

# Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in Summer and Fall 2020

This guidance is current as of July 10, 2020. Please refer to OSPI's [COVID-19](#) and [Special Education COVID-19](#) webpages for the most up-to-date information. This Q&A will be updated frequently to reflect current guidance as it is released. Refer also to OSPI's [website](#) for additional information regarding the provision of services to students with disabilities during COVID-19.

The Individuals with Disabilities Education Act (IDEA) and WAC 392-172A, along with related RCW, require school districts to provide a free appropriate public education (FAPE) for students with disabilities ages 3-21, and for OSPI to ensure that provision of FAPE through general supervisory authority, including the use of monitoring, dispute resolution, technical assistance, and corrective action, if needed. This document is provided in the format of technical assistance for school districts and is not intended to reduce the general supervision responsibilities of the OSPI but does reflect the opportunities for districts to make local decisions, provided they maintain compliance with IDEA and WAC 392-172A.

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## A. Provision of Services (including medical and behavioral services)

### **A-1. How do districts provide instruction and supports to students with disabilities, including those with significant disabilities, during the times impacted by COVID-19, including school facility closures and reopening?**

If a school district closes its schools and does not provide any educational services to the general student population, as happened in March 2020, then a school would not be required to provide services to students with disabilities during that same period of time. Per [Bulletin 024-20](#), school districts in the State of Washington were each expected to be providing educational services during school facility closures using such methods as printed learning materials, phone contact, email, technology-based virtual instruction, or a combination to meet student needs, on or before March 30, 2020. Recent [OSPI Guidance](#), sets additional expectations for school district educational service delivery in fall 2020.

As students in the school district receive general education instruction and student support services, districts must provide students with disabilities with the special education and related services and specially designed instruction supporting a free appropriate public education (FAPE). As a result of COVID-19, [Guidance dated March 21, 2020](#) from the U.S. Department of Education Office for Civil Rights (OCR) and Office for Special Education and Rehabilitative Services (OSERS) indicated "there may be exceptional circumstances that could affect how a particular service is provided." There remains an expectation that individualized education program (IEP) services will be delivered to the maximum extent possible during the pandemic, while adjusting delivery methods to comply with state and local health/safety restrictions. Additional information on this process is provided in the following questions below.

Regulatory requirements have not been rescinded or revised. Districts are required to comply with the Individuals with Disabilities Education Act (IDEA), Title II of the Americans with Disabilities Act (Title II), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Washington Law Against Discrimination (WLAD), along with their respective implementing regulations. These regulations help ensure that students with disabilities receive reasonable accommodations and modifications in order to have an equitable educational opportunity in the least restrictive environment to meet their individual needs. When planning for fall reopening, districts should make every effort to ensure students with disabilities spend as much time as appropriate in the general education setting, particularly given the limitations of physical distancing and other health and safety requirements. Instruction should be adapted to meet the student's needs, rather than the needs, or existing capacity, of the district.

There is no one right way for districts to provide special education and related services during COVID-19; however, not providing them at all is not an option, nor beginning in fall 2020 should they be limited to only the provision of written learning materials without teacher-led instruction. The [OSPI Reopening Washington Schools 2020 District Planning Guide](#) specifies an expectation from Superintendent Reykdal for schools to open for in-person instruction this fall.

At the same time, there is an acknowledgement, that in order to meet state and local Department of Health (DOH) requirements, fall openings may be a hybrid face-to-face/online model or any combination of modalities and schedules that meet local community needs, while also affording all students in the district access to their basic education rights. It will be rare that a single delivery method will meet the needs of each student with an IEP, and students with disabilities should be prioritized for in-person educational services. Districts must also have an alternative plan to return to full continuous remote learning in the event the district is unable to safely open or a local health authority or the Governor mandates additional short- or long-term closure.

OSPI expects districts to plan for providing a continuum of service delivery modalities this summer and/or fall, prioritizing in-person services to the maximum extent possible under state and local health guidelines. OSPI's expectation is that following the reduction of state and local COVID-19 health and safety restrictions, pre-closure IEPs will be re-implemented immediately to the maximum extent possible and/or adjusted (with the IEP team) to provide additional services, accommodations, and/or modifications. Students should not have reductions in IEP services on annual IEPs following the school facility closures in spring 2020, except in limited cases (e.g., following an evaluation demonstrating services are no longer needed).

It is recommended that districts align the delivery of special education services to the general education service model(s) being implemented, with individual decisions made to address specially designed instruction and access to general education settings and instruction. Be cautious when grouping students to receive services in hybrid models to ensure that students with disabilities are not subject to further segregation from general education peers, contrary to their IEPs.

As stated in the March 21, 2020 [guidance](#) from the U.S. Department of Education, the provision of FAPE may include, as appropriate, special education and related services provided through specially designed instruction that is provided in-person, virtually, online, telephonically, and/or in a combination. Many disability-related accommodations and modifications may be effectively provided to some students either in-person or online, such as extensions of time for assignments, videos with captioning or embedded sign language interpreting, accessible reading materials, and speech/language services through video conferencing.

OSPI encourages districts to sit down with their leadership and educator teams, as well as students and families of students with disabilities, and brainstorm ways of ensuring that all students are accessing special education services using individualized, alternative methods and potential shifts in district delivery of education services (i.e., in-person, hybrid, or continuous learning). Health and safety considerations remain a priority, and must be in place to the extent feasible, including physical distancing recommendations and a need for personal protective equipment (PPE) such as cloth face masks or face shields, in providing specially designed instruction. Accommodations and modifications to those requirements (based on disability)

must be considered and implemented to the maximum extent possible by the district, upon request or identification of need for a student to receive a FAPE.

Students who are unable to consistently wear PPE or maintain physical distance due to sensory, behavioral or other disabilities must not be disciplined or denied access to educational services as a result. Positive behavior interventions, explicit instruction in safety compliance, and consultation with families are among the tools available for meeting FAPE obligations during COVID-19. Face shields, which cover the entire face without touching or hiding the mouth, are considered a safe alternative to face masks and may make it easier for staff members and students to communicate and be understood, as can clear physical barriers or shortened periods of close contact.

OSPI's special education division has curated a [repository of online resources](#) to assist staff in supporting students with disabilities during COVID-19. Please check the [OSPI COVID-19 Special Education webpage](#) for the latest updates. Additionally, districts should provide families with information about the availability of other state agency and community-based supports available to them, such as Developmental Disabilities Administration (DDA), Vocational Rehabilitation (VR), and Medicaid.

Students with disabilities will need ongoing communication and specially designed instruction from school staff, regardless of the schedule and structure of the school during COVID-19. Districts should develop a system to track and monitor ongoing staff communications with students and families and respond to any lack of progress in a timely manner. Districts should consider the mode of communication used and ensure that communications are provided in the home language, and using multiple avenues, such as email, U.S. Mail, text, home visits, and/or telephone. Interpretation and translation services must be utilized when necessary for effective communication, including communication with individuals who are deaf and hard of hearing and those with limited English proficiency in speaking, reading, writing, or listening comprehension.

If the student does not access the educational opportunities and services made available during COVID-19, OSPI recommends the district document multiple communications with the family and attempts to address barriers to access, if known (see the optional individual student [Continuous Learning Plan](#) template from spring 2020 for one way to document). As described above, districts should consider the mode of communication used, if the family and student are unresponsive, and ensure that communications are provided in the home language, and using multiple avenues, such as email, U.S. Mail, text, home visits, and/or telephone. If the lack of access is ongoing, negatively impacting learning and progress, districts should reach out to parents to discuss further, and modify service delivery plans, as a result, to address the student's needs.

Documentation of the degree to which services were offered and accessed during the closure will assist the team in determining the extent to which a reevaluation, revised/amended IEP,

and/or recovery services<sup>1</sup> may be needed after school facilities re-open and/or health and safety requirements are updated. Refer to Appendix A of [Technical Assistance Paper 5](#) for more information on how to determine when an evaluation is necessary.

## **A-2. How can districts provide services to students with significant behavioral difficulties whose IEPs require a 1:1 paraeducator and/or a high level of behavioral support for the safety of themselves and others in fall 2020?**

There is no one way to provide services. Districts must determine, in collaboration with families, ways to provide services to their students and individualize these services based on individual student need.

In spring 2020, during school facility closures, the majority of all Washington students received educational services, including special education and related services, in their home, due to state health and safety restrictions. As stated in the question above, these intensive services may have been delivered differently based on COVID-19 health and safety needs, student need, parent engagement, staffing configurations, regional health and safety needs, and district systems which did not permit those services to be delivered safely in person. Districts make decisions individually based on student needs, and the focus should be on supporting students and their parents/caregivers in engaging in systems that promote safe behaviors in the home and community and allow for access to educational services.

OSPI guidance provided for spring 2020 included that schools and systems should leverage the behavioral expertise of their personnel to support interventions that meet the needs of their students and the new learning environment and prioritize the immediate needs of their most impacted students. Behavioral supports at home likely look very different than behavioral supports in schools, and parents/caregivers may need support on how to implement interventions and supports. Examples of behavioral supports that could be implemented in the home include remote instruction, parent/caregiver behavioral coaching, or coaching and support around interventions such as: “first, then choice boards,” activity schedules, functional communication strategies, implementation of reinforcement contingencies, etc. A list of social and emotional learning (SEL) activities for students, families, and educators can be found on OSPI’s [website](#).

In summer and/or fall 2020, districts resume in-person education services, and are expected to return to providing special education and related services to students with disabilities in accordance with the student’s IEP while following state and county DOH health and safety requirements. Districts should prioritize the implementation of positive behavioral supports,

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<sup>1</sup> The term “recovery services”, as used in this document, may depict a variety of scenarios. It may describe services need to remedy a denial of FAPE by a district (typically referred to during dispute resolution as “compensatory services”), and also to describe additional, supplemental services needed to address gaps in service delivery due to COVID-19 health/safely limitations, of which districts had no control.

school-based mental health services, and trauma-informed supports in the least restrictive setting to meet the student's needs, whether the services are in-person or online.

### **A-3. How and when can districts provide in-person special education and related services, including medical services?**

For spring 2020, health and safety was prioritized, which resulted in very few in-person services. Please refer to [March 17, 2020 Letter to Superintendents and Labor Leaders](#) for staff considerations for safety. See also question A-1 of this document.

**Summer and Fall 2020:** Districts resume in-person education services, and are expected to return to providing special education and related services to students with disabilities in accordance with the student's IEP. If there are concerns about students accessing special education and related services (e.g., school facilities are closed, [state or local DOH health and safety restrictions](#) are in place, or student and/or staff are unable to comply with physical distancing and PPE), districts remain responsible to examine these concerns on a case-by-case basis with families to identify what needs continue during this period impacted by COVID-19 and are able to be safely addressed using various supports, modalities, and PPE.

Districts should consider a multiple modality approach to ensure students have equitable access. There is no single correct approach, and the actions taken to provide services will vary district by district. Delivery of services could look like a combination of in-person services, providing printed learning materials paired with educator instruction and online learning options, and could also include providing some students with laptops and/or mobile Internet hotspots during school facility closure if needed. Unless the health and safety of students and staff make it impossible, districts should offer some form of direct/synchronous instruction. Consider the needs of each student and family when developing your strategies to support student learning and know that materials and strategies may also need to be differentiated or modified to support some learners and situations. Districts should anticipate a need for training for families on how to use electronic devices and learning platforms, including for families with limited English proficiency.

School districts will determine at a local level the degree to which in-person, online, or remote services will be made available, taking into consideration the equity needs of students receiving special education and maximizing inclusion. Here are some additional resources:

- Free technical assistance from OCR's web access team is available to support that web platforms selection and development for student learning are compliant with the civil rights laws that OCR enforces. Contact [OCRWebAccessTA@ed.gov](mailto:OCRWebAccessTA@ed.gov) if you are interested in receiving technical assistance.
- [OCR Short Webinar on Online Education and Website Accessibility](#)
- [Fact Sheet on Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#)

#### **A-4. Is there any additional OSPI guidance on providing services to students during a pandemic or to students who are medically fragile?**

Additional relevant information is available from the 2009 U.S. Department of Education Office of Special Education Programs (OSEP) [Q and A on Providing Services to Children with Disabilities during an H1N1 Outbreak](#). Decisions must be made on a case-by-case basis. Regardless of service setting, the district remains responsible for a free appropriate public education (FAPE).

Districts follow existing state and local requirements, procedures, and practices when providing educational services, including special education and related services to medically fragile students. Districts with school nurses will want to include them in these discussions for planning. Families are also an important partner and should be engaged in planning and problem solving.

For students who are medically fragile, IEP teams should meet prior to the fall 2020 school year beginning, including the parents and the school staff responsible for providing/supporting medical care and other related services (e.g., school nurse, 1:1 nurse, paraeducator), to consider the continuum of alternative placements available, including the Least Restrictive Environment (LRE) of the student. If not already available, districts may want to request permission from parents to maintain two-way communication with a medically fragile student's treating physician to discuss student-specific needs and safety considerations in the school context.

During the meeting, the team will review the student needs, the district's plan to address COVID-19, and document the student's individual plan for school attendance, potential safety adaptations due to illness of the student or others, and the need for any additional supports. This may include screening protocols for those coming in contact with the student (both staff and other students), how the IEP will be implemented when the student is in the school classroom, at home, or a combination of both, and how parents will be involved and notified of potential contact or illness. It is likely the student may need to change the location of educational services during the school year, based on exposure and illness.



## B. Extended School Year (ESY) and Recovery Services<sup>2</sup>

### **B-1. When in-person school operations resume, will districts need to review every student who has an IEP to determine if recovery services are needed?**

Yes, districts should look at each IEP and the student's progress on IEP goals, in addition to documentation showing the degree to which the student participated in remote learning opportunities during spring 2020, to determine whether recovery services are needed due to COVID-19. There is no exception to the requirement to provide FAPE to students with disabilities and as the district is providing general education services to students without disabilities, then it must also provide FAPE to students with disabilities. However, due to the exceptional circumstances of the COVID-19 pandemic, the resulting school facility closures in spring 2020, and the need to adjust in-person instructional models for summer and/or fall 2020, districts will need to determine whether and to what extent recovery services are necessary when in-person school operations resume in the event that the district is unable to provide appropriate IEP services during COVID-19.

Documentation of the degree to which services were offered and accessed during the closure, as well as data documenting progress (or lack of) toward the student's IEP goals, will assist the team in determining the amount of recovery services needed after school facilities re-open. The extent of a student's recovery services, if needed, must be an individualized determination made by the IEP team. Recovery services should be provided outside of the district's school day or be reflected as increased or supplemental services in the student's IEP (in limited circumstances). Recovery services are not generally provided in the same amount that was missed (i.e., minute for minute, hour for hour), and are dependent on the student's progress as well as the amount and type of services that were provided during the school facility closure. Districts should be cautious when scheduling recovery services during the student's school day to ensure that this does not lead to a more restrictive placement for the student or contribute to additional general education instruction being missed.

As always, districts should timely respond to, and address, parent requests for IEP meetings to address the FAPE needs of their student. In addition to IEP meetings, districts may work with families to access recovery services through other district-selected methods, provided that final recovery service decisions are individualized.

Districts may use federal IDEA funds, state special education funds, state basic education funds, district-allocated Elementary and Secondary School Emergency Relief (ESSER) funds and/or a combination to support the provision of recovery services.

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<sup>2</sup> As previously described, the term "recovery services", as used in this document, may depict a variety of scenarios. It may describe services need to remedy a denial of FAPE by a district (typically referred to during dispute resolution as "compensatory services"), and also to describe additional, supplemental services needed to address gaps in service delivery due to COVID-19 health/safely limitations, of which districts had no control.

OSPI is awaiting federal guidance on requirements for identifying and providing recovery services due to school facility closures and will provide additional guidance to districts when it is available.

**B-2. How may parents request recovery services for their student due to COVID-19 school facility closures and a resulting decrease in IEP services?**

Many families are concerned over the educational impact of school facility closures in spring 2020 on their students, whether or not they have a disability. Students with an IEP remain entitled to a free appropriate public education (FAPE) and specially designed instruction was expected to continue in some manner when the district was providing educational services to all students (i.e., generally beginning on or before March 30, 2020). See question A-1 of this document for additional information.

Parents with concerns over the special education and related services provided to their student, and the resulting impact on progress on IEP goals, are encouraged to contact their IEP team or the district special education director for further discussion. Additionally, all dispute resolution options remain available, including facilitation, mediation, state complaint, and due process. See also question G-3 of this document.

**B-3. What about students with disabilities who are graduating or reaching the age of 21?**

Communities may not be returning to “normal” any time soon, and job training sites and community activities may not be available due to safety concerns or may have changed due to physical distancing or health protocols to the point where the student does not have the opportunity to develop the skills originally intended by the IEP team. Districts are encouraged to work with families and students to determine the need for recovery services on a case-by-case basis. Districts may want to consult legal counsel for additional legal considerations when planning to provide services to students who have graduated or reached the age of 21. Recovery services could be provided to make up for missed services impacting student progress, and/or the IEP team could consider a different kind of opportunity or experience to replace or substitute for what was missed.

Students and their families still retain dispute resolution options, and remedy can be provided.

Districts may use available federal IDEA funds, state special education funds, state basic education funds, district-allocated ESSER funds and/or a combination to support the provision of recovery services after a student graduates or reaches maximum age, although the district cannot submit the student’s information to OSPI for additional funds. See also section G of this document.

#### **B-4. What is the difference between recovery services and extended school year (ESY)?**

Recovery services are intended to enable the student to make progress on IEP goals, used if students have not been provided or were unable to access IEP services during COVID-19. ESY services are intended to support students with maintaining skills during school breaks, if without them, the student is not provided with a FAPE.

Recovery services will generally be determined after in-person school operations resume and are determined by IEP teams on a case-by-case basis. Districts should examine the effect of COVID-19 and the special education and related services provided during the spring 2020 school building closures on the student's overall progress and engagement, including progress toward their IEP goals, in preparation for upcoming fall IEP meetings.

ESY is required if the student needs it in order to maintain IEP skills. The need for ESY is typically determined based on data that show regression or lack of recoupment of progress on IEP goals within a reasonable amount of time after a break from school. However, the determination could also be made based on the consideration of other factors, including the nature and severity of the student's disability, rate of progress, and emerging skills, with evidence to support the need. The need for ESY should be examined on a case-by-case basis for each student on an annual basis, as already required in IDEA. Districts should consider how to address current ESY needs of students whose IEP teams have already identified the need in their IEPs and prepare to provide needed ESY services during summer 2020 to the extent possible. See section (C) of this document for additional guidance on providing ESY and optional summer 2020 instructional services.

### **C. Planning for Optional Summer Services and Fall Reopening**

#### **C-1. What should districts consider when planning to provide ESY services or other summer instructional services during the summer of 2020?**

In compliance with state and local public health and safety guidelines (or guidance from the DOH), schools should prioritize school facility usage and in-person instruction for students needing hands-on learning opportunities and face-to-face instruction and support to learn, including students with disabilities, those who are multilingual/English Learners, migrant students, students experiencing homelessness or are in foster care, students with 504 plans, those who are marginalized, disengaged, and facing other barriers or inequities, or were not served through continuous learning in Spring 2020.

Many students with an IEP were unable to receive IEP-required 1:1 instructional support from paraeducators, related service providers, or behavioral support personnel during school facility

closures. As many of these services and supports are necessary for the student to benefit from their specially designed instruction and access to general education standards, districts will consider (with families) if these missed services/supports are needed over the summer to prepare the student for the fall. It is recommended that if districts offer optional summer instructional services, that such services also address needs for recovery services for students unable to make progress on IEP goals and/or benefit from SDI due to COVID-19 limitations, considering those who are able to safely access services during the summer, the intensity of need, the impact on the student, as well as those who are graduating or reaching maximum age and those with intensive behavior and physical health needs.

For students whose IEP teams determined prior to the school facility closures that the student was in need of ESY, districts may need to consider a continuum of provision options for ESY which prioritize in-person services, and also consider the COVID-19 status within the district's region. Districts may not postpone ESY services until next summer.

If the district is planning to offer optional summer learning programs in addition to ESY, OSPI encourages the district to consider how students with disabilities will be included and how those programs may be used to provide recovery services. Districts may use available federal IDEA funds, state special education funds, state basic education funds, district-allocated ESSER funds and/or a combination to support the provision of recovery services during optional summer learning programs.

**C-2. It may be very difficult for districts to hire staff to provide ESY services. Do you think that the federal government may step in and issue some form of "hold harmless"?**

No. OSPI understands that staffing shortages are a concern for districts.

All of the federal guidance issued thus far, including the [March 21, 2020 Supplemental Fact Sheet](#), indicates that districts must maintain a free appropriate public education (FAPE) and civil rights for students. Districts should not expect to be "held harmless" with respect to providing FAPE or providing IEP-required ESY services.

Districts may consider strategies to address staffing needs, including working with their local labor association, considering staggered work schedules for educators, Education Staff Associates (ESAs), and classified staff, as well as the need for contracted staff, in some cases where district staff are unavailable.

Districts may not enter into Collective Bargaining Agreements (CBAs) which serve to limit special education services or Procedural Safeguards for students with disabilities and their families. Please see [Bulletin 047-18](#) for additional information.

### **C-3. How should districts prepare this summer for the reopening of schools this fall?**

OSPI has convened a number of stakeholder workgroups to develop guidance to assist districts in decision-making for the reopening of school facilities, including considerations such as social emotional learning (SEL), physical, mental, and behavioral health, family engagement, student supports, schedules, finance, transportation, and health and safety. The workgroups identified various models for reopening, including a continuum of options based on the status of COVID-19 and related state and local health and safety restrictions. The guidance includes leadership needs, educator professional development, and the consideration of potential barriers to instruction and commits to the following priority:

#### Support Students Furthest from Educational Justice:

The impacts of fear, hatred, and systemic and structural racism within institutions cannot be ignored, and they yield tragic outcomes. Washington's public education system must engage in anti-racist capacity building, leadership, and resource allocation. Dismantling systemically racist structures will make progress on inclusivity and will better serve students of color, students with disabilities, students who are English learners, students who are migratory, students experiencing homelessness, students in foster care, students experiencing intergenerational poverty, and students who identify as LGBTQ+.

The work of Washington public schools is to prepare students for postsecondary pathways, careers, and civic engagement. Washington must create the conditions for each student to be educated in racially literate, culturally sustaining, positive, and predictable environments that intentionally prioritize the instruction and development of social-emotional skills, and mental health in addition to our primary focus on academic content.

OSPI released [Reopening Washington Schools 2020 District Planning Guide](#) on June 11, 2020. As part of the agency efforts, OSPI's special education division developed more specific guidance to accompany the agency's broader guidance on reopening schools that will focus on considerations related to the provision of services to students with disabilities. Districts are urged to consider both documents, in addition to this Q and A, in their planning for summer and/or fall 2020.

OSPI encourages districts to prioritize this summer and prepare for full implementation of IEPs (and returning to pre-COVID IEP services) in the fall, as well as complete any delayed evaluations, reevaluations, and annual IEPs, and begin identifying ways to address service gaps through additional services in a student's IEP or recovery services, if needed.

Districts should also begin to plan this summer, with school personnel and families, for returning-to-school transition activities, timelines, and opportunities for practice, for students who struggle with changes in schedules and routines.

#### **C-4. Are in-person special education and related services expected to be provided in summer and/or fall 2020?**

The Governor's order prohibiting in-person schooling is no longer in effect. As Department of Health (DOH) health and safety restrictions are decreased in communities during the summer and fall of 2020, additional safety precautions must be implemented by districts to allow students with disabilities to receive needed in-person special education and related services that were unable to be safely delivered during spring 2020 continuous learning. Districts should prioritize and plan on offering face-to-face services for students with disabilities. Health and safety precautions should be in place, including the use of PPE and physical distancing, when possible. Districts will need to consider IEP-defined student placements when scheduling staff and grouping of students, to ensure that placement decisions and LRE are not changed outside of the IEP process.

School staff will need to discuss considerations for those students needing closer, prolonged physical contact, to minimize exposure. These considerations could use strategies such as clear physical barriers, short periods of contact with follow-up handwashing by student and staff and changing of facemasks, providing services in a well ventilated area, and limiting personnel who make contact. It is important to note that any decisions for removal from in-person educational services students (due to the effect a disability has on their need for prolonged and sustained physical contact without the use of PPE) must be made by the IEP team, with consideration to the impact to the least restrictive environment (LRE) and special education and related services that provide FAPE. See also question A-4 of this document. The [Special Education Technology Center](#), an IDEA-funded State Needs Project, has provided technical assistance. District staff and staff from other impacted agencies and facilities should be included in planning efforts, as they bring expertise regarding services to students with disabilities, which can be embedded through the district plan. Please see the [WA DOH Recommendations and Resources Webpage](#) for additional up-to-date information.

OSPI's expectation is that following the reduction of state and local COVID-19 health and safety restrictions, pre-closure IEPs will be re-implemented immediately and/or adjusted (with the IEP team) to provide additional services, accommodations, and/or modifications. Districts should prioritize and complete remaining evaluations and IEPs that were unable to be completed in spring 2020 due to the school facility closures.

Districts may use available federal IDEA funds, state special education funds, state basic education funds, district-allocated ESSER funds and/or a combination to support the provision

of specialized or alternate PPE and other physical distancing equipment, to address the individual needs of the student.

#### D. IEP Implementation (including IEP amendments, progress reporting, accommodations)

##### **D-1. Do districts need to complete IEP amendments for every single student?**

As stated in the answer to A-1 above, there was not an expectation that IEP services would be delivered exactly as the IEP states during the COVID-19 school facility closures in spring 2020. IEP amendments are not required for time-limited changes resulting from the pandemic. A written plan, however, in the form of an optional individual student Continuous Learning Plan (CLP), or similar document, and communication with parents and families about what services can be safely provided is expected. Districts have flexibility to determine the method for documenting individual student continuous learning plans, the collaboration involved in the development of the plans, and the delivery of services, with input from families. However, the documentation system should be robust enough to provide evidence of the plans and services delivered.

##### **D-2. What is the difference between an IEP, an IEP Amendment, and an individual student Continuous Learning Plan? When may districts use an individual student Continuous Learning Plan?**

An individual student Continuous Learning Plan (or similar document) is a temporary plan that outlines the extent to which IEP services and accommodations must be delivered differently or suspended due to emergency health and safety restrictions in spring of 2020. An IEP, on the other hand, is a document updated annually that describes a district's offer of a FAPE to an individual student. While the information recorded in an individual student Continuous Learning Plan (or other similar document) may come from a student's IEP, such documentation is not intended to serve as, or to replace, the most recent IEP. The expectation is that in summer and/or fall of 2020, the existing IEP will be re-implemented. Students should not arbitrarily have reductions in IEP services (e.g., specially designed instruction, related services, supplementary aids and services) on annual IEPs following the school facility closures in spring 2020, or have permanent reductions in services based upon a temporary IEP amendment or continuous learning plan implemented during spring 2020 in response to school facility closures.

Without documented parent and district agreement under WAC 392-172A-03110 to amend a student's IEP, individual student Continuous Learning Plans or other similar forms should not be considered an IEP amendment (see question D-1 of this document for specific guidance on IEP amendments). Districts, however, must still have a method for documenting decisions made for individual students during the spring 2020 school facility closures, including what services were

offered to students and what services the students were able to access. This information, documented in an individual student Continuous Learning Plan or similar form, will be very important when it comes time for teams to plan recovery services which might be needed by the student during the summer and/or fall 2020 or following additional COVID-19 school facility closures.

It is OSPI's expectation that individual student Continuous Learning Plans (or other similar documents) will no longer be necessary pending the reduction of state and local COVID-19 health and safety restrictions in the summer and/or fall of 2020. Districts are expected to prioritize re-implementing pre-closure IEPs and adjust IEPs, as needed, to provide additional services, accommodations, and/or modifications, including addressing services to provide FAPE if the school or district utilizes a hybrid model (part time in-person and part-time continuous remote learning). Individual student Continuous Learning Plans (or other similar documents) should only be needed in fall 2020 as a point of reference when IEP teams consider adjusting IEPs and/or plan for any recovery services and should be maintained in the student's special education record.

If during summer and/or fall 2020 (as described in Questions C-3 and C-4) the IEP team determines that temporary reductions or adjustments to services are necessary, such as in cases of additional school facility re-closure, districts may wish to consider the options described above, including the use of a new or revised individual student Continuous Learning Plan (or similar document). To be clear, the use of a Continuous Learning Plan in fall 2020 is only an option for use during full school facility closure, impacting all district students.

It is important for districts to keep in mind that using IEP amendments to document reduced services during COVID-19 even on a temporary basis may be interpreted by parents as an attempt to reduce services for their student on a long-term basis. No temporary IEP amendment due to COVID-19, however, should last longer than the annual IEP. Districts may also not request or require that families "waive" aspects of IDEA during COVID-19. As stated above, the expectation is that in summer and/or fall 2020, the existing IEP will be re-implemented immediately. Students should not have arbitrary reductions in IEP services (e.g., specially designed instruction, related services, supplementary aids and services) on annual IEPs following the school facility closures in spring 2020. Any revised services that parents choose not to access, however, should be documented in a prior written notice (PWN). The parents' choice to access some, but not all, services for which the student is eligible should not be confused with the parent revoking consent for services. All of the services for which the student is eligible would still be available based on the service delivery model options offered by the district.

OSPI continues to support districts and families to work together, with and/or on behalf of the students with disabilities, to improve post-secondary education, employment and independent living, as intended by the IDEA and expects that everyone involved in a student's special education program participate in good-faith.



**D-3. If we complete an annual IEP during COVID-19, what is your guidance for developing the present levels section if the team is not able to observe the student to gather data?**

This decision should be made by the IEP team on an individual, case-by-case basis, and in the fall, the student will be observable in some manner through in-person instruction. Here are some points to consider:

- How old is the most recent data for each of the identified areas? Could these data still be considered current?
- What alternative data collection strategies could be used, such as having the student take an online performance assessment or sending work or assessments home for the student to complete and return?
- How might an observation take place, in person or through distance technology?
- How will input from teachers on work completed prior to the facility closure, as well as during the facility closure, be solicited and included?
- What information are parents able to provide?

**D-4. What is the guidance on IEP goal progress reporting during fall 2020?**

There is no waiver of IDEA progress reporting requirements. Progress reports should continue to be provided to parents on the schedule indicated in the IEP. As districts move to in-person instructional services during the 2020-21 school year, teams will have access to more traditional types of progress data to assist with progress reporting.

In the case of facility reclosure or a hybrid educational model, IEP teams should consider a variety of synchronous and asynchronous methods for collecting progress data, including observations of the student via remote methods, working with the parent to complete a data collection sheet, curriculum-based assessments, data collected prior to the school facility closures, etc. See question D-3 above for additional suggestions.

Progress data from spring and fall 2020 will also be an important consideration when IEP teams are determining what recovery services might be needed.

**D-5. If the district is providing child care to a student with a disability whose IEP indicates the need for a 1:1 paraeducator, does the district need to provide that same level of support in the child care setting?**

This would need to be determined on a case-by-case basis. If the district is providing child care services (such as for children of first responders), and a student's IEP indicates the need for a 1:1 paraeducator, the district should consider whether that service/support is needed in the child care setting (as opposed to continuing to provide IEP services in a child care setting).

**D-6. In light of OSPI’s Student Learning and Grading Guidance, what should districts do if a student’s IEP documents modified grading (e.g., pass/fail) as a necessary accommodation for spring 2020?**

[OSPI’s Student Learning and Grading Guidance](#) (and related [FAQ](#)) states that grading practices should do no harm to the student, and requires districts to continue using grades to assess student learning for the purpose of high school credit-bearing courses. The rules prohibit a binary pass/no-credit system, and they prohibit failing grades from being issued to students. These grading rules only apply to credit-bearing courses (i.e., they do not apply to preschool, elementary, or middle school (unless the middle school course offers high school credit)).

Districts and families may retain the grading practice that was established in the IEP prior to the closure. However, no failing grades are permitted for spring 2020. OSPI’s Special Education Continuous Learning Plan (model form 16b in [English](#) and [Spanish](#)) is a resource for situations in which an existing IEP outlines “Pass/Fail.” In light of the recent OSPI guidance and rulemaking on grading, a failing grade should not be used for spring 2020, due to the impact of COVID-19. If it seems that a student with IEP grading accommodations/modifications may not pass the course, the district should discuss OSPI’s grading guidance with the student and family. A similar process should be used for students with 504 plans which include grading accommodations or modifications.

**D-7. How do we ensure that general education teachers have access to student IEPs during the school facility closures and (other COVID-19 impacted times) in order to provide necessary services, accommodations, and supports?**

OSPI recognizes that school facility closures in spring 2020 presented challenges for general education teachers, special education teachers, related services providers, and any other service providers seeking to have access to a student’s IEP and/or individual student continuous learning plan. It is important, however, that all staff providing educational services to students with disabilities during school facility closures and other educational models used by districts during COVID-19 continue to have information related to their responsibilities and the accommodations, modifications, and supports described in the IEPs and/or individual student continuous learning plans of the students with whom they are working ([WAC 392-172A-03105\(3\)](#)).

The district may need to consider alternate methods for providing this information to teachers and staff if they are unable to access it from the district’s information system. The alternate methods should follow the confidentiality requirements set forth in [WAC 392-172A-05230](#) and the [Family Educational Rights and Privacy Act](#) (FERPA). Confidential student information is permitted to be shared with authorized school district employees who have a legitimate

educational interest ([WAC 392-172A-05195](#)). If alternate methods are used, districts should document how the information was provided to staff. OSPI has developed an optional individual student [Continuous Learning Plan](#) template that could assist teams in tracking this information. Districts are also encouraged to consult with information technology staff within their district to explore alternative methods and to ensure that proper technological safeguards are in place to the extent possible under the current circumstances.

It is recognized that students with disabilities are general education students first and are entitled to ongoing access to general education classrooms, instruction on grade level standards and meaningful interactions with nondisabled peers. Once students return to school, physically and virtually, ongoing collaboration between general education and special education teachers/service providers will be especially important, and will facilitate general education teachers' access to IEPs and awareness of students' IEP goals.

#### E. Completing Evaluations and IEPs (including timelines, parent consent, child find, and Part C to Part B transition)

##### **E-1. Are we obligated to continue to hold to IEP and evaluation timelines? Can IEP timelines be extended?**

If personnel are available (i.e., not on leave due to COVID-19) and parents are agreeable to completing the meetings via distance options (e.g., phone, Zoom), these meetings should continue to be conducted to the extent possible. If a meeting is not possible, then the district should document that a meeting is not possible and set the IEP/evaluation aside for when in-person school operations resume (e.g., summer and/or fall 2020). Since there is no guarantee that everything will return to in-person operations in the fall, districts should have a plan for updating IEPs and evaluations using alternate methods (see also questions C-3 and E-7 of this document).

Districts and parents can also agree to extend the 35-school day timeline to complete the evaluation. The agreement must be documented but does not require signed parent consent. The documentation of the agreement should include the reason for the extension. See model form 5c ([Agreement to Extend Evaluation Timeline](#)).

There is no provision in the law for extending an IEP. OSPI recommends the district document if the IEP (or evaluation) timeline was exceeded and why. OSPI has developed an optional individual student [Continuous Learning Plan](#) template for spring 2020 that could assist with this effort. OSPI does not support unilateral district decisions to delay all meetings during COVID-19. IEPs and evaluations that were delayed due to COVID-19 should be prioritized for timely completion during summer and/or fall 2020 and follow those decisions with a prior written notice to the parent.

Districts may use available federal IDEA funds, state special education funds, state basic education funds, district-allocated ESSER funds and/or a combination to support the completion of overdue IEPs and evaluations.

**E-2. If the district provided continuous learning opportunities during school facility closures for all students in spring 2020, were these considered “school days” when counting special education timelines under Chapter 392-172A WAC? What will count in fall 2020?**

For the timelines identified in Chapter 392-172A WAC, the term “school day” is defined in RCW [28A.150.203](#)(10) as “each day of the school year on which pupils enrolled in the common schools of a school district are engaged in *academic and career and technical instruction planned by and under the direction of the school.*” In analyzing what “instruction” means in the context of the school day definition, the Attorney General’s Office [has looked to](#) RCW [28A.150.205](#), the definition of “instructional hours”: “[T]hose hours students are provided the opportunity to engage in educational activity planned by and under the direction of school district staff, as directed by the administration and board of directors of the district, inclusive of intermissions for class changes, recess, and teacher/parent-guardian conferences that are planned and scheduled by the district for the purpose of discussing students’ educational needs or progress, and exclusive of time actually spent for meals.”

Particularly during COVID-19 school facility closures, the key is whether the district provided a student an *opportunity* to engage in educational activity planned by a teacher. This could look very different across districts in their district-wide continuous learning plans. The best evidence of this would be a bell schedule or similar established schedule of expected student learning.

The clearest answer would come from the school district itself. What does the district’s plan for continuous learning say with regard to when teacher-directed educational activity began for all students? For example, when did the district initiate regular meeting times for teachers and students via an electronic platform? When were students expected to log on to a learning platform or begin picking up and returning paper packets? Those could be considered the start of what may be defined as “school days”.

Although OSPI does not plan to identify issues of noncompliance through monitoring based on timelines that were missed as a result of the COVID-19 outbreak, districts still need to be prepared for the possibility of other dispute resolution options being utilized.

In the fall of 2020, districts employing a model that provides education and special education services through in-person, continuous learning, or a combination of both, should count all days educational services are offered as school days for the purposes of meeting special education timelines.

### **E-3. What constitutes written parent consent during school facility closures?**

For decisions that require written consent from a parent, districts could attempt to document consent during school facility closures using alternative means such as an email, a digital or e-signature, a digital photograph or scan of a parent signature on an applicable document, or district staff noting temporarily that consent was given verbally. Consent provided via email or using other alternative methods is considered to be written consent as long as the parent is informed of and understands all information relevant to the activity for which consent is sought. Districts must communicate with families in their native language or other mode of communication, unless it is clearly not feasible to do so.

The district should prepare to have a method for tracking parent consent through alternative means and, if necessary, make an attempt to obtain proper written consent as soon as possible (e.g., temporary verbal consent and then mail the parent something to sign and have them mail it back). Districts are also encouraged to consult with information technology staff within their district to explore alternative electronic methods and to ensure that proper technological safeguards are in place to the extent possible under the current circumstances.

Some decisions, such as amending an IEP, excusing an IEP team member whose area is not being discussed, and extending a 35-day evaluation timeline, require the parent's agreement, rather than written, signed consent. Documenting agreement does not require written or signed consent but could take the form of a documented verbal agreement or other documentation.

### **E-4. What is the best practice for reevaluations during this time? Would it be appropriate to complete file reviews or an agreement that a reevaluation is unnecessary to maintain timelines when we cannot assess?**

If staff are available (i.e., not on leave due to COVID-19), OSPI recommends the team moves forward with a review of existing data and communicate with parents in order to get input on whether additional assessments are determined to be needed. If the team, including the parent, believes the existing data supports continuing eligibility, the team can move forward and complete the reevaluation using the existing data.

For more detailed information on completing evaluations during the COVID-19 closure, refer to the [April 2020 guidance](#) from WSASP.

### **E-5. How should staff handle initial referrals and initial evaluations during the closures?**

Districts should ensure that there continues to be a process by which staff and parents can initiate a referral for a special education evaluation during school facility closures if they have

concerns about a student (i.e., child find). This referral process should be communicated to staff and parents, particularly if it differs from the referral process followed when in-person school was in session.

If a referral is made, the district should provide families with the [Notice of Special Education Procedural Safeguards for Students and Their Families](#) and make every effort to follow the established timelines, including: (a) 25 school days from the date of referral to review existing data including information provided by the parent and determine whether to move forward with an evaluation; (b) 35 school days from the date the district receives consent (refer to question E-3) to complete the evaluation and determine eligibility\*; (c) 30 calendar days to develop the IEP; and (d) beginning services as soon as possible after the IEP is developed.

\*Districts and parents can also agree to extend the 35-school day timeline to complete the evaluation. The agreement must be documented but does not require signed parent consent. The documentation of the agreement should include the reason for the extension. See model form 5c ([Agreement to Extend Evaluation Timeline](#)).

Depending on what continuous learning opportunities the student is receiving from the district at the time the initial evaluation is conducted, the evaluation group may need to rely more heavily on existing data, particularly if health and safety precautions prohibit the district from conducting in-person standardized assessments. Professional judgment is also an option, as long as the evaluation team has sufficient data to support their decisions.

OSPI recommends that districts complete as comprehensive of an initial evaluation as possible in a timely manner. If the team has sufficient information to support a decision regarding the student's eligibility, it is recommended the district move forward and complete the evaluation, with the understanding that once in-person school resumes, the team could consider whether additional assessment may be needed. If the team does not have sufficient information to support an eligibility decision, the district and the parent could consider agreeing to extend the evaluation timeline until sufficient documentation is able to be collected.

There is a new allowable exception on the Indicator B-11 (Timely Initial Evaluations) report for the 2019–20 school year. The new exception is for school facility closures due to COVID-19 and school staff were unavailable (i.e., on leave due to COVID-19), the parent stated that distance technology options would impede their participation, or the assessment could not be completed due to safety restrictions.

For more detailed information on completing evaluations during the COVID-19 closure, refer to the [April 2020 guidance](#) from WSASP. See also additional [guidance](#) on psychological tele-assessment during COVID-19 from the American Psychological Association.

## **E-6. What is the guidance on completing evaluations for students transitioning from Part C to Part B? Should districts be bringing those students in for evaluation?**

In spring 2020, health and safety concerns were paramount. If there was no feasible way to continue evaluations safely using distance methods or following physical distancing requirements, then districts considered delaying the evaluation until safety measures could be implemented in summer and/or fall 2020. During summer and/or fall 2020, districts must prioritize and timely complete remaining Part C to Part B evaluations and IEPs.

State Lead Agency for the ESIT Program (DCYF): Early Intervention Provider Agencies (EIPAs) are encouraged to communicate with individual families and with their local school districts regarding the feasibility of a virtual transition conference and how best to approach required transition activities. Potential options for transition meetings may include virtual methods to include conference phone calls or videoconferencing during periods of school facility closures. Existing early childhood transition personnel and their respective contact information remains the same during the period of school facility closure. School districts have local protocols in place to respond to emails. After decisions related to early childhood transition options have been jointly determined, written communication with families should be prioritized. For assistance troubleshooting specific circumstances, please contact Val Arnold, ESIT Strategic Innovations Advisor, at [valerie.arnold@dcyf.wa.gov](mailto:valerie.arnold@dcyf.wa.gov) or (360) 485-7773.

State Education Agency (OSPI): Resident school district personnel responsible for planning and scheduling initial evaluations for special education preschool services are encouraged to communicate with individual families to determine the feasibility of face-to-face transition conference meetings for 3-year-olds exiting B-3 early intervention. Consideration of physical distancing measures and DOH guidance to ensure safe implementation is a priority. If this is not feasible or acceptable to families', alternative virtual options may be explored as a means of meeting transition planning and implementation requirements. After decisions related to early childhood transition options, including the timeline for completing an initial evaluation have been jointly determined, written communication with families should be prioritized. For assistance troubleshooting specific circumstances, please contact Ryan Guzman, Early Childhood Special Education/Section 619 Coordinator at [ryan.guzman@k12.wa.us](mailto:ryan.guzman@k12.wa.us) or (360) 764-9448.

A new allowable exception has been added to the Indicator B-12 (Timely Part C to Part B Transition) report for the 2019–20 school year. The new exception is for school facility closures due to COVID-19 and school staff were unavailable (i.e., on leave for COVID-19), the parent stated that distance technology options would impede their participation, or the assessment could not be completed due to safety restrictions. This exception does not relieve the district of its obligation to make reasonable attempts to complete the Part C to B transition in a timely manner. There is no waiver from Congress with regard to FAPE or timely Part C to B transition. Please see questions E-5 and E-7 for more information.

For more detailed information on completing evaluations during the COVID-19 closure, refer to the [April 2020 guidance](#) from the Washington State Association of School Psychologists (WSASP), and [OSPI's guidance](#) for providing services to students with disabilities in early childhood programs.

**E-7. If an initial Part B evaluation is unable to be conducted because the assessments require face-to-face interaction, how can the district ensure there is no gap in services since Part C services would end at the child's third birthday?**

Districts are encouraged to move forward with initial Part B evaluations to the maximum extent possible (see also questions E-4 and E-5 of this Q&A). The initial evaluation process should begin with a review of existing data, including the most recent Part C evaluation report, and communication with the parent in order to determine whether additional assessments are needed. If the team determines that the existing data are sufficient to establish Part B eligibility, and the parent agrees that no additional testing is needed, the evaluation team can move forward using the existing data when completing their Part B evaluation report.

If additional assessments are determined to be needed, the district should consider alternate ways of gathering the necessary data, including the use of assessment tools that do not require in-person implementation. Another possibility would be to have an evaluation team member conduct an observation of the child through Zoom, in conjunction with the parent. Or a checklist could be sent home for the parent to complete and send back. OSPI reminds districts that if a specific assessment tool is being considered, the team should follow the testing guidelines for that tool. However, the team may consider checking the website of the test publisher to see if any additional guidance has been provided in light of the nationwide school facility closures. Professional judgment is also an option, as long as the evaluation team has sufficient data to support their decisions. The Center for IDEA Early Childhood Data Systems (DaSy) and the Early Childhood Technical Assistance Center (ECTA) have developed [a list](#) of norm-referenced assessment tools for children birth to age five with potential for remote administration for eligibility determination. See also [OSPI's guidance](#) for providing services to students with disabilities in early childhood programs.

OSPI recommends that districts make an effort to complete as comprehensive of an initial evaluation as possible in a timely manner, with the understanding that once in-person school resumes, the team could consider whether additional assessment may be needed. The optional individual student [Continuous Learning Plan](#) template for spring 2020 can assist the district in documenting decisions that are made for individual students. For more detailed information on completing evaluations during the COVID-19 closure, refer to the [April 2020 guidance](#) from WSASP.



**E-8. If a district is unable to complete a full evaluation during the school facility closures, is it permissible to not complete the C to B transition process until fall?**

No. There is no waiver that would relieve the district of its responsibility to provide FAPE or to transition students to Part B by their third birthday. Children who are turning three are at a critical state of development and waiting up to six months to provide services could do significant harm.

As referenced in E-7 above, districts should make a reasonable effort to complete as comprehensive of an initial evaluation as possible in a timely manner, with the understanding that once in-person school resumes, the team could consider whether additional assessment may be needed. The Center for IDEA Early Childhood Data Systems (DaSy) and the Early Childhood Technical Assistance Center (ECTA) have developed [a list](#) of norm-referenced assessment tools for children birth to age five with potential for remote administration for eligibility determination.

If the district has made reasonable attempts to complete the initial Part B evaluation and the parent does not respond, the district will document these attempts. OSPI also recommends that districts continue to make attempts on a regular basis throughout the duration of the school facility closure, rather than simply waiting until school re-opens to re-start the process.

The optional individual student [Continuous Learning Plan](#) template for spring 2020 can assist the district in documenting decisions that are made for individual students. For more detailed information on completing evaluations during the COVID-19 closure, refer to the [April 2020 guidance](#) from WSASP and [OSPI's guidance](#) for providing services to students with disabilities in early childhood programs. See also question E-5.

**F. Early Childhood Considerations (including services, outcome data reporting, birth-three programs)**

**F-1. If Early Childhood Educational Assistance Programs (ECEAP) are still in session, then does the district also have to continue the developmental preschool programs?**

Per [Bulletin 024-20](#), school districts in the State of Washington are expected to be providing instruction during school facility closures, using such methods as printed learning materials, phone contact, email, technology-based virtual instruction, or a combination to meet student needs. As stated in question A-1 of this document, districts must have a plan for how all students, including students with disabilities (ages 3-21), will be provided with continuous learning opportunities. As required in IDEA and WAC 392-172A, districts must have a range of preschool placements to provide students with the least restrictive environment (LRE), including placements with general education peers (e.g., ECEAP, Headstart, or general education

preschool classroom). Districts, even if concerned over potential budget decreases and identifying space availability for physical distancing, must maintain a continuum of placement options.

## **F-2. What is the guidance for staff who are completing the 2019-20 Child Outcome Summary (COS) form for Indicator B-7?**

IEP teams are expected to use assessments, observations, and referral information to give a student a COS entrance rating. If it is not feasible to give a child an anchor assessment at entrance, document what materials were used to determine the COS rating, and document within the appropriate reporting platform (e.g., Teaching Strategies GOLD, IEP online, Excel federal reporting forms).

When completing the COS exit rating, the IEP team is expected to use *reasonable efforts* to meet and use available data that is reflective of the student's present level of performance. Sufficient data might include student work, observations, and assessments completed prior to the school facility closure, as well as parent or caregiver interviews, and/or formative assessments performed virtually. School districts should document measures taken to determine the exit rating within the appropriate reporting platform.

The timeline for submitting the Child Outcome Summary Report has been extended to August 14, 2020.

For more information on how to complete Indicator B-7, Early Childhood Outcomes, during the COVID-19 school facility closure, visit the Early Childhood Technical Assistance ([ECTA](#)) Center. See also [OSPI's guidance](#) for providing services to students with disabilities in early childhood programs.

## **F-3. What is the guidance for districts who are providing early intervention services to children ages birth to three?**

In collaboration with DCYF, school districts who are providing early intervention services for children ages 0–3 under IDEA Part C directly, and not contracting for those services with a community-based organization, should extend the 3–21 guidance provided in this Q&A to include Part C service delivery, where applicable. For assistance troubleshooting child/family-specific circumstances, please contact Valerie Arnold, ESIT Strategic Innovations Advisor, at [valerie.arnold@dcyf.wa.gov](mailto:valerie.arnold@dcyf.wa.gov) or (360) 485-7773. For more information on the funding shift for early intervention services to DCYF, see [Substitute House Bill \(SHB\) 2787](#).

## G. Secondary Transition Considerations

### **G-1. How will districts provide school-to-post-school transition services during the fall 2020?**

IEP teams work together to plan and implement academic and non-academic courses and programs of study that help all youth achieve successful post-school outcomes such as postsecondary education and training, employment, and community engagement. These services are developed and implemented in alignment with a High School and Beyond Plan (HSBP) and often involve coordination with community businesses and state agencies which, like school facilities, may have been closed due to COVID-19 impacts during spring of 2019. As safety restrictions are reduced for in-person services, districts must prioritize transition services for students nearing graduation or turning 21 (aging out of special education services), in addition to other students disparately impacted by COVID-19 as described in question C-3 of this document.

### **G-2. What considerations need to be addressed for students who were unable to access transition services or make sufficient progress during spring 2020 due to COVID-19 closures?**

Additional safety precautions may be necessary to support students with disabilities receiving transition services in community settings and/or off-campus sites. Some of these considerations include safe travel in the community, including access to public transportation or paratransit, and PPE needed to participate in other settings or job functions. As safety restrictions are reduced for in-person services, districts must prioritize transition services for students nearing graduation or turning 21 (aging out of special education services), to support the student and family with finalizing the transition portfolio including a completed High School and Beyond Plan (HSBP), summary of performance, evidence of agency linkages and the most recent evaluation and IEP, so that the student is supported through a seamless transition from school to post school life

### **G-3. What are the considerations for those students who graduated or turned 21 (aged out of special education services) in spring 2020?**

For students who graduated or turned 21 (aged out of special education services) in spring 2020, there is currently no funding mechanism for providing services to students who have transitioned out of the school system. However, there is precedent in special education dispute resolution processes for services to be provided to students, on a case-by-case basis, after the age of 21. Districts are encouraged to work with families and students to individually determine any additional services needs in summer and/or fall 2020. Districts may want to consult legal

counsel for additional legal considerations when planning to provide services to students who have graduated or reached the age of 21. See also question B-3 of this document.

Districts may use available federal IDEA funds, state special education funds, state basic education funds, district-allocated ESSER funds and/or a combination to support the provision of recovery services after a student graduates or reaches maximum age, although the district cannot submit the student's information to OSPI for additional funds in 2020-21.

#### H. Family Communication and Involvement (including prior written notice, collaboration, providing resources)

##### **H-1. When should districts use prior written notice (PWN) during COVID-19 impacted decisions?**

Districts should use PWN during COVID-19 whenever there is a decision made proposing or refusing to change the identification, evaluation, educational placement or the provision of FAPE to the student. This includes any such decisions made during school facility closures. PWNs must be provided in the native language or other mode of communication of the parent, unless it is clearly not feasible to do so.

OSPI strongly encourages districts to communicate frequently with families about what is happening. It is advisable to provide information to families on an ongoing basis, and due to the nature of the COVID-19 situation, frequent communication is recommended and should be prioritized.

OSPI emphasizes the need for engaging in meaningful discussions with families when completing IEP amendments or individual student continuous learning plans, and to follow decisions made proposing or refusing to change evaluation, assessment, eligibility, placement, and/or FAPE for a student with a prior written notice. Districts unable to provide families with a prior written notice during school facility closures in spring 2020 will want to consider if one is needed at this time.

##### **H-2. If districts provide online resources for parents to access, should specific resources for students with disabilities be included?**

Yes, districts providing online resources for students and/or families, should also provide resources in an accessible and equitable manner for parents of students with disabilities. This includes using inclusive language, providing a range of activities accessible in a variety of modalities and skill levels, in the parent's language, and allowing parents and students flexibility

in selection. However, making online resources available for students and families should not be considered a substitute for plans of active delivery of instruction.

## I. Staffing Considerations (including teleservices, staff qualifications)

### **I-1. Do school-based speech and language pathologists (SLPs) providing telehealth services also need a Department of Health (DOH) SLP license?**

An ESA certification (or other appropriate educator certification) is required in order to provide specially designed instruction, as per an individualized education program (IEP). Individuals are not required to have a license from the Department of Health (DOH) in order to obtain the SLP ESA certificate, although many SLP ESAs also hold the DOH license. Some school districts set a local requirement of holding both an ESA certificate and a DOH license, often to allow billing for school-based health care.

School district SLPs and audiologists providing services through telepractice are subject to the same ESA certification and licensure regulations as those providing in-person services, and there are no Professional Educators Standard Board (PESB) regulations which would prevent any of the Washington state educator roles from practicing virtually.

To learn more please visit the [PESB educational staff associate webpage](#).

### **I-2. Would the state be willing to authorize related service staff to work remotely without all of the American Speech-Language-Hearing Association (ASHA) requirements being in place?**

OSPI does not have the authority to waive ASHA requirements. Both an Educational Staff Associate (ESA) Credentialed SLP and a Department of Health (DOH) credentialed SLP can deliver services via a telehealth model. There are no Professional Educator Standards Board (PESB) regulations which would prevent any of Washington state educator roles from practicing virtually.

There are existing resources within the state and many districts to meet the [WA Telepractice Requirements](#) for audiologists and speech-language pathologists at the current time, and OSPI recommends that districts strongly consider adapting services in this manner, to meet the needs of their students. Additionally, the U.S. Department of Health and Human Services has released notice of [Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency](#) which permits flexibility to provide services using widely available communication apps such as FaceTime or Skype when used in good faith to provide telehealth treatment or diagnostic services. The accompanying [FAQs on Telehealth and HIPAA](#)

[during the COVID-19 nationwide public health emergency](#) provides more guidance on this topic.

## J. Confidentiality and FERPA Considerations

### **J-1. Are there confidentiality issues (e.g., FERPA) if a parent or sibling were to walk by during a Zoom and see the faces of students with IEPs on their child's computer screen?**

FERPA applies to the information contained within educational records and does not specifically prohibit observing a student within their classroom (see, [Letter to Mamas \(December 2003\)](#)). Recent guidance issued by the SPPO confirmed the applicability of *Letter to Mamas* to virtual classrooms (“[...] the determination of who can observe a virtual classroom, similar to an in-person classroom, is a local school decision as teachers generally do not disclose personally identifiable information from a student’s education record during classroom instruction.” [FERPA and Virtual Learning \(March 2020\)](#)). Districts are also encouraged to consult with legal counsel and information technology staff within their district when reviewing the resources contained within the SPPO’s March 2020 guidance regarding online educational services, the use of virtual learning platforms/tools, and best practices for safeguarding personally identifiable information contained within student educational records under FERPA.

### **J-2. What about confidentiality issues (e.g., FERPA) if teachers and/or related service providers participate in a virtual IEP team meeting or parent/student conference and a spouse or other children were to walk by or overhear the meeting?**

If an IEP team meeting or parent/student conference will potentially involve discussing personally identifiable information contained within the student’s educational records, then the teacher and/or related service provider should take the necessary precautions to ensure that others in their household do not overhear the conversation before participating in a virtual meeting. Reviewing instructional materials and subject matter, on the other hand, generally does not involve disclosing personally identifiable information from a student’s educational records and would not require the same level of precaution. Districts may want to review the need for maintaining the confidentiality of information contained within student educational records with staff and, if necessary, develop procedures for obtaining prior consent in writing (see question E-3) from the parent or student for the potential disclosure of personally identifiable information from the student’s education records to others within the teacher’s or service provider’s household.

### **J-3. Should districts record the provision of specially designed instruction via distance technology (such as Zoom) for safety and documentation purposes?**

Districts would need to determine how best to document the provision of services. Recording services would be one method, as long as the district makes sure it follows current state law regarding private communication ([RCW 9.73.030](#)) and/or existing district policy regarding audio and video recordings of students and staff. The U.S. Department of Education Student Privacy Policy Office (SPPO) also recently issued guidance on the Family Educational Rights and Privacy Act ([FERPA](#)) and [Virtual Learning \(March 2020\)](#), which includes FAQs on the extent to which videos recorded and maintained by a district are educational records. See also [OSPI's Continuous Learning Considerations and Policy Issues for Videoconferencing](#).

Other methods of documenting services could be considered, such as contact logs, staff notes, or the use of a tracking form (such as the optional individual student [Continuous Learning Plan](#) template). Districts should consult with their legal counsel if questions persist regarding the applicability of privacy laws to audio and video recordings.

## **K. Students Attending Non-Public Agencies (NPAs) and Private Schools**

### **K-1. What should districts do regarding students placed in out-of-state Non-Public Agencies (NPAs) in spring 2020? Does it change for summer and fall of 2020?**

In summer and/or fall of 2020, NPAs may continue to provide in-person services, in alignment with their state and local health requirements. Districts should continue to work with NPAs and families to ensure student IEPs are implemented and consider needs for IEP meetings to address concerns and potential need for recovery services.

### **K-2. Will Safety Net continue to reimburse for non-public agency (NPA) contracts during the school facility closures in spring of 2020? What if the NPA is providing "distance learning" that is not directly tied to the student's IEP?**

Reimbursement for NPA services under Safety Net will continue, provided approval by the committee. OSPI is not currently planning to reduce Safety Net awards for 2019-20 based on COVID-19 closures and will continue to review applications on a case-by-case basis. Districts should review contracts with NPAs. For those NPA contracts that include language allowing the NPA to invoice for students who are absent, districts should consult with the NPAs and develop a plan about how to deliver alternate forms of SDI during closure.

If an NPA is providing distance learning opportunities that meet the requirements of the governor's proclamation for health and safety considerations, then districts are encouraged to

allow students placed at an NPA to take advantage of these opportunities. If an NPA has transitioned to distance learning due to the school facility closures, then the district should communicate with the NPA to understand what opportunities are being offered and document the decisions made for individual students. The NPA and school district can also begin making plans to address the effect that transition to distance learning may have on an individual student's needs for ongoing services.

### **K-3. What is the guidance for districts who are providing equitable services to parentally-placed private school students through proportionate share?**

Districts remain responsible for providing the equitable services identified through the private school consultation process. Private schools in the state, however, were also closed in spring 2020. OSPI recommends that districts communicate with the private schools in their region to determine whether any equitable services could continue through distance or other alternate methods and to continue providing such services if possible. OSPI also recommends districts communicate with families of students with individual services plans to let them know if services will or will not be provided. In summer and/or fall of 2020, OSPI continues to recommend ongoing communication and consultation with private schools on equitable service delivery.

Please refer to additional OSPI guidance found in [Bulletin 024-20](#).

#### **L. Fiscal Considerations (including use of funds, Maintenance of Effort (MOE), Medicaid)**

**Please note:** OSPI has not yet received official fiscal accountability guidance from OSEP but has submitted questions to federal liaisons. The guidance provided below is based on the Office of Management and Budget (OMB) regulations. OSPI will provide updates as they become available.

### **L-1. Will districts receive special education apportionment funding during the school facility closures in spring 2020 if the student's IEP or evaluation has lapsed?**

For the remaining months of the 2019-20 standard school year, districts should not submit a P-223 or P-223H enrollment report. Instead, district funding will be based on the Projected Enrollment found [here](#).

With regard to children ages birth-three, in partnership with DCYF, OSPI is committed to providing ongoing state apportionment payments to school districts to support continuity of early intervention services to the extent possible, for children ages 0-3 in accordance with [published DCYF guidance](#), during school facility closures as a result of the COVID-19 state of emergency.



## **L-2. How will CARES Act funds be allocated and used?**

OSPI submitted a plan to the Office of Financial Management (OFM) proposing how funds provided to Washington under the Coronavirus Aid, Relief, and Economic Security (CARES) Act will be dispersed to school districts, using the Title I funding formula. OFM recently approved 80% of school district Elementary and Secondary School Emergency Relief (ESSER) funds for immediate award. The remaining 20% will be awarded on or after August 15, 2020.

CARES Act funds to districts are not earmarked for special education or any other particular federal program by the United States Department of Education. Districts may use these funds to address the COVID impact in any way needed, but are encouraged to prioritize services to students with disabilities, and other disparately-impacted students as described in this document.

OSPI encourages special education directors to work with their superintendent and business manager to discuss the use of CARES Act funds to meet the needs of students with disabilities impacted by the school facility closures. Suggestions for use of funds include:

- Development, selection, and implementation of culturally, linguistically, and disability-accessible robust remote learning platforms that include professional development and ongoing technical assistance for both district personnel and families;
- Adoption of short-term and long-term solutions, including the use of assistive technology, to bridge technology gaps for students with disabilities and families with limited or no access, or need accommodations and modifications to access;
- Support for district personnel, families, and community-based organizations to meet and collaborate on supports for students with disabilities;
- Professional development for district and school leadership on effective strategies, such as use of inclusionary practices, Universal Design for Learning (UDL), trauma-informed and social-emotional learning support, Wraparound with Intensive Services (WISE), positive behavior and intervention supports (PBIS), and other mental health and behavioral supports for students with disabilities impacted by COVID-19;
- Professional development for evaluators specific to considering if lack of instruction resulted in referrals to special education and impacted results of evaluations following COVID-19 school facility closures;
- Support for districts to provide additional special education and related services (i.e., recovery services) during Summer of 2020, and the 2020-21 school year to address gaps in student learning and progress on IEP goals (including for those graduating or reaching maximum age during or shortly after school facility closures);
- Transition activities to prepare students with disabilities for returning to school buildings and adapting to the requirements of DOH regarding physical distancing and PPE;
- Additional supports needed for physical distancing and PPE for students with disabilities who are deaf, have sensory needs that make wearing a mask difficult, and other safety measures that accommodate for student needs related to their disability; and

- Additional staff time or contracted staff to complete IEP meetings, evaluations and reevaluations, functional behavior assessments and behavior intervention plans, and/or transition from Part C to Part B and review plans and progress of individual students.

For more information about the CARES Act funds, please T.J. Kelly, Chief Financial Officer, at [thomas.kelly@k12.wa.us](mailto:thomas.kelly@k12.wa.us).

### **L-3. Can cancellation fees be charged to federal grant programs?**

Recipients are permitted to charge the full costs related to the cancellation of events, travel, or other activities necessary and reasonable for the performance of the award, or the pausing and restarting of grant-funded activities, due to the public health emergency (2 CFR 200.403; 200.404; 200.405).

This does not mean additional funds may be available in the future to eventually carry over the event or travel. Recipients must maintain appropriate cost documentation (2 CFR 200.302; 200.333).

### **L-4. What technology purchases can be charged to IDEA funds?**

Technology may be purchased that will meet IEP goals and allow students with disabilities access to instruction and services. When purchasing the technology consider the following:

1. Must the devices be inventoried (2 CFR 200.313; 302(b)(4))?
2. Will the district have the capacity to implement the technology?
3. Is the technology accessible and/or assistive?

### **L-5. Can federally funded employees continue to be charged to the assigned federal funding sources?**

Per the OMB guidance (2 CFR 200.403; 200.404; 200.405), employee salaries and benefits may continue to be charged to the current active Federal award consistent with the recipients' policy of paying salaries (under unexpected or extraordinary circumstances) from all funding sources (Federal and non-Federal).

Appropriate records and cost documentation must be maintained (2 CFR 200.302; 200.333) to substantiate costs.

## **L-6. Can federally funded employees be paid for “telework” or “work from home?”**

Costs for compensation are allowable (per 2 CFR 200.430(a)) if they:

1. Are reasonable for services rendered **and conform to established written policy consistently applied to both federal and nonfederal activities;**
2. Follow an appointment in accordance with state/local laws, policies and meet requirements of federal statute; and
3. Are supported by time and effort documentation.

## **L-7. What is the guidance for paying contracted support personnel (e.g., speech language pathologists, occupational therapists, physical therapists, etc.) during the spring 2020 school facility closure?**

Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders (2 CFR 200.318(b)).

OSPI recommends that districts review their contracts and develop a plan on how best to provide services using alternative means. Generally speaking, if services continue to be provided by contractors, although in a different format or manner, districts should continue to pay those contractors.

## **L-8. Will Maintenance of Effort (MOE) requirements be waived?**

MOE requirements have not been waived. A district may not reduce the amount of local or state funds that it spent for the education of children with disabilities below the amount it spent for the preceding fiscal year.

## **L-9. What is the guidance regarding Medicaid reimbursement for school-based services that are being provided remotely (such as speech/language pathology)?**

School-Based Health Services (SBHS) contracted school districts can bill for IEP or Individualized Family Service Plan (IFSP) services through telemedicine during COVID-19 related school facility closures. Please refer to the [SBHS COVID-19 Frequently Asked Questions](#) from the Health Care Authority (HCA) for more information. To ensure you are receiving the most up-to-date SBHS information, consider [signing up](#) to receive SBHS GovDelivery notifications.

M. Other Considerations (including manifestation determinations, independent educational evaluations, dispute resolution, federal report timelines)

**M-1. What if a student is suspended while participating in an online or continuous learning opportunity?**

In addition to implementing IEPs, including Behavior Intervention Plans (BIPs), districts should continue to follow both general education and special education discipline procedures and conduct meetings via distance options (e.g., phone, Zoom, etc.) for any student subjected to discipline while participating in online or continuous learning opportunities. This means that when considering exclusionary responses to behavioral violations, districts should be aware that they may not suspend the provision of educational services to a student in response to behavioral violations. See RCW [28A.600.015\(8\)](#) and WAC [392-400-115](#).

In the fall of 2020, districts employing a model that provides education and special education services through in-person, continuous learning, or a combination of both, should count days when these are offered as school days for the purposes of meeting special education timelines. See question E-2 for more information on what constitutes a “school day”.

**M-2. Does the timeline for districts to respond to requests for an Independent Education Evaluation (IEE) at public expense still apply?**

Yes, the requirement for districts to provide a response to a parent’s request for an IEE at public expense within the 15 calendar day timeline stated in [WAC 392-172A-05005](#) cannot be waived or extended. Districts are encouraged to do the best that they can to respond to the request within the 15 calendar day timeline. If a response exceeds the timeline, then be sure to document the reasons for the delay in the response to the parent. Note that if the district agrees to an IEE at public expense, there is no deadline or timeline under [WAC 392-172A-05005](#) by which this IEE must be completed. Please also be sure to provide the parents with a list of providers and the criteria for obtaining an evaluation. If the district does not agree to the request for an IEE at public expense, then it must still initiate a due process hearing.

**M-3. How will OSPI address Special Education Citizen Complaints (SECCs) during the school facility closure period?**

OSPI will review, open, and investigate complaints according to the usual process and procedure. While OSPI has a federally-mandated 60-day timeline to complete the complaint investigation, on a case-by-case basis there may be flexibility with the complaint process timelines based on the impact of COVID-19. During this unprecedented time, OSPI aims to conduct thorough investigations in a collaborative atmosphere—using each complaint as a potential learning opportunity and within a continuous improvement mindset.

OSPI can investigate alleged violations from the past year of Part B of IDEA, including the State and federal implementing regulations; or allegations that the district is not implementing a mediation or resolution agreement. When investigating an alleged violation, OSPI must identify the legal standard the district is required to follow and determine whether the district met that legal standard. OSPI reviews the documentation received from a complainant and district to determine whether there was sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance. The basic complaint process is outlined in WAC 392-172A-05030 and on OSPI's website.

When investigating a complaint, OSPI asks districts for a specific response to the issue(s) and certain documentation depending on the issue(s), for example, but not limited to: Evaluations (including FBAs), IEPs (including BIPs), meeting invitations, prior written notice, progress reporting, correspondence/communications, and documentation supporting IEP implementation of specially designed instruction and related services. During this period, we encourage districts to document: the individualized decisions made and why regarding special education services; communication and collaboration with parents; and, the services provided to students. This documentation could include a student's IEP, amended IEP, prior written notice, individual student continuous learning plan, or other forms of documentation.

In responding to a complaint, if a district believes it has made an error or violated IDEA, districts are encouraged to propose corrective actions in their response to the complaint. Districts are also encouraged to share attempts already made to resolve the dispute. For example, the IEP team could meet now to discuss whether additional or different services are needed to mitigate the impact of the school closures on a student. OSPI takes into consideration the complainant's proposed solution and corrective action proposals made by the district. Depending on the issues in the complaint, common corrective actions ordered by OSPI include IEP meetings, recovery services, reevaluations, written guidance, policy and procedure review and amendment, and training.

If you have questions or concerns about potential complaints or future liability, OSPI encourages you to reach out to your legal counsel.

#### **M-4. How will Sound Options Group address requests for mediation during the school facility closure period?**

Sound Options Group remains available to provide mediation and facilitated IEP meetings. Sound Options Group is providing mediation and facilitation using the Zoom platform.

In addition, Sound Options Group knows that as the challenges of delivering services to students on IEPs increases, districts will, in some cases, be facing some challenging conversations. Sound Options Group remains available to support in this context. Call Sound

Options Group for support and coaching for your specific situation. They are ready to respond to requests for this support. In addition, they are prepared to provide professional development focused on skills and strategies for engaging these challenges.

Phone: (206) 842-2298; 1-800-692-2540

Email: Greg Abell - [grega@somtg.com](mailto:grega@somtg.com); Rebecca Larsen - [rebeccal@somtg.com](mailto:rebeccal@somtg.com); Mindy Hyde - [mindyh@somtg.com](mailto:mindyh@somtg.com)

Website: [www.somtg.com](http://www.somtg.com).

**M-5. What about the 2019-20 end of year reports that are due in July (i.e., Initial Evaluation Timelines (Indicator B-11), Part C to B Transition (Indicator B-12), and Child Outcomes Summary (Indicator B-7)) and August (Behavior and Weapons (Indicator B-4))?**

There are no waivers for end of year special education reporting requirements. However, due to the school facility closures in spring 2020, OSPI is extending the deadlines for these reports by one month for districts who need additional time. The Initial Timelines, Part C to B Transition, and Child Outcomes reports are due as soon as possible, but no later than **August 14, 2020**. The Behavior and Weapons application in EDS is due as soon as possible, but no later than **September 1, 2020**. If you have any questions, please email [specialeddata@k12.wa.us](mailto:specialeddata@k12.wa.us).

## N. Additional Resources

**N-1. Resources for providing special education and related services for students with disabilities during COVID-19.**

- OSPI Special Education Guidance for Reopening Washington Schools 2020 (coming soon)
- [Guidance for Providing Services to Students with Disabilities in Early Childhood Programs](#)
- [Supporting Inclusionary Practices during School Facility Closure](#)
- [Special Education Continuous Learning Implementation Guide](#) (model form 16a)
- [Special Education Continuous Learning Plan](#) (model form 16b)
- [Repository of Online Resources for Supporting Students with Disabilities through School facility closures](#)
- [OSPI's Special Education Guidance for COVID-19 Webpage](#)
- [WSASP Guidance for Special Education Evaluations during the COVID-19 Closure](#)
- [Frequently Asked Questions on School-Based Health Care during COVID-19 Closures](#)
- [Federal COVID-19 Guidance](#)
- [OSEP Q and A on Providing Services to Children with Disabilities During an H1N1 Outbreak](#)
- [List of Online Professional Development Opportunities for Supporting Students with Disabilities](#)

## **N-2. Additional resources for providing continuous learning for all students.**

- [OSPI Reopening Washington Schools 2020: District Planning Guide](#)
- [Continuous Learning 2020: Resources and Planning Tools](#)
- [OSPI's Continuous Learning Considerations & Policy Issues for Videoconferencing](#)
- [Repository of Continuous Learning Resources by Content Area and Grade Level](#)
- [Washington State OER Commons Hub – Resources to Support Remote Learning \(scroll to bottom of page\)](#)
- [OSPI's COVID webpage](#)