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**Frequently Asked Questions (FAQ):  
Providing a Free Appropriate Public Education (FAPE) through a Distance Learning Platform during a  
Closure to Normal School Operations due to the Coronavirus (COVID-19) Pandemic 2020**

**On March 27, 2020, the New Mexico Public Education Department (PED) announced the continued closure of New Mexico public schools through the end of the 2019-2020 school year due to the COVID-19 pandemic and the Stay-At-Home Orders issued by Governor Michelle Lujan-Grisham. Because of the recently announced extended school closure, the PED issues this updated guidance to answer questions about special education related to the impact of COVID-19. This guidance applies to all School Districts and Charter Schools in the State, which are referred to as School or Schools in this guidance.**

**1. Are Schools required to provide educational services to students with disabilities during the extended school closure?**

Initially, the US Department of Education issued guidance stating that if Schools do not provide any educational services to the general student population during the school closure, then it would not be required to provide services to students with disabilities during the school closure. However, on March 21, 2020, new federal guidance was issued and emphasized that “schools should not opt to close or decline to provide distance instruction, at the expense of the students, to address matters pertaining to services for students with disabilities” and stated that “to be clear: ensuring compliance with the Individuals with Disabilities Education Act 1990 (IDEA), Section 504, the Americans with Disabilities Act of 1990 (ADA) should not prevent any school from offering educational programs through distance instruction.”

If a School continues to provide educational opportunities to the general student population during a school closure, then it must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. Schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s Individualized Education Plan (IEP) developed under IDEA.

With the extended school closure to the end of this school year, the PED is requiring Schools to provide Continuous Learning to students, to submit assurances about the provision of such learning, and to submit and obtain approval by the PED of a Continuous Learning Plan. Special Education is an included requirement of the Continuous Learning Plan.

Schools are required by the PED to develop and implement Continuous Learning Plans and provide general education services to the general population and are required to ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. Schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP developed under IDEA.

As previously stated by the US Department of Education, Office of Special Education Rehabilitative Services (OSERS), “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 determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency.” “FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students.”

**2. Are Schools required to provide the special education services to students with disabilities in accordance with their IEPs?**

If a School is not able to provide services to a student with a disability in accordance with the student’s IEP, the IEP team must determine which services can be provided to appropriately meet the student’s needs, including whether services can be provided by alternate or additional methods. This may be done through an addendum using the Prior Written Notice (PWN).

Due to the national pandemic emergency, Schools may not be able to provide all services in the same manner. Schools are allowed flexibility in determination of how these services can be provided during the school closure including by use of technology, tele-therapy, or distance instruction. Schools are encouraged to communicate with parents to address new plans for the delivery of special education and related services due to the extended school closure.

**3. Are Schools required to provide face-to-face special education services during the extended school closure?**

At this time, there is a statewide Stay at Home Order issued by the Governor and Department of Health that is effective until April 10, 2020. As long as that, or any subsequent Stay at Home Order, is in place, Schools should not provide face-to-face special education services.

**4. How should students with disabilities, including students in special programs, medically fragile students, students with one-to-one paraprofessionals, and students receiving related services, be accommodated in the plan?**

Home instruction/services should be consistent with the student’s IEP to the most appropriate extent possible. Schools should talk to parents, who are key members of the IEP team, and help them consider how they may best ensure that students with disabilities have the necessary supports, including medical supports, in place during a public health-related school closure. Consultation with the parents should explore how students with disabilities will gain equitable access to home instruction and continue to make progress or maintain skills in the general education curriculum, or alternative course of study specified in their IEP, or toward meeting their individualized IEP goals. This is a temporary situation, and schools must offer special education services to the most appropriate extent possible while students are away from their schools/programs. IEP teams may need to consider compensatory services when students return to school and IEPs may need to be adjusted accordingly. The IEP team should determine the amount of compensatory special education and/or related services students with IEPs may require, on a case-by-case basis, when normal school operations resume.

**5. Are Schools required to continue services to students who are receiving services for dyslexia and currently being served by special education or under Section 504?**

Schools must ensure that students with disabilities have access to the same or equitable learning platform as their general education peers. To the greatest extent possible, the district must provide students with disabilities with the services required by the student’s 504/IEP. If there are services, accommodations, and modifications required by the student’s 504/IEP that cannot be provided during this time, the student’s 504/IEP team must determine which services it can provide to meet the student’s needs. Changes in services and accommodations may be made through the 504/IEP amendment processes.

In many cases, instructional accommodations may be met in an online environment by providing additional supports, such as individualized telephone or video conferencing. Schools should consider how current

accommodations and modifications are provided in a physical classroom setting (i.e., extra time, redirection, small group, among others) and what this would look like in a virtual environment.

If a School is not able to provide the necessary level of services for any reason, it should document in appropriate detail what should have been provided and was not provided during the school closure. This will allow for effective decision-making outcomes regarding compensatory services when schools reopen. Schools also should carefully consider the needs of students receiving interventions for dyslexia outside of special education or within Section 504 when planning to move to virtual or other non-traditional models during the COVID-19 pandemic response.

**6. Are Schools required to have teachers keep a record of the special education services that are delivered during the school closure?**

Schools are required to keep a record of the special education services that are delivered during a given school year. Therefore, it is required for teachers to keep a record of services delivered during the school closure.

**7. What are the obligations of Schools to students with disabilities when the schools reopen?**

Once the school reopens, Schools should review all data regarding individual student progress during the period of school closure to determine whether to convene an IEP team meeting to consider compensatory services.

Compensatory services may be necessary when there is a decline in the student's skills or lack of progress that occurred as a result of not receiving services during an extended closure. The IEP team also must review the student's IEP and determine whether any other changes to the IEP are needed because of the extended absence from school. The IEP team may consider using available assessment information to determine whether there have been changes in a student's performance.

**8. What are the Schools' obligations to parentally placed private school students with disabilities during a school closure?**

Schools should coordinate with appropriate private school officials to ensure that they have access to information related to equitable services for their eligible students within existing service plan agreements.

**9. Do Schools have to convene an IEP team meeting to address change of placement and services caused by the school closure?**

The closure of schools due to the public health emergency does not automatically result in a change of placement for students receiving special education and related services.

However, if a School is not able to provide services to a student with a disability in accordance with the student's IEP, the School must follow IDEA procedures to make changes to the IEP, including the change to distance learning. The School can do this either through an IEP team meeting or through an amendment to the IEP without a meeting with parents' consent. The School should then document the changes to the IEP in a PWN and ensure that parents are provided with a copy of the IDEA Procedural Safeguards Notice.

**10. What are options for how Schools provide FAPE to students with disabilities when a school goes to a distance-learning platform for all students?**

Schools must ensure that students with disabilities have access to the same or equitable learning platform as their peers. To the greatest extent possible, the district must provide students with disabilities with the services required by the student's IEP. If there are services, accommodations, and modifications required by the student's IEP that cannot be provided during this time, the student's IEP team must determine which services it can provide to meet the student's needs.

Changes in services and accommodations may be made through the IEP amendment process. Schools can either do this through an IEP team meeting or through an amendment to the IEP without a meeting with parents' consent.

In many cases, instructional accommodations may be met in an online environment by providing additional supports, such as individualized telephone or video conferencing. Schools should consider how current accommodations and modifications are provided in a physical classroom setting (i.e., extra time, redirection, small group, among others) and what this would look like in a virtual environment.

**11. How will Schools provide FAPE to high needs students who cannot participate in a distance-learning platform?**

Schools should act in good faith to support the needs of students with disabilities during this challenging time while being attentive to the health and safety of students, educators and other service providers. When electing to use distance learning, there are various factors for the team to consider regarding student characteristics. Not every student is a good candidate for distance learning services; thus, careful consideration needs to occur. Considerations include the complexity of the student's condition, the context and environment in which the student interacts, how comfortable the student is with using technology, and the nature and complexity of the service and/or intervention required and/or being asked of by the school.

If services cannot be provided through an online opportunity or alternative means that are available to other students (i.e., instructional activities and/or materials, phone consultation, etc.), then the district must determine what compensatory services are required once normal school operations resume.

**12. If distance learning is provided in some capacity but does not mirror the offer of FAPE in the IEP, will compensatory services be required once normal school operations resume?**

Once normal school operations resume, IEP teams should plan to make individualized determinations regarding whether or not compensatory education services may be needed for a student. Educational need can be measured by assessing whether or not the student continued making progress or maintained skills in the general education curriculum, or alternative course of study specified in their IEP, or toward meeting their individualized IEP goals, and/or if any regression occurred during the period of school closure.

**13. Are Schools required to document steps taken to address compensatory education services after a school closure?**

Schools should ensure that the IEP team discussion and decision about compensatory education services are documented in a Prior Written Notice (PWN) that is provided to the parent along with the IDEA Procedural Safeguards Notice.

**14. Is compliance with IDEA timelines required during the extended school closure?**

All IDEA timelines remain in effect. Although additional guidance may be forthcoming from the U.S. Department of Education, there is nothing yet indicating that IDEA timeliness will be extended due to the school closure.

**15. Do initial IEP meetings have to be held during this closure to normal school operations?**

At this time, there is no ability to waive these IDEA requirements. For initial IEP meetings, Schools should make every effort to convene an IEP team meeting and obtain parent input into the development of the initial IEP. For initial provision of special education services, informed written consent from the parent is required.

**16. Are Schools required to conduct Annual IEP meetings during the school closure?**

At this time, there is no current ability to waive these IDEA requirements. A School and parent may agree to use an alternative means of conducting Annual IEP team meetings during the school closure, such as conference calls or video conferences. The PED encourages district teams and parents to work collaboratively and creatively to meet IEP timeline requirements. If parent(s) cannot attend virtual meetings or phone conference meetings due to accessibility issues, the district should document reasonable attempts to schedule meetings and document parent contact.

IEP Team meetings should still consist of all required IEP team members. The process for IEP Attendance/Excusal should still be completed if any members are not able to attend. A PWN to Parents must be used to inform the parents of any group decision and reasons for that decision.

**17. Are IEP teams required to meet in person during the extended school closure?**

IEP teams are not required to meet in person while schools are closed. The IEP team may meet by video conference or telephonically. Schools are encouraged to ensure that IEP teams should continue to work with parents and students with disabilities during school closures to address issues related to a student's educational program as needed.

**18. What service types do we use when developing IEPs for students receiving instruction through a Distance Learning Platform?**

The service types, in most cases, will remain the same. IEP teams will need to review IEPs to determine if service types need to be changed.

Service types are as follows:

- **Monitoring/Consultation:** The student receives primary instruction from a general education teacher. The special education teacher monitors the performance of the student in the least restrictive environment (LRE) to ensure appropriate access to the curriculum and progress toward annual IEP goals.
- **Collaboration:** The student receives primary instruction from a general education teacher and the special education teacher reinforces the direct instruction of the general education curriculum.
- **Co-teaching:** The student receives primary instruction from both a general education teacher and a special education teacher within the general education classroom. Teachers have an equal partnership in the responsibility.
- **Direct Service:** The student receives primary instruction from a qualified special education teacher outside of the general education classroom.

**19. What flexibility do Schools have in the process required to amend an individual student's existing IEP during a closure of normal school operations?**

In making changes to a student's IEP after the annual IEP team meeting because of the COVID-19 pandemic, the parent of a student with a disability and the district may agree to not convene an IEP meeting for the purposes of making necessary changes, and instead develop a written document to amend or modify the student's current IEP (to be included as part of the IEP). However, if these changes are made to the IEP under this circumstance, the school must ensure that the parent provides input and consents to the amendment without an IEP team meeting and that the members of the IEP team are informed of these changes. If an IEP team meeting is warranted or requested by the parents, the district should schedule and hold the IEP meeting virtually or by a phone conference.

**20. What if a student's Annual IEP date is not met due to school closures or other COVID-19 issues?**

Schools should proceed with completing Annual IEPs within timelines. Missed Annual IEP meetings should be completed as soon as possible. If there are deviations from legally established timelines, Schools should document in the student's folder all reasonable efforts made to follow timelines.

**21. How should the IEP team address graduation for students with disabilities?**

Schools and IEP teams should exercise flexibility to ensure students with disabilities who were on track to graduate according to their transcripts and IEP still graduate. It is important that students are not negatively impacted by measures taken in response to the COVID-19. Please see additional guidance regarding graduation for all students on the COVID-19 resources page.

As schools develop coursework options for seniors, there should be consideration for provision of services and supports included in student IEPs. Schools are encouraged to communicate with students and families regarding the potential need for flexibility and adjustments to ensure that health and safety requirements are satisfied, while also

continuing to provide specially designed instruction to the extent possible. This will necessitate coordination of staff involved in delivery of instruction.

If the IEP team determines and documents that a student has not met the graduation requirements or that the student's graduation requirements include 18–21 years of age services, the student can continue to receive services until the school year in which they turn 21 years of age. The determination that the student has not met graduation requirements should be based on the student's course of study in the IEP and their performance and progress prior to the school closures caused by COVID-19.

A reevaluation is not required to discontinue a student's special education services due to graduation. However, prior to graduation and the discontinuation of special education services, the district must provide the parent and/or adult student with written notice that the district's obligation to provide special education services ends when the student obtains a regular high school diploma. The School must also provide the parent and/or adult student with a Summary of Performance (SOP), a written summary of academic achievement and a functional performance, including recommendations to assist the student in meeting his or her postsecondary goals.

**22. If a child's IEP calls for Extended School Year (ESY) services, will those services need to be provided during a period of distance learning?**

The need for ESY is determined by the IEP team. A public agency cannot unilaterally limit the type, amount, or duration of those services. A district should consider a student's needs for ESY services within a reasonable time after it is aware, or should be aware, that the student may need such services. An extended closure of normal school operations may necessitate a reconsideration of ESY services.

If a child's IEP presently calls for ESY, the district needs to provide those services. Schools must provide ESY services when the child's IEP team determines that the services are necessary for the provision of FAPE to the child.

**23. How should IEP teams monitor progress toward annual IEP goals?**

IEP teams will need to review students' annual goals and, if applicable, objectives, to determine if any changes need to be made. The team will also need to review how the progress toward meeting the annual goals will be measured and periodically reported to parents. The IEP team, including the parent, may determine it is best to focus on specific IEP goals during the timeframe the student is receiving special education and related services through a distance-learning platform. Schools will need to ensure they have documented students' present levels for IEP goals in order to record necessary baseline data. Baseline data will be critical in measuring progress toward the annual goals and having efficient data to make essential educational decisions once normal school operations resumes. The parent of a student with a disability and the district may agree to not convene an IEP meeting for the purposes of making these necessary changes, and instead develop a written document to amend or modify the student's current IEP (to be included as part of the IEP).

**24. How should Schools document the changes to a student's IEP during a school closure?**

In all instances, a School should be using the PWN to document the changes to a student's IEP.

The PWN must include the requirements set out in the IDEA regulations at 34.CFR. § 300.503. These include, among other things, a description of the actions proposed or refused by the School, an explanation of why the agency proposes or refuses to take the actions, a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; other options considered by the IEP team and the reason for their rejection; and a description of other factors relevant to the agency's proposal or refusal. In addition, Schools must ensure that the PWN is provided to the parent in an understandable language, including their native language if feasible, and provide sources for parents to contact for assistance in understanding the rights of parents and children under the IDEA.

**25. Can Schools email the PWN to parents?**

Schools should discuss with parents and determine whether email communication is an effective method of communicating with the parent. If the parent has access to reliable email and agrees, Schools are allowed to use

email to communicate with parents and send the PWN by email. PED's response does not address any internet security issues, which must be determined by Schools' policy and practice.

**26. Can parents request IEP team meetings and evaluations during the school closure?**

Nothing prevents a parent from requesting an IEP team meeting or evaluation during the school closure.

**27. Are Schools required to continue to identify children as eligible for special education when it is not possible to do the evaluations that require face-to-face contact with the student?**

These requirements of the IDEA have not been waived. Schools should continue Child Find activities, including steps to identify, locate and evaluate students as students with disabilities eligible for special education throughout the extended school closure due to COVID-19. Aligned to New Mexico Technical Evaluation and Assessment Manual (NMTEAM) guidance, Schools can review existing information about the child, medical information, parent-provided evaluations, and obtain rating scales as well as any other assessments or tests that could be administered without being face-to-face with the student.

If a determination of eligibility can be made, Schools should convene an eligibility determination team (EDT) (virtually or telephonically) to determine if the student is eligible and is in need of specially designed instruction and if so, develop an IEP to be implemented.

If a determination of eligibility cannot be made, due to the need to obtain additional information in order to complete the evaluation, Schools must develop a plan for alternative ways in which to obtain the needed information.

**28. Have the IDEA requirements for preschool transition conferences been modified due to the school closure?**

At this time, there is no current ability to waive these IDEA requirements. Schools should reach out to their transition C to B partners. Schools are still required to attend these conferences and adhere to all IDEA timelines as normal. Part C agencies are offering virtual meetings, so please alert your staff to be prepared with a Review of Existing Evaluation Data (REED) and parent consent. Schools should use the PWN diligently during this time to lay out clearly how school staff members will be completing evaluations in agreements with families. Families must be in agreement. The School's guidance is to do all parts of the evaluations that can be done without face-to-face contact such as rating scales, review of Part C information/evaluations, and review of any medical information or parent provided evaluations. If a determination can be made or an area of eligibility is clear, schools should do so. The PWN can spell out clearly what further evaluation will be completed as soon as Stay At Home provisions are lifted and buildings are again open.

Early Intervention agencies will be holding transition conferences, and must still send the transition summary form and any evaluations and required paperwork at least 30 days in advance of transition conference so Schools can be ready to attend. These agencies are also required to document per federal requirements if the School attended or not.

**29. Can students who have had their third birthday continue to receive IDEA Part C services pending the completion of their transition to preschool if that transition was delayed by the school closure?**

The requirements for transition from Part C to Part B has not changed, and there is no ability to continue Part C services past a child's third birthday. The Family Infant Toddler (FIT) Program service provider agency must notify the School of children who reside in the School's educational jurisdiction and who are potentially eligible for Part B services. Schools must conduct effective program planning and support efforts for Schools to have eligibility determined and an IEP developed and implemented for eligible children by the child's third birthday.

**30. Are Schools required to conduct evaluations of students with disabilities during a school closure?**

If an evaluation of a student with a disability requires a face-to-face meeting or observation, the School can delay the evaluation until school reopens. Evaluations and observations that do not require face-to-face assessments or observations may take place while the school is closed if the parent consents.

**31. Does the 60-day timeline for initial evaluation apply during the extended school closure?**

At this time, there is no current ability to waive this IDEA requirement. Initial evaluations must be completed within 60 calendar days of written parental consent.

If the initial evaluation is not able to take place or was not fully completed due to school closure, Schools should communicate with the parents and convene a meeting (virtually and/or telephonically) to discuss: 1) whether adequate information exists to identify the student as eligible for special education and if so, schedule an EDT/IEP meeting (virtually and/or telephonically), or 2) whether additional information may be needed in order to complete the evaluation and if so, develop a plan for alternative ways in which to obtain the needed information.

**32. Are there any modified requirements for reporting non-compliance with the 60-day initial evaluation timeline?**

Schools should proceed with completing 60 -day initial evaluations within timelines. Missed 60-day timelines should be completed as soon as possible. If there are deviations from legally established timelines, Schools should document in the student's folder all reasonable efforts made to follow timelines and report any deviations to the PED Special Education Division as outlined in Question 49 below.

**33. What reasons should be documented as the basis for failing to evaluate or complete a student's evaluation due to the school closure?**

Schools should document that the evaluation was not completed or conducted due to the need for face-to-face assessment, testing and/or observation that were not possible due to the COVID-19 pandemic. Parents are not required to produce their child for evaluation during the pendency of any Stay At Home Order. If parents later refuse to produce their child for evaluation, Schools should document the reason for the refusal, including whether the refusal is due to the COVID-19 pandemic.

**34. Are schools still required to conduct reevaluations?**

At this time, there is no current ability to waive this IDEA requirement. A reevaluation of a student with a disability must be conducted at least every three years, unless the parents and the district agree that a reevaluation is unnecessary. However, when appropriate, any reevaluation may be conducted through a review of existing evaluation data (REED), unless it is determined that additional assessments are needed.

**35. What if a student's three-year evaluation date is not met due COVID-19 pandemic response related issues?**

Schools should proceed with completing reevaluations within timelines. Missed three-year reevaluations should be completed as soon as possible. If there are deviations from legally established timelines, Schools should document in the student's folder all reasonable efforts made to follow timelines.

**36. Are there any specific requirements for signing documents when a meeting is conducted by video conference or telephone?**

There are no specific requirements or methods for obtaining signatures in a video conference or telephone meeting. One recommendation would be to document the participation in the PWN. For written consents, it is recommended to obtain a scan/email, photograph, etc. of the signed written consent.

**37. Are Schools required to provide related services when a school goes to a distance-learning platform for all students?**

If a student's IEP requires the provision of related services, the district is responsible for providing these services through a distance-learning platform. In many cases, services such as speech and language therapy, or other special education related services may be able to be provided in a virtual environment. Any adaptations in service delivery of related services during the period of school closure should be based on individual student's needs and reviewed by the student's IEP Team.

**38. Can related service providers utilize tele-therapy or video therapy during the statewide school closure?**

Schools may consider using tele-therapy or video therapy during the statewide school closure as an aspect of continuity of education afforded to students. Related service providers can use any non-public facing remote communication product that is available for use, including applications for video chats such as FaceTime, Facebook Messenger video chat, Google Hangouts video, Zoom, or Skype. Any type of encryption and privacy modes in the application should be enabled. Although the provision of services in this manner normally would need to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) rules for remote communications technology, the Office of Civil Rights for the U.S. Health and Human Services Department has announced that it will exercise its enforcement discretion and not impose penalties for non-compliance with those rules for the good faith provision of telehealth during the COVID-19 health emergency. Consideration should be given to notifying parents what application is being used for therapy.

**39. Are private contractors allowed to continue to bill and be paid for "Emergency Leave - COVID-19" and/or to bill for complete days when only part of a day was worked?**

To the best of their ability, Schools are expected to work collaboratively with employees/contractors to determine how to most effectively utilize paid staff during the closure. Through this collaborative planning, Schools should still be meeting the expectations for social distancing, complying with the Governor's public health order, and managing employee/contractor needs. These expectations can be met through telework, video/teleconferencing, and live reporting to work under controlled circumstances. Generally, all employees/contractors should be considered available to participate in activities that contribute to the ongoing improvement of the educational process and/or to assist with ongoing services to be provided by the Schools (i.e., health services, community support, and student/family support). Examples of this work include but are not limited to: telephonic/virtual support for students and families, crisis management planning and support, documentation maintenance, data review and analysis, providing professional development for staff, collaboration with general education or special education staff, meetings, etc.

Please reach out to your School for specific Alternate Work Expectations during the period of school closure.

**40. Can Medicaid in the Schools be used in connection with tele-therapy or video therapy by related service providers?**

Medicaid School Based Services (MSBS) will provide further guidance to Schools regarding billable services for Medicaid.

**41. Does providing instruction remotely through teleconference or video conflict with the requirements of FERPA or HIPAA?**

Teachers generally do not disclose personally identifiable information from a student's education record during classroom instruction, and the determination of who can observe a virtual classroom, similar to an in-person classroom, is a local school decision. The Family Educational Rights and Privacy Act of 1974 (FERPA) does not require or prohibit individuals from observing a classroom, whether in person or by some other means. Similarly, the provision of special education instruction through video or telephone would not violate HIPAA for several reasons, including that teachers should not disclose protected health information during classroom instruction. Schools are advised to caution school staff to not disclose personally identifiable information or protected health information for students during instruction, as under normal circumstances.

**42. Are Schools still required to do Student Teacher Accountability Reporting System (STARS) End of Year (EOY) data submission?**

The PED has not received information that this will be suspended.

**43. Does IDEA Part B fund both prior to and during a COVID-19 outbreak?**

The IDEA Part B funds may be used for activities that directly relate to providing, and ensuring the continuity of, special education and related services to children with disabilities.

For example, a School may use IDEA Part B funds to disseminate health and COVID-19 information that is specifically related to children with disabilities, to develop emergency plans for children with disabilities, or to provide other information to parties who may need such information, including school staff responsible for implementing IEPs, parents of eligible children, and staff in alternate locations where special education and related services may be provided.

Schools, however, may not use IDEA Part B funds to develop or distribute general COVID-19 guidance or to carry out activities that are not specific to children with disabilities (e.g., general COVID-19 activities for all children and staff). Schools also may not use IDEA Part B funds to administer future COVID-19 vaccinations to any children, including children with disabilities.

**44. What Dispute Resolution options are available for Schools and parents to resolve disagreements over IDEA services?**

The full range of Dispute Resolutions required by the IDEA remains available. This includes Mediation, Facilitated IEP meetings, State Complaints and Due Process Hearings. The PED Special Education Division Alternative Dispute Resolution staff are available to answer any questions.

**45. If a School or parent files a due process hearing request, will the due process hearing take place during the school closure?**

Parents and Schools will continue to be able to file special education due process hearing requests with the PED. The PED requires that Schools have an administrator assigned to receive these complaints through electronic transmission during school closure. The parties to a due process complaint should address any requests for extensions of time to the PED appointed Due Process Hearing Officer. However, as long as a Stay at Home Order remains in effect, mediations, Facilitated IEP Meetings, State Complaints, or due process hearings will take place by telephone, videoconferencing or any other way that ensures effective communication.

**46. If a state complaint is filed, will it be investigated during the school closure?**

PED will continue to accept State Level Complaints under the IDEA and state special education rules. The PED requires that Schools have an administrator assigned to receive these complaints through electronic transmission during school closure. The parties to a State Complaint should request an extension of time for exceptional circumstances if COVID-19 will prevent them from responding to the complaint or participating in the investigation of a particular complaint.

**47. Can mediation or Facilitated IEP meetings be done during the school closure?**

The PED will continue to accept requests for mediation or Facilitated IEP meetings under the IDEA and state special education rules. If the parties agree, mediation and Facilitated IEP meetings may be conducted by telephone, videoconferencing or any other way that ensures effective communication.

**48. Are Schools required to comply with Corrective Action Plans (CAPs) during the school closure?**

Schools are federally mandated to make corrections and provide evidence of systemic compliance in a CAP within one year of written notification of findings. At this time, there is no ability to waive this IDEA requirement under the IDEA. However, the PED can adjust the timeframes for steps within a CAP if it stays within that one-year

timeframe. Any School needing adjustment to a CAP due to the school closure should contact the PED Special Education Division.

**49. What steps should a School take if they cannot meet required compliance indicators due to school closure?**

If a school closure due to COVID-19 impacts a School's ability to meet required compliance indicators, the PED Special Education Division is requesting the following for each student impacted:

- State student identification number
- Indicator(s) impacted for each student
- Dates when actions occurred (i.e., evaluation, IEP, transition IEP, etc.)
- Additional comments if necessary to support why the School was non-compliant

The PED Special Education Division will establish a due date for the information after school resumes. At the end of the school year, Schools will be required to provide IEPs, consent for evaluation, evaluation timelines, etc., for each student and indicator that were missed. All of this information will help the PED Special Education Division to communicate with the Office of Special Education Program (OSEP) and ensure that Schools are not indicated as non-compliant due to the school closure.

**50. What is the impact of school site closures on special education monitoring timelines and processes? Will monitoring activities (On-Site, Self-Assessment, and Data Review Monitoring) continue during the school closures?**

The PED has suspended and postponed all on-site monitoring which will be rescheduled. Only self-assessment monitoring and data review timelines remain the same. The PED is assessing the impact of school closures and may adjust timelines for monitoring activities if school closures are extended further. Desktop monitoring will continue with each district's PED Education Administrator.

The federal government has not waived the federal requirements under the IDEA. The PED is working with the United States Department of Education (USDOE) to determine what flexibilities or waivers may be issued in light of the current extraordinary circumstances. Until and unless the USDOE ultimately provides flexibilities under federal law, Schools should document how Schools are adhering to IDEA requirements, including federally mandated timelines, to the maximum extent possible. Schools are encouraged to consider ways to use distance technology to meet these obligations. However, the PED acknowledges the complex, unprecedented challenges that Schools are experiencing from the threat of the COVID-19, and is committed to a reasonable approach to compliance monitoring that accounts for the exceptional circumstances facing the state.

In addition, due dates issued by the PED Special Education Division monitoring activities, including Targeted Monitoring, Intensive Monitoring, and Significant Disproportionality have been extended for a minimum of two months from the date of this notice. The PED Special Education Division will continue to evaluate the need for further extensions and will work with Schools to be reasonable and accommodating given these exceptional circumstances. At this time, the USDOE has not extended the allowable Comprehensive Coordinated Early Intervening Services budget period of 27 months.

If a School is having difficulty meeting timelines or has questions related to timelines, the School should contact its assigned PED Educational Administrator.