

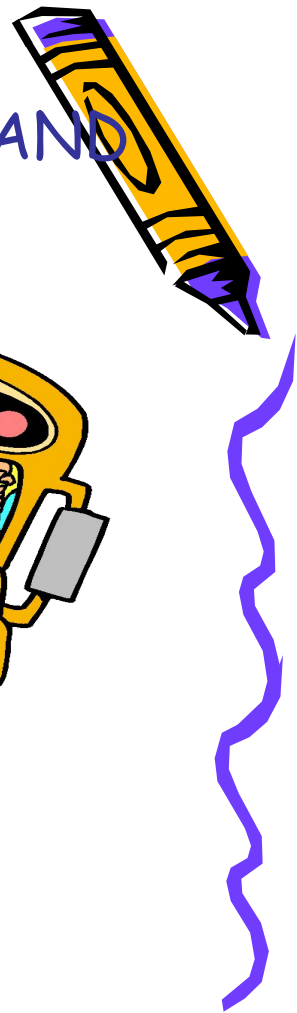


Special Education during COVID-19

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Systems Change Consulting

OVERVIEW OF LAWS RELATED TO SCHOOLS AND CHILDREN WITH DISABILITIES

- Individuals with Disabilities Education Act (IDEA)
- Chapter 115, Wis. Stats.



Vocabulary



- Free Appropriate Public Education (FAPE)-recent Supreme Court case: *Endrew F.*
 - IEP must be “reasonably calculated to enable a child to make appropriate progress in light of the child’s circumstances.”
 - “Every child should have the chance to meet challenging objectives.”
- Least Restrictive Environment (LRE)
- Individual Education Plan (IEP)



Evaluations- 60+30 days



- Anyone can refer a child who is suspected of having a disability for a special education evaluation
- Make requests in writing-keep a copy for your records
- Meet as an IEP team to discuss necessary evaluations, areas of suspected need and any existing information that should be included in the evaluation process
 - Private evaluations



Initial IEP meeting

- Ensure all necessary participants are at the meeting.
 - LEA
 - Teacher with recent training and knowledge of the suspected area of disability
 - Regular education teacher
 - Parents
 - Student when transition age or otherwise appropriate
 - Other participants with special knowledge of the child such as private therapists



Evaluation Timelines



- Evaluation must be complete within 60 days from parent signing consent to evaluation
- IEP must be complete within 30 days of completion of evaluation
- Can do both together



Evaluations, Parent Consent and Re-evaluations cont.



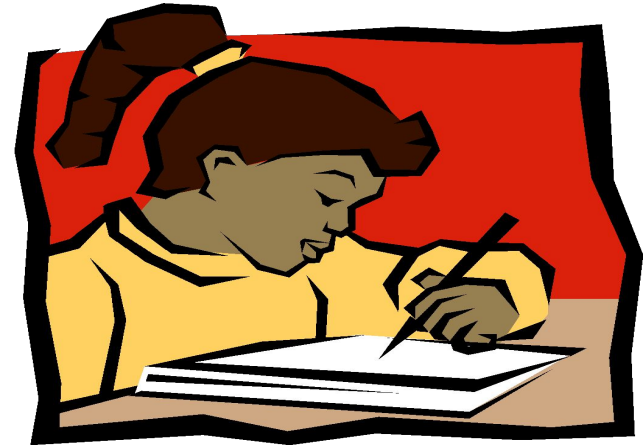
Re-evaluations shall be done:

- if the LEA determines that the educational or related services needs (including improved academic or functional performance) warrant it
- If the parents or teachers request it
- Not more than annually unless parent and LEA agree otherwise, but not less than every 3 years unless mutually waived.



Writing the IEP

- Present Level of Performance (PLOP)
 - Measurable
 - Goals must be related to this
 - Cover all areas of need
 - Pass the “stranger test”



Goals and Objectives

- Must be measurable.
- Based on information provided in the PLOP
- How will you know if a goal is met?
- Should address all areas of concern
 - Academic
 - Behavioral
 - Social Skills
 - Transition (14+)



Supplementary Aids and Services

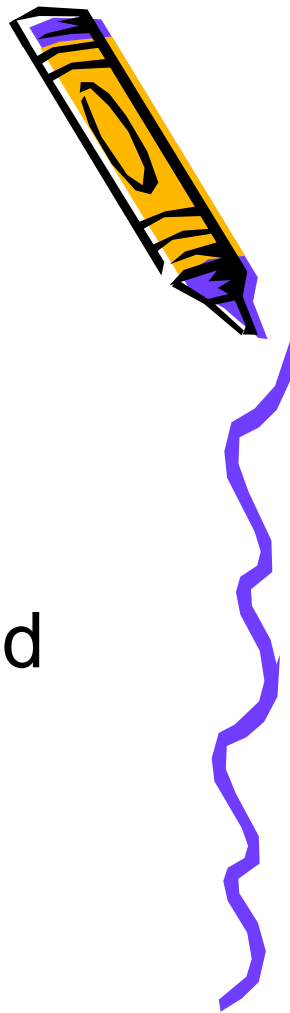


- What accommodations, services or supports will the child need to meet the goals defined in the IEP?
 - Assistive Technology
 - Accommodations
 - Therapies
 - Amount, location and duration
- Supportive services-Where will they take place?
 - Classroom size
 - LRE
 - Virtual



Other IEP Issues

- Extended School Year (ESY)
 - Regressions/recoupment
 - Not summer school
- Functional Behavioral Analysis (FBA) and Behavior Intervention Plans (BIP)
- Assistive Technology (AT)



Placement

- Placement is not dependent upon eligibility.
- Where can the child's IEP be implemented in the LRE?
 - Based on IEP
 - As close to child's home as possible
 - Where they would attend if not disabled when possible
 - With non-disabled children to the maximum extent possible



IEP: Goals

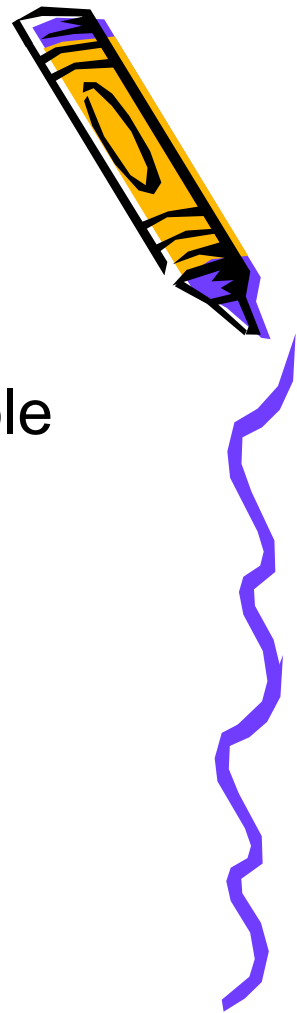


Requirements:

- Annual goals must include academic and functional goals
- IEP must describe how the child's progress towards meeting annual goals will be measured and when periodic reports about the child's progress will be made



Transition



Transition:

- At age 14 IEP must state “appropriate measurable postsecondary goals based on age appropriate transition assessments related to training, educations, employment and where appropriate, independent living skills”



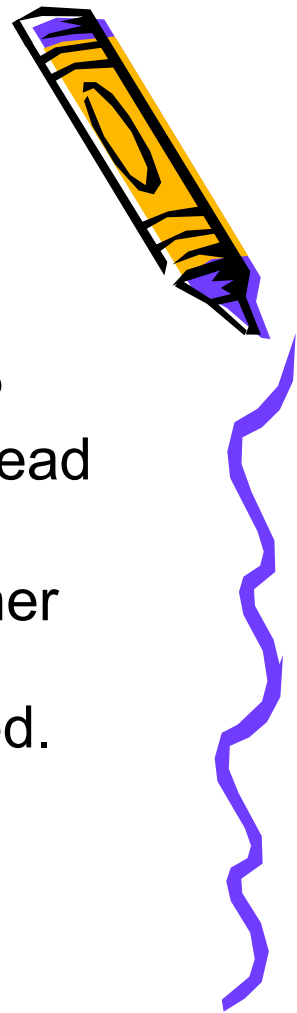
IEP Team participation

Team participation

- A member of the IEP team need not attend an IEP meeting in whole or in part if that parent and LEA agree that it “is not necessary because the member’s area of curriculum or related services is not being modified or discussed at the meeting.”
- May also be excused if member submits his/her input to the parent and team in writing in advance.
- Parental consent for this must be in writing.
- Parents and LEA may agree on alternative means of participation such as video conferences and conference calls



IEP Mid-year changes

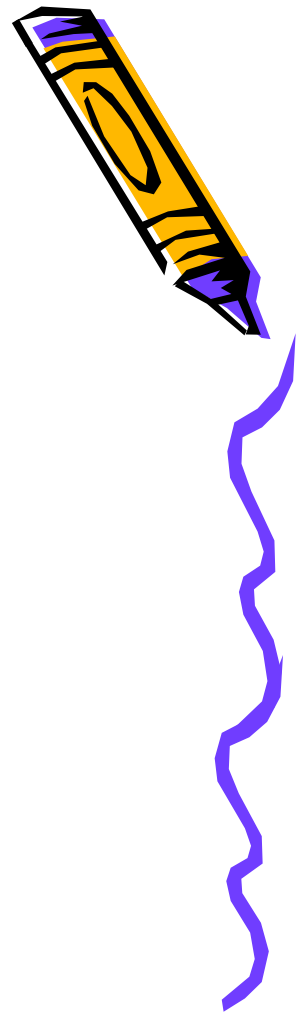


- During the year in which a child's IEP is in effect, the parent and the LEA may agree not to convene an IEP meeting for the purposes of making changes and instead may develop a written document to modify the IEP.
- IEP changes may be made through amendments rather than rewriting the whole thing. Parents may request a revised copy of the IEP with amendments incorporated.



Complaint Resolution

- Mediation
- IDEA Complaints to DPI
- Due Process



Procedural Safeguards



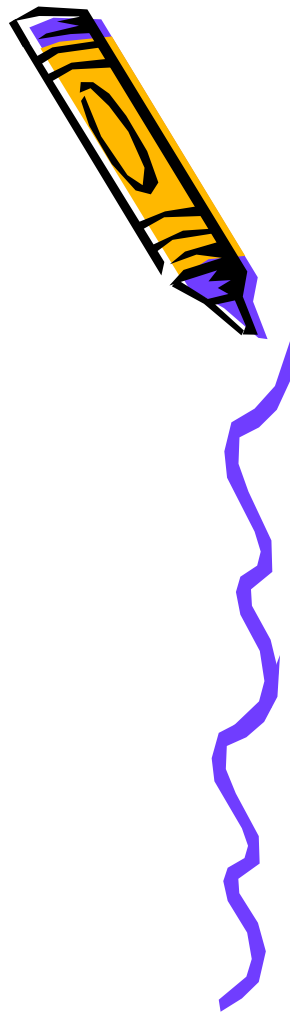
- The statute of limitations for filing a due process hearing is one year.
- Procedural safeguard notices need only be given once per year unless the parent request another one, or upon initial evaluation, or filing a due process complaint



Procedural Safeguards cont.,

Due Process:

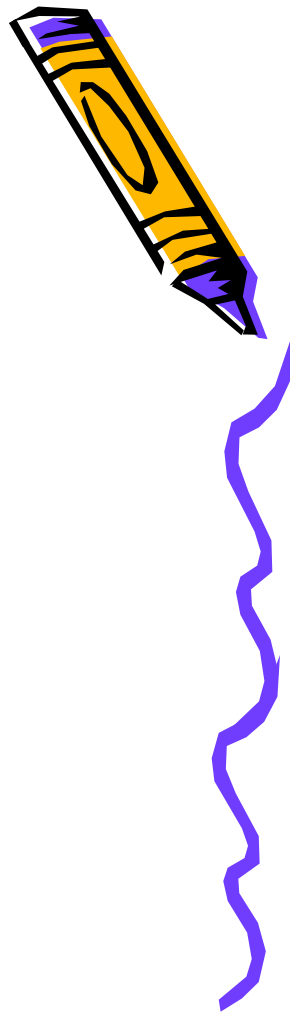
- Wis. Law requires a decision within 45 days of request for a hearing unless an extension is granted.



Procedural Safeguards cont.,

Due Process:

- Attorney's fees may be awarded to LEAs if a parent is found to have frivolously requested a hearing.



Procedural Safeguards cont.,



Due Process:

- Prior to a due process hearing and within 15 days of receiving notice of the complaint, the LEA shall convene a resolution meeting between the parents and relevant members of the IEP team.
 - The LEA must have a person there who has decision making authority.
 - LEA may not have an attorney at the meeting unless the parent has one there.
 - This meeting may be mutually waived or mediation may take its place.



Procedural Safeguards cont.,



Due Process:

- Resolution meeting cont.
 - Any agreement between the parties is enforceable in state or federal court.
 - Parents cannot obtain attorney's fees for this meeting.
 - If LEA does not resolve complaint within 30 days the hearing may proceed. The timelines for due process commence at this point.



Procedural Safeguards, cont.,

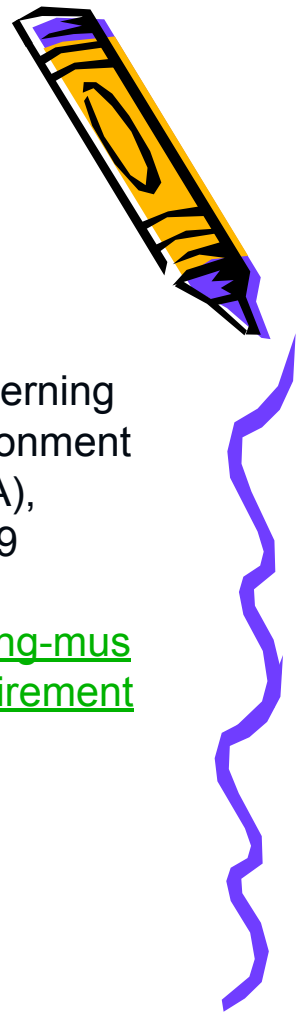


Mediation:

- If parent or school chooses not to use mediation the State of LEA may offer an opportunity to meet with a disinterested party, such as FACETS, or an appropriate alternative dispute resolution (ADR) entity to explain the benefits of mediation
- If mediation resolves a dispute “the parties shall execute a legally binding agreement that sets forth the resolution” which must be signed by both parties
- Mediation agreement is enforceable in state and federal court
- Currently being conducted via Zoom



No Federal IDEA Waiver



Secretary of the U.S. Dept. of Education Betsy DeVos:

- “is not recommending Congress pass any additional waiver authority concerning the Free Appropriate Public Education (FAPE) and Least Restrictive Environment (LRE) requirements of the Individuals with Disabilities Education Act (IDEA), reiterating that learning must continue for all students during the COVID-19 national emergency.”
- <https://www.ed.gov/news/press-releases/secretary-devos-reiterates-learning-must-continue-all-students-declines-seek-congressional-waivers-fape-lre-requirements-idea> (April 27, 2020)



Federal IDEA Guidance during COVID 19



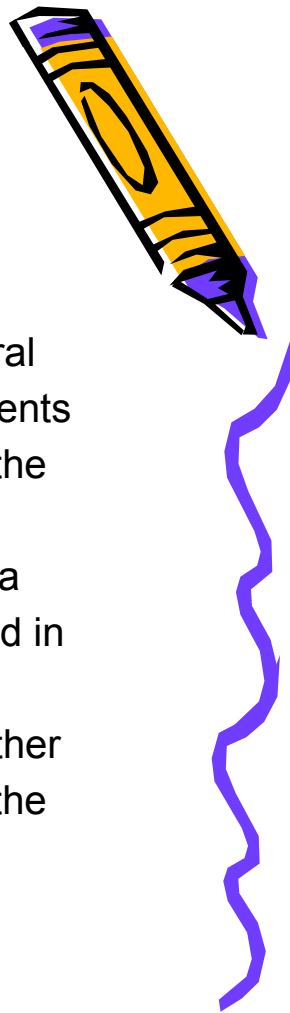
- If a school district closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then the district would not be required to provide services to students with disabilities during that same period of time.
- Once school resumes, the school district must make every effort to provide special education and related services to the child in accordance with the child's individualized education program (IEP)



Compensatory Education

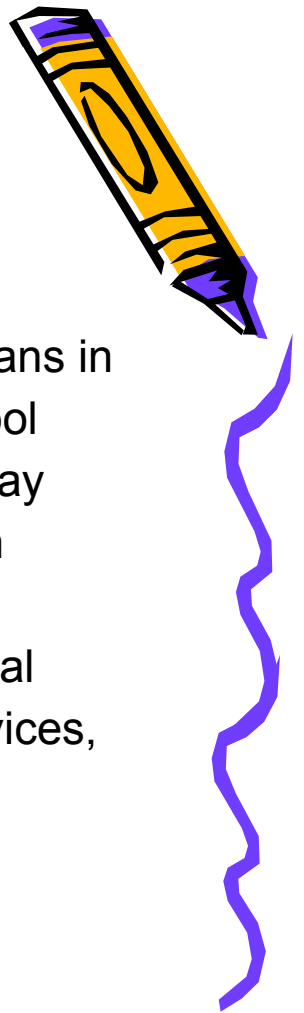
(DPI uses term "additional services")

- If a school district continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE.
- Schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA
- The IEP Team is required to make an individualized determination as to whether compensatory services are needed if the school district does not implement the child's IEP.

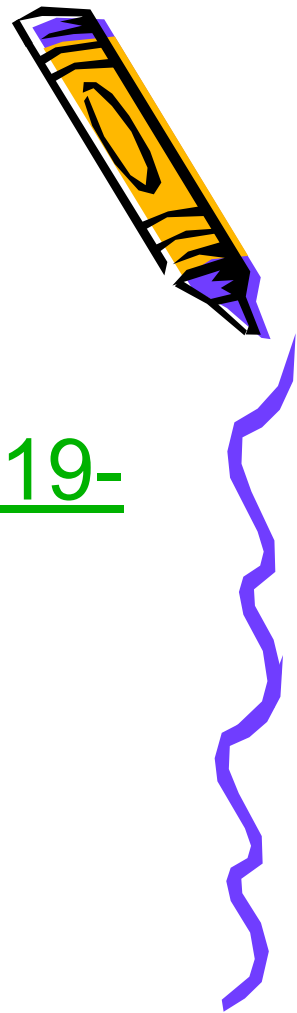


Distance/Virtual Learning

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



US Dept. of Ed. Q&A



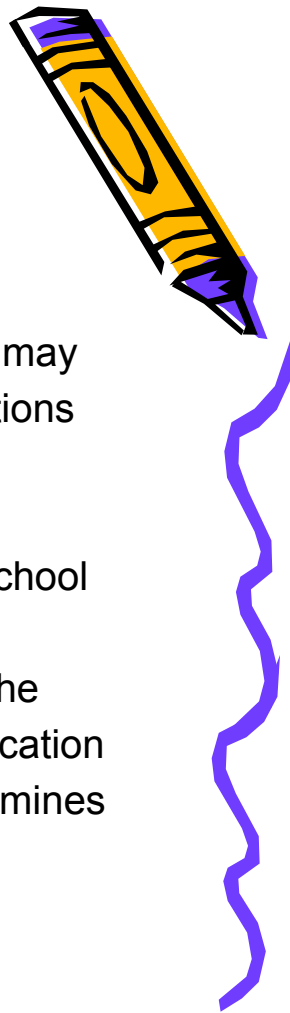
Full document:

<https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf>

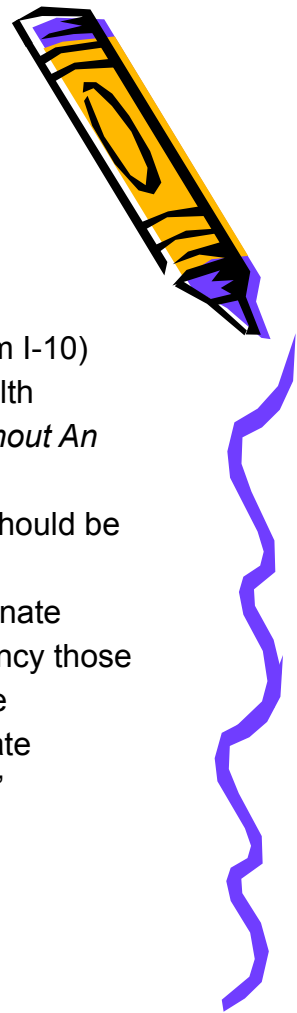


Wis. DPI Guidance: electronic signatures graduation

- School districts that wish to utilize electronic or digital signatures for consent may do so if they choose. The school district should address important considerations such as whether the parties have access to email and whether there are any potential barriers to address.
- School districts may, but are not required to, delay awarding a regular high school diploma to a student who has met all graduation requirements, but have not obtained all of their IEP goals. School districts should consider this option if the extended school closing has significantly deprived the student of special education and related services (particularly transition services), and the IEP team determines additional services are appropriate.



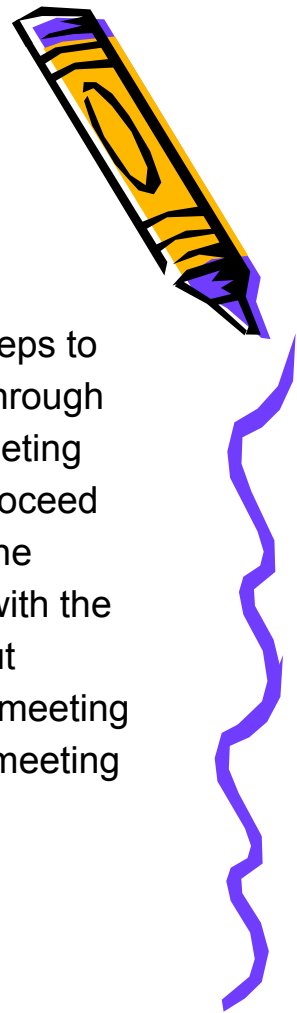
Writing IEPs



- School districts may use the *Notice of Changes to IEP Without An IEP Meeting* (DPI Model Form I-10) form to make revisions to an IEP, including changes in placement stemming from the public health emergency may be made without an IEP team meeting using the *Notice of Changes to IEP Without An IEP Meeting* form **if the parent agrees and if it is during the duration of the closure.**
- Annual IEPs developed during the period a school is closed due to a public health emergency should be written to address the student's disability-related needs when school resumes. If the IEP team determines there are additional supports or services the student needs to participate in the alternate mode of instruction offered during the period the school is closed due to a public health emergency those should be included in the IEP. Use the "duration" section in the program summary to indicate the conditions under which these services and supports will be provided. For example, an appropriate duration may be "for the period of time the school is closed due to the public health emergency."



Holding IEP meetings



When IEP teams are unable to meet in person, school districts must continue to take steps to ensure parents have the opportunity to meaningfully participate in IEP team meetings through participation via alternative means. However, some parents may not be comfortable meeting virtually or participating by phone. A parent may choose to allow the school district to proceed with the meeting without them. In that circumstance, school districts should document the parent's wishes on the participation section on the cover page of the IEP and proceed with the meeting. However, if the parent makes clear their desire to participate in the meeting but prefers to wait until the meeting can occur in person, it is acceptable to wait to hold the meeting in person once school reopens. The department understands postponing an IEP team meeting may mean not meeting annual IEP timelines.



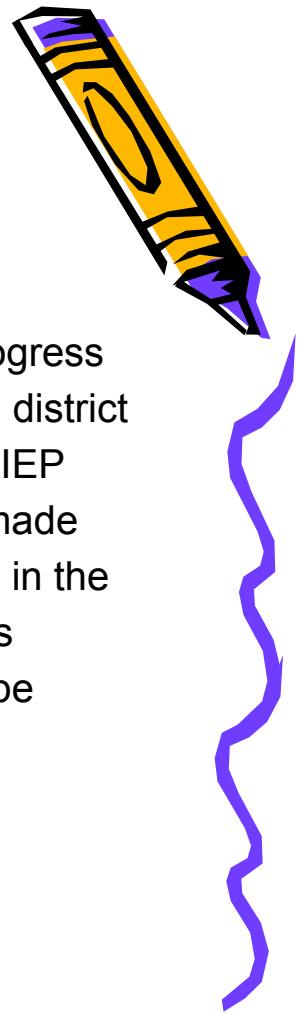
Change of Placement

School districts currently offering educational services to all students through alternative means have changed their “mode of instruction.” Current OSEP guidance holds that a change in mode of instruction is not a change in placement requiring IEP team action.



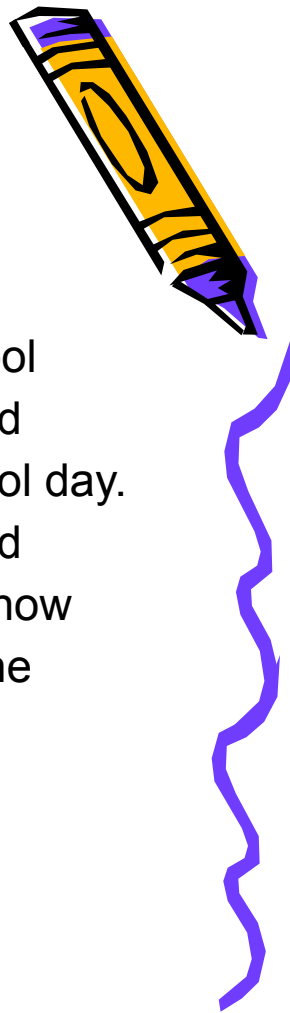
Progress Reports

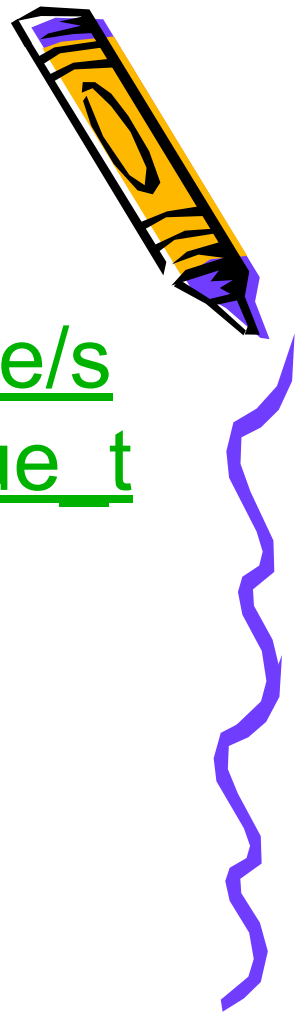
School districts should make reasonable efforts to continue measuring student progress towards annual IEP goals as specified in the student's IEP. In instances where the district has opted not to provide general education grades or report cards during closure, IEP progress reports should still be provided. Reports of progress to parents may be made via telephone or other electronic means if progress reporting procedures specified in the student's IEP cannot be met with reasonable efforts. If the amount of progress was unable to be determined due to the public school closure, this information should be conveyed to the parent in the progress report.



Hours of Instruction

- If the hours of instruction for all students are reduced, then the school district should consider whether the amount of special education and related services should be adjusted in response to the revised school day. During the period of the public school closure, school districts should consider how IEPs will be implemented during this time, document how and what services are being provided, and communicate this with the student's parents.
- In some cases, the student's IEP may need to be revised.



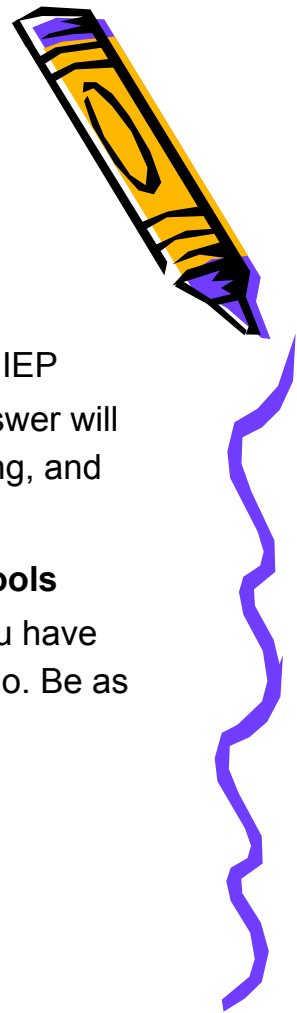


Link to Full DPI Guidance

https://dpi.wi.gov/sites/default/files/imce/spe/pdf/Extended_School_Closure_due_to_COVID.pdf



Tracking Progress/Regression



- **Some students may need compensatory (additional) services after this is all over.** IEP teams will decide on a case-by-case basis which students qualify. For your child, the answer will likely depend on 1) the services your child does (and does not) get during remote learning, and 2) the amount of progress or backsliding your child experiences.
- **You can help your child qualify for additional or compensatory services once schools reopen by keeping good records now.** Your top priority should be a daily journal. If you have more time, include additional records that demonstrate what your child can and cannot do. Be as thorough as you can be. Whatever notes you can take will be helpful.



Daily logs to track progress (or lack thereof)

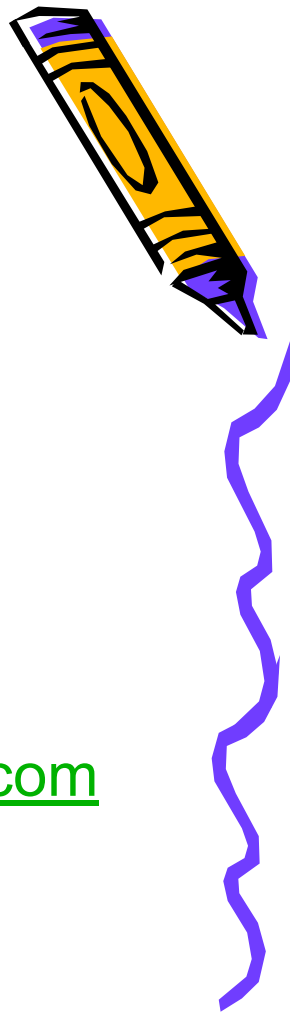


- Legal Council for Health Justice Daily Journal form:
- <https://legalcouncil.org/wp-content/uploads/2020/04/COVID-SPED-3.pdf>
- Southern Poverty Law Center fillable form:
- https://www.splcenter.org/sites/default/files/splc_covid19_school_services_tracker_01_editable.pdf?fbclid=IwAR1EEhT51F0DVZmlw5FhJf0njtcYP4EMsnUjkgfSokbWbIPq7YsbnDqdwMmw



Questions?

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