

Memo To: Special Education Unit Directors  
From: Gerry Teevens, Office of Special Education  
Re: Evaluation Guidelines During COVID-19

Date: April 2, 2020

During these unprecedented times of distance learning, educators and families are striving to balance the health and safety of all North Dakotans, while continuing to protect the rights of students with disabilities and ensure a free and appropriate public education (FAPE).

The United States Department of Education has been clear stating: “ensuring compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance instruction....School districts must provide a free and appropriate public education (FAPE) consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students.”

While it is understood that education through distance learning looks different than a traditional classroom, the IDEA continues to be in effect, ensuring a FAPE for students with disabilities. Under these conditions, it is of paramount importance that educational decisions continue to be made on an individual basis.

While requests for greater flexibility have been made to the Office of Special Education and Rehabilitative Services (OSERS) and the Office of Special Education Programs

(OSEP), in North Dakota, for students ages 3-21, the 60-day timeline for initial evaluation continues to be in effect.

Team discussion and reasons for not meeting this timeline must be clearly documented in a Prior Written Notice of Special Education Action. If an IEP team determines that, because of individualized circumstances, the 60-calendar day timeline will not be met for a student, the IEP team must clearly document the unique exceptional circumstance. The decision(s) and timeline(s) for completing the evaluation should be clearly documented. Parents are given their procedural safeguards if they are disputing the rationale.

If the IEP team determines an evaluation of a student with a disability requires a face-to-face evaluation, the process would need to be delayed until the school building reopens. Evaluations (ex: interviews, checklists, rating scales, virtual methods) and re-evaluations that do not require face-to-face evaluations or observations may take place while schools are closed, so long as a student's parent or legal guardian consents.

These same principles apply to similar activities conducted by appropriate personnel for a student with a disability who has a plan developed under Section 504, or who is being evaluated under Section 504.

If an evaluation was in progress when school buildings in ND were closed, the NDDPI is recommending the following considerations:

- ✓ If all the assessment information was completed prior to the school building closure, the team should consider meeting virtually, telephonically, or through other appropriate options to complete the Integrated Written Assessment Report (IWAR) and make eligibility determinations. This should be followed by the

completion of a finalized Prior Written Notice of Special Education Action in TieNet.

- ✓ If the IEP team decision is to complete the evaluation virtually, move forward with the evaluation and conduct the Integrated Written Assessment Report (IWAR) meeting and make an eligibility determination. This should be followed by the completion of a finalized Prior Written Notice of Special Education Action in TieNet.
- ✓ If adequate assessment information has not been gathered to hold the IWAR meeting and make an eligibility determination, then each evaluator should complete an Individual Diagnostic Report form found in TieNet to capture the evaluation results thus far. For assessments that have not been completed yet, evaluators should work with parents to determine which assessments will be completed and which assessments will not be completed until school buildings reopen. This should be followed by the completion of a finalized Prior Written Notice of Special Education Action in TieNet.

The NDDPI understands that there may be exceptional circumstances that could affect how a particular service is provided. If an eligible student does not receive IEP direct and/or related services after an extended period of time, the student's IEP Team, or appropriate personnel under Section 504, must make an individualized determination whether and to what extent compensatory services are needed. This includes consideration for any extended time between referral, initial eligibility determination, and delivery of initial special education services.

As the NDDPI continues to partner with all stakeholders interested in the IDEA, the Department continues to advocate for

- 1) Ongoing communication between schools and families,
- 2) Individual decisions made based on good faith efforts, and
- 3) Clear documentation through Prior Written Notice of Special Education Action.

Thank you for all the hard work and effort put forth to continue to serve North Dakota students with disabilities and their families.

References:

United States Department of Education, Office of Civil Rights, Office of Special Education and Rehabilitative Services Supplemental Fact Sheet (March 21, 2020):

[https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)

United State Department of Education, Office of Civil Rights Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students:

<https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf>

Joint letter to U. S. Department of Education, Office of Special Education and Rehabilitative Services and Office of Special Education Programs from the Council of Administrators of Special Education and National Association of State Directors of Special Education dated March 31<sup>st</sup>, 2020.