



# A Guide for Special Education

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## Introduction

*Disclaimer: This guidance document cannot and does not provide any additional waiver or flexibility from compliance with either federal or state law. Districts should review all matters concerning special education and related services obligations with their board, administrators, and counsel.*

*The information contained in this document generally constitutes informal guidance based on the context presented herein and is not legally binding. The Questions & Answers are not intended to be a replacement for the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), and their implementing regulations.*

As South Dakota begins efforts for the restart of school, the South Dakota Department of Education (DOE) released [Starting Well 2020](#) to help guide schools in their planning. It continues to be a fluid document, shaped by information as it becomes available and through ongoing stakeholder input and feedback. The department's Special Education Programs (SEP) recognize that serving students with disabilities requires additional considerations to comply with IDEA, including ensuring continued access to the general education curriculum, and an Individualized Education Program (IEP) designed/implemented to allow the student to make progress on their IEP goals through changing service delivery models as school restarts.

SEP recognizes the challenges associated with serving students with disabilities during a time of heightened health and safety needs and continues to reaffirm that special education is driven by a child-specific approach. We recognize the significant efforts that each district is making to allow for continuity of learning during this unprecedented time and that a variety of methods are being used to support students with disabilities in the delivery of specially designed instruction and related services.

This document provides key points and questions and answers to support districts addressing the needs of students with disabilities for a successful start of the 2020-21 school year for flex learning, determining compensatory or recovery services, and making individualized decisions through the IEP process.

## Planning for Restart Related to Students with Disabilities

### Key Points:

SEP understands that the process of reopening schools will be dependent on health and safety needs; therefore, there may be multiple stages of reopening that include a variety of flex learning models (e.g., distance, blended, or face-to-face instruction). No matter what the district reopening process looks like, each district must continue to evaluate whether each student with a disability is being provided with a free appropriate public education (FAPE), consistent with the health and safety needs of the student and the student's IEP.

In order to provide FAPE during this time for students with disabilities, districts need to ensure ongoing:

- Progress monitoring of the student
- Communication with families, teachers, and service providers; and
- Documentation of student progress and services delivered

### General Considerations:

As districts begin planning for teaching and learning models that may include in-person contact, the accessibility and safety needs of all students and staff must be considered. Special consideration and planning must be made to address the unique cleaning and disinfecting needs, communication access, and educational implications of social distancing of some students and staff. The following are intended to initiate consideration and conversation to plan for the unique needs of this population. This is not intended to be an all-inclusive list.

### Evaluation for Lost Learning

It is expected that student learning needs may have changed during the flex learning that occurred during spring 2020. As districts prepare for restarting this fall, IEP teams must consider each student's level of functioning prior to flex learning, the services provided during flex learning including extended school year (ESY) or additional learning opportunities, and information (with supporting data) about the student's current functioning levels upon return to school. Determinations should be made to address each student's individual circumstances examined within the larger context of overall learning for all students.

Upon return to normal school operations, the IEP team for each student with disabilities should review progress made during flex learning to make an individualized determination whether equitable instruction and FAPE was provided. In most cases, students will have been provided equitable instruction and FAPE but may require amendments to the IEP to address any changes in student needs due to the extended flex learning and/or ESY services. In some cases, teams may determine equitable instruction and FAPE were not provided in whole or in part. In these cases, the team should determine and document what compensatory services are needed.

## Social Distancing

Districts should consider ways to differentiate instruction for students with disabilities when teaching students about social distancing. Some students may require a variety of prompts or reminders to successfully practice social distancing.

Options to consider when teaching students to practice social distancing:

- Place tape on the floor as a visual reminder of personal space.
- Read or provide social stories to students about the importance of social distancing.
- Provide students access to videos that demonstrate examples of social distancing in multiple settings.
- As a daily reminder, include the steps to following social distancing during school announcements.
- Use gestures to prompt students while practicing social distancing.
- Provide students with opportunities for repeated practice in multiple settings.
- Break down the steps for following social distancing into key components.
- Remember to provide feedback and reinforcement to students practicing social distancing.

Districts may consider frequent verbal reminders for students to ensure they are aware of the necessary protocols. Some students may need additional supports, for example, students who use hearing assistive technology and/or students with low vision may need to be in close physical proximity with teachers and peers for spoken language to be accessible and understood.

## Staff Safety Measures

Some students with complex needs may require one-to-one assistance as outlined in the IEP. This may include assistance with toileting, hand-over-hand assistance, physical transfers, feeding, and restraint. In cases when social distancing cannot be maintained, staff should utilize appropriate personal protective equipment (PPE).

Related service providers who cannot maintain social distancing due to the nature of their work (such as orientation and mobility providers, oral mechanism checks for students with speech impairments, and others) should use appropriate PPE in order to protect the health and safety of the provider and students.

Itinerant staff travel to many different sites in a single day and encounter numerous staff and students, increasing the potential for exposure. Districts and cooperatives may consider remote coaching with an on-site proxy if possible, to mitigate risk. Itinerant staff will need extra time to sanitize material before and after visiting each different school/classroom. Districts and cooperatives may consider purchasing additional materials that can remain on-site or with specific students, if possible, to mitigate risk.

Districts are encouraged to think through situations that may require additional PPE and contact their local health department for further suggestions on how to ensure the safety of staff and students. Consider sharing videos on the district and/or schools' websites showing personnel demonstrating what the district is doing to clean and sanitize schools as well as other healthy hygiene habits (e.g., handwashing, covering coughs and sneezes). Additional information about [Reopening Schools](#) has been published by the South Dakota Department of Health and the Centers for Disease Control and Prevention ([CDC](#)).

## Special Transportation

The needs of students who receive special transportation should be considered when planning reopening practices. The district must provide special transportation when the student's IEP team determines that it is necessary to address the individual needs of the student and provide FAPE. There are many factors to consider if the parent of a student receiving special transportation is asked to provide transportation. The district must ensure the arrangement is mutually agreeable to the parent and reimburse the parent for transportation costs. Additional information about [School Bus Guidelines](#) has been published by the South Dakota Department of Health.

## Medically Fragile Students

Medically fragile students are at high risk of severe medical complications if exposed to COVID-19, and therefore may be unable to attend school. Medically fragile students unable to attend school will need to be provided with educational services remotely. The determination of the services to be provided must be made by the IEP team based on the individual student's medical and educational needs. Special education and related services determined by the IEP team could be provided in a remote instructional format, through instructional phone calls, homebound instruction, or through other curriculum-based instructional activities. If the services are to be delivered through remote instruction, technological competency and the need for additional assistive technology and supports must be considered.

## Social and Emotional Learning and Mental and Behavioral Health

The American School Counselor Association and National Association of School Psychologists have issued a [School Reentry Considerations](#) document that addresses social and emotional learning and mental and behavioral health. Some key considerations include:

- Teach skills in validation, acknowledging everyone has/had a different experience from COVID-19, and not everyone in each district will be in the same place in recovery. Individual trajectories will vary significantly. Validate that some are disappointed, some had fun, some are grieving, some are exhausted from added responsibilities at home, some are scared, etc.
- Establish an intentional focus on social and emotional skill building, mental and behavioral health, personal safety, and self-regulatory capacity, which likely regressed with a lack of social interactions. Avoid assuming that lack of demonstration of social skills represents willful disobedience or purposeful insubordination.
- Acknowledge the lack of closure many students and staff had from the previous school year.
- Consider opportunities to spend time with previous classmates or teachers. Some elementary schools may also consider "looping" to allow teachers to follow students for all or part of the year.
- Acknowledge students may have had inconsistent behavior and academic expectations during flex learning. Expectations and appropriate behavior should be explicitly and regularly retaught.
- Anticipate student defiance or resistance as a method of establishing control. Many students may feel disempowered, victimized, abandoned, or resentful. Others will have lost trust and faith in the district's ability to care for and protect them or may experience emotional numbing. Adults working with these

students should develop ways to empower students and provide unconditional positive support to build trust. Take extra time for relationship building.

### **Cloth Face Coverings (Masks)**

The CDC has issued [Guidance for Wearing Face Masks](#) and notes in some situations, wearing a cloth face covering may exacerbate a physical or mental health condition, lead to a medical emergency, or introduce significant safety concerns. Adaptations and alternatives should be considered to reduce risk.

It may be necessary for the IEP team to determine how a student with a disability will utilize a cloth face covering. Wearing a cloth face covering is an essential preventive measure; the IEP team decision should be based on the individual needs of the student and not be made unilaterally for a group of students.

#### **Considerations:**

- Cloth face coverings can limit or obstruct access to communication for persons who rely on speechreading, facial expressions, and American Sign Language (ASL) grammatical markers. Masks with clear plastic “windows” may be an option to consider, but still obscure access to the face, which is a critical part of speechreading and impacts spoken language comprehension.
- Cloth face coverings and social distancing between people may distort or reduce the volume of speech sounds. It can also make accessing and understanding facial expressions and ASL grammatical markers difficult.
- Because of the straps around the ears or around the head, wearing cloth face coverings can be difficult for persons who use behind-the-ear hearing aids, cochlear implant processors, eye protection, glasses, helmets, head gear, head/neck supports on a wheelchair/in standers.
- Wearing cloth face coverings can create barriers for persons who have difficulty controlling their saliva.
- Some students may be tactilely selective and may not tolerate wearing a cloth face covering. Others may not understand the need to wear or may become distracted by wearing a cloth face covering.
- The impact of masks on the ability to read emotions and facial expressions and generally participate and focus on academics, particularly for students with behavior that impedes learning or social skill goals.

### **Handwashing Procedures**

Develop and follow good handwashing procedures and routines (i.e., when students arrive, before and after eating, after diapering or toileting, after sneezing or coughing).

Staff should:

- Supervise and assist with student handwashing. Staff should remember to wash their own hands after assisting students with handwashing.
- Make sure students wash hands often throughout the day, one at a time, maintaining social distance.
- Make sure students do not re-contaminate hands by touching trash cans or doorknobs.
- Advise students, families, and staff to avoid touching their eyes, nose, and mouth with unwashed hands.

- Allow hand sanitizing to occur throughout the day with close adult supervision. Consider if any students should not have access to sanitizer due to health or behavioral concerns.
- Ensure students wash or sanitize hands before and after being on the playground.

## **Evaluation and Instructional Equipment**

Assessments for eligibility and identification are often administered to multiple students using the same materials. When conducting assessments, consider these strategies:

- Test booklets should sit out for at least 24 hours. If possible, lay out individually rather than in a stack.
- Sanitize any hard surfaces students will touch, such as tables, chairs, and pencils. This should be done between testing sessions.
- Students and staff should wash hands before and after testing.
- Have a plan for regularly cleaning materials used in the classroom (e.g., computers/tablets, keyboards, refreshable braille displays, digital book readers, desktop magnifiers, manipulatives, adaptive furniture, microphones, screens, books, writing instruments).

## **Instructional Experiences in the Community**

Rather than amending IEPs to remove community-based instruction, districts may consider remote opportunities as a temporary, alternate method for continuing to provide this type of instruction to students. Districts should consider how to create opportunities for students to have authentic experiences within the school environment or outline safety procedures for engaging in the community.

## **Food Preparation and Snacks**

When food preparation and snacks are part of the educational program, particularly in preschool and/or transition activities, it is also important to note that the CDC, in [Guidance for Childcare Programs](#), recommends the elimination of family style-meals and instead having staff serve food to mitigate the spread of germs when preparing food or snacks for students.

## **Preschool Service Considerations**

Districts should ensure students eligible for preschool services have equitable access to services. The preschool program should coordinate and collaborate with other childcare students receive such as Head Start or private preschool programs to ensure students receive services and for child find requirements. Districts should actively communicate with parents and caregivers, to determine the child's individual needs and progress.

It may be a challenge to maintain sanitation and social distancing requirements in self-directed group or individual learning areas (centers). Districts should take into consideration the following items when planning for developmentally appropriate center work in a socially distanced environment:

- Limit teaching and learning materials to those that can be easily cleaned and disinfected as often as needed.
- Avoid using materials that cannot be cleaned or sanitized, such as playdough.
- Keep art supplies in individual containers assigned to individual students.
- Have students wash or sanitize hands before and after each center.
- Limit the number of centers available during the day.

## **Questions & Answers:**

### **A1. How should districts proceed with special education and related services when districts resume normal operations?**

When districts resume normal operations, IEP teams will need to review individual student IEPs to determine whether there have been changes in a student's performance and educational need.

If due to closures of school buildings and transition to flex learning, there has been interruption in providing IEP services, IEP teams must make an individualized determination whether and to what extent compensatory services (see compensatory services section) may be needed when districts resume normal operations in consultations with parents.

Information needed to make this determination will likely not be known until after the interruption of services has ended.

## Compensatory services

### Key Points:

- The change in education from traditional learning at school facilities to flex learning created a disruption in the delivery of all education, including special education supports and services.
- This is not a situation where a district has intentionally or negligently denied FAPE to a student; it is a forced response to a national crisis not within the control of the district.
- Yet, while the circumstances within which all students, in the general and special education populations, are educated changed virtually overnight, there has been no corresponding legislative or regulatory change in the overall provision of education and what it means to comply with an IEP or provide FAPE.

### Defining terms:

- **Compensatory services:** An equitable remedy under IDEA. Compensatory services may be ordered in a complaint investigation report or in a due process hearing when a district has failed to provide a student with FAPE. There is no regulatory requirement that requires or addresses the determination of the need for compensatory services by an IEP team, nor is it prohibited. In this unique situation, [USED's Questions and Answers](#) encourages IEP teams to make determinations about whether and to what extent compensatory services may be needed.
- **Recovery services:** This term is increasingly being used across the country in lieu of the term compensatory services in response to the unprecedented impact COVID-19 has had on the learning of ALL students. The term recovery services reflects the universal need of all learners to recover from any educational gaps in learning or loss of skills caused by the unexpected transition to flex learning. Neither IDEA nor South Dakota statute or administrative rule defines the term "recovery services."
- **ESY services:** An individual entitlement for students with an IEP who have experienced a documented regression of skills during a break from instruction, who are in a critical stage of learning, or who, due to the nature or severity of their disability, require service beyond the normal school year. ESY services are provided outside the course of the normal school year and are designed for an individual student to maintain a skill in one or more goal areas of concern at no cost to the family.
- **Additional services:** Includes the individual provision or combination of compensatory and recovery services.

### General Considerations:

The decision about whether the student receives additional services is driven by the IEP team with information and data collected from a variety of sources. This information will guide the IEP decision-making process. Important information for the district to collect and consider includes:

- Data on the student's progress prior to and during flex learning to assess academic and/or behavioral progress in the general education curriculum and on the student's IEP goal(s). Data may take the form of grades, progress reports, classwork, informal/formal evaluation tools, teacher/service provider observation(s), parent feedback, and comparison to the progress of all students.

- Data on the student’s ability to recoup skills and make progress on IEP goals upon the return to school.
- Documentation of accommodations and/or services provided (e.g., amount of instruction and services, including dates, times, and duration), as well as accommodations and/or services the district was unable to provide during flex learning and reopening of school.
- Information related to the general education curriculum provided to all students.
- The student’s ability to access flex learning and the level of engagement in the learning process.
- Length of district closure, if any, and time without any instruction.

## Questions & Answers:

### **B1. What is the difference between recovery services and ESY?**

ESY is predictive analysis based on how the student has fared in the past during periods of breaks in instructional time.

Recovery services are intended to address gaps or loss of skills due to the sudden transition to flex learning. Information to collect and consider includes the following:

- The amount of instruction and special education services provided to the student during flex learning, and information from any data collection or tracking of student progress during this time.
- Information and observations from parents and other family members about the student’s ability to access flex learning and special education services and how engaged the student was in the learning process.
- The student’s level of academic and functional performance, including levels of performance on all IEP goals prior to flex learning as compared to the student’s current level of performance. Information from sources such as progress reports, informal and formal assessments, and observations from teachers, parents, and related service providers may be used to collect this information.
- The student’s progress in the general education curriculum in comparison to age/grade level peers. The regular education teacher’s input will be important as they will have observations and data for all students. The regular education teacher will also have information about what review and other activities are being provided to all students to address the impact of flex learning, and the district’s system of supports.
- The student’s prior need for and extent of ESY services, and information about the student’s previous ability to recoup skills and make progress after extended breaks in instruction, such as during the summer.

### **B2. What is the key difference between ESY and compensatory services?**

ESY services are proactive. ESY services are to be considered at each IEP team meeting on an individual basis. The IEP team determines the need for ESY services, based on data collected prior to and following a break in instruction verifying the student’s ability to maintain skills.

Compensatory services are reactive. Compensatory services are a remedy awarded in response to a district’s failure to provide FAPE or can be determined by an IEP team to address a unique circumstance.

### **B3. What is the key difference between recovery services and compensatory services?**

Despite the timely transition to flex learning and other significant efforts by districts to ensure continuity of learning during flex learning, many students are likely to show signs of regression or display gaps in their learning when districts reopen. To mitigate this regression and close these gaps, many students - including general education students and special populations, such as students with disabilities or English learners - will need recovery services and support to regain lost educational skills.

Recovery services, rather than compensatory services, aptly describes the universal provision of services for all students showing signs of skill regression or gaps in learning upon re-entry to school as a systemic approach to help our districts recover from unavoidable COVID-19 service delivery interruptions. Recovery services can be provided over an extended period - not just in the first weeks of returning to school. Also, recovery services do not need to be a minute-for-minute replacement for services that were not provided during flex learning.

Compensatory services should be considered on an individual basis, not in comparison to instruction provided to all students. Compensatory services are based on an analysis of the services and supports in the IEP that were not provided, in whole or part.

### **B4. How must the determination of the need for additional services be documented?**

Documentation may include:

- Documentation of the district's plan for recovery for all students
- Holding an IEP team meeting to make the determination and documenting and providing a prior written notice (PWN), or
- Discussing with the parent and, with parent agreement, documenting and providing a PWN

If an agreement cannot be reached, either inside or outside of the IEP team meeting, the parent must be provided with a PWN, so the parent can exercise the procedural safeguards to resolve any dispute.

### **B5. Does a district have to provide the same amount (minute-for-minute) of service time missed from the IEP as compensatory services?**

No. Compensatory services are not a contractual remedy, but an equitable remedy. It is designed to ensure that the student is appropriately educated within the meaning of IDEA and as such "[t]here is no obligation to provide day-for-day or minute-for-minute compensation for time missed." See *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1496-97 (9th Cir.1994). Compensatory services should be determined by looking at the totality of the circumstances for each student and determining the amount of service needed to remedy the educational deficits resulting from a failure to provide FAPE.

### **B6. How should a district determine whether a student with a disability should receive compensatory services?**

Compensatory services should be determined by looking at the totality of the circumstances for each student, including parental input, and determining the amount of service, if any, needed to remedy the educational deficits resulting from a failure or inability to provide FAPE.

In making an individualized determination as to whether a student receives compensatory services, districts should consider a variety of factors, including but not limited to: services provided during flex learning, ability of

the student to access any services provided during flex learning, regression in skills, progress or lack of progress made on IEP goals, and parental input. The consideration of compensatory education should include a review of ESY, including if ESY was to be determined and that determination was not able to be made due to the transition to flex learning.

**B7. Must all students with disabilities be provided with compensatory services?**

No. Districts must ensure that individualized determinations are made related to the extent to which a student may require compensatory services. In the present circumstances, the purpose of compensatory services is to remedy the district's failure or inability to provide a student FAPE during the time that the child is (or was) entitled to FAPE.

**B8. If a parent refused the IEP services provided by the district during flex learning, must the district determine whether the student should receive compensatory services when the student did not participate or attend the services available?**

Districts are advised to document all efforts to provide FAPE to students during flex learning as well as document parent and student contact and communication. Please consult your legal counsel for the best way to proceed in this specific circumstance.

**B9. If a parent refuses an offer of compensatory services, does the district have any further obligation?**

Once the district has made the offer of individualized compensatory services, the parent should make the student available to receive the services offered. If a parent refuses the offer, the district has met its obligation by making the compensatory services available. It is recommended that districts document parental input in the determination of the need for compensatory services and the proposed plan to provide the services as well as the parent's refusal. This may be done through PWN.

**B10: What happens if a parent disagrees with the district's offer of compensatory services?**

Parents retain their procedural safeguards in the event their child has been denied FAPE. Parental rights under IDEA have not been waived. Additionally, it is recommended that an alternative dispute resolution process such as mediation be used to resolve disagreements related to the need for, or the amount of, compensatory services offered.

Parents should be provided with their [Parental Rights](#). Parents can seek additional assistance from [Parent Connection](#) and [Disability Rights South Dakota](#).

**B11. Can the service minutes provided in the current IEP be reduced, if compensatory services are offered?**

No. Compensatory services cannot interfere with the services the student is to receive under a current IEP. Compensatory services must be provided in addition to the services implemented in a current IEP.

**B12. What is the timeframe for determining whether additional services are needed?**

Determinations about whether and to what extent additional services are required should be made as soon as possible after enough data has been obtained to make the determination, and SEP would recommend this occur no later than the first six months of the 2020-21 school term.

- In prioritizing these determinations, districts should first consider those students who did not receive special education services during flex learning or were unable to access services to determine compensatory services.
- Next consider students with gaps or loss of learning that require recovery services for a successful restart to school. For these students, if the IEP team has enough data to make a determination regarding recovery services, the IEP team may consider meeting prior to the beginning of the school year, and if feasible, starting the services during the summer.
- Finally, IEP teams should focus on determining if students have any newly identified needs that require an IEP amendment for a successful return to school.

Clearly state the reason and purpose the team has determined the need for additional services and include a description of the service (e.g., specially designed instruction in reading comprehension), and the frequency, amount, location, and duration of the services. State the services in the IEP so that the level of the district's commitment of resources is clear to the parents and other IEP team members.

**B13. Must districts consider whether additional services are required for those students who graduated with a regular high school diploma or reached 21 during flex learning?**

Yes. Districts may need to consider whether additional services are appropriate for students who graduated with a regular high school diploma or reached the maximum age (21) during flex learning. Unlike other students who will be returning to school when school resumes, these students are not expected to return for the 2020-21 school year and are not subject to compulsory school attendance requirements. Therefore, districts should first determine, in consultation with the adult student or guardian, if the student is willing to participate in additional services. If the student is unwilling to participate, the district should document this fact and need not take any further action. If the student is willing to participate or would like further information about services that may be appropriate, the district should move forward with an IEP team meeting to consider the need for additional services.

In considering the need for additional services, the IEP team should examine the effect of flex learning on the student's progress towards achieving their most recent IEP goals. IEP teams should pay attention to matters associated with the student's transition to postsecondary education or training, employment, and independent living. Additional services should be designed to address any lack of expected progress due to flex learning or the inability to complete transition activities due to disruption of services needed in the community.

Consideration of additional services for graduated students or students who have reached the maximum age of eligibility should be given priority given their unique circumstances and would be made before the beginning of the 2020-21 school year.

**B14. Can districts use funding available under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in providing additional services?**

Yes. In addition to traditional special education funding sources, additional monies included in the Elementary and Secondary School Emergency Relief Fund (ESSERF) component of the CARES ACT (P.L. 116-136) may also be used for special education costs incurred to prevent, prepare for, and respond to the coronavirus.

Please refer to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Supplement distributed on 6/4/2020 for additional ESSERF information/guidance (Appendix C).

## Individualized Education Program (IEP)

### Key Points:

- An analysis of a student’s current performance must be considered in light of progress documented and implementation of flex learning, including parental input, and progress data gathered upon return to school.
- Present levels of academic achievement and functional performance should be updated based on the analysis of these data.
- IEP reviews must occur at least annually; and should take place when there is lack of progress toward meeting the IEP goals and lack of progress in the general curriculum, if appropriate; if there was a reevaluation or if information provided by the parents requires a review.

### General Considerations:

Scenario	Amendment	
	IEP Meeting	Amendment without IEP Meeting
The only change to service delivery is the “location.” (School building vs. Remote)	<i>An IEP meeting is not required because the IEP can be delivered as written. All that has changed is the location of where services will be provided.</i>	
The only change to service delivery will be the frequency of services as a result of change to a school schedule for all students. (A/B schedule, A/B schedule + flex learning, etc.)	This is an option, but an amendment and PWN are required.	This is an option, but parent agreement (for not having an IEP meeting), amendment, and PWN are required.
The delivery of services in the IEP or the IEP itself will be <i>substantively</i> different than originally planned (goals, accommodations, services and supports, etc.).	The IEP team should meet to discuss a review/revision to the IEP in order to ensure FAPE is being delivered according to the child’s unique circumstances.	This is <u>not an option</u> because the IEP team must determine the appropriate offer of FAPE given the child’s unique circumstances.

### Least Restrictive Environment (LRE)

The transition to flex learning generally has not changed any individual student’s LRE; it has changed how the general education system operates.

### Time Inside the Regular Classroom

- Because flex learning models differ in the opportunities they present for interaction with other students (with and without disabilities), determining if flex learning time for students with disabilities can be

considered time inside the regular classroom with non-disabled peers may be challenging, yet is critical for accurate data reporting.

- Flex learning applies to both general and special education.
- Students often access flex learning in a variety of settings (e.g., library, home, classroom, coffee shop), and students may or may not have opportunities to interact with other students or instructors in real time.
- When determining the educational environment of individual students with disabilities in flex learning, consider:
  1. If other students without disabilities are taking the course.
  2. Where the course is held.
  3. If the student with disabilities participates in the same manner as all students or participates in a different manner from all students:
    - All students participate 4 days on-site, 1 day remote, including students with disabilities. (This could be considered education with non-disabled peers.)
    - All students are remote except students with disabilities are 4 days remote and 1 day on-site. (The 1 day on-site could be considered a removal from non-disabled peers.)
- Many students who engaged in flex learning fall into the first two categories below, but circumstances around flex learning detailed in categories 3—7 must be considered before making a final classification about students' education environments.
  1. Generally, when students with disabilities participate in flex learning in a course open to students with and without disabilities—that is, the course is unrelated to the student's disability—that flex learning time should be considered time inside the regular classroom.
  2. Generally, when students with disabilities spend time in a flex learning environment with no specific requirement as to the location for participation—that is, students may participate in requirements—that flex learning time should be considered time inside the regular classroom.
  3. If there is a prescribed location where students must be while participating in flex learning, then whether this time is considered inside the regular classroom is based on the actual setting and whether the students who are participating in the prescribed location are students with or without disabilities.
  4. Flex learning course content does not determine the educational environment. The time in the flex learning environment is determined to be time inside the regular classroom, or not, based on both the location where students with disabilities access the flex learning and the characteristics of other students who are, or may be, participating in the course.
  5. When students spend more than 50 percent of their school day in a separate school for students with disabilities, regardless of their participation in other locations that may be less restrictive, the educational environment for the students is separate school. The same is true for residential facilities. Time spent in flex learning for students in those placements would not change the more restrictive educational environment categories established by the IEP team.
  6. For students placed in homebound/hospital settings, correctional facility, or parentally placed private school, participation in flex learning does not change these more restrictive educational environments that have been established by the IEP or Services Plan. Students in these settings may participate in flex learning, but time spent in flex learning, even if that flex learning time would be considered a regular class environment based on information shared in this document, would not change their educational environment for reporting purposes. They would be classified as being in homebound/hospital settings, correctional facility, or parentally placed in private school.
  7. For long-term exclusions, a district must consider the continuum of alternative placements and make a determination of placement. A change in placement must be made by the IEP team. If

the team determines that the child’s needs could be met through homebound instruction, then the district must amend the IEP and issue a prior written notice (PWN).

Location Where Flex Learning is Provided	Characteristics of All Students at This Location	How Time Spent in Flex Learning Environment Should Be Counted
<b>Location is at student’s discretion</b>	Students with and without disabilities independently select where they access flex learning. For example, if the coursework is asynchronous and the student works on it independently during the day in the library, study hall, or designated area at their discretion.	Time inside the regular classroom
<b>Special Education Classroom or Special Class</b>	All are students with disabilities and access flex learning in special education classroom or special classes.	Time outside the regular classroom
<b>Designated classroom or other location within the school building or campus</b>	There is a mix of students with and without disabilities	Time inside the regular classroom
	Students with disabilities access course in isolation from students without disabilities (not student choice).	Time outside regular classroom
<b>Off-campus location (e.g., home, public library, community center, local career tech education school, etc.)</b>	There is a mix of students with and without disabilities	Time inside or outside the regular classroom (classification will be based on the makeup of the enrolled students and state guidance for defining regular class.)
	Students with disabilities access course in isolation from students without disabilities.	Time outside regular classroom
<b>Off-campus location specifically intended for children with disabilities</b>	All are students with disabilities	Time outside the regular classroom (However, if children attend this location for more than 50 percent of their school day, the educational environment is separate school.)

**Homebound Services:** Districts must provide special education and related services to a student with a disability who is absent for an extended period.

- [USED’s Questions and Answers](#) states “It has long been the Department’s position that when a child with a disability is classified as needing homebound instruction because of a medical problem, as ordered by a physician, and is home for an extended period of time (generally more than 10-28 consecutive school days), an IEP meeting is necessary to change the child’s placement and the contents of the child’s IEP, if warranted. Further, if the IEP goals will remain the same and only the time in special education will change, then the IEP team may add an amendment to the IEP stating specifically the amount of time to be spent in special education. ***If a child with a disability is absent for an extended***

***period of time because of a COVID-19 infection and the district remains open, then the IEP team must determine whether the child is available for instruction and could benefit from homebound services such as remote instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available.*** In doing so, district personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services. The Department understands there may be exceptional circumstances that could affect how a service is provided.”

**Use of Homebound due to Infection in Student’s Family:** Once school buildings reopen, a student with a disability may be quarantined at home for an extended period due to a family member’s infection. A district would follow the same homebound protocol identified above to ensure the provision of FAPE. District personnel should likewise follow appropriate health guidelines to assess and reduce the risk of transmission in the provision of such homebound services.

**Use of Homebound Not Related to COVID-19:** As districts restart, students who were receiving services in a homebound placement pursuant to their IEP will remain in that placement until the IEP team determines that a different placement is appropriate. Whether the location of the homebound services identified in the student’s IEP is in the student’s home or an out-of-school location other than the student’s home, district personnel should follow appropriate health guidelines to assess and reduce the risk of transmission of COVID-19.

### **Progress Monitoring**

When a child’s IEP indicates the progress report will be provided concurrent with the issuance of report cards or in the same manner and frequency as general education, the IEP progress report would only need to be issued when general education report cards are also issued. When the IEP indicates the progress report will be provided in a different manner and frequency than general education report cards, a district should make every effort to issue the IEP progress report in the manner required by the IEP.

As a part of progress monitoring and progress reporting under flex learning frameworks, it is important to consider all of the following:

- Explore all assessment possibilities recognizing that conducting assessments may be limited during flex learning
- Maintain documentation of what services were offered
- Maintain documentation of what services were delivered
- Maintain documentation of student “attendance” to the extent possible (if digital learning is being offered, how often did the student log in, what work was produced during that time, etc.)

### **Questions & Answers:**

#### **C1. Must an IEP meeting be held once school resumes if a student’s needs have changed as the result of flex learning?**

If a student’s educational, social/emotional, or behavioral needs have changed to the degree that the student’s ongoing services or supports are no longer sufficient to provide FAPE, the student’s IEP team should meet to determine if the current IEP requires revision to reflect the student’s current needs (i.e. a student who did not have behaviors that impeded learning when learning was happening within a school building, has now

developed behaviors that impeded his or her progress or a child has become markedly more anxious or depressed or has lost core academic skills previously learned).

## **C2. How does the district determine whether the IEP in effect is appropriate?**

The district is responsible for ensuring that the student's IEP in effect is written and implemented to enable the student to make progress in the general education curriculum and on their IEP goals.

If the district service delivery model changes, then the district must ensure the student's IEP remains appropriate and can be implemented. During the transition to flex learning, the instructional model changed for all students. This should be considered temporary change. This temporary adjustment does not change the obligation for FAPE. FAPE should be determined based on each student's individual needs, not the current circumstances of the district.

As under normal circumstances, the district must review and revise the IEP, as appropriate, to address any lack of expected progress or information about the student's needs. Each district is responsible for ensuring that progress monitoring continues through this evolving situation. If the student data indicates that the student has new, additional, or different needs as a result of district closure, flex learning, and changing service delivery models, then the IEP should be amended/revised to address those needs.

## **C3. What should a district do when it cannot meet the requirement to review and revise each IEP at least annually due to flex learning or student illness/absence because of the COVID-19 pandemic?**

34 CFR § 300.324(b)(1)(i) requires each district to ensure the IEP team reviews the child's IEP not less than annually to determine whether the annual goals for the child are being achieved and to revise the IEP as appropriate to address any lack of expected progress toward the IEP goals and in the general education curriculum.

There is no exception to this annual requirement.

To accomplish this, teams may conduct meetings virtually via telephone or videoconference. Any required IEP team members who are unable to attend may be excused by written consent of the parent or written agreement between the parent and the district pursuant to the procedures outlined in 34 CFR § 300.321(e).

However, districts are reminded of IDEA requirements to establish a mutually agreeable time and place. Therefore, when a parent is not able or is unwilling to participate virtually, the IEP team may need to delay the meeting. The district should keep documentation of efforts to schedule a timely review.

## **C4. Should the initial or annual IEP be based on the options available through flex learning, or based on what a district would offer as FAPE if districts were in operation as normal?**

The IEP is an entitlement under IDEA, and therefore must be written to reflect the services, modifications, supports, and placement that support a student's unique education and behavior-related needs and is reasonably calculated to provide FAPE to the individual student. The IEP should not be written to accommodate a temporary situation, administrative convenience, or lack of time and resources. An IEP team may, but is not required to, create a continuity of learning plan for a child with an IEP which can be implemented during school building closures due to the COVID-19 pandemic.

The IEP team would need to complete the initial and/or annual review IEP as the full offer of FAPE for the ensuing annual timeframe. Should circumstances change, the IEP team can convene at any time and amend the IEP. Consideration can be given to the educational opportunities available to all students when making an offer of FAPE to support the individual needs of the student. District IEP teams can develop a continuity of learning plan to detail those programs and/or services the district will provide during flex learning if necessary.

**C5. If a student participates in the general classroom for a portion of the day and the special education classroom for a portion of the day, should the student’s program be altered to stay with the same group of students?**

It is important for districts to remember the requirement to provide FAPE to students with disabilities. The IEP team is responsible for determining the appropriate placement decision under least restrictive environment provisions. While the district should follow the appropriate safety expectations and limit contacts to the extent possible, whether the student is spending a portion of his or her day in the general classroom or the special education classroom should be determined by the IEP team and based on the needs of the student.

**C6. What is a district’s obligation for students with disabilities placed by their parents in non-public schools?**

A parentally placed non-public school student does not have an individual right to receive some or all of the special education and related services the child would receive if enrolled in a public school. 34 CFR § 300.137. A student with a disability parentally placed in a non-public school is not entitled to FAPE, ESY, or compensatory services. Services for these students are addressed through an individual service plan (ISP) and opportunities for equitable participation.

Students with disabilities parentally placed in non-public schools are supported through an ISP. For this reason, districts should reach out to non-public schools in which they have parentally placed students with disabilities with an ISP. The district should discuss the ISP for each student to determine how those services may or may not be provided to ensure they understand which services are being provided during flex learning. Changes to the ISP should be documented with an amendment/addendum.

## Continuity of Learning

### Key Points:

Moving forward districts may want to consider continuity of learning plans for students to document services and accommodations that will be provided during flex learning:

- The plan should be developed in conjunction with individual IEP team to offer FAPE.
- The plan allows for flex learning to be implemented without requiring an IEP meeting and amendment to the student's IEP.
- The student's IEP will resume upon return to regular district operations.

### General Considerations:

Developing a continuity of learning plan provides an opportunity for staff and parents to clearly communicate the expectations for flex learning and to document how special education and related services will be provided during interruptions to the regular district operations. Establishing a continuity of learning plan minimizes questions that may arise regarding how to implement a student's IEP if changes occur and districts quickly transition to flex learning.

The IEP team should use the student's IEP to document services that are feasible and safe to provide so it is clear to parents/guardians and educators.

Parents/guardians can provide information about preferred types of activities that work well in engaging their child at home, and about the need for telephone consultations, teleconference meetings, days, times, and methods for providing instruction, etc.

Once the plan is developed, the following is important:

- A student's educators and family continually communicate to adapt and adjust the plan based on the student's ongoing needs.
- Document special education and related services provided, methods and minutes of instruction, content, and accommodations provided.
- Providers should also maintain notes that can be used to determine progress on annual goals and objectives. Districts may need to consider methods for progress monitoring, such as data from work products, that may differ from previously used assessments.

### Flex Learning Considerations:

Once districts understand caseloads, technology resources, and student and family needs, districts need to decide on a delivery approach for direct services. This approach can be high-tech, low-tech, or a hybrid. It may not be the same for every student.

- **High-Tech Option**
  - Determine if a high-tech or hybrid approach is appropriate based on:
    - Student and staff device and internet access
    - Adaptability of direct services to alternate methods of delivery through high-tech platforms
    - Student IEP goals, need, age, and developmental level
  - Direct service providers should evaluate the direct services based on each student’s IEP and determine the elements that are adaptable to high-tech continuous learning platforms. Direct service providers should consider the different models or structures of service delivery through videoconferencing:
    - **Student Interactive:** Direct services are conducted with interactive audio and video connection in real time to create an in-person experience like that achieved in a traditional in-person special education or therapy session.
    - **Capture-and-share:** Images, videos, therapy activities, and specialized instruction whenever possible. Hybrid services may include remote technology facilitated by a direct service provider that models intervention support for families and caregivers.
  - Document the IEP services that were provided via flex learning so that data can be used to determine the need for compensatory services when school resumes.
- **Low-Tech Option**
  - Determine if low-tech options are appropriate based on student and staff device and internet capabilities, as well as individual student IEP goals, need, age, and developmental level.
  - Low-tech direct service options, paired with manipulatives sent by the district, or readily available household materials, can include:
    - **Print Materials:** Printed materials, including readings and books, that act as either the primary way to deliver services or to enhance high-tech service delivery. Materials should be disseminated through meal pick-up, email, website, or a combination.
    - **Skill Building Materials:** Activities that align with IEP goals to develop targeted skills through weekly phone calls, newsletters, emails, and/or videos.
    - **Curriculum-Based Activities:** Reading, math, writing, or other activities that align with core instructional materials.
    - **Home-Based Activities:** Activities that build skills at home to the extent possible, such as games, cooking, art, drawing, and role-play.

**Additional Considerations:**

- What training or professional development do educators need to be able to use educational technology effectively to engage students of all abilities? How can professional development be personalized based on educators’ existing skills? What follow-up or ongoing supports will educators need to fully benefit from professional development?
- How do products incorporate considerations of accessibility and learner variability into their design processes?
- How can principles of Universal Design for Learning (UDL) be incorporated into the use of digital platforms or products?
- How will the district establish a plan to provide technology support, answer student questions, submit assignments, and exchange feedback?

**Student Engagement During Flex Learning:**

Remote delivery of direct services and therapy is a new method of learning for many students. Some students might need help to focus, attend, and stay motivated when they are not in the same room with their instructor or peers. To keep students engaged, direct service providers should:

- Start with a fun game or activity just like during in-person direct service sessions.
- Work toward big goals using some of the student’s favorite websites, apps, games, books, digital books, music, or stories.
- Incorporate students’ favorite in-person direct service activities.

Some students might benefit from assistance during direct services, such as logging in to technology and staying at the computer or phone. Direct service providers should clearly understand and communicate when assistance is needed so the provider can deliver the service. Document modifications, delays, or adjustments to service delivery during continuous learning.

Direct service providers can provide additional support to students and families during service delivery through:

- Instruction or tips on how the student can be supported to practice activities between sessions
- Supplemental activities that target direct service skills and IEP goals, starting with skills that the student has already mastered
- A list of apps to support goals in the IEP
- Weekly consultations

**For Example:**

<b>Providing Early Childhood Special Education Services (ECSE) Planning Guide</b>	
<b>Prior to the Session</b>	
<b>Assess understanding and familiarity</b>	<ul style="list-style-type: none"> <li>• Communicate with the family or caregiver to gauge their familiarity of direct services and what to expect during a session. If the family is unfamiliar with the process, provide information to engage interest and work together to establish an approach that feels manageable.</li> </ul>
<b>Communicate environmental considerations to families or caregivers</b>	<ul style="list-style-type: none"> <li>• Develop a checklist to help families or caregivers prepare for the session including the following steps:               <ul style="list-style-type: none"> <li>› Prepare your environment to limit noise and distractions.</li> <li>› Ensure your child is ready for the session (i.e. provide ample time for meals and diaper changes prior to the start of the session).</li> <li>› Check the internet connection prior to the start of the session and make sure the camera/speakers are turned on.</li> <li>› Review all materials that will be used during the session to prepare ahead of time and reach out to your direct service provider with questions.</li> <li>› Prepare any questions you may have for the service provider.</li> </ul> </li> </ul>
<b>Prepare materials</b>	<ul style="list-style-type: none"> <li>• Consider everyday household materials that the family will need to collect prior to the visit.</li> <li>• Consider specific materials and manipulatives that the service provider can deliver to the family prior to the visit.</li> </ul>

	<ul style="list-style-type: none"> <li>Plan for ways to embed session activities into daily routines (i.e. eating a meal, brushing teeth, getting ready for nap).</li> </ul>	
Beginning of the Session	During the session	Close of the Session
<ul style="list-style-type: none"> <li>Review IEP goals           <ul style="list-style-type: none"> <li>If this is the first visit, review the child’s IEP goal and desired behaviors to observe or look for throughout the session.</li> <li>If this is not the first visit, review specific goals that were targeted during the last visit and identify desired goals for the current session.</li> <li>If the parent or caregiver is present, ask if there are questions or concerns before the session activity begins.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Prepare to model the activity for the child. If the parent or caregiver is participating, structure to engage both the child and parent or caregiver.</li> <li>If the parent or caregiver is participating, encourage them to repeat the activity with the child, if appropriate.</li> <li>Provide positive feedback and reinforcement on how the activity is being implemented.</li> <li>Closely monitor the child’s engagement.</li> <li>Follow the child’s lead. If the child loses interest, offer another activity or material to re-engage.</li> </ul>	<ul style="list-style-type: none"> <li>Reassure parents or caregivers that early childhood special education services can support their child’s development.</li> <li>Ask follow-up questions to gauge comfort during the session in order to plan for the next session.</li> <li>Identify modifications to meet the needs of the child and parent or caregiver.</li> <li>Schedule the next session and identify any support that is needed in between sessions.</li> </ul>

Continuity of learning plans are not a required component of the IEP, therefore there is not a set format, nor does South Dakota have a recommended form. It would be up to the district to determine how to document the plan.

**Examples of Individual Continuity of Learning Plans:**

- <https://mtpleasantschools.net/wp-content/uploads/2019/07/GIRESD-Contingency-Learning-Plan.pdf>
- [https://docs.google.com/document/d/1OXNEmVRoYImjcs9P\\_TOs01ztGz2NvFH/edit](https://docs.google.com/document/d/1OXNEmVRoYImjcs9P_TOs01ztGz2NvFH/edit)
- [https://tea.texas.gov/sites/default/files/covid/covid-19\\_sped\\_emergency\\_contingency\\_form\\_pdf\\_fillable.pdf](https://tea.texas.gov/sites/default/files/covid/covid-19_sped_emergency_contingency_form_pdf_fillable.pdf)
- <https://www.cde.ca.gov/ls/he/hn/sspiupdatespecialdisted.asp>
- Louisiana general guidance: <https://www.louisianabelieves.com/students-with-disabilities>
  - Louisiana form: [https://www.louisianabelieves.com/docs/default-source/covid-19-resources/individual-contingency-plan-for-continuous-learning.docx?sfvrsn=1f349b1f\\_2](https://www.louisianabelieves.com/docs/default-source/covid-19-resources/individual-contingency-plan-for-continuous-learning.docx?sfvrsn=1f349b1f_2)

**Questions & Answers:**

**D1. Can a student be disciplined for inappropriate behavior during flex learning?**

Yes, a student can be disciplined for inappropriate behavior during flex learning. To discipline a student for inappropriate behavior, a district may need to revise or amend its Student Code of Conduct. Districts must monitor and track behavioral removals. All expulsions, suspensions, and disciplinary removals must be documented and maintained as part of the student’s educational record.

When a school decides to suspend or expel a student from flex learning, the student is to be extended the same procedural protections as any student with or without a disability in a school setting.

**D2. What happens if a parent declines services during the flex learning period? Can a parent agree to specific services during flex learning and not others?**

There is currently no flexibility concerning a district’s responsibility to provide FAPE aimed at addressing each area of need; therefore, IEP teams should communicate and collaborate with parents as much as possible to deliver FAPE to students during flex learning. Districts should clearly document all repeated and varied attempts to provide services during flex learning. Districts should communicate with families regarding the reason they are declining services and differentiate decisions being made due to the student’s individual needs versus external factors such as technology barriers or lack of availability of structured instructional supervision in the home. The IEP team should work with families to minimize external factors and consider the need for additional services when the district resumes normal operations.

**D3. If a parent does not want flex learning, should this automatically be considered a “revocation of consent” for services?**

No. IDEA has very specific requirements concerning the treatment of an informed revocation of consent (34 CFR 300.300). Although parents may revoke consent for the continued provision of special education and related services at any time, districts should approach any matter concerning revocation of consent with extreme caution and in strict compliance with the requirements under IDEA for ensuring informed consent and obtaining PWN.

**D4. What if the family doesn’t make the student available during scheduled flex learning or related service times?**

The South Dakota Department of Education urges districts to account for every student enrolled. SEP recommends that districts document multiple and varied attempts to contact students, establish flex learning, and provide FAPE to students.

**D5. Is it allowable to purchase technology to support a district’s continuity of learning plan for students with IEPs?**

Yes. When a district buys certain technology for all students, purchases for students with IEPs should be included. IDEA Part B funds are to be used for the excess costs of special education. Additional technology to address a child’s disability-related needs is allowable. IEP teams may consider an assistive technology assessment to determine the student’s needs and abilities related to technology. Any equipment purchased with federal flow through funds must receive prior approval from SEP through the [Grants Management System](#).

**D6. How can paraprofessionals, including individual aides and classrooms aides, be used to support flex learning?**

Paraprofessionals, including individual aides and classroom aides, can participate in the provision of services in a flex learning environment. Recommendations include:

- Participate in scheduled district-based professional development regarding online learning or other professional development to prepare for working with students upon return to school.
- Support classroom teachers with preparing assignments, content, and activities.

- Assist with collecting materials that will be sent to students.
- Maintain regular communication with teachers and related service provider(s).
- Communicate and check in with students as determined by classroom teacher and school leadership.
- Under the direction of the teacher or related service provider, support families and students in accessing and participating in flex learning and therapy experiences, including supporting families in implementing behavior supports and structures, as needed.
  - One online option for professional development for paraprofessionals is through the IRIS Center of Vanderbilt University. See <https://iris.peabody.vanderbilt.edu/>

## Evaluations

### **Key Points:**

Districts should communicate with families in the initial evaluation/reevaluation process about when evaluations may be conducted.

Districts may conduct evaluations virtually, if doing so does not compromise the validity of the assessment results.

### **General Considerations:**

The Early Childhood Technical Assistance Center (ECTA) has released guidance on potential assessments for remote administration. [\*Norm-Referenced Assessment Tools for Children Birth to Age Five Years with Potential for Remote Administration for Eligibility Determination\*](#)

Districts may not make unilateral decisions regarding stopping the initial evaluation timeline or unilateral decisions regarding whether initial referrals will be accepted or rejected during flex learning and restart. Each of these decisions shall be individualized, determined within the context of an IEP team and documented using the PWN.

In cases where there is enough existing data to determine eligibility and develop the IEP, the IEP team should do so in order to address the student’s unique needs in a timely fashion. If the evaluations needed solely for programming purposes can be conducted safely, then the IEP team is encouraged to do so.

Eligibility determinations must be made using multiple sources of data. While it is understood that due to flex learning more careful analysis when ruling out a “lack of appropriate instruction” may be needed, IEP teams should consider the instruction provided to the student prior to flex learning and the student’s response documented at the time of referral; the instruction provided during flex learning and the student’s response; and the child’s performance on all the required screenings and evaluations for the suspected disability. Furthermore, parent interviews may play a critical role in documenting a student’s response to instruction during flex learning.

## Questions & Answers:

### **E1. Do we have flexibility with the 25-day timeline for completing evaluations?**

There has not been any waiver granted for evaluation timelines. South Dakota does have flexibility in administrative rule for teams to seek an extension to the timeline if all parties agree. Every effort should be made to complete evaluations in a timely manner in a method that will yield valid and reliable results.

### **E2. Are electronic signatures allowable for consent items for special education?**

The IDEA does not specify how written consent must be obtained. Therefore, schools that wish to utilize electronic or digital signatures for consent may do so if they choose. Parts B and C of the Individuals with Disabilities Education Act both allow for the use of electronic signatures provided necessary safeguards are in place. Such safeguards are consistent with the Family Educational Rights and Privacy Act (FERPA) and Health Insurance Portability and Accountability Act (HIPAA) guidelines. Electronic signatures can be used to capture parent consent and are applicable even when parents do not have direct access to a data system via a parent portal.

#### **Considerations:**

- FERPA and HIPAA allow for the use of electronic signatures if processes are in place to authenticate the identity of the person signing, that is, to make sure the person is who they say they are.
- Other considerations are the security and protection of the signature itself (for example, using encryption) and issues related to whether and how the signature and related identity authentication data elements are stored.
- Alternatives to maintaining parent/guardian electronic signatures in the state data system include allowing local programs to maintain the electronic signature in a local system to document that the signature was obtained. Options for electronic or digital signatures could include, but are not limited to, the use of applications such as HelloSign, DocuSign, Adobe Sign.

## **Resources:**

The following information is provided from resources developed by national technical assistance centers funded by the Office of Special Education Programs (OSEP).

### **Remote IEP Meetings**

[Tip Sheet](#)

[Infographic: Participating in Remote Meetings](#)

[Sample Remote IEP Meeting Agenda](#)

### **Evidence-Based and Promising Practices to Support Continuity of Learning**

[Practices and Resources to Support Parents and Families](#)

[Practices and Resources to Support Teachers](#)

[Tips for Educators](#)

[Progress Monitoring Virtually](#)

[Positive Behavioral Interventions and Supports for Remote Instruction](#)

[Practices and Resources to Support Related Service Providers](#)

[Supporting Students with Disabilities at School and Home](#)

[Early Childhood Remote Service Delivery and Distance Learning](#)

### **Remote Learning**

[Remote Learning Resources](#)

[Center on Technology and Disability](#)

### **Important Websites**

[National Center on Systemic Improvement](#)

[Early Childhood Technical Assistance Center](#)

[IDEAs that Work](#)

[Office of Special Education and Rehabilitative Services](#)

[U.S. Department of Education](#)

## Acknowledgement and References:

We are experiencing a time in education unlike anything we have experienced before. The situation is continually evolving, and we are updating guidance as we identify new and refined sources of information. Multiple sources were reviewed to develop this guidance along with input from stakeholders. The following is an extensive, but not exclusive, list of federal departments, state departments, technical assistance centers, other organizations, and stakeholders (including, but not limited to, SD CASE, Parent Connection, and Disability Rights South Dakota) that were consulted or contributed in the development of this document. It will continue to be revised as new information and practices emerge. Thank you to everyone who is working tirelessly to ensure we are together trying to provide equitable and meaningful educational opportunities for all students.

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