



Questions from the field:

**1. Can students receive face to face instruction to meet the needs of their IEP?**

At this time the Commissioner is still promoting the three tiers of instruction for special education students:

**Remote Instruction** – instruction is received either videoconferencing, teleconferencing or in another form determined by your district for students. This also includes low tech options for students if deemed appropriate (packets of work, etc.).

**Remote Services** – Services provided to small cohorts of students in the school building. With smaller numbers we are decreasing the risk while providing students with their special education and related services.

**Compensatory Services** – if your team can document that it has made a reasonable effort to provide service with one of the above methods or a combination of the two, once you are physically back in session, the team would review what services were missed on a student by student basis, and what compensatory services each student requires.

**2. What should paraprofessionals be doing?**

Paraprofessionals can be assisting with the delivery of remote instruction. For example, they may be able to provide audio or-video check-ins with students to support access to the day's work tasks.

Paraprofessionals may also assist teachers in planning and preparing for remote instruction. Some states are utilizing this time to allow paraprofessionals to participate in online professional development.

**3. What about our most needy students? What if they cannot participate remotely?**

These students are some of the few that may be able to come to the school for individual or small group instruction. Services may be provided within the home if the district and family determine this is appropriate. Several of our private providers have done some great work around remote instruction for some of our most needy students. You can reach out to the bureau to contact these schools if needed. Think outside the box, be creative and as stated above make a reasonable effort to provide services to these students.

**4. Should students be going to private providers of special education?**

Private providers have not been closed. Many are continuing to operate with an abundance of caution for the health and safety of their students. Please work closely with them to determine what services would look like and how they can continue to support some of our neediest students.

**5. What special education and related services must be provided when a school is closed, but has chosen to provide educational opportunities to the general student population during the school closure?**

This is addressed in the answer to Question A-1 in the U.S. Department of Education's Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak, [https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=) .

Please note that "make every effort" to fully implement a student's IEP once school resumes in the answer to Question A-1, linked above, has not been interpreted in a way that would allow a district to decline all services to students with an IEP and only offer compensatory services at a later date.



**6. What steps must be taken to serve a student with a child with a disability once a remote learning is over and school buildings are open?**

The student's IEP Team must make a determination **on a case by case basis** as to whether, and to what extent, it may be necessary to provide compensatory education.

Compensatory services may be necessary when there is a decline in the student's skills that occurred as a result of a student not receiving services during an extended remote learning caused by the COVID-19 outbreak. The team should be documenting the services missed for each student with an IEP to assist in determining the compensatory education to be provided at a later date.

The student's IEP Team also must review the student's IEP upon return and determine whether any other changes to the IEP are needed as a result of the ~~extended~~ remote learning. An IEP Team may consider using informal assessments or screenings to determine whether there have been changes in a student's performance.

**7. Should all student IEPs be amended in response to special education and related services not being provided in accordance with a student's IEP during an extended school closure caused by the COVID-19 outbreak?**

No. IEP amendments must be individualized decisions, particular to the needs of each child. Missed services should be addressed as outlined in the answer to Question 6.

**8. What should a school do if it cannot meet the 60 school-day timeline for initial special education evaluations due to school closure or student illness/absence because of COVID-19?**

At this time, the NHDOE has not received any indication from the USDOE that any of the timelines associated with the special education process may be waived or otherwise relaxed.

Districts will still need to follow the special education process with respect to evaluations in accordance with Ed 1107.01. We would suggest utilizing audio or video conferencing to hold meetings and at this time following the Remote Services guidance the Department has shared which allows individual or small group services to be provided at schools to meet the requirements for evaluations as well as services.

As a reminder, the following continues to apply with respect to evaluation timelines:

- For initial evaluations, the evaluation process, as defined in Ed 1102.02(n), shall be completed within 60 days after receipt of parental consent to evaluate.
- For reevaluations, the evaluation process as defined in Ed 1102.02(n) shall be completed within 60 days after the receipt of parental consent to evaluate, or at the conclusion of any extension provided in Ed 1107.01(e).
- Upon written consent of the parties, the 60 day time limit required by Ed 1107.01(d) may be extended by a specific number of days, not to exceed 30 days.

The following exceptions still apply, in accordance with 34 CFR 300.301 for initial evaluations:

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or



(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8

Please contact us if you need one of these exception forms.

**9. What should a school do if it is closed due to COVID-19 and cannot meet the obligation to have an IEP in effect for a child transitioning from Part C to Part B no later than the child's third birthday (Part C to Part B transition)?**

34 C.F.R. 300.101(b) and 34 C.F.R. 300.124(b) require that an IEP is developed and is being implemented by the third birthday of a child participating in Part C programs and who will participate in Part B preschool programs. There is no exception to this requirement. An IEP must be developed and implemented by the child's third birthday. To accomplish this, teams may conduct meetings virtually via telephone or videoconference.

**10. How does school building closure due to COVID-19 affect the school's obligation to provide IEP services to students who transfer within the state and from out of state?**

Students with IEPs who transfer to a new school within New Hampshire or from out-of-state and enroll in the new school within the same school year must be provided with a free appropriate public education (FAPE) including services comparable to those described in the child's IEP from the previous school district until the new school district adopts the child's IEP from the previous school district, or develops a new IEP, or (in the case of an out-of-state student) conducts an evaluation (34 C.F.R. 300.323(e), (f)). Schools should be careful to not introduce unreasonable logistical barriers on enrollment and keep in mind their obligation to provide FAPE to a student who has transferred into the school district.

**11. What should a school do if it cannot meet the requirement to review and revise each IEP at least annually due to school closure or student illness/absence because of COVID-19?**

34 C.F.R. 300.324(b)(1)(i) requires each school district to ensure that the IEP team reviews the child's IEP not less than annually to determine whether the annual goals for the child are being achieved and to revise the IEP as appropriate to address any lack of expected progress toward the IEP goals and in the general education curriculum. There is no exception to this annual requirement. To accomplish this, teams may conduct meetings virtually via telephone or videoconference. Any required IEP team members that are unable to attend may be excused by written consent of the parent or written agreement between the parent and the school pursuant to the procedures outlined in 34 C.F.R. 300.321(e).

**12. What should a school do if it cannot meet the requirement to reevaluate each child with an exceptionality at least once every 3 years due to school closure or student illness/absence because of COVID-19?**

34 C.F.R. 300.303(b)(2) requires school districts to ensure that a reevaluation of each child with an disability occurs at least once every 3 years, unless the parent and the school district agree that a reevaluation is unnecessary. There is no provision that allows for an extension of time. Further, it would be inappropriate and inconsistent with the law for the parent and school district to agree not to conduct a 3-year reevaluation because of administrative convenience or lack of time and resources. A school district would not be required to conduct a 3-year reevaluation only if one of the following occur: a. the



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parent refuses to provide consent for the reevaluation, or b. the parent and school district agree that the reevaluation is unnecessary. Whether a 3-year reevaluation would be unnecessary is an individualized determination and must be made based on the needs and unique circumstances of the child. If the school district is not conducting a reevaluation then the previous evaluation must be reviewed and able to provide information on the child's current status in the area of evaluation. Then the evaluation can be used to make a determination of eligibility. Also see question 8.

### **Questions from Private Providers:**

- 1. If we provide access to services for a remote student but they don't access it, is that enough? If they don't log-in and avail themselves to the services, do we need to make it up later?**

If a district/private provider offers the access (curriculum and services) and the student doesn't attend, the district/private provider would have to be able to provide evidence that they attempted to provide the curriculum and the services. If the parent fails to produce the student for school you would also want to document attempts to provide instruction.

- 2. How do we ensure we are being paid by districts for the services we provide?**

Private providers will need to work with their districts and look at the agreements they have with public schools to develop a plan around how this will look going forward. This is not something we can address as this falls outside our purview.