?

The Idaho Special Education Manual provides that the 60-calendar-day timeline for conducting an initial evaluation does not include periods when *regular school* is not in session for 5 or more consecutive school days. The SBE’s order of a “soft closure” has resulted in regular school not being in session, for most brick and mortar schools. However, if a particular school provided virtual education prior to the SBE’s order for a “soft closure,” and little has changed on how the school is providing services, then the 60-calendar-day timeline may still be in force. *Manual*, Chapter 4, Section 3.F, p. 36.

5 If a student is currently under the eligibility category Developmental Delay, and will be aging out of this category prior to school returning to the classroom, how do teams proceed?

The disability category of “developmental delay” may only be used for students ages 3 until their 10th birthday. To the extent feasible, a school should continue to use the existing process to determine whether a student meets the eligibility criteria for another disability category before age 10, including holding an IEP team meeting and evaluating the student, as appropriate. If, due to the soft school closure, it is not possible to evaluate the student, parents should be informed through Written Notice of the individualized situation for the student and that the student will continue to receive the services on the Student’s IEP pending the ability to evaluate and determine continued eligibility.

Section 6: IEP Development

IEP Amendment Considerations

- 1.1 **Is there a reason why an IEP amendment to change placement would be required for one student and not all students given they are all transitioning from classroom instruction to home/virtual?**
- 1.2 **If all parents are provided Written Notice explaining the transition in instruction delivery and how that method will be delivered to support the IEP for a temporary period of time in response to COVID-19, would this then eliminate the need to amend the IEP and document a change of placement?**

During a Webinar on March 13, 2020, the director of OSEP stated that if moving to on-line instruction is part of school closure, OSEP is not requiring the need to amend IEPs; it is an alternative mode of delivery. *OSEP Webinar, 3/13/20.*

- 2 **Our school is open. We are completing annual reviews and many of our students that receive face-to-face services are now receiving those services in a different way (online, consultation, or a reduced number of service minutes, etc.). When we complete the annual review, do we write the new IEP based on how the service is being provided during the pandemic or how the service would be provided if we were able to see students face-to-face?**

The pandemic is temporary and does not drive the needs of each student. An IEP written through the annual review process must be based on the educational services necessary for that student to receive FAPE. 34 CFR 300.320.

Section 7: Annual IEP

- 1 If school is in session, but a student with disabilities is absent for an extended period of time due to being infected with COVID-19, what special education and related services must be provided?**

It is OSEP's position that when a student needs homebound instruction because of a medical problem, as ordered by a physician, and is home for an "extended period of time," (10 consecutive school days or more) an IEP meeting is necessary to change the student's placement and contents of the IEP or, if appropriate, amend the IEP without a meeting. Q & A COVID-19 Guidance (OSEP 3/20), Q/A A-2.

- 2 Our district has closed schools and we have IEP annual reviews scheduled during the closure. Can the annual review timelines be extended?**

No. Neither the SDE nor the US Dept. of Education has the authority to waive the timeline requirements in the IDEA. [Letter to Geary, OSERS 11/20/12](#)

- 3 Can we conduct IEP annual review meetings telephonically or by other means?**

Yes. The IDEA specifically provides that the district and the parent may agree to use alternative means of meeting participation, such as video conferences and conference calls. 34 CFR 300.328.

- 4 If we are unable to conduct the IEP annual reviews within the timelines required, what should we do?**

Notify parents, through written notice, that the district is unable to hold their child's annual IEP meeting due to the COVID-19 outbreak and the closure of school. Include additional pertinent information that may be unique to your situation, such as the inability to access records due to the closure. Inform parents that their child's IEP will continue to be in place and will be implemented when school resumes until a new IEP is developed through the IEP team process.

Delivering Instruction

- 5 If we don't have access to students and we send materials or utilize an online platform is that really sufficient for SDI since we would really be depending on parents for assistance in delivery of the service through access of technology? For students with disabilities would**

phone calls, tutorials, etc. by case managers to regularly guide parents in working with their students on their IEP goals be sufficient during this time of emergency?

The determination as to whether SDI has been provided to each particular student during school closure or while limited school services have been provided is an IEP team determination, which is made once school is back in session. Data may need to be collected to help the IEP team determine whether compensatory education is appropriate.

6 When we reach out to families to determine services while the district is providing virtual services, is there flexibility on the number of “required” members of IEP team, eligibility team and 504 team meetings? Do excusal forms need to be used or can those be waived and documented in the contact log?

The SDE does not have authority to waive IDEA timelines or requirements. If certain IEP or evaluation team members are not available to participate in the meeting, the Idaho Special Education Manual 2018 (Manual), addresses the process for excusal. The use of excusal forms cannot be waived. See Chapter 4, Section 1, p. 31; Chapter 5, Section 1.D, p. 67-70.

7.1 If we can add a check box to our student management system that a parent can check that they attended their child’s IEP and agree so that we do not have to try to collect signatures at this time during these virtual meetings would this meet requirements? Then send documents home when school resumes instead of using email that may not be secure to collect actual signatures?

7.2 What are the recommendations for getting documents signed by all participants during virtual IEP meetings?

For those documents requiring informed parental consent prior to taking particular action, such as conducting an initial evaluation or implementing an initial IEP, schools must take reasonable action to obtain written consent. Actions which require parental consent may not occur pending the receipt of consent. 34 CFR 300.9. Email can be utilized if the parent agrees; otherwise US mail should be used to obtain written consent. Documentation of the efforts taken to obtain consent is important to show compliance.

8 With a long-term closure could we utilize the term "resources" to provide to all students, which includes activities or packets for students with disabilities for IEP Goals? Would this be an allowable pathway to provide assistance and tools to families rather than using the term

alternative learning, remote learning, or being required for the provision of services? Is it sufficient if there is simply tools and resources posted on our webpages and provided by teachers in general ed and SPED as a way to support education without formally providing any services? I assume this would mean that we are not grading or terming anything as learning. Could we have a standardized guidance of language we could embed in a written notice for us to send to all students on IEPs related to the Coronavirus?

Rather than focus on the terminology used, the focus should be on what educational services or resources are being provided to all students and ensuring there is equal access to those same services or resources to students with disabilities. Rather than embedding standardized language in written notices, a flier with pertinent information related to COVID-19 could be considered.

- 9 What do you recommend staff say to parents who are requesting extended hours/weekends for providing teletherapy? I am concerned that we need to support our staff and their families who are also going through this crisis and may need to teach their own children while working full time.**

Staff needs to work with parents to determine a mutually-convenient time in which to provide services. If it is not possible to come to an agreement regarding the provision of teletherapy services, Written Notice should be provided to parents setting forth the efforts made by staff to come to a mutually-convenient time.

Preschool Programs

- 10 Are the IDEA requirements different when dealing with preschool students and special education services?**

No. Under Idaho law children with disabilities, beginning at age 3, are of school age. I.C. 33-201.

- 11 Must school districts meet Part C to Part B timelines for referrals and have an IEP in place by a child's third birthday?**

The federal requirements to ensure that children transitioning from Part C to Part B have an IEP in place by each child's third birthday have not been waived. Schools should take all reasonable efforts to comply with the requirement to develop an IEP for each child and may utilize alternative means for IEP team meetings, such as telephone or videoconferencing.

Upon receiving Part C referral information, it will be important to contact the family to discuss transitioning to Part B services. During this contact, discuss and explain potential alternative ways in which evaluations and assessments can be conducted so that the family can provide informed consent. Provide the family with Procedural Safeguards and information about how early childhood special education services might be offered during the COVID-19 crisis.

During this COVID-19 national emergency, screenings and evaluations for children referred under Part C may occur through virtual means. Ensure that all FERPA requirements are followed. First and foremost, ensure transparency with the family, gain their informed written consent if possible, and provide Written Notices as required. Document all communications with the child's family.

A family may choose not to participate in an alternative evaluation or assessment, which will result in the child's evaluation being postponed until the evaluation can be conducted in person. When determining methods of conducting alternative evaluations it is important to consider the effectiveness of gathering information in a virtual format. Each evaluation conducted during this time should include collection and review of a body of evidence. Consider a combination of the following:

- Interviews with caregivers;
- Review of existing developmental information, including videos of the child, if available;
- Virtual observation of a play session or other routine;
- Guiding parents in simple activities that can then be reviewed together;
- Direct assessments that are able to be conducted in an interview format;
- Initial evaluation and assessments of child and family must be completed timely of receiving the consent to assess;
- Other means available to provide necessary information.

12 Early Childhood Outcome (ECO) Entrance

IEP teams should use assessments, observations, and referral information to give a student an ECO Entrance rating. If it is not feasible to give a child an anchor assessment at entrance, document what materials were used to determine the ECO rating, and provide Written Notice as required.

13 Is my assumption correct that infant/toddler referrals that need additional assessments to determine eligibility can be postponed with Written Notice?

If additional assessments need to occur face-to-face as part of the evaluation process and cannot occur because school is closed, the assessments necessary to complete the evaluation

would need to be delayed. Notification to the parent of the need to delay the evaluation process should occur through a Written Notice. *Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students* (OCR 3/16/20).

14 Our district schools are closed. What obligation is there to meet with infant toddler service providers and hold transition meetings prior to a child’s 3rd birthday?

At the age of 3 a child with disabilities has the right to special education services. It will be necessary to work with the other agencies providing infant toddler services to determine whether transition meetings can be held telephonically or by other means instead of than face-to-face.

15 Are preschool special education teachers going to need to do anchor assessments at the end of the school year?

The IEP team will meet and use available data to complete the ECO Exit rating to reflect the student’s current level of performance. This information can be student work, observations, testing completed prior to COVID-19, parent or caregiver input, etc. Document in Written Notice what material was used to determine the Exit rating.

If additional assessments need to occur face-to-face as part of the evaluation process and cannot occur because school is closed, the assessments necessary to complete the evaluation would need to be delayed. Notification to the parent of the need to delay the evaluation process should occur through a Written Notice. *Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students* (OCR 3/16/20)

16 Transition to Kindergarten

The process for students transitioning to kindergarten will follow the same procedures as other IEP meetings and guidance outlined in the SDE FAQ. It is important to document all decisions made and provide Written Notice as required.

Section 8: Service Time & Placement

1 What happens if our district’s schools remain open, but a student with disabilities is excluded from school due to being high risk of severe medical complications? Is this a change in placement?

If a student is excluded for a temporary emergency measure (10 consecutive school days or less), the provision of services “such as online or virtual instruction, instructional telephone

calls, and other curriculum-based instructional activities, to the extent available, is not considered a change in placement.” Q & A COVID-19 Guidance (OSEP 3/20), Q/A A-4.

- 2 How do we justify the significant reduction in service minutes beyond just stating in a written notice due to coronavirus and ensuring student and staff safety, we will provide services to the greatest extent possible to assist your student to progress on their IEP goals? Is providing a homebound model an acceptable practice without staff in the home?**

Because special education services are determined on the individualized needs of each child, the determination as to whether services will be provided, and if so, to what extent and how the services will be provided, is made on an individualized basis, taking into consideration the resources available.

- 3 Are we opening ourselves up from a litigation perspective regardless of how we proceed on this with our limitation of not being able to go into homes to deliver services or services provided at school?**

It is important for schools and families to communicate and collaborate regarding special education services. The health and safety of student and staff is of utmost importance and school and district staff must act reasonably, based on the most current information available. The importance of documenting the actions taken by school and district staff cannot be underestimated and will assist in any complaint or hearing request filed by a parent.

- 4.1 What if a parent wants to waive services such as speech while the school is closed?**

- 4.2 As we contact parents about the changes to delivery of services and a parent does not want those services, do we need to just note that in Written Notice?**

Similar to when a parent declines certain special education or related services offered by a school district in the school setting, a parent may decline services being offered during the closure of school districts. Written Notice should be provided to the parent setting forth the services offered and the fact that the parent declined the services. If there are particular reasons why the parent declined the services, those reasons should also be included in the Written Notice.

- 5 Regarding the questions just posed, if parents do waive or decline all remote services of any kind, would the district still be obligated to consider and possibly provide compensatory education once school resumes?**

The answer to this question depends on a variety of circumstances, including why the parents declined the services. Depending on the circumstances, an IEP team may need to review the services offered, the reasons why the parent declined the services, and determine whether compensatory education is appropriate.

- 6.1 **For students with more severe needs, could the school decide to still bring a select few students to serve within the school setting?**
- 6.2 **I am hearing from some of our parents that the online option isn't working for our students with more severe disabilities because they are unable to interact with the device. I am assuming that we cannot make exceptions to meet in person based upon the Board of Education's (SBE) closure. Are we still compliant?**
- 6.3 **My super and I had a "lively discussion" this morning about special education services! Here is the document he sent me, which is a little different than what we have been hearing about kids in buildings. Could you clarify please?**

In recognition of the wide range of services schools provide to their students and the needs of some of our special education students, schools may have students that need some in-person instruction or other limited school accesses. **To meet these needs schools may still use their facilities for serving students as long as services are provided within the CDC social distancing guidelines, including small groups where the appropriate distance can be maintained between students and adults and the proper sanitization can be performed before and after individuals use the location.** (Emphasis added). *COVID-19 School Operations Guidance* (SBE 3/27/20).

- 6.4 **For students that have all day BI support, are we obligated to have the BI go to the home to support the student when the parent is trying to help the student with academics? We do have teachers sending home SEL lessons to support the desired behavior (the reason we need a BI) so would that be sufficient to address that skill/service area?**

The March 25, 2020 *Order to Self-Isolate for the State of Idaho* provides that public and private K-12 schools are essential businesses and individuals may leave their residences “for the purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible.” As quoted above, the Idaho State Board of Education’s COVID-19 School Operations Guidance has similar language. The decision as to whether certain students can be served within the school setting or the home setting must be made by the school district and the student’s parents, based on

the individualized needs of the student. Any location identified for the provision of services must be designed to protect the health, safety, and well-being of the student and the district's staff or service provider. For further information on the location of services and Medicaid reimbursement, please review Idaho's *Guidelines for Providing Medicaid School-Based Services During the COVID-19 Pandemic*, dated 3/24/20.

7.1 What if we offer online services for all students but a special education student doesn't have accessibility?

7.2 Should we treat English language learner (ELL) students and special education students similar with online services? Be flexible and creative?

For all students, including students with disabilities, school and district staff must be flexible and creative. In those instances where students do not have accessibility to on-line services, other means to provide equal access to the information should be provided. *Q & A COVID-19 Guidance* (OSEP 3/20), *Q/A A-1; Fact Sheet: Addressing the Risk of COVID-19 While Protecting the Civil Rights of Students* (OCR 3/16/20), *COVID-19 School Operations Guidance* (SBE 3/27/20).

Section 9: Written Notice

1 Should written notice be capturing frequency and duration of services provided during remote learning (e.g., 30-60 minutes per week)? Or should we focus on method and delivery of instruction? I was initially thinking to focus on keeping it simple and focusing on delivery of instruction and not getting specific with minutes but wanted to make sure.

The determination of whether a Written Notice will include the frequency and duration of services provided during remote learning, or whether it will only address the delivery of instruction must be made on a case-by-case basis. For example, if the frequency and duration of services may/will change for a variety of reasons, the parent should be so informed. On the other hand, if a set schedule has been established it may be appropriate to include it in the Written Notice.

2 Do we amend every single IEP accompanied by written notice? Ideally with amendments, we convene IEP Teams. Would it be recommended to convene an IEP Team Meeting for every student? Under the circumstances, would the case manager calling the parent to

communicate changes in IEP due to Coronavirus be adequate as long as all IEP Team members were communicated with and the parent signs off on the amendment?

The process for amending IEPs has not changed. An IEP may only be amended after an IEP meeting, or alternatively, if agreed upon by the parties, an amendment to modify a student's current IEP may occur without a meeting. Once the IEP has been amended, written notice must be provided to the parent.

3 Is written notice sufficient without a formalized IEP amendment? I would assume amendments would have to happen to reflect the changes. Regardless, what is some standardized language we could utilize related to the Coronavirus for all students on IEPs?

Please see the response above. The process for amending IEPs has not changed. Since an IEP amendment is individualized regarding a particular student, there is no standardized language to utilize. However, districts may elect to provide parents with general information about the COVID-9 virus through a flier or other means.

4 In the event an IEP needs to be amended to support student access and/or participation in online learning, can those changes be agreed upon and documented within a written notice to be in effect only as long as the school district is providing schooling online?

As discussed in other questions, an IEP does not need to be amended if services are being provided through an alternative mode of service delivery. If it is determined that an IEP should be amended, the IEP amendment process must be followed, and written notice provided to the parents. In this scenario, the amendment could be similar to a contingency plan and could be for a certain duration.

5.1 So to clarify, we need to provide Written Notice to all special education students about the change in service delivery?

5.2 Can you clarify why we would need a Written Notice if this is a change for all students?

5.3 I have the same question regarding need for Written Notice if ALL students will be receiving online learning.

5.4 Should all parents of special education students be provided a Written Notice with the proposal and explanation that we will transition from the classroom to a combination of resources and deliveries that will be individualized to support the IEP in response to the COVID-19 pandemic?

While Written Notice is only required to be provided to parents whenever a district is proposing or refusing to initiate or change the identification, evaluation, educational placement, or provision of FAPE to a student, it is a useful tool for informing parents of the actions taken by schools regarding their child's special education program during the COVID-19 soft school closure. 34 CFR 300.503.

6 Can the sample letter be used in lieu of Written Notice to describe the change of service delivery?

A sample letter could be used if the district is not proposing or refusing to initiate or change the identification, evaluation, educational placement, or provision of FAPE to a student. However, parents are familiar with the Written Notice format and it is a useful tool for informing parents of the actions taken by schools regarding their child's special education program during the COVID-19 school closure.

7 To me, in this situation all students got a change in instructional methodology/process. For special education, we are using Written Notice to document how parents and teachers are going to handle the current situation until school resumes back to the norms prior to these changes. If the IEP team decided that this change is going to be more long term than what is the potential in the next few weeks and months, then that is when an IEP amendment would be more appropriate, correct?

If a student's IEP team determines that a change to the student's IEP services or placement is appropriate beyond the closure of schools that has been ordered by the SBE, the student's IEP may need to be amended. For example, if virtual learning becomes part of daily instruction for a student once school is back in session, the student's IEP team will need to determine how the services are constructed within the IEP, which may require amending the IEP. *OSEP Webinar, 3/13/20.*

8 So we are now looking at 1,600 students going online with IEPs... Didn't the state board just make a unilateral change in placement?

The SBE did not make a unilateral change in placement, as all students have been required to leave school buildings due to the closure order. *COVID-19 School Operations Guidance (Approved 3/23/20).*

9.1 The OSERS guidance doesn't mandate an IEP meeting. Is it acceptable to send a blanket written notice to parents explaining the board decision and tell them their case manager will

be in touch to address any concerns regarding online instruction and related services and convene an IEP meeting if necessary?

- 9.2 A lot of directors are asking for more guidance on sending written notice to all of our families. They don't want to standardize them but also want to know if they can have some parameters for how to inform parents about reduced service time during COVID-19.**

Communicating with parents during school closure is paramount so that parents are informed of the actions being taken to provide all children, including children with disabilities, with educational services. However, when providing parents with Written Notice, the notice should be individualized regarding the services and facts specific to their child. 34 CFR 300.503.

- 10 Are we required to provide the parents of all students with disabilities Written Notice that end of year assessments will not occur because they have been waived due to the exceptional circumstances brought on by COVID-19?**

To the extend end of year assessments have been waived for all students, including students with disabilities, Written Notice is not required. The Idaho State Board of Education waived the requirement for the administration of the Idaho Standard Achievement Test (ISAT) and alternate assessments for students with significant cognitive disabilities, in English Language Arts, math and Science, in grades 3-8 and high school for the 2019-2020 school year. Further guidance can be found in the Idaho State Department of Education COVID-19 Assessment & Accountability Guidance (4/1/20), available at: <https://www.sde.idaho.gov/coronavirus/COVID-19-Assessment-Accountability-Guidance.pdf>.

- 11.1 I have concerns how to best disperse a Written Notice, if it is indeed needed, in addition to the parent letter and distance learning plans. At the CASE webinar last Friday (3/27/20), the attorney stated the intention of the Written Notice is for "traditional" reasons for change of placement and that a "Pandemic" is not a "traditional" reason for a District instituting distance learning. She felt the Written Notice was not appropriate...**
- 11.2 If it is required to send a Written Notice then I need to know the most effective way, since all district offices and buildings are locked to all staff. To problem solve I inquired if EDPlan had a Written Notice created for COVID-19, and it does not.**
- 11.3 I'm needing guidance to what was stated by the CASE attorney, and also to the sending of a "generic" EDPlan pdf written notice via email to parents and/or public posting of a "generic" Written Notice to the District website (addressed to "Dear Parent/Guardian of Special Education Student").**

Attorneys will have differing opinions on whether Written Notice is required. As we know, Written Notice must be provided to a parent whenever the district proposes or refuses identification, evaluation, provision of FAPE or placement. 34 CFR 300.503.

It has been our recommendation, as best practice, to provide parents individualized information on their child’s educational program through the use of Written Notice. This recommendation is made for several reasons:

- Parents are familiar with the written notice as a means to inform them of changes to their child’s educational program, and changes are being made.
- We don’t know what future decisions may be made as to what will be viewed as a change in placement or a change to FAPE due to COVID-19 school closures and providing services in an alternative fashion.
- OSEP stated that there may be exceptional circumstances that could affect how a particular service on a student’s IEP is provided, and once school resumes the IEP team (or 504 team) “would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.” Q & A COVID-19 Guidance (OSEP 3/20, A/A A-1). Refusal to provide components of FAPE require Written Notice be provided to parents.
- Providing Written Notice addresses the individualized educational services of a particular student and will assist the team in identifying what, if any, compensatory services may be needed.

Section 10: Charter Schools

1 Can charter schools whose LEA is a School District go online if they can meet the needs of their SPED population even if the LEA cannot?

In the scenario above, the school district is the Local Educational Agency (LEA), and one school within the LEA – a charter school – is providing different/additional services than the rest of the schools in the district. OSEP’s Q & A does not specifically address this situation but does address what must occur when a public school for children with disabilities within an LEA is selectively closed due to the possibility of severe complications from a COVID-19 outbreak. In this case, the guidance provides:

“If a public school for children with disabilities is closed solely because the children are at high risk of severe illness and death, the LEA must determine whether each dismissed child could benefit from online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available.” Q & A COVID-19 Guidance (OSEP 3/20), Q/A A-3.

Thus, OSEP recognizes there might be unique or different circumstances that come into play among the different schools within a school district.

Section 11: Private Schools

- 1 What is our obligation to continue to serve students in private schools who receive services through a service plan. With the private schools moving to remote learning, we cannot continue those service plans as written, either. Are private school students entitled to compensatory education, even though we only allocate a proportionate share of funds to them each year?**

A parentally placed private school student does not have an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. 34 CFR 300.137. Since a parentally placed private school student is not entitled to FAPE, compensatory education services would not be required, but parents should be provided Written Notice informing them that the district is unable to continue providing the services set forth in a service plan and the reasons why. If a district has not expended all of the funds for equitable services by the end of the fiscal year, the district must obligate the remaining funds for special education and related services to parentally-placed private school children with disabilities during a carry-over period of one additional year. 34 CFR 300.133.

Section 12: Procedural Safeguards

- 1 For IEPs conducted can we document how we provided procedural safeguards (email or postal service) vs collecting a signature?**

Although districts are required to ensure that a copy of the procedural safeguards are available to parents upon initial referral or parent request for evaluation, upon receipt of the first State complaint or due process complaint in a school year, and in accordance with the discipline procedures, the IDEA does not require parent signature acknowledging receipt. 34 CFR 300.504. Documenting the process by which parents were provided the procedural safeguards and the date provided is sufficient.

Section 13: Discipline

Our district closed school due to the COVID-19 virus. Just prior to the closure, a special education student was suspended for 5 days, and the principal is recommending expulsion. Several questions have surfaced regarding this matter:

- 1 **Should a manifestation determination meeting be held now, or should it occur once school is back in session?**

A manifestation determination is required to be held **within 10 school days** of any decision to change the placement of a student with a disability because of a violation of a code of student conduct. Because schools are currently closed, a manifestation determination is not required to be held until school is back in session. A school may elect to hold a manifestation determination meeting during the school closure if the meeting does not violate the district's closure directive. However, necessary precautions must be taken to ensure the health and safety of those individuals involved in the manifestation determination meeting to prevent possible exposure to the COVID-19 virus.

- 2 **Is there a need to add additional suspension days by the superintendent (beyond the 5 days ordered by the principal) because of the school closure?**

If the suspension notice informs the parent that the suspension will occur when school is in session, there is no need to add additional suspension days because of school closure. If the notice of suspension identified specific days for suspension, the notice should be amended to inform the parent that the 5 days of suspension will occur when school is in session.

- 3 **Can disciplinary actions, including an expulsion hearing, be held while school is not in session?**

An expulsion hearing could occur while school is closed, similar to holding an expulsion during summer break, so long as the hearing does not violate the district's closure directive. However, necessary precautions must be taken to ensure the health and safety of those individuals involved in the expulsion hearing to prevent possible exposure to the COVID-19 virus.

Section 14: Confidentiality

- 1 **How does the FERPA health or safety emergency come into play?**

The health or safety emergency exception “is limited in time to the period of the emergency” and is typically intended for law enforcement officials, public health officials, trained medical personnel and parents. It is not intended to be a blanket release of PII to the public or the media. FERPA & Coronavirus FAQ (SPPO 3/20), Q. 2.

2 Must there be a specific threat for the health or safety emergency to come into play?

Yes, there must be a determination of a specific emergency not based on a generalized or distant threat of a possible or eventual emergency. “If local public health authorities determine that a public health emergency, such as COVID-19, is a significant threat to students or other individuals in the community, an educational agency or institution in that community may determine that an emergency exists as well.” FERPA & Coronavirus FAQ (SPPO 3/20), Q. 2.

3 How does a district determine there is a specific threat or safety issue under FERPA for release of records?

A district must determine, based on the totality of the circumstances, that there is “an articulable and significant threat to the health or safety of the student or another individual and that appropriate parties need the PII to protect the health or safety. When this determination is made, the district may disclose PII to the appropriate parties without consent. FERPA & Coronavirus FAQ (SPPO 3/20), Q. 2-3.

4 Is there a requirement to document the release of PII under the health or safety emergency provision?

Yes. A record must be completed and maintained in the student’s education file which sets forth the articulable and significant threat to the health or safety of a student or other individual that formed the basis for the disclosure and the parties to whom the disclosure occurred. FERPA & Coronavirus FAQ (SPPO 3/20), Q. 10

5 If it is learned that a student in the district is sick with the COVID-19 virus, may that information be disclosed to other students and parents in the district without prior parental consent?

Yes, but only if the information released does not identify the student, and the information disclosed would not allow a reasonable person to identify the student with reasonable certainty. FERPA & Coronavirus FAQ (SPPO 3/20), Q. 4.

6 Can a district provide a health department with the names, addresses, phone numbers and other information of students who are ill so that parents can be contacted in order to assess the students' illnesses?

Yes. In conjunction with health, law enforcement, or other officials, in limited situations, it may be necessary to disclose PII about a student with COVID-19 to parents or staff on a case-by-case basis. Ex: wrestler with COVID-19 who was in direct and close contact with other team members or other students in school with higher health risks. FERPA & Coronavirus FAQ (SPPO 3/20), Q. 7.

7 Might there be an occasion when a particular student's identity is revealed to other parents or staff under a health or safety emergency?

Unless the district determines there is a health or safety emergency where the health department must have the information for each student, parent consent is required. FERPA & Coronavirus FAQ (SPPO 3/20), Q. 5.

8 What should a district do if the education records for various students are requested, but there doesn't appear to be an articulable health or safety emergency at the time of the request?

The FAQ recommends that a consent form is available for parents to sign to allow the potential sharing of information to assist with the tracking or monitoring of a COVID-19 outbreak before an emergency is recognized. The FAQ has a sample disclosure form attached. FERPA & Coronavirus FAQ (SPPO 3/20), Q. 5.

9.1 If students are participating online in a Google or other virtual classroom with the special education teacher, will there be a confidentiality issues if parents can see the other students?

9.2 I would assume doing a Google hangout with three 2nd graders would not be allowed since parents would need to be involved?

Utilizing a virtual classroom to instruct students will typically not violate student confidentiality, as confidentiality requirements only come into play when confidential information contained in a student's education record is revealed without prior written parental consent. Similar to having parents visit a classroom in a school building, parents observing instruction in a virtual classroom are not accessing confidential information. Teachers should not discuss a student's IEP services or other information in a student's education record when the whole class is

attending the lesson virtually. *Family Educational Rights and Privacy Act (FERPA)*, 34 CFR Part 99.

10 If we are providing speech via ZOOM online in groups, do we need to have written consent or a HIPAA form signed at this time? Is there anything that will need to be signed, since parents may see other students?

Please review the answer to the previous question. The individuals providing the speech services to students virtually must refrain from discussing educational services listed each students' IEP when providing services in a group setting, including via ZOOM. There is no requirement to obtain parental consent under the Health Insurance Portability and Accountability Act (HIPAA), as all student records (including medical or health records) are generally considered education records in the school setting and fall under the provisions of FERPA, not HIPAA. *Joint Guidance on the Application of HIPAA and FERPA to Student Health Records*, 119 LRP 47130 (12/19/19).

11.1 We have typically tried not to use Gmail to share documents surrounding the IEP with parents, as it might not be secure. In this pandemic, would it be appropriate to send the written notice or signature pages through Gmail, and document in the communication log as well?

11.2 Are we able to send IEPs, Written Notices, and Eligibility Reports through email?

The IDEA specifically provides that a parent of a child with a disability may elect to receive notices by electronic mail communication if that option is made available by the school. 34 CFR 300.505. Staff may wish to contact parents to determine whether they would like to receive documents through Gmail or by US Mail. Documenting all communication with parents in a communication log is best practice.

12 We have been contacting parents during the soft closure to determine the best means by which to get documents and school work to them. Some parents have given us their work email to use. Is there a confidentiality issue when using a parent's work email?

Possibly, depending on what information is in the email, and if other employees can access the parent's email. Sending an email to a parent's work email that does not contain personally identifiable information (PII), such as sending a parent the general schoolwork packet for their child is not a breach of confidentiality. On the other hand, sending personally identifiable

documents to a parent at a work email, such as an IEP or Written Notice, which could be accessed by other employees without prior written parental consent, would violate FERPA. *Letter to Stanley*, 119 LRP 43518 (SPPO, 9/30/19). In order to avoid the possible breach of confidentiality, consider sending an email to the parent indicating there are confidential documents regarding their child that need to be provided to the parent and ask if the documents can be attached to an email or if the parent would prefer that the documents be mailed.

- 13.1 If we send an email to gain permission for sending confidential information by email to the parent's work email address, is the email permission enough or should we have a signed form that can be put in the student's IEP file granting the permission?**
- 13.2 If the parent only has work email could we send it in a password protected email?**
- 13.3 On FERPA guidance regarding attaching PII documents to an email, do we ask if we can attach PII documents to a home email, since the problems with work email access might be the same in the home setting?**

Sending an email to a parent at the work email address indicating that staff would like to send confidential information to that email address and receiving the parent's approval to do so is sufficient documentation, as the parent has essentially provided consent to the use of the work email. The PII documents could certainly be sent with added protection in a password protected email upon receiving parent approval to send to the work email address.

If a parent has provided school staff with a personal email address as the address in which to receive school notifications and documents, it is reasonable to presume that PII can be sent to that email address.

- 14 If a parent signs an email consent and scans it back to school staff is that okay, or do we need to have the actual signed paper?**

Idaho law allows for electronic signatures. "If a law requires a signature, an electronic signature satisfies the law." Idaho Code 28-50-107(d).

FERPA also provides for signature in electronic form and "signed and dated written consent" will occur if the record and signature in an electronic document: (1) identifies and authenticates a particular person as the source of the electronic consent; and (2) indicates such person's approval of the information contained in the electronic consent. 34 CFR 99.30(d).

- 15 Our district has been providing instruction to all students through the use of virtual classrooms or meetings, such as Zoom, and we have been recording the instruction. Is there a confidentiality issue with recording students in these virtual settings?**

It depends. FERPA defines education records as “records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution.” 34 CFR 99.3. Because of the various types of online educational services, there is no universal answer to this question. To determine whether instructional recordings are education records, schools and districts will typically need to evaluate the use of online educational services on a case-by-case basis to determine if FERPA-protected information is implicated. Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices is a helpful resource issued by the Privacy Technical Assistance Center and is available at <https://tech.ed.gov/wp-content/uploads/2014/09/Student-Privacy-and-Online-Educational-Services-February-2014.pdf>.

Section 15: Funding and Accountability

- 1 If an employee who is paid out of Part B special education funds works say 4 out of the 6.5 hours they normally work, would the Part B budget be able to cover the 2.5 hours not worked or would that compensation need to come from the general fund? If we are able to pay a portion of an employee's time when they are not working out of Part B funds, is there a percentage we can pay? Say if we require a classified employee to put in 50% of their regular hours, could we pay the other 50% of their time or possibly a percentage of this time from Part B?**

We have not received any formal written guidance, but the following guidance was shared with us verbally by OSEP and other TA centers.

During the H1N1 outbreak, ED has taken the following position: if the LEA has a policy of paying employees during a closure, it should follow that policy for its federally-funded staff as well. In other words, if state funds will pay state-funded staff during a closure, then IDEA funds can pay IDEA-funded staff. CCSSO Memo March 13, 2019

It all comes down to what your district will do for all other teachers during this COVID-19 crisis. If your district will pay general education teachers for hours not worked, then you can also use

IDEA Part B funds to pay your special education staff for hours not worked. If it will be 50% of the time paid for all staff then the same principle should be applied to SPED staff as well.

The compensation policy implemented by the LEA during the school closure must be consistent all across the board including SPED.

- 2 If classified (SpEd paras in particular) or certified (SpEd teachers) are not able to work their full schedule while school is in a soft closure, might we expect classified and teachers to use hours not worked but paid in providing compensatory services in June when they typically are not working?**

This again should be consistent with the district policy. If all teachers will provide compensatory services in June for hours paid but not worked, it will be allowable for sped staff under IDEA Part B as well. Just make sure that any decision for sped is consistent with the decision at your district. CCSSO Memo March 13, 2019

- 3 With the cancellation of many scheduled professional development trainings, we anticipate our carryover may exceed the allowable percentages for some of our federal funds. Will we need to request a waiver to carryover additional funds or will there be a statewide waiver?**

For the IDEA Part B federal grants, there is no requirement for a maximum or minimum allowable percentage of carryover. So, LEAs are allowed to carryover up to 100% of the allocation if there is a valid reason. COVID 19 is a valid justification for a large carryover balance. 34 CFR §76.709 & 710

- 4 If we need to repurpose a special education or Title 1 paraprofessional for child care, how do we handle time and effort requirements?**

Since the work assignment will change during the school year, the monthly Personnel Activity Report (PAR) will be the appropriate time and effort documentation for the variation of the work assignment. 2 CFR §200.430

- 5 Does the state have any recommendation to help district provide internet connection to students who do not have internet access at home?**

A good solution could be the purchase of MiFi devices and have parents check it out from the school. The SDE uses Verizon wireless for MiFi.

6 Can we purchase materials needed for the telehealth work?

Yes, the materials are supplies purchased to provide special education and related services. 34 CFR §300.208

7 Do you think we will get flexibility on maintenance of effort for SPED like we did in 2008?

We have not yet received any guidance from OSEP regarding LEA’s maintenance of effort. As soon as we receive any guidance, we will make it available.

Section 16: Paraprofessionals

1 If we need to repurpose a special education or Title 1 paraprofessional for child care, how do we handle time and effort requirements?

Since the work assignment will change during the school year, the monthly Personnel Activity Report (PAR) will be the appropriate time and effort documentation for the variation of the work assignment.

Section 17: Re-Entry Criteria

Return from Soft Closure

1 When can schools move from the “Soft Closure” to providing educational services in the school buildings?

On April 16, 2020, the SBE issued a document entitled “School District and Charter School Re-entry Criteria (Return from Soft-Closure)”. This document provides the minimum re-entry criteria that must be met in order to return to normal school operations. In addition to considering relevant local factors, the minimum reentry criteria for districts/charter schools (LEAs) currently includes:

1. No statewide or local social distancing restrictions are in place.
2. The peak of the state infection curve has passed, as determined by H&W, and a minimum of 14 days have passed from the from the identified peak. In counties with no community spread at the time state restrictions are lifted the 14 consecutive days criteria is waived for LEAs with approval by the local health department.

3. Approval by the local health department after review of cleaning and disinfection protocols.
4. Re-entry plan approved by the board of trustees identifying the following minimum school protocols:
 - a. Cleaning and disinfection protocols.
 - b. Identify and plan for vulnerable staff and students with special emphasis on persons over 60 and those who are medically vulnerable.
 - c. Identify and plan for staff duties which require close contact.
 - d. Absenteeism plan for staff and students whose parents do not feel comfortable returning the student to school, and for students who show symptoms of the coronavirus.
 - e. Communication plan for informing parents and staff of the response plans, protocols, and policies to manage the impact of the coronavirus.
 - f. Verify point of contact for each district/charter school for effective communication and collaboration with the local public health officials.
 - g. Reopening plans are reviewed in consultation with local health officials.

2 If an LEA is unable to meet the minimum re-entry criteria required by the SBE, can small groups of students meet with staff?

The SBE's COVID-19 School Operations Guidance issued on March 27, 2020 allows for the use of school facilities for students that need in-person instruction or other limited school access. The CDC social distancing guidelines must be followed, and proper sanitization must be performed before and after use. In the School District and Charter School Re-entry Criteria (Return from Soft-Closure) document issue on April 16, 2020, the SBE continued to recognize exceptions to the Soft Closure mandate and stated:

Exceptions to the soft closure should continue to be considered for staff and student needs, on a case by case basis, as determined at the local level (e.g. small groups of students that can be distanced in a way that meets the social distancing criteria for the purpose of proctoring exams or working one-on-one with special education students, as long as the school district or charter school has sufficient capacity to maintain hygiene and sanitation).

Extended School Year

3 How should schools address the provision of ESY services to students whose IEPs require ESY during summer 2020?

It will depend on the circumstances. If school buildings are open and operations return to normal during summer 2020, ESY services must be provided in accordance with each student's IEP. If school buildings remain closed and the district continues its "Soft Closure" each student's IEP team will need to determine what, if any, ESY services can be provided through alternative means identified in the "Soft Closure."

Section 18: Miscellaneous

1 Our schools are closed to combat the spread of COVID-19. Can staff open up certain special education programs, such as preschool, and have parents bring their children if they choose to do so?

The determination regarding closure of schools and programs is district-specific. When all schools in a district are closed in order to combat the spread of COVID-19, it is anticipated that all programs within those schools will not provide services during the closure.

Relief from IDEA Requirements

2 What are some of the specific parts of IDEA requirements (Parts B and C) that your state would like to seek temporary relief from during the crisis?

If there was to be flexibility or waiver relief from IDEA it would need to come from Congress and not OSEP. Only congress has the authority to waive these requirements. We need to ensure that while we ask for temporary flexibility and waivers, we would like to see them all restored once things get back to normal. We are working fast to identify specific IDEA recommendations. NASDSE communications with National Governors Association

Progress Monitoring

3 We are moving to a distance learning model starting April 6th, the focus is on identifying essentials and providing student learning opportunities and that grades will not be given during this closure. If ISAT's are cancelled and gen ed students are not going to be obtaining grades, what is our obligation for IEPs to collect data/ progress monitoring on IEP goals?

The IDEA requires periodic reports be provided to parents on the progress their child is making toward IEP goals and objectives. 34 CFR 300.320 (a)(3). To the extent feasible, staff must continue collecting data for progress monitoring purposes. The progress monitoring data will not only be utilized to provide parents with accurate progress reports as identified in each student's IEP but will also provide important information if compensatory education is an issue.

- 4 We are having our teachers continue in their attempt to progress monitor through probes or built into their assignments. We are questioning the validity of the results for a variety of reasons. What is the recommendation for monitoring this? How should we report progress monitoring on progress reports at the end of the school year since the data may not be accurate? Do we need to provide progress reports at the end of the school year?**

If a student's IEP states that a progress report will be provided concurrent with the issuance of report cards, then the IEP progress report would only need to be issued if report cards are also issued. If the IEP states the progress report will be issued in a different manner or frequency than report cards, schools should issue the IEP progress report in the manner required by the IEP.

Staff should be documenting the attempts to progress monitor, the attempts to contact parents, and the results of those attempts. In those instances where staff have experienced difficulties in their ability to accurately monitor students' progress, the progress reports should contain the data collected, to the extent feasible. If appropriate, the progress reports should also include a statement that the progress monitoring results may be questionable or not valid and the reasons for that conclusion.

Juvenile Detention Centers

- 5 I have recently learned that our county juvenile detention center (JDC) is not providing school for any incarcerated juveniles. Since those students are not receiving general education, is there any documentation that the LEA needs to do for students attending the JDC who are eligible for special education and are residents of our district?**

This question poses two issues: 1) what educational services should students attending a JDC be receiving during the "Soft Closure"; and 2) what notification should be provided to parents of students with disabilities attending the JDC, and by which school district?

Educational Services

Idaho State Board of Education (SBE) rules provide that each Idaho school district in which a public or private detention facility housing juvenile offenders is responsible to provide an instructional program to each student no later than 2 school days after admission and be provided for a minimum of 4 hours each school day. Further, the instruction program is to be coordinated with the instructional program at the school the student attends, when appropriate. IDAPA 08.02.02.240.01.

Students placed in detention facilities must be provided with an instructional program, although during the “Soft Closure” the instruction could shift from in-person to the use of on-line, virtual, or distance learning. Alternatively, the instruction could be provided in the detention classroom as long as services are provided within the CDC social distancing guidelines and proper sanitization can be performed. Further, depending on the circumstances, it may not be feasible to provide a minimum of 4 hours each school day.

Notification

If the instructional program does not provide the minimum of 4 hours daily, and a student’s IEP is not implemented as written, the school district in which the detention facility is located should provide the parent with Written Notice setting forth the details regarding the student’s instructional program.

Resources

[U.S. Department of Education Information and Resources for Schools and School Personnel](#)

[State of Idaho Information and Resources for Schools and School Personnel](#)

[OCR Announces Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency](#)

[U.S. Department of Education Releases Webinar, Fact Sheet for Protecting Students' Civil Rights During COVID-19 Response](#)

[A Collection of SPED Resources from Around the United States](#)

[Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#)

[Idaho State Department of Education FAQs for Families and Parents of Students with Disabilities](#)

Please Send Additional Questions To:

Dr. Charlie Silva csilva@sde.idaho.gov

Brenda Arnold barnold@sde.idaho.gov

Idaho State Department of Education

650 W State Street, Boise, ID 83702

208 332 6800 | www.sde.idaho.gov