

Guidance for serving SWD under the emergency guidelines with COVID-19

Purpose: This guidance addresses the issues that LEAs should consider when developing and implementing procedures for serving students with disabilities during the COVID-19 outbreak.

General Guidance

In response to the coronavirus outbreak, the U.S. Department of Education has offered the following guidance: *“School officials must keep students safe and secure. In keeping students safe, school officials should keep in mind the federal civil rights requirements and respond appropriately to allegations of discrimination on the basis of race, color, national origin, sex or disability. **School districts have significant latitude and authority to take necessary actions to protect the health, safety, and welfare of students and school staff.** School officials must respond to evolving conditions related to the coronavirus and should be mindful of the requirements of Section 504, Title II and Title VI to ensure that all students are able to study and learn in an environment that is safe and free from discrimination. School officials have an obligation to avoid discrimination on the basis of disability under Title II and Section 504 while cooperating with public health authorities.”*

*While school remains in session, “if a student with a disability (SWD) is expected to stay home for an extended period of time (beyond 10 days) for medical purposes as recommended by the student’s treating physician, provisions should be made to maintain educational services for SWD. If school is out of session and schools provide educational services (e.g., online) to the general student population, then provisions should be made to maintain educational services for SWD. If a school district closes its schools and does not provide any educational services to the general student population, then a school would not be required to provide services to students with disabilities during that same period of time. **If a student does not receive services after an extended period of time, the student’s IEP team... must make an individualized determination whether, and to what, extent compensatory services are needed... including to make up for any skills that may have been lost.**”*

Generally speaking, SWD are able to participate in any of the educational options that a CSI school provides as a part of their COVID-19 School/Educational Plan and it is understood that students/parents will most likely be given a variety of options as a part of the general education program (note that SWD are entitled under FAPE to be able to access and participate in those options as determined by the IEP team).

For schools that are providing both in-person and remote online learning options, a SWD elects to participate in a remote/virtual school option for the 2020-21 school year, an IEP team will convene to review the student’s most current IEP, current and past data, and determine if an additional **re-evaluation*** is needed. There are four possible outcomes/options from the IEP meeting:

- A. Option 1:** Based on the current IEP review and data, the IEP team determines that the student’s needs can be met in the virtual setting. There are no adjustments to the IEP that need to occur.
- B. Option 2:** Based on the current IEP review and data, the IEP team determines that the student’s needs can be met with minimal modifications to the IEP. An IEP meeting will be held, modifications made, and a Prior Written Notice issued that articulates the modifications for online learning and that the school stands ready to serve the student without the modification in a brick and mortar setting.
- C. Option 3:** Based on the current IEP review and data, the IEP team determines that the student’s needs cannot be met in the remote/virtual setting. The team issues a Prior Written Notice that states that FAPE can only be provided in the brick and mortar setting. There are two outcomes:

1. The student attends the brick and mortar setting.
 2. The student attends the remote/online school, and parents understand that the student will not receive services on the IEP. An issued PWN states that the district stands ready to serve the student in the LRE determined on the IEP.
- D. Option 4: Based on the current IEP review and data, the team determines that additional information is needed and further re-evaluation is needed (follow re-evaluation process i.e. PWN to test, etc).

Students with disabilities *may*** be able to make adequate progress in the virtual online setting and the following services are examples of what will typically be available to students in a virtual format including email, telephone communication:

- Virtual Direct specialized instruction from a learning specialist
- Virtual Speech/Language services
- Virtual Mental Health services
- Virtual Occupational Therapy services
- Virtual Consultation/indirect services
- Other

*Re-evaluation does not mean a full comprehensive assessment, rather the evaluation must include evidence as to if/how the student can receive FAPE in the virtual setting.

** For students with disabilities that require more intense services from a special education team that may not be able to meaningfully and successfully access this type of instruction, the IEP team will determine alternative instruction methods and services.

Special Education Services State (CDE) Recommendations

Recommendation 1

Consider alternatives to school-based learning. These might include homebound instruction, instructional telephone calls, online learning, homework packets, or other distance-based learning strategies.

Special Education Instruction (Blended Learning):

- Students will need access to a computer i.e. Google Chrome, a Chrome Book, or a Smart Phone.
- Assigned classroom work packets will be posted in google classroom or delivered through certified mail. In Google classroom, they will be in the form of a PDF document that can be printed out. If parents do not have access to a printer, teachers will work on an alternate arrangement
- The Special Education Teacher will assign Support from Para-Educators to support families via teleconferencing, Google Duo, Facetime, and/or Zoom

Speech and Language Services

- Online/Virtual Related services i.e. Presence Learning tele-therapy
- Internet services will be arranged for families who do not have services

Occupational Therapy

- Online/virtual and/or Phone/email consultation

Social/Emotional/Behavioral

- Phone consultation
- Zoom, Google Duo, Face Time or other

Recommendation 2

Allow IEP teams to meet virtually. IEP teams can meet virtually to confer about individual student supports. Additionally, assessments and evaluation activities that are available online should continue during a quarantine. If face-to-face meetings are required but impossible to carry out during a school shutdown or because of a student's illness, those activities will need to be delayed.

Schools must ensure all Initial, Re-Evaluations, and Annuals are held by their due dates. Late IEP meetings will be coded COVID-19.

Recommendation 3

Progress Monitoring: SWD must be closely monitored for making progress.

Consider changes in placement for students who are not progressing. If the school closure is for an extended period, Schools must consider placement decisions for students with disabilities under the IDEA's procedural protections. [34 CFR 300.115](#) through [34 CFR 300.116](#). At this time, an IEP meeting will occur to discuss next steps. A Prior Written Notice will be sent to parents electronically or via certified mail.

All Initial, Re-Evaluation, and Annual IEP Meetings

Team Member Availability

- All IEP team members will be invited to attend the meeting
 - student case manager, parent, general education teacher, specialized support team, Special Education Director/Designee, Building Administrator (Initial and Re-Evaluations only)
 - Members can only be excused with a written consent
 - Minimally make three attempts to promote parent participation

Access to Resources

- IEP team members will use a virtual format such as Zoom and phone conferencing to host IEP meetings
- Drafts of the IEP, Prior Written Notice, and other relevant documents needed to support determination of eligibility can be emailed to the parent in an encrypted file i.e. with a passcode following in a separate email. Final copies of the IEP will be either sent through certified mail or electronically (per parent request)

Documentation of Desired Outcomes

- Meeting notes will be written, and a Prior Written Notice will be sent via email or certified mail to parents
- Documentation of virtual supports will be included in the meeting notes and in the Prior Written Notice. All other supports will be stated within the IEP goals, service grid, accommodations, and service delivery statement.

Q&A (Adapted from the Federal Guidance and resources shared by various Colorado School Districts).

Question 1: Is an LEA required to continue to provide a free appropriate public education (FAPE) to students with disabilities during a school closure caused by a COVID-19 outbreak?

Answer: *The IDEA, Section 504, and Title II of the ADA do not specifically address a situation in which elementary and secondary schools are closed for an extended period of time (generally more than 10 consecutive days) because of exceptional circumstances, such as an outbreak of a particular disease.*

If an LEA closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's individualized education program (IEP) or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504. The Department understands there may be exceptional circumstances that could affect how a particular service is provided. In addition, an IEP Team and, as appropriate to an individual student with a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.

If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130

(Title II of the ADA)). SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504)).

Question 2: Must an LEA provide special education and related services to a child with a disability who is absent for an extended period of time because the child is infected with COVID-19, while the schools remain open?

Answer: *Yes. It has long been the Department's position that when a child with a disability is classified as needing homebound instruction because of a medical problem, as ordered by a physician, and is home for an extended period of time (generally more than 10 consecutive school days), an individualized education program (IEP) meeting is necessary to change the child's placement and the contents of the child's IEP, if warranted. Further, if the IEP goals will remain the same and only the time in special education will change, then the IEP Team may add an amendment to the IEP stating specifically the amount of time to be spent in special education. If a child with a disability is absent for an extended period of time because of a COVID-19 infection and the school remains open, then the IEP Team must determine whether the child is available for instruction and could benefit from homebound services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. In so doing, school personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services. The Department understands there may be exceptional circumstances that could affect how a particular service is provided.*

If a child does not receive services after an extended period of time, a school must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

Question 3: What services must an LEA provide if a public school for children with disabilities is selectively closed due to the possibility of severe complications from a COVID-19 outbreak?

Answer: *If a public school for children with disabilities is closed solely because the children are at high risk of severe illness and death, the LEA must determine whether each dismissed child could benefit from online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. In so doing, school personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services. The Department understands there may be exceptional circumstances that could affect how a service is provided.*

If a child does not receive services during a closure, a child's IEP team (or appropriate personnel under Section 504) must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

Question 4: If a child with a disability at high risk of severe medical complications is excluded from school during an outbreak of COVID-19 and the child's school remains open, is the exclusion considered a change in educational placement subject to the protections of 34 CFR §§ 300.115 and 300.116 and 34 CFR §§ 104.35 and 104.36.

Answer: *If the exclusion is a temporary emergency measure (generally 10 consecutive school days or less), the provision of services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available, is not considered a change in placement. During this time period, a child's parent or other IEP team member may request an IEP meeting to discuss the potential need for services if the exclusion is likely to be of long duration (generally more than 10 consecutive*

school days). For long-term exclusions, an LEA must consider placement decisions under the IDEA's procedural protections of 34 CFR §§ 300.115 – 300.116, regarding the continuum of alternative placements and the determination of placements.

Under 34 CFR § 300.116, a change in placement decision must be made by a group of persons, including the parents and other persons knowledgeable about the child and the placement options. If the placement group determines that the child meets established high-risk criteria and, due to safety and health concerns, the child's needs could be met through homebound instruction, then under 34 CFR

§300.503(a)(1), the public agency must issue a prior written notice proposing the change in placement. A parent who disagrees with this prior written notice retains all of the due process rights included in

34 CFR §§ 300.500-300.520.

For children with disabilities protected by Section 504 who are dismissed from school during an outbreak of COVID-19 because they are at high risk for health complications, compliance with the procedures described above and completion of any necessary evaluations of the child satisfy the evaluation, placement and procedural requirements of 34 CFR §§ 104.35 and 104.36. The decision to dismiss a child based on his or her high risk for medical complications must be based on the individual needs of the child and not on perceptions of the child's needs based merely on stereotypes or generalizations regarding his or her disability.

Question 5: May an IEP Team consider a distance learning plan in a child's IEP as a contingency plan in the event of a COVID-19 outbreak that requires the school's closure?

Answer: Yes. IEP teams may, but are not required to, include distance learning plans in a child's IEP that could be triggered and implemented during a selective closure due to a COVID-19 outbreak. Such contingent provisions may include the provision of special education and related services at an alternate location or the provision of online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, and may identify which special education and related services, if any, could be provided at the child's home.

Creating a contingency plan before a COVID-19 outbreak occurs gives the child's service providers and the child's parents an opportunity to reach agreement as to what circumstances would trigger the use of the child's distance learning plan and the services that would be provided during the dismissal.

Furthermore, according to the language that the Colorado Governor made in his recent emergency announcement on 3/18/20, the Charter School Institute schools "will need to make every effort to provide alternative learning opportunities during this time, while taking into account the needs of their local communities. School buildings, as approved by local emergency management in coordination with the local public health agency, may be utilized to assist families and students in accessing alternative learning, including online learning, opportunities, provide emergency sheltering, distribute food, and for other services for students, families, and educators during the period in which this Executive Order is in effect, including for providing child care for the essential workforce necessary to respond to COVID-19."

Question 6: Do Schools need to continue to complete IEP meetings and Evaluations (Child Find)?

Answer: In the country's past experience with these types of emergencies, the U.S. Department of Education has not exempted districts from IEP meeting and evaluation obligations. That being said, everyone will make good faith efforts to serve students with disabilities in compliance with IDEA requirements.

IEP teams would not be required to meet in person if a school closes. IEP teams, however, must continue with special education processes, including conducting informal assessments or formal assessments of the student, including parent surveys and standardized reports, and consult, as needed. If an evaluation of a student with a disability requires a face-to-face meeting or observation, the evaluation can be delayed until school reopens.

Evaluations and reevaluations that do not require face-to-face assessments or observations may take place while schools are closed, if the parent consents.

Special education staff should plan ahead for assessments and evaluations that are scheduled for the remainder of the 2019-2020 school year. Teams should consider advancing assessments that require a face-to-face meeting. Case managers may reach out to parents now to determine the plan for the evaluation or reevaluation process in the event of a school closure. (If an evaluation of a SWD requires face-to-face assessment or observation, the evaluation would need to be delayed until school reopens. We concur and we have included this language in our guidance to IEP teams. We have also put provisions in place to document these unique situations through our Prior Written Notice process. On March 17, 2020, CDE offered this guidance: "Please use code 61 (NOT VALID) and 'COVID-19 School Closure' as the reason to identify those evaluations which are delayed due to school closures."

Question 7: We have an IEP meeting scheduled, do we still hold it if school is not in the building?

Answer: *In the event that there is a school closure, IEP meetings can be held virtually on web platforms. This is strongly recommended. If this is not a possibility, the meeting can be held upon return to the school building.*

Question 8: We are in the middle of an evaluation, what happens if school closes?

Answer: *IEP teams must continue with the special education evaluation process. Assessments that do not require face to face meetings, such as parent surveys, standardized reports, and consultation can continue in the event of a building closure. Evaluations and observations requiring face to face contact can be postponed until the school building reopens.*

Special Education providers should plan ahead for assessments that are scheduled between now and the end of the 19/20 school year. Prioritizing assessments requiring in person contact should be considered.

Question 9: Do we have to amend the IEP or change the service delivery for online learning?

Answer: *You will not need to amend IEP's during this time for the change in service delivery. In a rare instance where schools cannot make Online services work for a student, the school would need to convene an IEP meeting to discuss options that are specific for a student. (Note that according to Paul Foster, CDE SPED Director- the Change of Placement process requirement is something that he agrees that does not make sense for districts to do and also confirmed that there may be some instances where Online services for a student might not be appropriate and that it would be up to the district and IEP team to come up with other options).*

Question 10: If a school open and a family elects to remove the student from school, what is our obligation?

Answer: *If a school is open, students are expected to be in attendance. If the student is removed by the family, you are not required to create special learning plans for students whose family chooses not to send them to school. As you would for any other student missing school, sending home missed assignments and work is appropriate. It will be beneficial to collect and record progress monitoring data now. When the student returns to school collect the same type of data to determine skill levels.*

Question 11: For students who have para educator support, how should they be utilized?

Answer: *Paraprofessionals can be a great resource during a time of remote learning. Ultimately school leadership teams will need to provide direction to paraprofessionals during this time. Here are some guiding questions and suggestions for utilizing a paraprofessional.*

Considerations

- *Do the paraprofessionals have access to technology to support learning? What resource does the school have that they can utilize?*
- *Do paraprofessionals have a means to call families without using their personal phones? Has the school considered usage of Google Voice or other apps that can create free phone numbers to call from?*
- *Do the paraprofessionals need to be trained on the technology needed to support remote learning?*

Suggestions

Maintain Relationships

Paraprofessionals play a critical role in a child's life. They could be calling their students and families to check in each day, guide them through any challenges, supporting with any social, emotional or academic needs and report back to teachers any concerns that can be address through the curriculum.

Support Learning

While students are learning at home, the paraprofessional can provide tutoring support virtually or over the phone during this time. While they are not primary teachers, they can reinforce skills teachers initially taught, support with working through difficult problems academic problems and be a primary contact for families.

Question 12: Are there any privacy issues that need to be taken into consideration during the COVID-19 Outbreak with respect to delivery special education services.

Answer: *Yes. There are some restrictions that have been lifted- below is the guidance from the FEDS.*

The Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) is responsible for enforcing certain regulations issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act, to protect the privacy and security of protected health information, namely the HIPAA Privacy, Security and Breach Notification Rules (the HIPAA Rules).

During the COVID-19 national emergency, which also constitutes a nationwide public health emergency, covered health care providers subject to the HIPAA Rules may seek to communicate with patients, and provide telehealth services, through remote communications technologies. Some of these technologies, and the manner in which they are used by HIPAA covered health care providers, may not fully comply with the requirements of the HIPAA Rules.

OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency. This notification is effective immediately.

A covered health care provider that wants to use audio or video communication technology to provide telehealth to patients during the COVID-19 nationwide public health emergency can use any non-public facing remote communication product that is available to communicate with patients. OCR is exercising its enforcement discretion to not impose penalties for noncompliance with the HIPAA Rules in connection with the good faith provision of telehealth using such non-public facing audio or video communication products during the COVID-19 nationwide public health emergency. This exercise of discretion applies to telehealth provided for any reason, regardless of whether the telehealth service is related to the diagnosis and treatment of health conditions related to COVID-19.

For example, a covered health care provider in the exercise of their professional judgement may request to examine a patient exhibiting COVID- 19 symptoms, using a video chat application connecting the provider's or patient's phone or desktop computer in order to assess a greater number of patients while limiting the risk of infection of other persons who would be exposed from an in-person consultation. Likewise, a covered health care provider may provide similar telehealth services in the exercise of their professional judgment to assess or treat any other medical condition, even if not related to COVID-19, such as a sprained ankle, dental consultation or psychological evaluation, or other conditions.

Under this Notice, covered health care providers may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype, to provide telehealth without risk that OCR might seek to impose a penalty for noncompliance with the HIPAA Rules related to the good faith provision of telehealth during the COVID-19 nationwide public health emergency. Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications.

Under this Notice, however, Facebook Live, Twitch, TikTok, and similar video communication applications are public facing, and should not be used in the provision of telehealth by covered health care providers.

Covered health care providers that seek additional privacy protections for telehealth while using video communication products should provide such services through technology vendors that are HIPAA compliant and will enter into HIPAA business associate agreements (BAAs) in connection with the provision of their video communication products. The list below includes some vendors that represent that they provide HIPAA-compliant video communication products and that they will enter into a HIPAA BAA.

Skype for Business, Updox, Vsee, Zoom for Healthcare, Doxy.me, Google G Suite Hangouts Meet

Question 13: Do “original” parent signatures need to be collected for IEP meetings (i.e. signature page?)

Answer: *No. As a Witness, simply add the parents name on the participants page and indicate that the parent was present or not present.*

COMPENSATORY SERVICES

The following recommendations acknowledge that IDEA-eligible students are entitled to FAPE and that students, families, and schools are having to adapt to novel circumstances due to the COVID-19 pandemic. Consistent with Secretary DeVos’s April 27, 2020, Report to Congress, these recommendations are also based on the following key principles.

- Schools can, and must, provide education to all students, including children with disabilities;
- The health and safety of children, students, educators, and service providers must be the first consideration;
- The needs and best interests of the individual student, not any system, should guide decisions and expenditures;
- Parents or recipients of services must be informed of, and involved in, decisions relating to the provision of services; and
- Services typically provided in person may now need to be provided through alternative methods, requiring creative and innovative approaches.

Q1. What are compensatory education services?

Compensatory education is an equitable remedy designed to repair educational and functional deficits resulting from the denial of a free appropriate public education (FAPE). In determining compensatory education services, the Colorado Department of Education (CDE) employs a qualitative approach that is intended to place a student in the same position they would have been in if FAPE had been

provided, rather than calculating the award to account for the exact amount of service minutes identified on the individualized education program (IEP).

Q2. Why might compensatory education services be required as a result of COVID-19 related school closures or suspension of in-person instruction?

In addition to the traditional use of the term “compensatory education services” to describe services required to remedy a violation of IDEA that resulted in a denial of FAPE, this term is also used by the U.S. Department of Education (ED) to describe services that may be required to remedy the loss of skills/regression as a result of extended school closures and disruptions to in-person instruction, circumstances caused by the pandemic that are beyond the control of schools. [Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus 2019 Outbreak \(OSEP 3/2020\)](#).

During this unprecedented, national emergency, schools must prioritize, above all else, the safety of students, staff, and communities. Consistent with this priority, schools must also ensure that—to *the greatest extent practicable*—students with disabilities are provided the special education and related services identified on the IEP. Because FAPE must now be provided consistent with the need to protect health and safety, there may be disruptions, delays, and/or changes in how services are provided that result in a student losing skills. Schools must therefore make an *individualized* determination whether and to what extent compensatory education services may be needed to make up for any skills that may have been lost as a result of COVID-related disruptions to the provision of FAPE.

Q3. Are all IDEA-eligible students entitled to compensatory education services as a result of COVID-19 related school closures or suspension of in-person learning?

Not necessarily. School districts must ensure that individualized determinations are made as to whether and to what extent a student may require compensatory education services to remediate a loss/regression in skills as a result of the inability to provide services during COVID-related disruptions, such as the suspension of in-person instruction.

Until further guidance is available, the CDE anticipates that the following factors will be relevant when determining whether a student requires compensatory education services as a result of COVID-19 related disruptions to the provision of FAPE:

- Rate of progress on IEP goals prior to closure/disruption;
- Difference between IEP progress monitoring data immediately preceding closure/disruption and IEP progress monitoring data collected a reasonable time after the return to in-person instruction;
- Difference between services identified on the IEP and services offered during closure/ disruption, including amount, frequency, duration, type, and delivery model;
- Accessibility of services offered to the student during closure/disruption;
- Changes in the general education curriculum, as well as level and type of instruction for all students during closure/disruption; and
- Input and information from parents concerning student performance during closure/disruption.

Q4. Should a school district provide summer school and/or extended school year (ESY) services for all students with disabilities as a way to address a potential need for compensatory education services resulting from COVID-19 related closures or suspension of in-person learning?

Not necessarily. Compensatory education services and ESY services are not interchangeable, and a particular student may be entitled to one, both, or neither depending on individual circumstances. Although appropriate and effective ESY services may help a student maintain skills, schools must ensure that individualized determinations are made for ESY eligibility/services and compensatory education services. Schools should not create blanket rules offering ESY to all students or offering a set amount of compensatory education services to all students when they return to school. [Please see the Q and A section on ESY for additional information.](#)

Q5. When should schools evaluate the need for compensatory education services?

Although compensatory education services may be most appropriately determined when schools return to normal operations, the CDE recommends that the need for such services be considered as the situation evolves, and schools begin to phase-in more services. In addition, schools should consider services that can be provided during COVID-related disruptions that may mitigate the need for and/or amount of compensatory educational services.

Q6. How should schools determine the *need* for compensatory education services related to COVID-19?

Schools must make an individualized determination that includes input and involvement from parents as to whether a student needs compensatory education services as a result of disruptions to in-person instruction. Compensatory educational services should be determined by collecting and examining student-specific data, including information from parents, to determine if the student lost skills or regressed on IEP goals as a result of COVID-related disruptions in instructional and related services or the inability to provide FAPE. In making this individualized determination, schools should consider a variety of information, including but not limited to: services provided to all students during the suspension of in-person instruction, the ability of the student to access services provided, regression in skills, and progress or lack of progress made on IEP goals. Parental input will also be useful for evaluating student performance during the suspension of in-person instruction and the need, amount, and delivery of compensatory education services.

Q7. How should schools calculate the *amount* of compensatory education services related to COVID-19?

School should offer compensatory educational services sufficient to allow the student to recoup lost skills and continue to make progress on IEP goals. Parents and schools are encouraged to consider creative and innovative ways to address regression or loss of skills that carefully consider a student's individual circumstances, including strengths, impact of disability on learning, and stamina. For example, providing targeted, one-on-one tutoring or instruction, combined with adjustments based on frequent progress monitoring, may allow a student to recover lost skills and make progress in less time.

This does not preclude the IEP team from recommending more intensive services for a student, even if the need may be related entirely or partially to disruptions of in-person instruction resulting from COVID-19.

Q8. When can schools provide compensatory education services?

Compensatory educational services may be provided during the regular school day, over school breaks, in intensive, targeted, individualized programs, one-on-one instruction/tutoring, and by outside service providers. If compensatory educational services are provided during the school day, the provision of these services may not be provided in a manner that changes the least restrictive environment or reduces service minutes on a student's current IEP, unless agreed to by the IEP team, including parent.

Q9. What happens if a parent disagrees with the school district's offer of compensatory education services?

Parents are still entitled to IDEA's procedural safeguards when they disagree with a school district's provision of FAPE, including a disagreement about compensatory educational services offered to address COVID-related interruptions or loss in services. Parents may therefore use IDEA's dispute resolution processes, mediation, state complaint, and/or due process complaint, to challenge a decision about compensatory education services.

Whether a parent agrees or disagrees, school districts should issue prior written notice (PWN) to inform parents about determinations regarding compensatory education services. In addition to the other required content, the PWN should explain why the school district is making/or refusing to make the offer and describe the information that served as the basis for this determination in sufficient detail.

Q10. What happens if a parent refused services that were provided during the period of school closure? Does the school district still have to make a determination as to the need for compensatory educational services or make an offer of compensatory educational services?

School districts should regularly make and document attempts to provide services, including contact and communication with parents and students. A parent's refusal of services may excuse the school

district from its obligation to consider or provide compensatory educational services, depending on the individualized circumstances. The inability to access the services offered, however, would not be considered a refusal. Similarly, the student's inability to benefit from the services offered would not be considered a refusal.

Prior Written Notices

Q1: What is the purpose of issuing a prior written notice (PWN)?

A PWN must be provided to the parents of a child with a disability before the school proposes to make a change to the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. A PWN is also provided if the school refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. Among other requirements, PWN provide an explanation of why the school proposes or refuses to take the action, a description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action, and a description of other options the IEP team considered and the reasons why those options were rejected.

Q2: Are prior written notices (PWNs) required in response to any of the Governor's executive orders directing all P-12 school districts and the Charter School Institute (CSI) to close school buildings to normal in-person instruction?

No. CDE is not recommending that schools systematically provide a PWN to all IDEA-eligible students with disabilities in response to any of the Governor's executive orders requiring the suspension of in-person learning

Progress Monitoring

Q1: Should schools continue to monitor progress on IEP goals during the suspension of in-person learning?

Yes. Schools should make reasonable, good faith efforts to continue to collect and report progress on IEP goals to parents consistent with the schedule identified on the student's IEP, even in situations where the school district has decided not to provide report cards. Providing periodic progress reports to parents ensures that they are informed of their child's progress and can meaningfully participate in IEP team decisions about their child's educational program, including whether the IEP is reasonably calculated to ensure progress. Progress monitoring data will also be important information to consider in determining whether compensatory education services are required for a particular student when in-person learning resumes.

Q2: How should schools monitor progress during the suspension of in-person learning?

Parents and other IEP Team members should collaborate and partner to identify flexible data collection strategies that can be used to track progress. These might include having the student take an informal performance assessment, sending an assessment home for the student to complete and return, or having the student send assignments/work samples to the educator (via mail, email, or online platform such as Google docs). Consider also how to gather input from others on work completed prior to, and during, the suspension of in-person learning, including information from families.

If the amount of progress was unable to be determined, or work on the annual goal could not be provided due to the suspension of in-person learning, this information should be conveyed to the parent in the progress report.

Special Education Evaluations

Timelines

Q1: Are the timelines for initial evaluations waived due to the suspension of in person learning?

At this time, there are no waivers for initial evaluation timelines. As a result, AUs are encouraged to complete evaluations that do not require face-to-face assessment in a timely manner. Schools and parents may also work together to reach mutually agreeable extensions of time to allow for the completion of a sufficiently comprehensive initial evaluation for which a face-to-face assessment is necessary. Any agreement to extend the timeline for the completion of the initial evaluation should be well documented by the AU and shared with the parent.

If the child's parents do not agree to an extension, the IEP team may convene virtually to review the existing evaluation data. The IEP team may then determine if there is sufficient evaluation data to make an eligibility decision. If sufficient data exists, the IEP team should make a determination, and, if the child qualifies, develop an IEP. If there is insufficient evaluation data to make a determination, the IEP team will be unable to determine eligibility at this time. The AU may need to seek consent for an initial evaluation when school building operations return to normal at a future date. The CDE will work with both AUs and other educational stakeholders to develop specific guidance around procedures for ensuring the completion of sufficiently comprehensive initial evaluations when it is not feasible due to measures required to protect the health and safety of students and school staff.

Q2: Will the timelines for reevaluation be waived due to the suspension of in person learning?

At this time, there are no waivers for reevaluation timelines. A reevaluation for each child with a disability must be conducted at least every three years, unless the parents and the public agency agree that a reevaluation is unnecessary. As noted above, AUs are encouraged to work with parents to reach mutually agreeable extensions of time. Any agreement to extend the timeline for the completion of the three-year reevaluation should be well documented by the AU and shared with the parent.

In addition, AUs are reminded that a reevaluation may be conducted through a review of existing data, and this review may occur without a meeting and without obtaining parental consent, unless it is determined additional assessments are needed. Reevaluations that require additional assessments but do not require face-to-face assessments or observations may take place during the suspension of in-person learning, if the parents consent.

Decisions to dismiss a student from special education services should not be determined due to an inability to complete a comprehensive reevaluation. If a comprehensive evaluation is not possible due to the suspension of in person learning, the AU should continue to provide special education and related services to the greatest extent possible until the necessary assessments can safely be completed and eligibility can be properly determined. The AU should not determine that a student is no longer eligible based on a reevaluation that is not sufficiently comprehensive.