



Fall Guidance 2020-21: Special Education Due Process

Introduction

This document is intended to assist districts and charter schools in planning for the 2020-21 school year by providing guidance on three models: Scenario 1: In-person learning for all students, Scenario 2, Hybrid model with strict social distance and capacity limits, and Scenario 3: Distance learning only, and the necessary considerations for supporting students with disabilities. During this unprecedented time, the Minnesota Department of Education (MDE) seeks to ensure that every student in the State of Minnesota receives an equitable education and has equal access to learning and instruction during the COVID-19 pandemic. As districts and charter schools are planning for each scenario, refer to the [Minnesota Department of Health 2020-21 Planning Guide for Schools](#) and the [MDE 2020-21 Planning Guidance for Minnesota Public Schools](#). Furthermore, it is important to recognize the need for flexibility and creativity in providing educational services to students with disabilities during this evolving time.

Disclaimer: This document is accurate as of the time it was posted. This situation is fluid and MDE will continue to strive to provide the most up-to-date guidance as it becomes available. MDE encourages districts and charter schools to frequently visit the [Centers for Disease Control and Prevention](#) (CDC) website and the [Minnesota Department of Health](#) (MDH) website for updates.

Universal Themes in Ensuring Special Education Due Process

Equitable Services

Each district and charter school must ensure equitable programming for all students under all three models. “We must prepare in a way that is flexible enough to respond to an uncertain future under COVID-19, yet robust enough that all students – including students with disabilities - have an equal opportunity to succeed over the long term. Doing so can help ensure that equity is built into the foundation of a new era of education.” [Preparing to Reopen: Six Principles that Put Equity at the Core](#), May 20, 2020, Eric Tucker and Lindsay Kruse.

Free Appropriate Public Education

No matter which model a district or charter school is using, Scenario 1: In-person learning for all students, Scenario 2, Hybrid model with strict social distance and capacity limits, or Scenario 3: Distance learning model only, each district and charter school is responsible for providing a free appropriate public education (FAPE) to each eligible student with a disability, under either an individualized education program (IEP) or Section 504 plan.

On March 27, 2020, the CARES Act was signed into law, in response to the COVID-19 pandemic. Under the CARES Act, Secretary DeVos was granted the authority to determine what, if any, waiver authorities to recommend to Congress to provide limited flexibility to assist State Education Agencies (SEAs) and Local Education Agencies (LEAs) to meet the needs of students with disabilities during this time.

On April 27, 2020, Secretary DeVos issued her recommendations, which included two waivers, under the Individuals with Disabilities Education Act (IDEA), pertaining to the Part C to Part B transition timeline for toddlers and to IDEA personnel preparation grants. All other provisions of IDEA, including the obligation to provide FAPE, continue to apply.

As set forth in the Office of Special Education Programs (OSEP) Guidance, [Questions and Answers on Providing Services to Children with Disabilities during the Coronavirus Disease 2019 Outbreak](#), districts and charter schools must ensure that students with disabilities also have equal access to the same opportunities, including the provision of a FAPE. And, to the greatest extent possible, provide the special education and related services identified in the student's IEP or Section 504 plan.

Parental Participation

Strong partnerships with districts and charter schools and parents is essential for engaging in the best possible planning and implementation efforts and for ensuring equitable opportunities. As provided by the U.S. Department of Education in its guidance documents, districts and charter schools remain responsible for the FAPE of its students eligible for special education services who have an IEP or Section 504 plan. See OSEP Guidance, [Questions and Answers on Providing Services to Children with Disabilities during the Coronavirus Disease 2019 Outbreak](#), and Office of Civil Rights (OCR)/Office of Special Education and Rehabilitative Services (OSERS) [Supplemental Fact Sheet](#), dated March 21, 2020. This will necessitate ongoing communication between the case manager, the general education teachers, the parent/guardian, and related service providers to ensure that students with disabilities can be appropriately involved and make progress toward the general education standards and IEP goals. See [MDE's Family Engagement Toolkit](#). An additional resource is the Student and Family Engagement Section of the [MDE 2020-21 Planning Guidance for Minnesota Public Schools](#).

IEP amendments, revisions, and documentation remain important to ensure that students' rights are protected and that decisions are made by schools and families in partnership, no matter which instructional delivery model a district or charter school is using.

In order for the partnerships to be successful, districts and charter schools must address translation and accessibility needs when working to collaborate creatively to continue to meet the needs of students with disabilities and when developing and providing instructional materials. See [Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#), from March 21, 2020, the U.S. Department of Education.

Alternative Dispute Resolution/Complaints/Hearings

Mediations/Facilitated Team Meetings: MDE will continue to offer remote mediation and facilitated team meetings. Depending upon the access to technology, parties can agree to participate in remote mediations or facilitated team meetings via telephone conference or video conference. Alternative dispute resolution options

will continue to be voluntary on behalf of each party, and will be “scheduled in a timely manner and . . . held in a location that is convenient to the parties to the dispute.” 34 C.F.R. 300.506(b)(5). See also [Minn. Stat. § 125A.091](#).

Other alternative dispute resolution options offered by school districts, such as conciliation conferences and meetings with relevant members of the IEP team after a parental objection to a prior written notice, should remain available and be offered remotely. [Minn. Stat. § 125A.091](#) and [Minn. R. 3525.3600](#).

Special Education Complaints: Absent agreement by the parties, a state may be able to extend the 60-day timeline for complaint resolution if exceptional circumstances exist with respect to a particular complaint. 34 C.F.R. § 300.152(b)(1). Although the U.S. Department of Education has previously advised that unavailability of staff is not an exceptional circumstance that would warrant an extension of the 60-day complaint resolution timeline, the COVID-19 pandemic could be deemed an exceptional circumstance if a large number of SEA staff are unavailable or absent for an extended period of time. See OCR/OSERS [Supplemental Fact Sheet](#).

Administrative Due Process Hearings: When a parent files a due process complaint, LEA must convene a resolution meeting within 15 days of receiving notice of the parent’s complaint, unless the parties agree in writing to waive the meeting or to use mediation. 34 C.F.R. § 300.510(a). While the IDEA specifically mentions circumstances in which the 30-day resolution period can be adjusted in 34 C.F.R. § 300.510(c), it does not prevent the parties from mutually agreeing to extend the timeline because of unavoidable delays caused by the COVID-19 pandemic.

Additionally, although a hearing decision must be issued and mailed to the parties 45 days after the expiration of the 30-day resolution period or an adjusted resolution period, a hearing officer may grant a specific extension of time at the request of either party to the hearing. 34 C.F.R. § 300.515(a) and (c). See OCR/OSERS [Supplemental Fact Sheet](#).

Scenario 1: In-person learning for all students and Scenario 2: Hybrid model with strict social distancing and capacity limits

Considerations and Factors to Assist Districts and Charter Schools in Implementing Scenario 1 or 2

In determining what FAPE would look like under while implementing scenario 1 or 2 for an individual student with an IEP or Section 504 plan, it is important to ensure equitable educational opportunities for all students while prioritizing their health and well-being. Furthermore, it is important to recognize the need for flexibility and creativity in providing educational services to students with disabilities during this evolving time. As a school district or charter school considers implementation of in-person learning for all or the hybrid mode, they should consider transition needs of students with disabilities.

Here are additional considerations that districts and charter schools, in partnership with their special education administrators, teachers and related services providers, should consider when implementing an in-person learning for all students or a hybrid model. Please note the requirements and recommendations for each scenario outlined in the [Minnesota Department of Health 2020-21 Planning Guide for Schools](#) as you work through these additional considerations.

- a. How do students/staff move around the classroom/school space, how controlled is the movement, and students' ability to social distance;
- b. How do students who receive some of their instruction in the general education classroom safely transition in and out of that classroom?
- c. What is needed to be included in the district's or charter school's COVID-19 preparedness plan to address what to do when a student becomes symptomatic or exposed to COVID-19 while participating in the in-person learning for all students or the hybrid model; or when one or more staff test positive for COVID-19? Does it include a contact health person for the school district or charter school? Does it include how to partner with Public Health and MDH related to contact tracing?
- d. How will the district or charter school promote a safe program environment for students with disabilities: what would the special education and general education groupings and transportation look like, is there much mixing of groups of students or staff; how will related service providers provide services while minimizing group mixing of students;
- e. How will the school district and charter school encourage/promote the use of cloth face coverings: and what are the protocols when students are unable to tolerate a mask? Are you emphasizing the use of masks by staff?
- f. What will lunch groupings look like? Is it equitable for students with disabilities and least restrictive environment considerations?
- g. How will the district or charter school minimize opportunities for mixing between groups: consider options to adjust students' arrival and/or dismissal time, and how will you continue to provide virtual instruction as needed due to health and safety concerns, how will you address students' bathroom needs, including when staff support is needed, how will you organize outdoor and indoor recess?
- h. How will the district's or charter school's social norms and health etiquette impact students with disabilities? What additional services will be provided to teach hygiene skills, such as covering your mouth and nose with a tissue when you cough or sneeze, washing hands, etc.; and,
- i. Which health screening model will the district or charter school adopt, and how will students with communication difficulties be screened?

Question 1: What is important to consider when determining FAPE for students with an IEP or Section 504 plan when considering Scenario 1 or 2?

Response: Since all the provisions under IDEA are still applicable, save the two potential exceptions where waivers were requested, districts and charter schools remain responsible for the provision of FAPE for students with disabilities with an IEP or Section 504 plan, just as it was prior to and during the implementation of distance learning. This is consistent with the requirements of IDEA and its implementing regulations, as interpreted by the U.S. Supreme Court in *Hendrick Hudson Dist. Bd. Of Ed. v. Rowley*, 458 U.S. 176 (1982) and *Endrew F. v. Douglas County School District* 580 U.S. ____ (2017).

In determining how to provide FAPE, an individualized determination must occur with parental participation. See 34 C.F.R. § 300.322. The Student's IEP team, including the parent, should review recent data to determine the student's academic, functional and developmental needs. See 34 C.F.R. § 300.324(a). After determining the student's needs, the IEP team should consider what services and supports would enable the student to advance toward her annual goals, make progress in the general education curriculum, and to participate in

extracurricular and other nonacademic activities. See 34 C.F.R. § 300.320(a)(4). After determining the necessary services and supports the student needs, then the student’s IEP team should determine the student’s least restrictive environment. See 34 C.F.R. § 300.114.

Question 2: How do districts and charter schools start the process of determining what in-school learning for all students or a hybrid model would look like for an individual student with an IEP or Section 504 plan?

Response: In determining what FAPE would look like under these two scenarios for an individual student with an IEP or Section 504 plan, it is important to ensure equitable educational opportunities for all students while prioritizing their health and well-being. Furthermore, it is important to recognize the need for flexibility and creativity in providing educational services to students with disabilities during this evolving time. As a school district or charter school considers its implementation process for either scenario, it should consider transition needs of students with disabilities and consider how to optimize student engagement for all students. The student’s team would need to make an individualized determination of the frequency, location, and duration of services necessary for the student to receive FAPE as discussed above, with the local parameters of the district’s instructional delivery scenario.

Furthermore, as outlined in the [MDH COVID-19 Prevention Guidance for Youth, Student and Child Care Programs](#), updated June 9, 2020, the student’s team would want to consider the items below. As you consider the items below, refer to the [Minnesota Department of Health 2020-21 Planning Guide for Schools](#) to determine the respective requirements and recommendations specific to each scenario.

- a. What impact does social distancing have on this individual student: what measures need to be taken to restrict where and when people can gather in the classrooms/areas the student will be utilizing, how do students/staff move around the classroom/school space, how controlled is the movement, and what is this individual student’s ability to social distance;
- b. What is needed to plan and prepare: how would the district’s or charter school’s COVID-19 preparedness plan impact this individual student and ensure the student’s family understands what actions they need to take should this student become symptomatic or exposed to COVID-19 while participating in the hybrid model or the full in-person model;
- c. How would the district or charter school promote a safe program environment for this individual student: what would the individual student’s groupings and transportation look like, is there much mixing of groups of students or staff;
- d. How would the district or charter school maintain safe program spaces for this individual student: what program modifications are needed or physical space rearrangements need to occur;
- e. How would the team plan on promoting cloth face coverings: what impact/ability does this individual student have to wear a cloth face covering and what coverage is necessary for the district or charter school staff that will interact with this student;
- f. How will meal times be handled for this individual student: what would the lunch grouping look like and where would meals be provided;
- g. How will the district or charter school minimize opportunities for mixing between groups: consider whether this individual student’s arrival and/or dismissal time would need to be adjusted, what services

will continue to be provided virtually, determine how this individual student's bathroom needs will be addressed, determine how recess will be addressed;

- h. How will the district's or charter school's social norms and health etiquette impact this individual student: what is this individual's student's ability to follow the social norms and health etiquette the district or charter school has in place, such as covering your mouth and nose with a tissue when you cough or sneeze, washing hands, etc.; and,
- i. How will this individual student be impacted by the district's or charter school's health checks: determine what the daily health check would look like for this individual student and what is the process if this individual student does not pass the daily health check.

Question 3: Does each student's IEP need to be amended and prior written notice provided if a district or charter school moves from distance learning only to either the hybrid or in-person learning for all students scenario?

Response: When moving from a full distance learning model to an in-school learning for all students or hybrid scenario, relevant members of the student's IEP team and the parent will need to discuss how best to meet the student's needs. And further, a written document is necessary to set forth any changes needed to provide FAPE through either scenario and be provided to the parent to ensure agreement and so school staff and the parent understand who will be providing services and how that will occur.

This could be accomplished by developing a written document to amend or modify the student's current IEP. See 34 C.F.R. §300.324(a)(4)(i)(ii). This may result in changing the service delivery from distance learning to a hybrid or in-person learning for all students scenario, or may involve more extensive changes depending upon the needs of the individual student with a disability.

Another method would be using a prior written notice and revised IEP which describes what the hybrid or in-person learning for all students scenario will look like for a student, the provision of any specialized instruction and related services, and what accommodations are necessary to ensure a student can access and make progress toward education standards and IEP goals. If the district or charter school and parents are unable to reach agreement on how to provide FAPE to the student, the prior written notice would inform parents of their right to object to the proposal and seek alternative dispute resolution. See 34 C.F.R. § 300.530, Minn. Stat. § 125A.091 and Minn. R. 3525.3600.

In addition, districts and charter schools should also consider that an IEP team may need to reconvene to review and revise a student's IEP for a student for whom distance learning was not effective during the spring of 2019-20, to address any lack of expected progress, information about the student provided to or by the parents, the student's anticipated needs, or other matters. See 34 C.F.R. § 300.324(b). For example, due to any portion of the student's programming continuing with distance learning, a parent may be in need of training, such as the use of technology, or positive behavior supports and interventions. Additionally, a student may need additional or different accommodations and supports to be able to continue to access the instruction in the home environment.

Finally, as provided for in the CDC guidance on [Considerations for School Closures](#) (March 13, 2020), the IEP team could also develop a contingency plan that would address the provision of distance learning only, or hybrid

instruction model and include what services would look like, including the specific services and their frequency, type and duration. In the event of another emergency statewide closure or a school- or district-wide closure due to community spread or a student's exposure to a person testing positive for COVID-19.

Further, in making changes to a student's IEP after the annual IEP team meeting, the parent and the district or charter school may agree to not convene an IEP team meeting for the purposes of making any needed changes, and instead develop a written document to amend or modify the student's current IEP. 34 C.F.R. §300.324(a)(4)(i). These decisions must be individualized for each student with documented parental input.

Question 4: How do districts and charter schools meet federal and state timelines when operating under a Scenario 1 in-person learning for all students or Scenario 2 hybrid model?

Response: The OCR/OSERS supplemental fact sheet states: "As a general principle, during this unprecedented national emergency, public agencies are encouraged to work with parents to reach mutually agreeable extensions of time, as appropriate." However, keep in mind that all provisions of IDEA, including timelines, remain in effect during the COVID-19 pandemic. On April 27, 2020, Secretary DeVos recommended a timeline extension of Part C services for students turning age 3 and the district or charter school is unable to complete an initial Part B evaluation.

Reevaluation Timelines

A reevaluation of each child with a disability must be conducted at least every three years, unless the parents and district or charter school agree that a reevaluation is unnecessary. See 34 C.F.R. § 300.303(b)(2). When appropriate, a reevaluation may be conducted through a review of existing evaluation data, which includes any evaluation and additional information provided by the student's parents. This review may occur without a meeting and without obtaining parental consent, unless it is determined that additional assessments are needed. See 34 C.F.R. §300.305(a).

As a reminder, when a district or charter school conducts a comprehensive reevaluation, it does not need to include the assessments required for an initial evaluation. Rather, the evaluation plan should include only those assessments needed to gather the needed data as detailed in 34 CFR §300.305 (a). If there is a question about the validity of a prior assessment, that could be a reason to repeat an assessment. However, it is not necessary in a reevaluation to repeat Intelligence Quotient (IQ) and achievement assessment unless there is a specific need for updated data.

While MDE recognizes it may be difficult for districts or charter schools to timely complete special education evaluations due to a backlog from the prior year, when a district or charter school is operating a hybrid or in-person learning scenario, more processes will be in place to ensure a timely evaluation. Districts and charter schools are encouraged to continue to track school days in determining appropriate timelines and to continue to document efforts used to mitigate any loss of programming to students as a result of any evaluation not timely completed. Please also review the following fact sheet, entitled [Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#), from the U.S. Department of Education, Office for Civil Rights, beginning on page 3. See OCR/OSERS [Supplemental Fact Sheet](#).

Initial Evaluation Timelines

In Minnesota, an initial evaluation must be conducted within 30 school days of receiving parental consent. Minn. R. 3525.2550, subp. 2. Eligibility for special education services under Minnesota criteria also must be determined within the evaluation timeline (Minn. R. 3525.2710, subp. 6) and an IEP developed within 30 days of that determination (34 C.F.R. § 300.323(c)). While MDE recognizes it may be difficult for districts or charter schools to timely complete special education evaluations due to a backlog from the prior year, when a district or charter school is operating a hybrid or in-person learning model, more processes will be in place to ensure a timely evaluation. Districts and charter schools are encouraged to continue to track school days in determining appropriate timelines. These same principles apply to similar activities conducted by appropriate personnel for a student with a disability who has a plan developed under Section 504, or who is being evaluated under Section 504. See OCR/OSERS [Supplemental Fact Sheet](#).

Scenario 3: Distance Learning Only

Question 1: How do districts and charter schools determine FAPE for students with disabilities with an IEP or Section 504 plan, under a distance learning model?

Response: The [Office of Special Education Programs \(OSEP\)](#), the [Office for Civil Rights \(OCR\)](#), and the [Office of Special Education and Rehabilitative Services \(OSERS\)](#) have provided guidance on what constitutes FAPE for students with disabilities on an IEP or a Section 504 plan. See Students Receiving Special Education Services section in the [MDE 2020-21 Planning Guidance for Minnesota Public Schools](#).

[MDE School Closure Guidance for Public School Districts and Charter Schools](#), Special Education Services – IEP or 504 Plan section. As provided in the OCR [Fact Sheet](#) and the OCR/OSERS [Supplemental Fact Sheet](#), the provision of FAPE and providing equal access to the general education instruction can occur through distance learning. Those documents provide examples of ways to provide distance learning. This includes specialized instruction and supports, related services, and disability-related modifications. In determining how to provide FAPE, an individualized determination must occur with parental participation.

During the spring of the 2019-20 school year, districts and charter schools were required to create and implement district-wide distance learning plans and post them on their websites. The district-wide distance learning plans were to address the need to develop a communication process with parents and to review delivery of services with staff. Districts and charter schools should continue to revise, as appropriate, and implement their distance plans during the 2020-21 school year when implementing a full distance learning model. The U.S. Department of Education, in its supplemental fact sheet entitled [Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Servicing Children with Disabilities](#), stated, “The Department encourages parents, educators, and administrators to collaborate creatively to continue to meet the needs of students with disabilities.”

That document also provides, “School districts must provide a [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. In this unique and ever-changing environment, OCR, and OSERS recognize that these exceptional circumstances may affect how all educational and related services and

supports are provided, and the [U.S. Department of Education] will offer flexibility where possible. However, school districts must remember that the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically. Where technology itself imposes a barrier to access or where educational materials simply are not available in an accessible format, educators may still meet their legal obligations by providing children with disabilities equally effective alternate access to the curriculum or services provided to other students.”

Question 2: How do districts and charter schools provide direct instruction, indirect instruction, and/or related services to students with disabilities in accordance with an IEP or a distance learning plan when operating under a distance learning model?

Response: [Minnesota Rules 3525.0210](#), Subpart 14 and Subpart 27, define direct services and indirect services:

Subp. 14. Direct services. "Direct services" means special education services provided by a teacher or a related service professional when the services are related to instruction, including cooperative teaching.

Subp. 27. Indirect services. "Indirect services" means special education services which include ongoing progress reviews; cooperative planning; consultation; demonstration teaching; modification and adaptation of the environment, curriculum, materials, or equipment; and direct contact with the pupil to monitor and observe. Indirect services may be provided by a teacher or related services professional to another regular education, special education teacher, related services professional, paraprofessional, support staff, parents, and public and nonpublic agencies to the extent that the services are written in the pupil's IEP and IFSP.

While implementing a distance learning model, the IEP team will determine how special education and related services will be provided, either directly or indirectly, based on the individual needs of the student. 34 C.F.R. § 300.320(a)(4) and (a)(7).

Instruction may be provided by special education staff, including related service providers. This can occur through a variety of means consistent with the distance learning section of the [MDE School Closure Guidance for Public School Districts and Charter Schools](#). This includes, but is not limited to:

- Paper packets or worksheets, which could be distributed daily by bus route or collected several times a week at a central location.
- Textbooks.
- Telephone instruction.
- Online resources (take into account availability of broadband).
- Instruction via the school's learning management system (LMS).
- Other platforms such as Skype, FaceTime, and Zoom.

Districts and charter schools will need to address translation and accessibility needs for students and families when developing and providing instructional materials. In its guidance document entitled [Addressing the Risk of](#)

[COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#), from March 21, 2020, the U.S. Department of Education provided:

It is important to emphasize that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities.

...

The Department encourages parents, educators, and administrators to collaborate creatively to continue to meet the needs of students with disabilities. Consider practices such as distance instruction, tele-therapy and tele-intervention, meetings held on digital platforms, online options for data tracking, and documentation. In addition, there are low-tech strategies that can provide for an exchange of curriculum-based resources, instructional packets, projects, and written assignments.

Whether the provision of instructional materials such as work packets or pre-recorded video lessons would constitute direct or indirect services depends on an individual determination of each student's unique needs by the IEP team. During a conference call entitled [Joint NASDE/CASE/CCSSO Webinar on COVID-19 Guidance for Students with Disabilities](#) on March 13, 2020, the Director of the U.S. Department of Education, Office of Special Education Programs (OSEP), further emphasized the importance of considering the individual and unique needs of each student when providing education through alternative methods, including but not limited to virtual instruction, instructional phone calls, and work packets. Specifically, the Director stated:

[Whether work packets sent home for special education students are considered educational service will depend on the individual needs of the student and IEP team will need] to take a look at whether the student would be able to access that information or whether the student would require some additional supports in order for them to be able to complete that work. So that would be based on an individual determination.

Therefore, student programming, which may include direct or indirect services, will depend on each individual student's unique needs and based on IEP team determination.

When planning student programming, remember the importance of teacher and service provider interaction, whether through online platforms, over the telephone, or through other means. Minnesota's definition of distance learning includes both students' "access to appropriate educational materials" and "daily interaction with their licensed teacher(s)." Likewise, courts have stated that independent computer-based instruction that does not involve interaction with a teacher is not a substitute for direct instruction. *See, e.g., Downington Area Sch. Dist. v. K.D.*, 1485 C.D. 2016 (Pa. Commw. Ct. 2017).

Keep in mind that parents also may require consultation with their student's teachers and related service providers in order to support the student during implementation of a distance learning model. Such consultation with parents, if written in the student's IEP, could constitute indirect services as defined by [Minnesota Rule 3525.0210](#), subp. 27. These services could include training for parents on the use of technology, information for parents about how a student's disability impacts their learning, and strategies to address a student's behavioral needs.

Also, note that the direct and indirect services provided to a student during implementation of a distance learning model may look different from services provided in the student's traditional school setting, as a student's disability may manifest itself differently in new learning conditions.

Question 3: When operating under distance learning model only, can districts and charter schools provide in-school instruction or related services?

Response: No. When a district or charter school is operating under a distance learning model only, no in-school instruction can occur. However, the district or charter school remains responsible under federal law to continue to provide any and all services outlined in the student's IEP or distance learning plan. Therefore, districts and charter schools must continue to be creative and flexible in providing services, such as counseling, mental health services, or other related services through tele-therapy for mental health services, or tele-services for speech and language services. However, the distance learning plan cannot include having a staff member or direct service provider being physically in the same location for the provision of specialized instruction or related services under a distance learning model only.

Question 4: Can districts and charter schools bring students into the school to complete evaluations while implementing Scenario 3: Distance learning only?

Response. Yes. Consistent with MDE's guidance in the [MDE School Closure Guidance for Public School Districts and Charter Schools](#), under the In-School Special Education Services section, a district or charter school may provide in-school assessments or observations needed for special education evaluations, which is not considered the provision of services set forth in a student's IEP or Section 504 plan. However, until further guidance is provided by the CDC and MDH, there continues to be a prohibition for school staff to provide special education services at the student's home or place of residence.

Students, staff, and families must follow [MDH Protect Yourself and Others: COVID-19](#), and the [CDC Supplemental Guidance for Child Care](#), which set forth social distancing guidelines for schools, and three models for daily health checks. Also, please review MDH face-covering guidance found in [MDH 2020-21 Planning Guide for Schools](#), to determine if face coverings, including masks would be appropriate and necessary while providing services.

Currently our tools to protect students and staff from infection include social distancing, barrier/partition controls, cleaning and disinfecting, screening students and staff, keeping sick people home, and encouraging the use of face coverings. MDH and MDE are working with the CDC to understand how to provide services when social distancing is not possible and what other measures might be needed including when and what type of Personal Protective Equipment (PPE) would be most appropriate. This guidance will be given in the future.

Districts and charter schools are highly encouraged to complete initial Part C and Part B initial evaluations/reevaluations that require in-person assessments and observations during the implementation of distance learning only in accordance with the [MDH 2020-21 Planning Guide for Schools](#). Initial evaluations may be offered even if a district or charter school is not offering a hybrid instructional model.

Nothing in this guidance should be construed to encourage or require school staff, students, or families in at-risk categories to act inconsistently with public health recommendations or the advice of their medical providers

Question 5: How do districts and charter schools document progress reporting for students with an IEP during distance learning only?

Response: The IDEA and Minnesota rule require that a student’s IEP include a statement on how progress toward annual goals will be measured, how parents will be regularly informed of their child’s progress toward annual goals, and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year. 34 CFR § 300.320(a) (3) and Minn. R. 3525.2810 subpart 1(9). Progress reporting is to be provided at least as often as parents are informed of their nondisabled children’s progress.

Depending on the district’s or charter school’s progress reporting period, data would reflect the student’s IEP, as well as progress toward goals and objectives in any IEP amendments or individualized distance learning plans developed with parental participation and consent during the implementation of distance learning only. Progress monitoring may be collected through a variety of sources, such as assessments, observations, and working with the parent to collect data on a student’s on-task behavior while doing school work. For example, a parent may record a video of the student during the time the student is doing school work to provide data on the student’s ability to stay on task, or to demonstrate competency for a particular objective or goal. Or, a staff person could be designated as an observer during a virtual classroom activity to collect data on a student’s engagement in the task and classroom participation. Another example of data collection could be a student putting together a portfolio, video, or audio file to demonstrate competence on a particular goal, such as reading comprehension. For additional information about academic progress monitoring tools, The [National Center on Intensive Intervention](#) has developed [a chart which ranks various monitoring tools](#) to help educators and families select tools that meet standards for technical rigor and address a student’s specific needs.

When it is time to complete progress reporting, based upon the reporting period described in the student’s IEP, and you have not been able to work on a particular objective or goal while implementing a distance learning only, document the reason why it could not be worked on during that reporting period. If you worked on an objective or goal, but had difficulty in collecting data to determine progress, document the services provided and your attempts to collect data, taking into consideration the examples provided above, as well as data you were able to collect, which may include both quantitative and qualitative data. The purpose is to determine what the student has been able to achieve during the distance learning periods, as well as areas in which the student may have made minimal progress or regressed.

Question 6: Does each student’s IEP need to be amended and prior written notice provided if a district or charter school continues to operate under distance learning only?

Response: For the 2020-21 school year, districts and charter schools may continue to implement individual distance learning plans, if already in effect and incorporated into a student’s IEP if the district or charter school is going to continue with the distance learning only during the fall of 2020-21 school year.

In addition, the district or charter school should consider that an IEP team may need to reconvene to review and revise a student’s IEP and/or distance learning plan for a student for whom distance learning was not effective during the spring of 2019-20, to address any lack of expected progress, information about the student provided to or by the parents, the student’s anticipated needs, or other matters. See 34 C.F.R. § 300.324(b). For example, due to the continued distance learning, a parent may be in need of training, such as the use of technology or

positive behavior supports and interventions. Additionally, a student may need additional or different accommodations and supports to be able to continue to access the instruction in the home environment.

MDE has consistently provided guidance that in order to develop an individualized distance learning plan for a student with a disability, relevant members of the IEP team and the parent will need to discuss how best to meet the student's needs in a flexible learning model. And further, that a written document is necessary to set forth any changes needed to provide FAPE through distance learning, and be provided to the parent to ensure agreement and so school staff and the parent understand who will be providing services and how that will occur.

This could be accomplished by developing a written document to amend or modify the student's current IEP. *See* 34 C.F.R. §300.324(a)(4)(i)(ii). This may result in simply changing the service delivery from in-person to a distance learning delivery model, or may involve more extensive changes depending upon the needs of the individual student with a disability.

Another method would be using a prior written notice and attached individualized distance learning plan amendment document which describes what the distance learning delivery model will look like for a student, the provision of any specialized instruction and related services, and what accommodations are necessary to ensure a student can access and make progress toward education standards and IEP goals.

If the district or charter school and parents are unable to reach agreement on how to provide FAPE to the student during the time a distance learning plan is in place during the COVID-19 pandemic, the prior written notice would inform parents of their right to object to the proposal and seek alternative dispute resolution. *See* 34 C.F.R. § 300.530, Minn. Stat. § 125A.091 and Minn. R. 3525.3600.

Question 7: When and how do districts and charter schools hold IEP team meetings if a district or charter school is implementing distance learning only?

Response: Each student's IEP must be reviewed annually. *See* 34 C.F.R. §300.324(b)(1). However, parents and an IEP team may agree to conduct IEP team meetings through alternate means, including videoconferencing or conference telephone calls. *See* 34 C.F.R. §300.328. It is in the best interest of school teams and parents to work collaboratively and creatively to meet IEP timeline requirements.

Further, in making changes to a child's IEP after the annual IEP team meeting, the parent and the district or charter school may agree to not convene an IEP team meeting for the purposes of making any needed changes, and instead develop a written document to amend or modify the student's current IEP. 34 C.F.R. §300.324(a)(4)(i). These decisions must be individualized for each student with documented parental input.

Question 8: Do districts and charter schools need a parent to physically sign a prior written notice describing any amendments or revisions to a student's IEP, an evaluation plan or an evaluation report while a district and charter school is operating under distance learning only?

Response: The use of an electronic signature for parental consent is an area in which flexibility may be needed due to COVID-19. It would be up to a charter school or school district to set a policy with data practices provisions to allow for electronic signatures for parents when written consent is required, and parents would need to agree to use that format. The key is to ensure that the signature is tied to a particular person. This can

be accomplished through a third-party digital software that authenticates electronic signatures, such as Adobe Sign, when it includes the date and time of the signature, an authentication code and is attributable to the person intending to sign the document. In addition, a parent could send an email to demonstrate consent.

For example, if a district or charter school amends or revises a student's IEP while operating under a full distance learning model, they can accept an electronic signature or an email from a parent confirming consent to the amendments or revisions in the prior written notice and the amended IEP.

Question 9: What steps should a district and charter school take if a parent/guardian of a student with a disability objects to the provision of special education and/or related services proposed while implementing distance learning only?

Response: While implementing distance learning only, a district or charter school continues to follow due process procedures and offer dispute resolution options to the parent (i.e., conciliation conference or meeting with relevant members of the IEP team to discuss the specific part of the proposal or refusal the parent objects to, facilitated team meeting, or mediation) to reach an agreement. See 34 C.F.R. § 300.503, Minn. Stat. § 125A.091, and Minn. R. 3525.3600. Thus, if the parent/guardian objects to a district's or charter school's proposed special education and related services during the distance learning period, and requests a conciliation conference or meeting with relevant members of the IEP team, the district or charter school must work with the parent/guardian to schedule a conference/meeting (to occur through remote means such a conference call or online platform) to discuss their concerns and attempt to reach resolution. See Minn. Stat. § 125A.091, and Minn. R. 3525.3600.

Following the meeting, the district or charter school must timely provide a conciliation conference memorandum, prior written notice, and/or copy of the proposed IEP, as appropriate. See Minn. Stat. § 125A.091, and Minn. R. 3525.3700. During the dispute resolution process, the district or charter school continues to provide special education and related services to the student based on the student's most recent IEP and/or distance learning plan, albeit through distance learning. A parent/guardian or district or charter school also retains the right to request a due process hearing pursuant to 34 C.F.R. § 300.507 and Minn. Stat. § 125A.091, subd. 12.

Question 10: What procedures should be followed if a parent/guardian revokes consent and refuses to allow a student to receive special education services while a district or charter school is implementing distance learning only?

Response: While a district or a charter school are implementing distance learning only, students with disabilities are entitled to a FAPE. If a parent/guardian revokes consent for special education and related services, the district or charter school should first discuss the parent/guardian's concerns, attempt to address any issues, and ensure that the parent/guardian understands the consequences of revocation. If the parent/guardian continues to want to revoke special education services, the district or charter school must ensure the revocation is in writing. See 34 C.F.R. § 300.9. Following a written revocation of consent, the district or charter school must provide prior written notice proposing to discontinue the student's special education and related services in response to the parent/guardian's request. See [34 C.F.R. §300.300\(b\)\(4\)](#). After the parent/guardian signs in agreement with the district's or charter school's proposal to discontinue services or after the 14-day objection period has passed, the district or charter school must stop providing special education and related services and

may treat the student as a general education student. See Minn. Stat. § 125A.091, 34 C.F.R. §§ 300.9 and 300.300. The parent/guardian may request reinstatement of the student's special education and related services within one year. See Minn. R. 3525.3100. For more information, see [MDE's Q&A: Revocation of Parental Consent for the Provision of Special Education Services](#).

Question 11: What are a district's or charter school's responsibilities when a student with a disability is refusing to participate in the general education instruction and/or the provision of special education and related services?

Response: For students with disabilities, the student's IEP/amended IEP/individualized distance learning plan addresses the specially designed instruction, related services, and accommodations and modifications needed for the student to have equal access to the general education instruction provided through distance learning. If, during the period of distance learning, a student is not participating in either general or special education instruction, the student's IEP team will need to review the student's IEP to determine if the student is exhibiting different behaviors due to the change in the environment from the school setting to the home setting and to revise the IEP, as appropriate, to address any behavior that is impeding the student's learning. In addition, the student's IEP team should review the student's ability to use the technology used to provide the instruction and related services. See 34 C.F.R. § 300.324.

IEP teams should note that the direct and indirect services, accommodations and modifications provided during distance learning may look different from the services and supports provided in the student's traditional school setting, as a student's disability may manifest itself differently in new learning conditions. [As emphasized in a webinar from the National Association of State Directors of Special Education \(NASDSE\) on March 26, 2020](#), the change in learning environment necessitates meaningful discussions with parents/guardians about the home environment context and any barriers the student faces to learning at home. During such discussions, the IEP team should consider what training and support parents/guardians need to support the student's learning, including training on how to utilize technology, provide positive behavioral interventions and supports, and understand the impact of the student's disability on learning, and add those services to the student's IEP/amended IEP/individualized distance learning plan, as appropriate. Districts and charter schools should develop methods for ongoing communication with the student's parent/guardian on how to monitor the effectiveness of distance learning for the individual student and to timely respond to parental and student concerns.

Question 12: How do districts and charter schools meet federal and state timelines when operating under a full distance learning model?

Response: The OCR/OSERS [Supplemental Fact Sheet](#) states: "As a general principle, during this unprecedented national emergency, public agencies are encouraged to work with parents to reach mutually agreeable extensions of time, as appropriate." However, keep in mind that all provisions of IDEA, including timelines, remain in effect during the COVID-19 pandemic. On April 27, 2020, Secretary DeVos recommended a timeline extension of Part C services for young students turning 3 when the district or charter school is unable to complete an initial Part B evaluation.

Reevaluation Timelines

A reevaluation of each child with a disability must be conducted at least every three years, unless the parents and district or charter school agree that a reevaluation is unnecessary. See 34 C.F.R. § 300.303(b)(2). When appropriate, a reevaluation may be conducted through a review of existing evaluation data, which includes any evaluation and additional information provided by the student’s parents. This review may occur without a meeting and without obtaining parental consent, unless it is determined that additional assessments are needed. See 34 C.F.R. §300.305(a). It may also occur consistent with question 4 above.

As a reminder, when a district or charter school conducts a comprehensive reevaluation, it does not need to include the assessments required for an initial evaluation. Rather, the evaluation plan should include only those assessments needed to gather the needed data as detailed in 34 CFR §300.305 (a). If there is a question about the validity of a prior assessment, that could be a reason to repeat an assessment. However, it is not necessary in a reevaluation to repeat IQ and achievement assessment unless there is a specific need for updated data.

MDE recognizes it may be difficult for districts or charter schools to complete special education evaluations, including re-evaluations during distance learning only. While students receive instruction, through distance learning, districts and charter schools may need to consider options including review of already-existing data on the student as well as remote engagement with the student and necessary evaluators. Districts and charter schools should document efforts used to mitigate any loss of programming to students. Please also review the following fact sheet, entitled [Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#), from the U.S. Department of Education, Office for Civil Rights, beginning on page 3. See also the Supplemental fact sheet entitled [Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Servicing Children with Disabilities](#).

Initial Evaluation Timelines

In Minnesota, an initial evaluation must be conducted within 30 school days of receiving parental consent. Minn. R. 3525.2550, subp. 2. Eligibility for special education services under Minnesota criteria also must be determined within the evaluation timeline (Minn. R. 3525.2710, subp. 6) and an IEP developed within 30 days of that determination (34 C.F.R. § 300.323(c)). A “school day” is defined as any day, including a partial day that children are in attendance at school for instructional purposes”. See 34 C.F.R. § 300.11. To the extent the district or charter school is able to assess the student virtually or through in-school assessments as addressed in Question and Response 4 above, the district or charter school should proceed. On the [Pearson website](#), it provides guidance for administering the Wechsler Intelligence School for Children®-Fifth UK Edition (WISC-V). This website sets forth the protocols to be followed for such administration. Other testing companies may also be offering ways to administer assessments virtually. In addition, the student’s evaluation team should work with the parent to consider options for collecting information, such as virtual observations of a student during a group class on an online platform. Minnesota Rule 3525.1354 allows the use of an override when standard procedures used result in invalid findings. The inability to conduct an assessment does not meet this definition. However, if a district or charter school cannot meet the social distancing guidelines to assess in-school, and they reasonably attempt to administer an assessment through tele-practice and are unable to get a full scale score for that particular assessment, then they could consider the use of an override to determine initial eligibility. These same principles apply to similar activities conducted by appropriate personnel for a student with a

disability who has a plan developed under Section 504, or who is being evaluated under Section 504. See OCR/OSERS [Supplemental Fact Sheet](#).