

Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in the 2020-21 School Year

This guidance is current as of January 13, 2021. 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 the Office of Superintendent of Public Instruction (OSPI's) [website](#) for additional information regarding the provision of services to students with disabilities during COVID-19, specifically guidance developed after August 2020, which generally replaces that from spring and summer 2020.

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.

If you have questions, please contact Glenna Gallo, Assistant Superintendent of Special Education, at 360-725-6075 or [email Glenna Gallo](#).



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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, in remote (continuous learning¹) and hybrid instructional models?

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 possible² during the pandemic, while adjusting delivery methods to comply with state and local health/safety guidelines.

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. 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 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 in 2020–21 to the maximum extent possible. At the same time, there is an acknowledgement that in order to meet state and local Department of Health (DOH) and Local Health Jurisdiction (LHJ) requirements, districts may make a decision to provide remote learning or a hybrid face-to-face/remote model or any combination of modalities and schedules that meet local community needs, while also

¹ In this document, the terms “continuous learning” and “remote learning” are used to describe an instructional model in which students participate in synchronous and/or asynchronous instructional activities from home or another location outside of a typical school classroom setting.

² Per [30 20 U.S.C. § 1401\(9\)\(D\)](#), IDEA defines a free appropriate public education (FAPE) as services “provided in conformity with the IEP.”

affording all students in the district access to their basic education rights, including special education services for eligible students. It will be rare that a single delivery method will meet the needs of every student with an IEP. The priority is to provide students with disabilities educational services based on their individual needs in a safe and equitable way. An equitable approach means focusing on what each individual student with a disability needs to access the curriculum, to engage with various instructors and resources, and to have an opportunity to make progress within the context of the barriers created by COVID-19.

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 remote learning if needed. Unless the health and safety of students and staff make it impossible, districts should offer some form of direct/synchronous instruction, whether in person or online. Collaborate with students and families when developing 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 (see question A-6 of this document for additional information).

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 health, safety, and 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 ensure that web platforms selection and development for student learning are compliant with the civil rights laws that OCR enforces. Contact 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](#)

The [Special Education Planning for Reopening Washington Schools 2020](#), a companion resource to the OSPI reopening guidance, includes best practices, resources, and unique considerations for supporting students with disabilities, their families, and all educators through the school reopening process. OSPI expects districts to plan for providing a continuum of service delivery modalities this year, prioritizing equitable access to services to the maximum extent possible under state and local health guidelines. OSPI's expectation is that, in fall 2020, IEPs³ will be re-implemented immediately to the maximum extent possible and/or adjusted (with the IEP team)

³ Throughout this question and answer document, the term "IEP" includes any addendums or plans that are part of a student's IEP, such as but not limited to, behavioral intervention plans (BIPs), post-secondary transition plans, and emergency response protocols.

to provide additional services, accommodations, and/or modifications that may be needed in order to address the lack of access and gaps in student progress. Students should not have reductions in IEP services on annual IEPs, except in limited cases (e.g., following an evaluation demonstrating services are no longer needed, the IEP team determines that shorter but more intensive (such as 1:1) instruction will be provided, etc.). IEP teams should document the basis for decisions to modify services on the IEP, such as in the present levels section or in a prior written notice.

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 (such as models in which a limited number of students with IEPs are invited to participate in in-person instruction) to ensure that students with disabilities are not subjected to further segregation from general education peers, contrary to their least restrictive environment (LRE).

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. The IEP team should also consider whether additional accommodations need to be added to the IEP to support the student's access to instruction in the remote environment.

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).

Students with disabilities will need ongoing, coordinated 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 access and barriers to student 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 remote 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. 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. The IEP team may also need to convene to determine whether additional supports or accommodations need to be added to the IEP to address the lack of progress.

Documentation of the degree to which services were offered and accessed will assist the team in determining the extent to which a reevaluation, revised/amended IEP, and/or recovery services⁴ may be needed during the 2020–21 school year and beyond. Refer to Appendix A of [Technical Assistance Paper 5](#) for more information on how to determine when an evaluation is necessary.

A-1A. Can districts decide to provide one type of service (e.g., math) for six weeks and then switch to another type (e.g., English language arts) for the next six weeks? How should this be documented on the IEP service matrix?

Before deciding to provide services on a rotating basis, the following should be considered:

- Services should reflect the unique needs of the student and not the schedule.
 - How will these decisions be made and documented on a case-by-case basis, rather than a standard, “blanket” offer?
 - What is the process for providing uninterrupted services across these schedule rotations, when the IEP team determines it is necessary?
 - How will related services such as speech and motor therapy continue to be provided?
- Gaps in services may result in regression and result in a need for extended school year (ESY) services.
 - How will the IEP team consider whether the gap in services may lead to regression?
 - What progress data will be collected, and how often, to support the IEP team with monitoring these processes to prevent regression?

With regard to documenting services in the IEP, the regulations do not require a specific format for documenting the frequency of services; that would be an IEP team decision. Services should be documented in a manner that enables the parents and all individuals implementing the IEP to understand the services that will be provided. While identifying weekly minutes is common, there are also cases where it may make more sense to note services provided monthly or in another format. There can also be separate matrices to show changes in service delivery over time.

⁴ 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.

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 the 2020–21 school year?

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.

For districts implementing remote learning or hybrid models during 2020–21, 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. Districts will need to hold IEP meetings to address the needs of students with IEPs that include 1:1 paraeducator services, to identify how those services will be provided in the event the student is accessing remote or hybrid services. During these meetings, the IEP team will want to consider the needs of the student and the intended purpose of the paraeducator support, to ensure that any alternate plans to in-person paraeducator services address those needs and purposes.

As IEP teams are reviewing IEPs to determine how to best provide services and support student progress, it is also important to review and update the Behavior Intervention Plan (BIP) in response to new student data and any new learning environment, if applicable. Some students may be exhibiting new behaviors, some interventions may need to be changed to be effective in the new learning environment, and some students may require more intensive supports to make progress during this time. BIPs must include positive behavioral interventions, supports, and strategies that are **reasonably calculated** to address the student’s behavioral needs and enable the student to participate in the full school day. Additionally, when implementing a BIP, staff working with the student inside and outside the classroom must be aware of its content and their role in implementation. During remote and hybrid instruction, many families are supporting their students learning in the home and thus may need coaching or other support to understand the content of the BIP and how to support its implementation.

If needed, 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. (see also question A-6 of this document). A list of social and emotional learning (SEL) activities for students, families, and educators can be found on OSPI’s [website](#).

Additional suggestions include:

- Use behavior specialists and/or special education teachers to develop a general student schedule template to support students who need extra support to engage in learning tasks.

The schedule could have embedded reinforcement (token exchange/scheduled reinforcing tasks) and tasks could be paced and prompted to support student need. This template could be used across a system as a tiered intervention and intensified based on student need.

- For some students it may be a physical reinforcer given for every task (token or small reward, or tablet access/media break). For others it could be an unstructured break after several tasks
- Prompts and links for tasks could be embedded in the schedule to support independent use
- Systems can create videos to assist parents in setting up learning environments at home, providing student choices, and accessing and following the basic schedule of learning for their students (i.e., first, then). See also question A-6 of this document.
- For students who need the most intensive behavioral support, schools could bring the students to school for a **brief** period of in-person intervention (e.g., a week or two) to access intensive instruction on independently utilizing a schedule and completing tasks for access for a token and exchanging these reinforcers. This could be paired with brief parent coaching to support the transition to the home environment.

During the 2020–21 school year, districts may be able to resume in-person education services based on local health conditions. Regardless of the instructional model being implemented, districts are expected to provide special education and related services to students with disabilities in accordance with the student’s IEP while following state and local health and safety requirements. Districts should prioritize the implementation of positive behavioral supports, 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 remote.

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

Regardless of the use of in-person, remote, or hybrid delivery services, districts are expected to provide special education and related services to students with disabilities in accordance with the student’s IEP. Unless there is a state or local stay at home order in effect, districts are not prohibited from providing in-person education services to students with disabilities, even if the district has determined it will provide only remote learning to its general student population. However, districts implementing remote learning models are **not required** to serve students with disabilities in-person unless it is determined necessary by the IEP team and health and safety requirements can be met. If there are concerns about students accessing special education and related services (e.g., school facilities are closed, [state or local health and safety guidelines](#) 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 personal protective equipment (PPE). Districts should follow state and local guidelines for student and staff safety.

Health and safety considerations remain a priority, and must be in place to the extent feasible, including physical distancing recommendations and the use of PPE such as cloth face coverings,

when providing specially designed instruction in-person. Districts should also consider whether the student or the student's family is at higher risk for complications from COVID-19. 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 services in-person.

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 service obligations during COVID-19. Clear face coverings, which cover the entire face without hiding the mouth, 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. Districts may want to contact the state or local health officers for guidance about student safety and the Department of Labor and Industries for guidance about staff safety.

A-3A. What if the district determines that in-person special education services are needed for an individual student, but the parent chooses the district-offered virtual option?

OSPI recommends that the IEP team begin with proposing the offer of FAPE. If the team believes FAPE to be in-person instruction, offer those services and discuss them thoroughly with the parent. If the parent chooses a virtual option, the team should work from there to formulate a plan for providing FAPE in the virtual setting, including how to provide the services in accordance with the student's IEP to the maximum extent possible in light of the circumstances and the parent's choice of setting. The remote services in the IEP should be aligned, as best as possible, with the student's needs and goals set in the IEP.⁵

A-3B. What if the parent requests a 1:1 paraeducator or nurse in the home to assist the child with remote learning?

Here are some points for the IEP team to consider when determining whether services from a 1:1 paraeducator or nurse in the student's home are needed and feasible:

- Is this a necessary service in order to provide FAPE?

⁵ The answers to A-3A and A-3C are adapted from "Second Virtual Legal Retreat: Answers to Attendee Questions", PowerPoint by Julie Weatherly, Resolutions in Special Education, Inc.; moderated by Phyllis Wolfram, CASE

- What would the paraeducator or nurse actually be doing for the student?
- Did the district offer in-person services that the parent has declined? If so, why were in-person services declined?
- Would the child have a 1:1 paraeducator or nurse if services were being provided in a traditional setting (i.e., is it on the student's IEP)?
- Are there health/safety considerations for sending a paraeducator/nurse into the home at this time (for both the student/family and staff) that make this an unavailable option?
- Is there a paraeducator/nurse available and willing to go into the student's home?

A-3C. What are the parent's options for special education services when the student is home-schooled or enrolled in a private school?

Refer to the [tip in OSPI's October 2020 Special Education Monthly Update](#) for more detailed information. Below is a summary of the most important points:

- Eligible students with disabilities who are attending a private school or are homeschooled have the right to part-time enroll in the resident district for any or all of the IEP services for which the student is eligible ([WAC 392-134](#)).
- If the parent of an eligible private school or homeschool student chooses not to access some or any of the services for which the student is eligible, OSPI recommends the district document their offer of FAPE in a prior written notice, including the offer to provide services if the parent changes their mind.
- Eligible students with disabilities who are attending an approved, **non-profit** private school may be able to receive a service plan from the district in which the private school is located (which may be different than the resident district). Whether the student receives a service plan would depend on the outcome of the district's private school consultation and the amount of proportionate share funds that are available.
- Through Choice ([RCW 28A.225.225](#)), a parent can pursue enrollment in a non-resident school district, including online programs or other alternative learning experiences run by the nonresident district. If accepted, the new (i.e., non-resident) district would be responsible for providing FAPE to the student as the new district is considered the "district of residence" for the purposes of IDEA.

A-3D. What if the parent wants to temporarily suspend special education services until traditional in-person school operations resume?

OSPI recommends that the district discuss with the parent their specific reasons for not wanting special education services, and make sure they understand what services could be provided (both in-person and remotely). If the parents continue to decline services on a temporary basis, the district should document the parent's decision through a prior written notice, along with the offer to resume services when the parent changes their mind or when traditional school operations resume.

If the parent chooses to temporarily suspend special education services, this would **not** be considered a revocation of consent under [WAC 392-172A-02000\(2\)](#).

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, 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.

A-4A. Can a district provide remote learning opportunities to a resident student who is temporarily outside the state of Washington?

Per [Bulletin 065-20](#), for the 2020–21 school year, students who had previously been enrolled in the district prior to COVID, but are now living outside of the state and intend to return to the district after the end of the pandemic can be enrolled in the district's remote learning program and be claimed for state funding.⁶ Districts should retain evidence that the student was enrolled in the district prior to February 2020 and documentation on why the student is living outside of the state for reasons due to COVID. Note that if the student is living in Washington, but in another district, a choice transfer or interdistrict agreement is still required.

⁶ This does not apply to (a) students who have moved permanently (whether related to COVID or not) and do not intend to return to Washington and re-enroll at the end of the pandemic, or (b) students that intend to move to Washington but do not physically live in the state.

With regard to students accessing remote services for speech, occupational therapy, motor therapy, or other related services, please refer to question I-3 of this document.

A.5 What is the difference between “remote learning”, “homebound” services, “home/hospital”, and “homeschooling”?

The National Association of State Directors of Special Education (NASDSE) has developed [guidance](#) to assist in clarifying the differences between these approaches to student learning.

Remote learning is an instructional model implemented by a public school district for students who are enrolled in the district. Students participate in synchronous and/or asynchronous instructional activities from home or another location outside of a traditional brick and mortar school. Students with IEPs participating in remote learning remain entitled to FAPE that is provided in the least restrictive environment (LRE).

Homebound services are one of the continuum of placement options that IEP teams must consider when determining a student with a disability's least restrictive environment (LRE). Homebound services are determined by the student's IEP team for students with IEPs who are enrolled in the district. Homebound services are provided in the student's home or other setting (such as a hospital) due to the student's individual health and/or academic needs. Similar to remote learning, a student in a homebound placement is entitled to FAPE that is provided in the LRE.

[Home/Hospital instruction](#) is provided to any student who is temporarily unable to attend school for an estimated period of four weeks or more because of a physical and/or mental disability or illness. The program does not provide tutoring to students caring for an infant or a relative who is ill. School districts determine a student's eligibility for home/hospital tutoring based on the requirements found in [WAC 392-172A-02100](#) and guidelines for district administration of the Home/Hospital Instruction Program.

Homeschooling is a decision made by a student's parent, and the student is not enrolled in a public school system. If parents make the decision to homeschool their child, they must complete an annual, signed declaration of the intent to homeschool their child. Homeschool instruction is delivered at home by the parent in accordance with [state homeschool guidelines](#). Children with disabilities who are homeschooled do not have an individual right to FAPE, unless the parent part-time enrolls their child in the public school district. Parents who are homeschooling have the right to part-time enroll their child in the resident school district for any of the IEP services for which their child is eligible.

A-6. When and how should parent/family training and support be documented in the IEP?

Families may need help to support student learning across instructional models, and these generalized supports would not be documented in an IEP. These could include topics such as how to set up a learning environment or how to use the learning platform selected by the district.

Individualized parent/family training and support might also be documented in the IEP. IEP teams should consider the purpose of parent training when determining whether it will be provided as a related service or a supplementary aid and service (SAS).

- Related services are intended to support the student with benefiting from special education. Parent training or counseling is considered to be a related service if the primary goal of the service is to assist the student in benefiting from their specially designed instruction (SDI). Parent training can be part of a district's offer of FAPE to address barriers to learning in the home environment and support student progress toward annual IEP goals and objectives.
- SAS are services and supports intended to allow a student to access general education. If the intent of the parent training is to support the student in accessing general education instruction, those minutes could be documented as SAS. This might include topics such as how to utilize a student-specific schedule template or how to use positive behavior supports during asynchronous learning activities.

The decision to add individualized parent training or counseling, which is not a direct service to the student, is typically an IEP team decision, and would generally not require a reevaluation to support the addition of the service.

B. Extended School Year (ESY) and Recovery Services⁷

B-1. Will districts need to review every student who has an IEP to determine if recovery services are needed?

Districts should look at each IEP (including the Behavior Intervention Plan) and the student's progress on IEP goals, in addition to documentation showing the degree to which the student participated in remote, hybrid, and in-person learning opportunities during the pandemic to determine whether recovery services are needed in order to allow the student to continue to make progress that is appropriate in light of the child's circumstances. 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

⁷ 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, over which districts had no control.

pandemic, the resulting school facility closures in spring 2020, and the need to adjust in-person instructional models during the 2020–21 school year, 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 the COVID-19 pandemic. While the need for recovery services may not be able to be fully measured until in-person school operations resume, districts are not prohibited from providing recovery services through remote and/or hybrid learning models during the 2020–21 school year in order to assist students in making progress toward their IEP goals and to mitigate the educational impact of the pandemic on the student.

Documentation of the degree to which services were offered and accessed through remote, in-person, and hybrid models, 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, if any. The extent of a student's recovery services, if needed, must be an individualized determination made by the IEP team. When determining the extent to which recovery services may be needed, districts should consider multiple factors, including what services were provided during the spring 2020 school facility closures, the degree to which the student was able to participate in services during spring 2020 and the 2020–21 school year, any regression in the student's skills, progress or lack of progress made in the general education curriculum and toward meeting the IEP goals, and parent input.

Recovery services can be provided outside of the district's school day or be reflected as increased or supplemental services in the student's IEP. 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.*

If the parents refuse the district's offer of recovery services, OSPI recommends that the IEP team document parent input in the determination of the need for recovery services, the proposed plan to provide the services, and the parent's refusal of the services offered. If the parent refuses the district's offer, the district has met its obligation for the time being by making the recovery services available.

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.

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 as well as the non-traditional instructional models implemented in the 2020–21 school year 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 traditional in-person school operations resume and are determined by IEP teams on a case-by-case basis. While the need for recovery services may not be able to be fully measured until traditional school operations resume, districts are not prohibited from providing recovery services through remote and/or hybrid learning models in the 2020–21 school year in order to assist students in making progress toward their IEP goals and to mitigate the impact of the spring 2020 school facility closures on the student.

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. See question A-1A and section C of this document for additional guidance on providing ESY.

B-5. Should recovery services be documented in the student’s IEP, and if so, how should they be documented?

If the recovery services will be in the form of additional services and supports provided during the school day (see question E-2 for more information on what constitutes a “school day”), then the services should be identified in the student’s IEP, including the frequency, location, and duration of those services.

If the recovery services will be provided outside of the school day, then the team could document them in the IEP or in a separate document, such as a prior written notice. If the team decides to document services outside of the school day on the IEP service matrix, the district may need to revise its IEP system to ensure that the services are not automatically calculated into the student’s total amount of time spent in special education versus general education (which would impact the calculation of an accurate LRE code for the student). Services provided outside the school day should not be factored into the calculation of the LRE code for the student. See question D-7 for more information on calculating LRE.

C. Planning for 2020–21 and Beyond

C-1. It may be very difficult for districts to hire staff to provide ESY services.

OSPI understands that staffing shortages are a concern for districts. 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-2. What considerations should districts keep in mind for 2020–21 and beyond?

OSPI convened a number of stakeholder workgroups during the spring and summer of 2020 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 guidelines. 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. The [Special Education Planning for Reopening Washington Schools 2020](#), a companion resource to the OSPI reopening guidance, includes best practices, resources, and unique considerations for supporting students with disabilities, their families, and all educators through the school reopening process. Districts are urged to consider both documents, in addition to this Q and A, in their planning for fall 2020.

OSPI encouraged districts to prioritize and prepare for full implementation of IEPs (and returning to pre-COVID IEP services) to the maximum extent possible in the 2020–21 school year, 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 prepare, with school personnel and families, for moving to and from the various instructional models, including transition activities, timelines, and opportunities for practice, particularly for students who struggle with changes in schedules and routines.

C-3. Are in-person special education and related services expected to be provided in the 2020–21 school year?

As previously stated, unless there is a stay at home order in effect, districts are not prohibited from providing in-person education services to students with disabilities, even if the district has determined it will provide only remote learning to its general student population. However, districts implementing remote learning models are **not required** to serve students with disabilities in-person unless it is determined necessary by the IEP team and health and safety requirements can be met. As DOH health and safety guidelines are updated in communities during the 2020–21 school year, additional safety precautions may need to be implemented by districts to allow students with disabilities to receive needed in-person special education and related services. Districts should prioritize equitable access to services and plan on offering face-to-face services for students with disabilities to the maximum extent appropriate for each student based on local health conditions. 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 include 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, as per DOH guidance. Districts should follow state and local guidelines for student and staff safety.

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, since 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, in fall 2020, special education services will be re-implemented immediately to the maximum extent possible, and/or adjusted (with the IEP team) to provide services, accommodations, and/or modifications that may be needed in order to address the lack of access and gaps in student progress. Districts should prioritize and complete remaining evaluations and IEPs that were unable to be completed in spring 2020 due to the school facility closures, particularly initial evaluations and Part C to B transitions.

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, and LRE)

D-1. Do districts need to complete IEP amendments for every single student when the instructional model changes from in-person to remote and vice versa?

As previously stated, OSPI's expectation is that, in the 2020–21 school year, special education services will be re-implemented immediately to the maximum extent possible, and/or adjusted (with the IEP team) to provide services, accommodations, and/or modifications that may be needed in order to address the lack of access and gaps in student progress. Districts are not required to complete new IEPs or IEP amendments for all students. The decision to complete a new IEP or IEP amendment is made by the student's IEP team.

If the student will be participating in a remote or hybrid instructional model, and the services will be provided as indicated on the current IEP service matrix (including the amount of time and location (special education or general education setting)), then the team may be able to implement the IEP without a need to amend.

Here are a few examples:

- A student's IEP indicates 30 minutes per week of in-person speech therapy in the SLP's office (i.e., special education setting). During the period of remote instruction in 2020–21, the SLP will be providing one 30-minute speech session via Zoom each week. The services are for the same amount of time and same setting (special education), therefore the IEP team may determine an amendment is not needed, since the IEP can be implemented as written.
- A student's IEP indicates 30 minutes per day of specially designed instruction (SDI) for math in a general education setting. In 2020–21, the school will be implementing a hybrid model in which the student receives in-person math SDI from the general education teacher (supported by a paraeducator) for 30 minutes, two days per week, and will participate in an online, synchronous, small group math session with the general education teacher for 30

minutes the other three days of the week. Again, the services are for the same amount of time and the same setting (general education), so an amendment may not be necessary.

For more information on what constitutes a “general education setting” and a “special education setting” in remote and hybrid learning models, see question D-7 of this document. OSPI’s [LRE case studies guidance](#) provides additional information to assist teams in determining when IEP amendments may be considered.

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 guidelines. An IEP, on the other hand, is a document updated annually that describes a district’s offer of 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 the 2020–21 school year, IEPs 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 had a method for documenting decisions made for individual students during the spring 2020 school facility closures and any temporary, emergency school closures during the 2020–21 school year, 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.

It is OSPI’s expectation that individual student continuous learning plans (or other similar documents) will no longer be necessary in the 2020–21 school year, except in the case of an unplanned, emergency school closure (such as a Governor-issued stay at home order or a school closure for sanitization due to an identified case). Districts are expected to prioritize re-implementing pre-closure IEPs and adjust IEPs, as needed, to provide services, accommodations, and/or modifications that may be needed in order to address the lack of access and gaps in student progress, 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).

Unless there is an emergency school closure, individual student continuous learning plans (or other similar documents) should only be needed in the 2020–21 school year 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 the 2020–21 school year (as described in Questions C-2 and C-3) the IEP team determines that temporary reductions or adjustments to services are necessary due to an unplanned, temporary, emergency school 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), as it is unlikely that a continuous learning plan developed in the spring 2020 would remain appropriate. To be clear, the use of a continuous learning plan in the 2020–21 school year is only an option for use during a temporary, unplanned, emergency 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 and/or alter the placement 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 the 2020–21 school year, the existing IEP will be re-implemented. 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. Students should not have reductions in IEP services on annual IEPs, except in limited cases (e.g., following an evaluation demonstrating services are no longer needed, the IEP team determines that shorter, more intensive (such as 1:1) instruction will be provided). IEP teams should document the basis for decisions to modify services on the IEP, such as in the present levels section or in a prior written notice.

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 through 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. What is your guidance for developing the present levels section if the team is not able to observe the student in person to gather data?

The collection of student data following instruction is expected and is used to adjust instruction, as needed. This expectation continues regardless of whether a district is providing remote or hybrid services. For purposes of an IEP, this decision should be made by the IEP team on an individual, case-by-case basis. 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 in remote and hybrid instructional models?

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 planned instructional models during the 2020–21 school year, teams should consider methods for collecting student progress data in those models.

In the case of remote or hybrid educational models, IEP teams should consider a variety of synchronous and asynchronous methods for collecting progress data, including observations of the student via remote methods, training and 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 for additional suggestions.

Progress data from spring and fall 2020 will also be an important consideration when IEP teams are determining what recovery services, if any, 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. How do we ensure that general education teachers have access to student IEPs during remote learning and hybrid models in order to provide necessary services, accommodations, and supports?

It is important 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 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](#)). Districts are 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. Ongoing collaboration between general education and special education teachers/service providers during all types of instructional models will be especially important, and will facilitate general education teachers' access to IEPs and BIPs, including awareness of students' IEP goals.

D-7. How should districts calculate LRE codes for students? What is considered a "general education setting" in a remote learning model?

Special education services can be provided in a general education setting or a special education setting, through synchronous or asynchronous delivery. LRE codes are calculated using the percentage of the instructional day/week the student spends in a general education setting. The calculation of LRE is not dependent upon the content of the instruction or who is teaching it, rather it is based on the setting in which the learning occurs. Just because the instruction is considered to be specially designed (SDI) and is designed by a special education teacher, does not automatically mean that the instruction is occurring in a special education setting.

In situations where all students in a school or district are participating in a remote learning model, the student's home is the setting from which all students are accessing their instruction. Therefore, generally, **the student's home is considered the general education setting for calculating LRE.**

Asynchronous services in a remote learning environment will typically be considered a general education setting.⁸ However, there may be situations in which the remote learning would be considered a **special education setting**. For example:

- A student with an IEP participates in a synchronous, virtual lesson with a paraeducator individually or in a group consisting primarily (51% or more) of students with IEPs.
- A student with an IEP watches a pre-recorded lesson prepared by the special education teacher that is intended for follow-up discussion only with other students with IEPs.

While other remote learning activities, such as asynchronous completion of assignments or participating in a modified online program, may be considered specially designed instruction if it meets the definition in [WAC 392-172A-01175](#), it may be determined to be happening in a general education setting during remote learning models.

For the denominator of the LRE calculation, districts should use the total instructional minutes per week (MPW) in the school's adopted schedule(s) for the 2020–21 school year and available to the public. For LRE reporting purposes, OSPI recommends that districts use the following calculation to determine the percentage of time the student spends in a general education setting:

% in Gen Ed setting = (Total instructional MPW in school's adopted 2020–21 student schedule MINUS total instructional MPW student spends in a special education) setting divided by the total instructional MPW in the student schedule times 100. Here is an example:

Formula: (Total MPW – MPW in sped setting) ÷ Total MPW x 100 = % in gen ed setting

Example: (1800 total MPW in student schedule – 100 MPW in sped setting) ÷ 1800 x 100 = 94.44% in gen ed setting

OSPI's [LRE case studies guidance](#) provides additional LRE considerations across the different types of instructional models. The National Association of State Directors of Special Education has also issued additional [guidance](#) on LRE during COVID-19, including case examples.

D-8. Is changing from a special education setting (e.g., services provided in-person in a special education classroom) to a general education setting (e.g., asynchronous services in a remote setting) considered to be a significant change of placement that would require a reevaluation?

If the only reason that the placement is changing is because of a change in learning models as a result of health and safety requirements, a reevaluation may not be needed. The team should consider if a reevaluation is warranted for individual students whose needs may have changed as a result of the student's disability, creating a potential need for significantly more or less services. Or, the team may determine that a reevaluation is needed in order to gather current

⁸ Adapted from guidance from the IDEA Data Center, an OSEP-funded technical assistance center.

information to help develop the IEP. Ultimately, it would be a team decision whether a reevaluation was needed – it would not just be a blanket requirement for all students transitioning from remote to hybrid or in-person services.

If the team determines that a reevaluation is necessary, then it could be completed through a review of existing data or additional testing (which may be able to be completed remotely). See [additional information](#) on testing during COVID from WSASP.

E. Completing Evaluations and IEPs (including timelines, student attendance, 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?

Districts must continue to hold to IEP and evaluation timelines to the maximum extent possible. Districts should have a plan for conducting meetings via distance options (e.g., phone, Zoom) if in-person meetings are not possible. See also questions C-2 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](#)). It is important to note that while the 35-school day timeline to complete an evaluation upon receipt of parent consent can be extended, the three-year timeline for completing a reevaluation and the one-year timeline for completing an IEP cannot be extended.

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 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 the 2020–21 school year.

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-1A. Can districts count a student on the special education enrollment (P-223H) count in fall 2020 if the IEP and/or evaluation was delayed due to the spring 2020 school facility closures?

Currently, there are no planned changes to the federal child count date (November 2, 2020) or the special education (P-223H) enrollment reporting process for the 2020–21 school year.

However, in the fall of 2020, districts were able to claim a student receiving special education services whose IEP and/or evaluation was delayed due to a **documented** impact of COVID-19 (e.g., staff illness with COVID-19, parent request to postpone for in-person meeting, or assessment not able to be completed due to safety guidelines) on the Form P-223H provided that the IEP/evaluation is completed within 30 school days after school resumed in the fall of 2020. The 30 school day timeline began with the first day of school in fall 2020, regardless of what instructional model the district was implementing. Districts were advised to prioritize updating IEPs and completing evaluations that were delayed in the spring of 2020 as soon as possible to avoid any potential impact on funding.

This 30-day flexibility has now passed, and students are once again required to have a current IEP and current evaluation in order to be included on the monthly P-223H enrollment report.

E-2. What is considered a “school day” in remote or hybrid instructional models?

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.”

In July 2020, Washington’s State Board of Education (SBE) adopted [emergency rules](#) to define “instructional hours” in remote and hybrid models:

For the 2020–21 school year, “instructional hours” as defined in RCW 28A.150.205 are not limited to in-person educational services. Local education agencies may count as instructional hours towards the minimum district-wide annual average those hours of educational activity planned by and under the direction of school district staff that are delivered through learning modalities which may include but are not limited to distance learning, hybrid classrooms, rotating schedules, or other methods that allow for delivery of basic education services during the COVID-19 epidemic.

In 2020–21, districts employing a model that provides education and special education services through in-person, remote 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-2A. How is student attendance in remote learning environments defined? What parts of the compulsory attendance laws (or Becca Bill requirements) are still required this year?

OSPI filed an emergency rule updating the definition of absence for the 2020–21 school year. The rule, [WAC 392-401A](#), is effective beginning November 9, 2020. This is an extension of the emergency rule filed on August 13, 2020. OSPI has initiated formal rulemaking to adopt a permanent rule. More information can be found in [Bulletin 091-20](#) and [Bulletin 064-20](#).

OSPI encourages districts to maintain contact with families early and often, through multiple, flexible opportunities for students to engage with learning, both online and through other means.

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

For decisions that require written consent from a parent, districts could document consent 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.

With regard to parent consent for Medicaid billing, districts only need to obtain a one-time consent from parents to bill Medicaid. So, if the district already has consent on file, they do not need to obtain new consent each year. The district may want to check with their billing agent to see which students for whom they have already received consent.

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 move 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 is sufficient to support the team in making a decision regarding whether the student continues to be eligible for special education or is no longer in need of special education services, the team can move forward and complete the reevaluation using the existing data.

The parent and district could agree that a reevaluation is not needed, which is different than determining that no additional assessments are necessary because there is sufficient existing data to complete the reevaluation. The agreement that a reevaluation is unnecessary is a decision that should be made on an individual student basis, and should not be based on staffing limitations, the inability to gather complete data (such as not being able to implement in-person assessments as a result of COVID), or maintaining compliance with a deadline. An agreement might be considered in cases where a student's levels of performance have not changed, and the special education and related service needs of the student do not require any revisions or modifications. An agreement that a reevaluation is unnecessary should be the exception, not the rule – it should not be something that is done on a routine basis.

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

E-5. How should staff handle initial referrals and initial evaluations?

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 and/or remote or hybrid services 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 is 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](#)). It is important to note that while the 35-school day timeline to complete an evaluation upon receipt of parent consent can be extended, the three-year timeline for completing a reevaluation and the one-year timeline for completing an IEP cannot be extended.

If the student is participating in remote learning 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 limit 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 assessment becomes feasible, the team could consider whether additional assessment may be needed. If the team does not have sufficient information to support an eligibility decision and the necessary information is unable to be obtained due to health and safety guidelines, the district and the parent could consider agreeing to extend the evaluation timeline until sufficient documentation is able to be collected. Caution should be applied, however, to ensure that the timelines are not unduly extended, as the delay of potentially necessary services could have an adverse effect on the student. In the interim, if the team suspects that the student would meet eligibility requirements under Section 504 of the Rehabilitation Act of 1973, the student should be considered for a 504 plan to minimize potential adverse impacts on the student. If the student already has a 504 plan, the district should ensure that it is updated to reflect all of the student's current disability related needs. Completing the evaluation for special education services should be prioritized and resume as soon as safety conditions permit.

There will continue to be an allowable exception on the Indicator B-11 (Timely Initial Evaluations) report for the 2020–21 school year. The exception is for school facility closures due to COVID-19 and school staff were unavailable (e.g., 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 guidelines.

For more detailed information on completing evaluations during the COVID-19 closure, refer to the [August 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?

The guidance for meeting timelines for children transitioning from Part C, IDEA, has not changed. Districts must prioritize and complete Part C to Part B evaluations and IEPs by the child's third birthday. Collaboration with the early intervention provider agency (EIPA) will be essential to ensure local school district staff are available to (1) engage in transition planning conferences, (2) receive student contact information, (3) communicate with parents, and (4) review existing progress monitoring and evaluation data that would support a district's intent to evaluate a student for IDEA, Part B.

EIPAs will contact the district according to local agreements. Providing notification to OSPI and appropriate LEAs of toddlers who are potentially eligible for Part B serves as an initial referral to the LEA for Part B eligibility determination. This requires the LEA to provide a prior written notice to inform the parent of the receipt and status (plan of action) of the initial referral, notice of procedural safeguards and information on Part B to the toddler's parents.

While there is no waiver from Congress relating to Part C to B transition timelines, there will continue to be an allowable exception on the Indicator B-12 (Timely Part C to Part B Transition) report for the 2020–21 school year. The exception is for school facility closures due to COVID-19 and when school staff were unavailable, the parent stated that distance technology options would impede their participation, or the assessment could not be completed due to safety guidelines. 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. Please see questions E-5 and E-7 for more information.

State Lead Agency for the Early Support for Infants and Toddlers (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 [email Valerie Arnold, DCYF](mailto:Valerie.Arnold@dcyf.wa.gov) or 360-485-7773.

State Education Agency (OSPI): Consideration of physical distancing measures and DOH guidance to ensure safe implementation is a priority. Alternative virtual options, including videoconferencing or conference telephone calls, may be explored as a means of meeting transition planning and implementation requirements. OSPI encourages school teams and parents to work collaboratively and creatively to meet evaluation and IEP timeline requirements. For assistance troubleshooting specific circumstances, please contact Ryan Guzman, Early Childhood Special Education/Section 619 Coordinator at [email Ryan Guzman, OSPI](mailto:Ryan.Guzman@ospi.wa.gov) or 360-764-9448.

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

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?

Although there are many advantages to in-person meetings, remote evaluation and assessment can be accomplished successfully with careful planning. 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 document). The initial evaluation process should begin with a review of existing data, including the most recent Part C evaluation report, progress monitoring data, 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 and in-person assessments are not feasible due to health and safety guidelines, the district should consider alternate ways of gathering the necessary data, including the use of assessment tools that do not require in-person implementation. Visit the [ECTA website](#) for the resources, including guidance documents and tables of tools for [conducting remote screening evaluation and assessment](#).

For more detailed information on completing evaluations during the COVID-19 closure, refer to the [August 2020 guidance](#) from WSASP and [OSPI’s guidance](#) for providing services to students with disabilities in early childhood programs.

E-8. If a district is unable to complete a full evaluation due to health and safety guidelines, is it permissible to not complete the C to B transition process until in-person assessment becomes feasible?

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 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 or virtual assessment becomes feasible, 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 should document these attempts. OSPI also recommends that districts collaborate with the IFSP Team and local EIPA to determine potential barriers that

might be impacting the family's ability to fully engage in the transition process rather than simply waiting until in-person school resumes to re-start the process.

For more detailed information on completing evaluations during the COVID-19 closure, refer to the [August 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. What is the guidance for preschool programs if the district is implementing a remote or hybrid learning model?

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, Head Start, 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.

The following guidance documents may also be helpful:

- [OSPI Reopening Washington Schools 2020: Early Learning Planning Guide](#)
- [Recommendations for Re-Opening Face-to-Face Sessions for Inclusionary Preschools and Early Care Centers](#) (from the Early Childhood Technical Assistance Center (ECTA))
- [Restart & Recovery: Considerations for Teaching & Learning: Pre-K to 3rd Grade Recovery in School Year 2020–2021](#) (from the Council of Chief State School Officers (CCSSO))

F-2. What is the guidance for staff who are completing the 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 in person, or parent

or caregiver interviews, observations, and/or formative assessments performed virtually. School districts should document measures taken to determine the exit rating within the appropriate reporting platform, including who participated in the rating process.

For more information on how to complete Indicator B-7, Early Childhood Outcomes, in remote learning models, 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?

Effective September 1, 2020, school districts acting as Early Intervention Provider Agencies (EIPAs) will work in collaboration with DCYF ESIT, the Part C Lead Agency, in accordance with [Substitute House Bill \(SHB\) 2787](#). For assistance troubleshooting child/family-specific circumstances, please contact Valerie Arnold, ESIT Strategic Innovations Advisor, at [email Valerie Arnold, DCYF](mailto:Valerie.Arnold@dcyf.wa.gov) or 360-485-7773.

G. Secondary Transition Considerations

G-1. How will districts provide school-to-post-school transition services during the 2020–21 school year?

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 or limited due to COVID-19 impacts. As safety guidelines are updated and may allow 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-2 of this document.

Secondary transition is more than providing pathways for the individual's movement from high school to employment; it is a comprehensive approach to educational programs, focused on aligning student goals with educational experiences and services. Examples of transition services that could be provided through the continuum of learning models include:

- Use the units and lessons in the [T-folio](#), starting with the introductory lesson, then working through the assessment lessons to help students identify their strengths, preferences, interests, and needs. The educator provides instruction on the purpose and importance of assessment in the areas of interest inventories, needs assessments, preferences, career clusters, self-determination, etc. The student is then guided to

chosen websites to complete the assessment, print results to a PDF, and send to the instructor.

- For students who are developing and practicing work and/or independent living skills and can no longer do this on a job/community site due to COVID-19, consider working with the family to set up comparable activities in the home or similar setting. Examples could include assisting with household chores such as laundry, cooking, cleaning; assisting with the family budget; or caring for pets and/or younger siblings.
- Assist the student in accessing the district's career and technical education (CTE) opportunities for job skill development to help build skills when students are not able to be in the community.

Additional examples of transition services that can be provided across the reopening models can be found beginning on page 49 of [Reopening Washington Schools 2020: Special Education Guidance](#).

G-2. What considerations need to be addressed for students who were unable to access transition services or make sufficient progress during 2020–21 school year due to COVID-19 impacts?

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 guidelines are updated and local health conditions allow 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 2020–21 school year?

For students who graduated or turned 21 (aged out of special education services) in spring 2020 or the 2020–21 school year, 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 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 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 remote learning and hybrid models. 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 and coordinated communication is recommended and should be prioritized.

OSPI emphasizes the need for engaging in meaningful discussions with families when completing IEPs 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.

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 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 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 DOH credentialed SLP can deliver services via a telehealth model. There are no Professional Educator Standards Board (PESB) regulations that 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.

I-3. Can an SLP, OT, or PT who is licensed in the state of Washington provide teletherapy services to a student who is a resident of Washington but is temporarily traveling to a different state?

Please see question A-4A of this document for information regarding students accessing the district's remote instruction program while temporarily outside the state of Washington. With regard to services provided by staff with an Educational Staff Associate (ESA) certificate (such as speech therapy, occupational therapy, physical therapy, etc.), there are no PESB or OSPI regulations which would prevent any of the ESA roles from practicing virtually (including providing services while a student is temporarily traveling to another state).

However, if the provider also holds a DOH license, the relevant DOH regulations would apply. Some states have policies that individuals providing telepractice services have appropriate certification for both the state they are providing services from and the state they are providing services to, thus providers have the responsibility to inquire with relevant states before providing services. Likewise, each provider will also need to uphold the requirements from their accreditation body, if applicable (ASHA, Behavior Analyst Certification Board (BACB), etc.). OSPI and PESB cannot provide guidance on the policies of DOH and accreditation bodies, each provider will need to ensure that they are aware of and can meet these requirements that apply to them. To learn more about the eight different ESA roles and whether a DOH license is required for each, please visit the [PESB ESA webpage](#).

Districts should be aware of their FAPE obligation and should work in collaboration with families to identify when students may be traveling out of the state and to determine how to best serve the student. When students are temporarily traveling out-of-state for extended periods of time, districts could consider:

- Providing more services prior to a student departing on out of state travel (i.e., "front loading");
- Preparing a variety of asynchronous activities to support students during potential gaps in services (note: parents may need some coaching to support asynchronous activities);
- Supporting providers to pursue additional certification in bordering states (e.g., Oregon and Idaho) to prepare for situations where students may be traveling for extended periods of time; and
- Exploring options to partner with therapy and staffing companies who may be able to provide some flexible staffing solutions to meet the needs of families who may be temporarily traveling to other states due to the COVID-19 pandemic.

Districts can bill Medicaid for services provided to a Washington student who is temporarily out of the state (see question 18 of the updated [School Based Health Care Services COVID-19 Billing FAQ](#)).

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 U.S. Department of Education Student Privacy Policy Office (SPPO) in March 2020 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." 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 SPPO issued guidance in March 2020 on FERPA and Virtual Learning, which includes frequently asked questions 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, tracking forms, etc. 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 with either in-state or out-of-state Non-Public Agencies (NPAs)?

NPAs may continue to provide either in-person services or remote learning, in alignment with local health requirements in their state. If an NPA is offering an instructional model that is different from the model being used by the school district (e.g., the NPA offers in-person learning while the school district offers remote/hybrid learning), then the district and NPA may need to discuss how to ensure the student still has access to FAPE within the context of the current contract for services and if any changes are needed. Districts should continue to work with NPAs and families to ensure student IEPs are implemented to the maximum extent possible given current health and safety requirements; and to consider the need for IEP meetings to address amendments/adjustments to services (see question D-1), and any potential need for recovery services (see questions B-1 and B-5). The school district ultimately remains responsible for ensuring FAPE is provided.

K-2. Will Safety Net continue to reimburse for non-public agency (NPA) contracts during 2020–21 if the NPA is implementing a remote or hybrid model?

Reimbursement for NPA services under Safety Net will continue, pending approval by the committee. OSPI is not currently planning to reduce Safety Net awards for 2020–21 based on COVID-19 school building closures and will continue to review applications on a case-by-case basis. Services submitted for Safety Net consideration must have been provided to the student.

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 for implementing an instructional model that ensures student IEPs are implemented to the maximum extent possible given the current health and safety requirements where the NPA is located.

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 may also be implementing a remote or hybrid model in the 2020–21 school year. OSPI recommends that districts communicate with the private schools in their region to determine how equitable services will continue through in-person, remote, or other alternate methods and to continue providing such services to the maximum extent possible. OSPI continues to recommend ongoing communication and consultation with private schools on equitable service delivery.

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 in fall 2020 if the student's IEP or evaluation has lapsed?

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

For the 2020–21 school year, the standard P-223 and P-223H processes are back in place. However, as referenced in question E-1A of this document, during fall 2020, districts could claim a student receiving special education services whose IEP and/or evaluation was delayed due to a documented impact of COVID-19 (e.g., staff illness with COVID-19, parent request to postpone for in-person meeting, or assessment not able to be completed due to safety guidelines) on the Form P-223H provided that the IEP/evaluation was completed within 30 school days after school resumed in the fall of 2020. The 30 school day timeline began with the first day of school in fall 2020, regardless of what instructional model the district was implementing. This 30-day flexibility has now passed, and students are once again required to have a current IEP and current evaluation in order to be included on the monthly P-223H enrollment report.

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.

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, a multi-tiered system of supports (MTSS), 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 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 [email T.J. Kelly, OSPI](#).

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). However, documentation must be kept on file that all efforts to obtain a refund and/or credit were exhausted and the vendor refused to issue the refund and/or credit.

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?
4. Is the technology available to **all** students?
5. Are costs reasonable, allowable, and allocable?

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.

If there is a need to use a substitute time and effort system, a request must be submitted to OSPI and prior approval must be obtained before the substitute time and effort system is implemented.

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)?

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 and document the services provided.

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. If you have any questions about MOE, please contact [OSPI Special Education Fiscal](#).

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 Care Services (SBHS) contracted school districts can bill for IEP services through telemedicine during COVID-19 related school facility closures. Please refer to the [SBHS COVID-19 Frequently Asked Questions](#) (updated November 23, 2020) 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/virtual or hybrid 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 in-person, virtual, or hybrid learning opportunities. Disciplinary exclusions in a remote learning environment would include exclusions from online learning opportunities (such as moving the student to a breakout room in Zoom as a result of their behavior). 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 2020–21 school year, districts employing a model that provides education and special education services through in-person, remote learning, or a combination of both (i.e., hybrid), should count days when these services 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 the 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 2020–21 school year?

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. OSPI encourages districts to document the impacts of the pandemic through 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, progress reporting, 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 spring 2020 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 and compensatory 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 2020–21 school year?

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; 800-692-2540

Email: Greg Abell: [email Greg Abell](mailto:greg.abell@ospi.wa.gov); Rebecca Larsen: [email Rebecca Larsen](mailto:rebecca.larsen@ospi.wa.gov); Mindy Hyde: [email Mindy Hyde](mailto:mindy.hyde@ospi.wa.gov)

Website: [Sound Options Group website](https://www.soundoptionsgroup.com).

N. Additional Resources

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

- *UPDATED* [School Based Health Care Services COVID-19 Billing FAQ](#)
- [OSPI Reopening Washington Schools 2020: Special Education Guidance](#)
- [Special Education Reopening Guidance: Least Restrictive Environment \(LRE\) Case Studies](#)
- [LRE Guidance from the National Association of State Directors of Special Education \(NASDSE\)](#)
- [Remote Learning vs Homebound vs Homeschool](#) issue brief from NASDSE

- [WSASP Guidance for Special Education Evaluations during the COVID-19 Closure](#)
- [Guidance for Providing Services to Students with Disabilities in Early Childhood Programs](#)
- [Restart & Recovery: Considerations for Teaching & Learning: Pre-K to 3rd Grade Recovery in School Year 2020–2021 \(CCSSO\)](#)
- [OSPI Reopening Washington Schools 2020: Early Learning Planning Guide](#)
- [Recommendations for Re-Opening Face-to-Face Sessions for Inclusionary Preschools and Early Care Centers \(ECTA\)](#)
- [Repository of Online Resources for Supporting Students with Disabilities through School facility closures](#)
- [List of Online Professional Development Opportunities for Supporting Students with Disabilities](#)
- [OSPI’s Special Education Guidance for COVID-19 Webpage](#)
- [Federal COVID-19 Guidance](#)

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

- [OSPI’s COVID webpage](#)
- [OSPI Reopening Washington Schools 2020: District Planning Guide](#)
- [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 \(scroll to bottom of page\)](#)

O. What Is New and Revised in This Q&A Update

O-1. What questions from the August 26, 2020 update of this Q&A document were added or edited in this January 13, 2021 update?

Questions that were added :	A-3A	A-3D	I-3
	A-3B	A-4A	
	A-3C		
Questions that were deleted :	M-5		
Questions with content edits :	A-2	C-3	E-3
	A-3	D-1	E-4
	A-5	D-2	E-5
	A-6	D-6	F-1
	B-1	D-7	L-1
	B-2	E-1	N-1
	B-4	E-1A	N-2
	C-2	E-2A	