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Summary of Federal and Washington State Guidance on Provision of Special Education Services During COVID-19 School Closures

- **2.28.20 OSPI [B013-20](#) – Student engagement:**
 - Recognizes that some districts may be in a position to offer distance learning, but encourages using “an equity lens” when planning such services.
 - Will likely make sense to cancel services and make up missed days at the end of the year rather than offering distance learning that can’t be accessed by all students.
 - Special education:
 - If school closure causes educational services for all students to cease, then not required to provide services to special education students.
 - Contemplates that “delay in services” may create a need for “make-up services” if delay results in loss of educational benefit, based on degree of skill lost; and/or changed ESY needs. To be determined by IEP team.
- **3.3.20 OSPI [B014-20](#):**
 - Reiterates need to serve all students if offering services to any, including continuance of FAPE in accordance with IEPs.
 - Reiterates that it will likely make sense to cancel services rather than offer services accessible by some but not all.
- **3.6.20 OPSI [B016-20](#):**
 - “OSPI does not recommend closed schools transition to an online distance model” unless district can assure that all students will have equal access to learning, materials and technology.
 - “Regardless of *where* the learning is happening, supports identified on a student’s IEP must be provided if the district is operating.”
- **3.12.20 U.S. Dep’t of Education [Questions and Answers](#) on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak:**
 - If LEA closes schools and does not provide any educational services to the general student population, not required to serve students with disabilities during that period of time. But notes that IEP teams will need to determine whether compensatory services are needed as a result.
 - If LEA continues to provide educational opportunities, “must ensure that students with disabilities have equal access to the same opportunities, including the provision of FAPE” and “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.”
 - IEP teams may include distance learning plans in IEPs.
- **3.12.20 Governor Inslee [Proclamation 20-08](#):** Closes schools in King, Pierce, Snohomish Counties through April 24, 2020

- **3.13.20 OSPI [B019-20](#):**
 - Similar to DOE guidance: If not offering services to students generally, no requirement to provide special education. If providing educational opportunities, this includes provision of special education and related services.
 - For special education, urges districts to:
 - Prioritize health and safety of students, staff, community.
 - “Make every effort to fully implement” IEPs and 504 plans. This does not allow districts to decline all services and reliance upon compensatory services at a later date.
 - Identify service delivery limitations and alternatives. Consider accessible distance technology, use of small groups of students with disabilities and access to nondisabled peers.
 - Maintain proactive and ongoing communication with parents of students with disabilities; ensure real-time opportunity to respond to parent questions and concerns.
 - In-person services, meetings: No prohibition on holding meetings at school, conducting individual student assessments, providing related services on a case-by-case basis, provided social distancing is used. (Subsequently narrowed.)
 - IEP teams will need to consider the need for compensatory services and/or ESY additions or revisions. Collect progress data for IEP goals to inform parents and IEP teams and assist compensatory education decisions after schools resume normal operations.
- **3.13.20 Inslee [Proclamation 20-09](#):** Expands school closure statewide
- **3.16.20 DOE OCR [Fact Sheet](#) on Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students:**
 - Reiterates need to determine need for compensatory services once normal operations resume.
 - Evaluations: If face-to-face assessment or observation is required, the evaluation would need to be delayed until schools reopen.
- **3.20.20 OSPI [B022-20](#):**
 - As districts develop coursework options for seniors, include provision of IEP services and supports for seniors.
 - Recognizes that special education eligibility ends upon graduation with a regular diploma.
- **3.21.20 DOE OCR/OSERS [Supplemental Fact Sheet](#):**
 - “At the outset, OCR and OSERS must address a serious misunderstanding that has recently circulated within the educational community. As school districts nationwide take necessary steps to protect the health and safety of their students, many are moving to virtual or online education (distance instruction). Some educators, however, have been reluctant to provide any distance instruction because they believe that federal disability law presents insurmountable barriers to remote education. This is simply not true. We remind schools they should not opt to close or decline to provide distance instruction, at the expense of students, to address matters pertaining to services for students

with disabilities. Rather, school systems must make local decisions that take into consideration the health, safety, and well-being of all their students and staff. To be clear: ensuring compliance with [IDEA, Section 504 and ADA] should not prevent any school from offering educational programs through distance instruction.”

- “School districts must provide [FAPE] consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students.”
- “Many disability-related modifications and services may be effectively provided online. These may include, for instance, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing.”
- “Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services – or even making decisions about how to provide services - IEP teams (as noted in the March 12, 2020 guidance) must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.”
- IDEA Timelines:
 - Encourages mutual agreements with parents to extend timelines.
 - State complaints: SEAs may extend the 60-day timeline for resolution if exceptional circumstances exist with respect to a particular complaint (e.g., staff unavailability due to COVID).
 - Due process hearings:
 - Parties may agree to extend resolution timeline.
 - ALJ may grant extensions/continuances.
 - IEPs:
 - Initial IEP: Due within 30 days of eligibility determination (no suggestion of delaying).
 - Annual IEPs: Conduct through alternate means (no suggestion of delaying).
 - Evaluations:
 - Initial: WAC 392-172A-03005 imposes shorter timeline than IDEA; complete evaluation and make eligibility determination within 35 school days of consent; parties may agree to extend.
 - Reevaluation: Three-year timeline; OSERS suggests file review.
- **3.23.20 Inslee [Proclamation 20-25](#):** Stay Home, Stay Healthy through April 6, 2020
- **3.24.20 OSPI [Q&A](#) on Provision of Services to Students with Disabilities During School Closures for COVID-19:**
 - Reiterates that if serving general education students, district “must have a plan for how all students with disabilities will also receive FAPE,” prioritizing health and safety.

- Document services offered, how they were determined (not necessary to amend IEP for interim services).
 - Include implementation of and any necessary revisions to ESY services.
- Distance learning options: online, telephone, teletherapy
- Some accommodations can be provided in a remote learning model: *e.g.*, extra time; captioning or embedded sign language interpretation; accessible reading materials. Determine which can be provided for each student.
- Document services provided and those that could not be provided; contact logging.
- IEP goal progress reporting:
 - Meet IEP provisions for data gathering and progress reporting, to the extent feasible; document reasons for any inability to do so.
 - Establish baselines at outset (if data not already current) and keep track during interim services.
 - This will assist with compensatory education decisions, which OSPI says will be needed for each student once normal operations resume.
 - “Districts should not expect to be ‘held harmless’ with respect to providing FAPE.”
- Students with behavioral difficulties:
 - Likely infeasible to provide 1:1 para/behavior tech support.
 - Prioritize immediate needs.
 - Support parents in how to implement interventions and supports: training, coaching.
- Timelines:
 - Conduct required IEP and evaluation meetings remotely to the extent feasible in order to meet timelines.
 - Initial evaluations: Parents and district may agree to extend 35 school day timeline; agreement must be documented but signed parental consent is not required.
 - Document reasons why any expected/required meetings were not conducted.
 - Reevaluations: Proceed with review of existing data and communicate with parents to get input on whether additional assessments are needed.
 - Days when district is providing instruction and student support to all students during school closure are “school days” for purposes of special ed timelines.
 - Independent educational evaluation requests: The requirement that district respond to a parent IEE request within 15 calendar days may not be waived.
- **4.2.20 Inslee [Proclamation 20-25.1](#):** Extends Stay Home, Stay Healthy through May 4, 2020
- **4.6.20 Inslee [Proclamation 20-09.1](#):** Extends statewide school closure through June 19, 2020

- **4.8.2020 OSPI [B031-20](#)** – Use of school facilities:
 - No group in-person meetings of staff, including for professional learning or staff meetings.
 - No in-person services to groups of students.
 - “Facilities should only be used for providing direct services to individual students where there is no alternative for the service delivery and both the service is necessary and essential AND the use of the facility is both necessary and essential. This is expected to be an unusual occurrence.”
 - Any gatherings within school facilities must comply with social distancing directives and hygiene recommendations.
- **4.13.2020 OPSI [Updated Q&A](#) on Provision of Services to Students with Disabilities During School Closures for COVID-19:**
 - Updates based in part on March 21, 2020 OCR Supplemental Fact Sheet.
 - Use of school facilities: Reiterates B031-20’s parameters.
 - IEP Amendments: Suggests that if interim services are significantly different from those specified in IEP, teams *could* (but are not necessarily required to) amend to add a matrix of interim services during closure.
 - Teletherapy: “Both an ESA Credentialed SLP and a DOH credentialed SLP can deliver services via a telehealth model. There are no Professional Educators Standard Board (PESB) regulations which would prevent any of Washington state educator roles from practicing virtually.”
 - Remote instruction via videoconference:
 - Recording: Doesn’t endorse recording of sessions; mentions RCW 9.73.030 (requiring consent to record private conversations) and FERPA guidance.
 - Confidentiality issues with non-students observing online classes: FERPA does not prohibit observation of a student within a classroom, which extends to virtual classrooms.
 - Timelines: Do not delay all meetings simply due to school closure.
 - Initial Referrals and Evaluations:
 - Ensure that there continues to be a process for staff and parents to initiate referrals during school closure. Communicate any changes in process.
 - If referral is made, make every effort to follow timelines including 25 school days from referral for review of existing data and determination whether to evaluate; 35 school days from consent to complete evaluation and determine eligibility (may be extended by agreement); 30 calendar days to develop IEP; and commencement of IEP services and supports as soon as possible thereafter.
 - May need to rely more heavily on existing data and professional judgment.
 - Suspension and Manifestation Determinations:

- Student suspended prior to school closure and for whom manifestation is required: Conduct remotely if possible; otherwise document reasons why it was not possible.
- Follow usual general and special education discipline procedures for inappropriate conduct during remote instruction.
- COVID-19 school closures provide an opportunity to shorten exclusionary discipline previously imposed.
- **Additional Resources:**
 - April 2020 OSPI [Continuous Learning 2020 Resources and Planning Tools](#)
 - April 2020 OSPI [Supporting Inclusionary Practices During School Facility Closure](#)