

Guidance for Public School Districts Serving Students with Disabilities During the Current Closure Related to COVID-19

As public educators are aware, the effects of the novel coronavirus (COVID-19) are both pervasive and ever-changing. The guidance below is presented based upon the current situation and the most current guidance available. As we become aware of updated or new guidance, we will attempt to update the guidance below as quickly as possible. However, we encourage you to also continually monitor guidance being issued by the United States Department of Education (“USDOE”) (<https://www.ed.gov/coronavirus>), the Office of Special Education and Rehabilitative Services (“OSERS”) (<https://www2.ed.gov/about/offices/list/osers/index.html>), the Wisconsin Department of Public Instruction (“DPI”) (<https://dpi.wi.gov/sspw/2019-novel-coronavirus>), and the Wisconsin Department of Health Services (“DHS”) (<https://www.dhs.wisconsin.gov/covid-19/index.htm>).

1. During a school closure, when must a district provide a free appropriate public education (“FAPE”) to students with disabilities?

If a district provides educational services to the general student population, a district would be required, to the greatest extent possible, to provide students with disabilities a free appropriate public education during the same time period in which it provides services to the general student population. Conversely, if a district does not provide services to the general population during a closure, a district would not be required to provide services to students with disabilities during the period of the closure. However, if closure is for an extended period of time (generally more than 10 consecutive school days), a district would need to convene the IEP team once school resumes and determine what, if any, compensatory services are required.

It is noteworthy that in recent guidance, DPI notes that even if no services are provided to the general population, districts may selectively, and on an individualized basis, choose to provide special education services to students who may be most affected by the closure. (*Extended School Closure for Students with IEPs due to COVID-19 Special Education Question and Answer Document* (3/18/20) (located here: https://dpi.wi.gov/sites/default/files/imce/sspw/pdf/Extended_School_Closure_due_to_COVID.pdf) “When an LEA is aware that due to a student’s unique, disability-related needs, the student will likely experience significant regression due to the absence of the student’s educational program, providing some level of services can mitigate some of the student’s losses and reduce the need for expending excessive time and effort reteaching the student when school resumes.” (See *Extended School Closure for Students with IEPs due to COVID-19*, link provided above) Should a district elect to provide such services, districts must ensure that students are not selected in a discriminatory manner or based upon any factor other than disability-related need.

2. During a closure, if a district provides educational services to the general population and is also required to provide FAPE to students with disabilities, must the district convene an IEP team meeting to revise the student's IEP?

Both OSERS and DPI recently provided guidance related to the need to conduct an IEP during a period of closure and while providing virtual instruction to all students. During a recent webinar conducted by the Office of Special Education and Rehabilitative Services (“OSERS”) the Director of the Office of Special Education Programs (“OSEP”) stated that if districts were offering online or distance learning instruction to students, districts did not need to conduct IEP team meetings in order to make that shift in instructional delivery. Instead, it would be considered an “alternate mode of instructional delivery.” (See *Joint NASDE/CASE/CCSSO Webinar on COVID-19 Guidance for Students with Disabilities*, located here: https://zoom.us/rec/play/usIvJbr-pm03TNGXsQSDAaB4W469L_6s03VK-PIEyhuyUXMLMFekZ7NDNOZOKplYrwl9W5AsPdOeqZSC?startTime=1584110179000) The Director further stated, in response to a question regarding whether phone instruction or consultative support needed to be equal in frequency and duration to the services specified in an IEP, that “we’re not looking at the requirement of meeting all of the required time that’s in it. [We are] going to be looking at what is going to be most appropriate for that student to receive in order for them to continue to make progress, not only with the curriculum, but toward their progress on their goals and objectives.”

DPI also provided recent guidance regarding how a District might revise IEPs during this period of closure. In *Extended School Closure for Students with IEPs due to COVID-19 Special Education Question and Answer Document (3/18/20)* (see above for link) DPI stated the following:

May LEAs use the Notice of Changes to IEP Without An IEP Meeting (DPI Model Form I10) form to make revisions to an IEP, including changes in placement?

Yes, necessary changes to IEPs, including changes in placement, stemming from school closures ordered by the state or recommended by local health departments may be made without an IEP team meeting using the Notice of Changes to IEP Without An IEP 3 Meeting form (DPI Model Form I-10) if the parent agrees and if it is during the duration of the closure.

Based upon the guidance from both agencies, districts may consider the following process to provide FAPE to the greatest extent possible.

- A. Initially, contact parents and inform them a) that IEP services will be provided as set forth in the current IEP and no revisions are required or, b) alternatively, discuss the District’s current capabilities and the services that can and cannot be provided during the closure. If revisions to the IEP are necessary, and the parent agrees with the proposed revisions, document the changes on DPI Form I-10 (Notice of Changes to IEP Without An IEP Meeting) and send the finalized form to the parent.
- B. If the parent disagrees with the proposed revisions or does not agree to make any necessary revisions via use of the I-10, the district should send a Prior Written Notice (“PWN”) explaining which services will be provided to the student when virtual instruction begins and which services that cannot be provided through virtual instruction during the period of closure. The district can indicate the date on which virtual services will start. We have attached a template districts may wish to use to provide the PWN. The district should also offer to conduct a virtual IEP team meeting in the future to discuss the changes with the parent and address any disagreement. After the IEP team meeting is held, and if the parent disagrees with the services set forth in the resulting IEP, document that disagreement on a prior written notice (PWN).

With the sudden closure of all schools, even with the streamlined process set forth above, districts may be tasked with contacting a number of parents and determining appropriate and available services within a short period of time. Districts

may consider student-specific disability-related factors when prioritizing those contacts. For example, districts may contact parents of students who require a significant amount of services first as those students may be missing the greatest amount of services during the closure. Districts may also look to past and current extended school year data related to regression and recoupment. Districts may want to prioritize contacting parents of students who have consistently demonstrated regression over breaks in the past in order to forestall, to the best of the District's ability, similar regression during the current closure.

3. How should a district handle developing an initial IEP during a period of closure?

If a student is determined to be eligible for special education and related services during the period of closure, the IEP team should make every effort to develop an initial IEP within 30 calendar days of the date of the eligibility determination. When creating that initial IEP, it is recommended that the team first develop an IEP based upon the placement and services the student would receive during a period in which the school is open and in session. The team should then discuss what is currently available and will be provided during the period of closure and document in the IEP the Governor's order, the specific services that will be provided, the reason why other services cannot be provided and any disagreement of the parent. This may be done directly on the P-2 or on a PWN attached to and referenced on the P-2. The district must then finalize all of the resulting IEP documents and provide them to the parent.

4. What if specific services cannot be provided during the period of closure?

DPI guidance acknowledges that some services may not be able to be delivered during a period of closure and in an online format. For example, addressing social skill goals or implementing a specific physical therapy intervention may be impossible online. In those instances, once school resumes, the IEP team must reconvene and determine what, if any, compensatory education services are necessary to make up for the lack of services during the closure.

Given that IEP teams will be addressing the compensatory education question at some point in the future, it will be crucial for districts to document the services it was unable to provide during the closure and to collect data, if possible, during the closure. It will be equally important to collect and/or review existing data once school resumes in order to gauge the student's present levels and the extent of educational loss experienced during the closure.

5. During the period of closure, will districts need to comply with mandatory timelines associated with annual IEPs and evaluations?

The Director of OSEP stated that the agency is currently working on guidance regarding timelines associated with IEPs and evaluations. DPI's recent guidance also addresses timelines and states that with regard to evaluations, "if a student is not available because the school is closed, the timeline may be extended." DPI further notes that although there is no form to document an extension to the 60-day evaluation timeline, districts must document "why the timeline was extended, and communicate to the parent as to why the evaluation cannot be completed within the 60 days." To this end, a District may wish to send a PWN to parents documenting this information. DPI further advised that the review of existing data process, which may be conducted virtually and without a meeting, should continue to be held within 15 business days from receipt of referral. At the conclusion of that process, if the IEP team determines that sufficient data is available to determine eligibility, the team should make that determination in a meeting conducted via videoconference or a conference call and no extension to the evaluation timeline would be necessary.

With regard to annual IEPs, because alternative methods of meeting participation are expressly identified in the IDEA, districts should make every effort to conduct those meetings utilizing those methods and within the prescribed timelines. Indeed, DPI notes the following as the only two exceptions to annual IEP timelines:

- The LEA has reasonably determined the use of virtual technology is not a suitable method of conducting the required meeting; or

- Information necessary for the IEP team’s deliberation is not attainable due to recommendations of the state or local health departments.

In the event that a parent does not have the technological capacity to engage in remote participation in a meeting, a district may have to brainstorm with the parent to consider alternate options. For example, the district may offer the parent a room at the district office, if open, set up video or phone conferencing capabilities in that room, and allow the parent to access those capabilities in that setting.

Attached on last page: Prior Written Notice Template (Documenting Services to be Provided During Closure)

PRIMARY AUTHORS



Matthew W. Bell

(608)286-7239
 MBELL@BOARDMANCLARK.COM

■ Michael J. Julka	(608) 286-7238	■ Steven C. Zach	(608) 283-1736	■ Matthew W. Bell	(608)286-7239
■ James K. Ruhly	(608) 283-1738	■ Richard F. Verstegen	(608) 283-7233	■ Christopher T. Schmidt	(608) 286-7157
■ William L. Fahey	(608) 286-7234	■ David P. Weller	(608)286-7235	■ Brian P. Goodman	(608) 283-1722
■ JoAnn M. Hart	(608) 286-7162	■ Jennifer S. Mirus	(608) 283-1799	■ Daniel T. Fahey	(608) 286-7216
■ Eileen A. Brownlee	(608) 822-3251	■ Rhonda R. Hazen	(608) 283-1724	■ Eric B. Hagen	(608) 286-7225
■ Doug E. Witte	(608) 283-7529	■ M. Tess O’Brien-Heinzen	(608) 283-1798		

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PRIOR WRITTEN NOTICE

This document provides you prior written notice of the _____ School District's decision with respect to special education and related aids and services for your son/daughter, _____ during the period of school closure as a result of COVID-19. This is being provided pursuant to Wis. Stat. §§ 115.792(1)(b) and 115.792(2) and the applicable provision of the Code of Federal Regulations, 34 CFR §300.503(a).

On March 13, 2020, the Governor of the State of Wisconsin, ordered all public and private schools in the State of Wisconsin to close effective March 18, 2020. Per Governor Order, the schools shall remain closed for the duration of the public health emergency or until a subsequent order lifts the restriction.

The District will be providing educational services through virtual instruction to students beginning on _____. In compliance with guidance from the United States Department of Education (DOE) and the Wisconsin Department of Public Instruction (DPI), the District is working to provide to your student, to the greatest extent possible, special education and related services identified in his/her IEP developed under the Individuals Disabilities Education Act (IDEA) [or Section 504 Plan developed under the Rehabilitation Act of 1973]. As DOE and DPI have recognized, however, the District may not be able to provide some services through virtual instruction. When that occurs, the District will reconvene the IEP team once school resumes and determine whether additional services are necessary.

The District has reviewed the special education and related services identified in _____'s IEP [or 504 plan] and has determined that the following services will be provided virtually during the period of school closure: [Identify services here]

The District has also determined that the following services will not be able to be provided virtually during the period of school closure: [Identify services and the reasons why they cannot be provided]

During the period of school closure, the District will continue to explore additional options for virtual learning and will work with you to identify additional services or educational resources that may be provided to _____.

Please be aware that you and _____ have protection under the procedural safeguards (rights) of special education law. The District must provide you with a copy of your procedural safeguards at least once per year. The District gave you a copy of these rights [by mailing] at a meeting on _____. I am enclosing another copy of the procedural safeguards with this letter.

In addition to District staff including me, you may also contact the Wisconsin Department of Public Instruction at 608-266-1781 or Disability Rights Wisconsin at 131 W. Wilson St., Suite 700, Madison, WI, and phone 608-267-0214 if you have questions about your rights.

Sincerely,