

# Special Education Legal Updates

## September 29, 2021



WISCONSIN DEPARTMENT OF  
**PUBLIC INSTRUCTION**  
Carolyn Stanford Taylor, State Superintendent

# IDEA Complaints COVID 19 Circumstances

## 20-064

- Unless there is a prohibition through a health order, if an in-person assessment is required in order to conduct the reevaluation, the district must proceed and cannot wait until the district resumes face-to-face instruction.
- In providing in-person instruction or evaluations, the district should consult with local health authorities and follow all health and safety protocols.
- If a student cannot access the virtual instruction due to their *disability related needs*, then the IEP team must determine how to provide in-person instruction in order for the student to receive a free appropriate public education (FAPE).

# IDEA Complaints COVID 19 Circumstances

## 20-054

- Districts must properly respond to a parent's requests for in-person services by holding an IEP team meeting and engaging in thorough discussion of the student's needs and documentation of the parent's concerns.
- If the request is denied, the parent must be provided with prior written notice.

# IDEA Complaints COVID 19 Circumstances

## 20-055

- IEPs teams must determine a student's need for in-person services based on a team discussion of their unique disability-related needs, which cannot be based on a predetermined schedule.

## 20-058

- A contingency plan must clearly communicate the services the IEP team has determined the student requires in order to receive FAPE should the district need to change the mode of instruction in response to local conditions, and must be implemented should those conditions occur.

# IDEA Complaints COVID 19 Circumstances

## 20-061

- An IEP team meeting to consider the results of an IEE should not have been delayed for eight months.

## 20-062

- An evaluation was not properly conducted when the eligibility determination was delayed six months, notwithstanding the state-wide school closure.

# IDEA Complaints COVID 19 Circumstances

## 21-024 & 21-007

- IEP Team must consider and address barriers to virtual attendance

## 21-021

- Specially designed instruction in the virtual setting must be provided by special education teacher

# IDEA Complaints

## Manifestation Determinations

### 20-027

- The manifestation determination is a matter of due process designed to respond to a decision regarding a disciplinary change of placement, not to be used as an information gathering tool or as part of IEP team discussions related to other matters.

### 20-014

- Because the IEP team determined that the conduct was a manifestation of the student's disability, the student should have been returned to his original placement without a significant reduction in the school day.

# IDEA Complaints

## Shortened School Days

### 20-014

- When a student's school day is shortened, the student's IEP must include an explanation of why the student's disability-related needs require a shortened day, and a plan for the student's return to school for a full day. Before deciding to shorten the student's day, the IEP team must consider if there are other ways to meet the student's needs.

### 20-018

- The student should return to a full school day as soon as they are able, and under most circumstances, a shortened school day should be in place for a limited amount of time.



# IDEA Complaints Shortened School Days

## 21-009

- Time for reasonable and necessary transportation does not shorten a student's day.

## 21-017

- COVID-19 mitigation measures are not a justification for shortening a student's day.

# IDEA Complaints Evaluations

## 20-006

- The IEP team did not adequately consider whether the determinant factor for the student's eligibility was the student's limited English proficiency.

## 20-018

- Although the parent did not use the exact words "special education evaluation," evidence, in this case, demonstrates the parent's intent was clear, and as such, the district did not properly respond to the parent's request for a special education evaluation.

# IDEA Complaints Evaluations, ESY

## 21-013

- Discrepancy Model may not be used for private school SLD evaluations.

## 21-006

- Participation in summer enrichment program may not deprive student of necessary ESY services.

# Proposed Rule Changes/Impairment Criteria

- Creation of Deafblind disability category, effective 8/1/21
- Revisions to Deaf and Hard of Hearing and Blind and Visually Impaired Criteria, effective 8/1/21
- Speech or Language Impairment Criteria, effective 8/1/21
- Revisions to Emotional Behavioral Disability, pending with the legislature
- Specific Learning Disabilities, pending with the Legislature
- [DPI's Administrative Rule Page](#)

# Face Coverings

- **Nondiscrimination or IDEA?**
- **Disability-related needs: can't wear mask**
- **Disability-related needs: others need to wear masks**
- **Personal objections to wearing masks**

# DPI Resources

## COVID-19 Special Education Updates and Resources

- [Question and Answer Document](#)
- [A Guide to Implementing IEPs and Measuring Progress When Moving Between Learning Environments](#)
- [Considerations in Using Facial Coverings During In-Person Instruction](#)
- [Teleservices Considerations for Related Services](#)
- [Additional Services Bulletin No. 20.01/What Families Need to Know](#)
- [Conducting Parent Friendly and Productive Virtual IEP Team Meetings](#)

# Questions?

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