

Birth to Three, Parental Participation and Writing Annual IEPs Addressed in Updated Guidance from the Department of Public Instruction

The Department of Public Instruction (“DPI”) continues to provide special education guidance by frequently updating its COVID-19 Special Education Questions and Answers Document (“Questions and Answers Document”). The most recent update provides districts with much needed information addressing transitions from Birth to 3 programs to school districts, providing for meaningful parental participation when a parent may not have access to technology and drafting annual IEPs during this period of closure. The updated Questions and Answers Document may be [accessed here](#). Given the evolving nature of the current pandemic, we encourage you to visit this site frequently to stay informed of any new guidance.

CHILDREN TRANSITIONING FROM BIRTH TO 3 PROGRAM

During this period of closure, agencies providing Birth to 3 services are still required to initiate special education referrals “not fewer than 90 days before the child’s third birthday” for children who may be eligible for special education services. Those agencies also continue to have the obligation to conduct a transition planning conference (“TPC”), which may be conducted virtually, with the family and the school district “not fewer than 90 days – and, at the discretion of all parties, not more than 9 months – before the toddler’s third birthday.” After a referral, districts must make efforts to meet all procedural requirements of the special education evaluation prior to the child’s third birthday, including complying with the 15-business day timeline to request consent for additional assessment or inform the parent that no additional assessment is required. If no additional assessment is required, within 60 calendar days of providing notice to the parent the district must schedule an eligibility determination meeting and determine the child’s eligibility for special education and related services. If additional assessment is necessary, the district may extend the evaluation timeline if the child is unavailable for that evaluation due to the current school closures. Any extension of the timeline must be documented and communicated to the parent. Districts may consider documenting and providing notice of an extension to an evaluation timeline by way of a prior written notice. Finally, if a child referred by a Birth to Three agency is found to be eligible for special education and related services, the IEP implementation date “would continue to be the child’s third birthday with the understanding that services would not begin until the school closure order is lifted.”

DPI’s guidance reminds districts that school closures do not halt the special education process. During this period of closure, districts must develop methods to accept and process referrals for special education evaluations submitted by parents, outside agencies or others who reasonably believe that a child is a child with a disability. Lines of communication may be strained and typical procedures, such as hand delivering a referral to a school, may be unavailable. Consequently, districts should reach out to referring agencies, particularly agencies providing Birth to 3 services, to reestablish or confirm appropriate channels of communication to ensure referrals do not fall through the cracks.

CREATING IEPs DURING SCHOOL CLOSURES

DPI advises that annual IEPs created during the period of closure “should be written to address the student’s disability related needs when school resumes.” If a student requires supports or services that are specific to the instruction being delivered during the closure, the IEP team should note those services in the IEP and further identify those services as being provided “for the period of time the school is closed for the public health order.” This limitation should be noted in the “duration” section of the program summary (Section IV of DPI form I-4).

ENSURING MEANINGFUL PARENTAL PARTICIPATION

DPI reiterates that during this period of closure, districts must continue to make attempts to involve parents in IEP team

decisions. When seeking to convene an IEP team meeting, districts must “document at least three reasonable attempts using multiple methods” to reach the parent. Those attempts may take the form of emails, telephone calls, or certified mail. If, after making three reasonable attempts, the district is unable to contact the parent, the IEP team meeting may proceed and the district must then notify the parent of the IEP team decisions and offer to meet again once the parent is available.

If a District is successful in reaching a parent, the district may offer the parent the option of participating in the IEP team meeting through “alternative means” (i.e. conference call, video conferencing). DPI notes that the parent has three choices:

- participate in the IEP through those alternative means;
- allow the meeting to proceed without parent participation; or,
- request that the meeting be postponed until the meeting can occur in person.

If the parent requests a postponement, DPI notes that it “is acceptable to hold the meeting in person once school reopens.” While DPI permits a district to grant a parent’s request to postpone an IEP in order to meet in person, DPI also states that if the postponement results in not meeting annual IEP timelines, at an IEP team meeting held after school resumes “the team should consider whether, as a result of the delay, compensatory services should be provided to the student.”

Based upon DPI’s prior guidance set forth in the *Questions and Answers Document*, if students have not received all of their IEP services during this period of closure, IEP teams “must consider, on an individualized basis, whether and to what extent, compensatory services are required due to the closure.” Consequently, IEP teams may already be meeting to consider compensatory education services and could consider the result of any postponement at that time as well.

Finally, districts are reminded, as noted above, that if the IEP team meets during this period of closure, with or without the parent present, the IEP should be written to reflect the services the child will receive once schools are allowed to open.

The current pandemic and resulting school closures have significantly altered the manner in which IEP team meetings are conducted and special education processes are coordinated. The sudden change of circumstances is bound to raise questions and require creative problem solving to ensure students continue to receive services and parents remain active participants in the process. In addressing those challenges, we encourage you to collaborate with colleagues and parents, continue to monitor guidance being issued by DPI and the USDOE and know that the Boardman & Clark School Law Team is here to assist your district in rising to those challenges.

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