

REMEMBER
WHY YOU
STARTED



kriha kb boucek

2 TransAm Plaza Dr., Suite 450 • Oakbrook Terrace, IL 60181
krihaboucek.com • 630.394.3790

March 28, 2020

krihaboucek.com

Table of Contents

<i>Remote Learning Plan</i>	2
<i>Provision of Services</i>	3
<i>Managing Disputes</i>	8
<i>Special Populations</i>	10
<i>Teletherapy Services</i>	11
<i>IEP Meetings Evaluations</i>	13
<i>Fireside Chat Information</i>	15
Contact us!	16

COVID-19 UPDATE SPECIAL EDUCATION GUIDANCE

Our thoughts and best wishes are with you, your families and your school communities during this unprecedented and difficult time. We are sending this newsletter out knowing that we do not have all the answers as the sand is shifting under our feet. That said, we are committed to solving problems in pragmatic and creative ways, a lesson we learned from our teachers over the years, including the educators we serve. Thank you for this gift.

ISBE Emergency Rule [23 Ill. Adm. Code § 5.10 Remote Learning Days](#) – Issued on March 27, 2020

Local control carries the day. The emergency ISBE rule allows school districts that implement e-learning programs to make modifications to their plans. School districts without approved e-learning programs must adopt 'Remote Learning Day Plans'. Districts may use five 'remote learning planning days' to develop, review and amend their plans, the terms of which must be mutually agreed with their respective bargaining units. The unique needs of special education students must be taken into account when the plans are developed and approved. This newsletter will help you formulate some ideas.

A Few Disclaimers

As with any newly emerging issue, our collective knowledge will evolve over time. We fully expect additional ISBE (perhaps even national) guidance along with insights from you that will change our thinking and advice. As the landscape develops and changes, we will send updates accordingly.

This newsletter is intended for general information purposes only and does not, nor is it intended to, constitute legal advice. Contact your board's attorney for advice on specific legal issues.

REMOTE LEARNING PLAN

The ISBE 62-page [Remote Learning Recommendations](#) document issued on March 27, 2020 devotes a mere two pages to special education considerations (see pages 30-31) which is probably for the best. It would be nearly impossible to adequately describe or capture the extraordinary efforts educators are making to serve special education students during this crisis.

Q1. *What considerations should guide us when determining how remote learning will be provided to special education students?*

Designing remote learning for students with disabilities requires a keen understanding of their strengths, needs, and IEP goals. It is not reasonable to replicate at home the services that you provide to special education students in the school setting. The same is true for all children. Keep in mind that ISBE (page 40 of the Remote Learning document) recommends that new instructional content is *not* introduced during the remote learning period.

The provision of special education instruction during remote learning should take the following considerations into account:

- *Individualized* to meet the unique needs of the student
- *Reasonable* in light of the current circumstances
- *Appropriate* based on the student's unique needs and learning style
- *Focused* on readiness for the next grade level
- *Accessible* to the student and family
- *Holistic* in terms of each family's unique circumstances
- *Commensurate* with what is provided to students without disabilities

Remote learning delivery options for special education students (all students) can include a variety of platforms (more on confidentiality considerations follow at Q24):

- Video conferencing (Zoom, Skype, etc.)
- Video lessons (Google classroom)
- Choice boards with check-ins
- Email check-ins
- Special education listserv communication to families and work packets sent home
- Phone calls from case managers, teachers, related service providers

A few words about confidentiality: you cannot guarantee the confidentiality of remote learning. Period. Full stop. Our inboxes are full of emails warning school districts about the perils of this or that platform. We have observed that some in the field are attempting to manage this aspect with lengthy confidentiality agreements that parents are 'required' to sign which we do not agree is necessary. The harsh reality of the situation is that *you cannot guarantee the confidentiality of instruction, services or communications delivered through an electronic or remote medium.* It really is just as simple as that. The best way to address confidentiality is through candid dialogue with your families: "We cannot control or guarantee the confidentiality of sessions held on any remote electronic platform or application. District personnel cannot know or control who is listening or viewing the sessions in each household. If you have specific confidentiality concerns, please let us know."

PROVISION OF SERVICES

Q2. *Will Congress provide guidance about special education services at the federal level during the COVID-19 pandemic?*

Our firm has provided the following statements to Congress and the U.S. Department of Education:

- It is not reasonable to expect that public school districts will carry on as normal or that instruction and related services will be provided for special education eligible students in the same amounts, with the same fidelity or with the same rigor during a pandemic health crisis.
- The COVID-19 pandemic has negatively impacted all of our nation's children, general education and special education alike. The pandemic will necessarily result in limited instruction and special education services for a period of approximately 40-50 school days until the end of the current school year.
- Public educators are spending the vast majority of their time at present serving the immediate needs of families in their communities who are experiencing anxiety and insecurity about basic human needs, including how to feed and shelter their families and whose lives have been upended due to job loss, inability to pay mortgages, illness, etc.
- Until school resumes as normal, compensatory education must be put on hold. Alternatively, compensatory education should only be available in extremely limited situations, *i.e.*, when a school district engages in bad faith efforts to deprive children of special education services. The costs of compensatory education, if any, should be eligible for federal COVID-19 funding allocations.
- A temporary moratorium must be placed on awards of parent attorneys' fees relating to the enforcement of substantive and procedural errors in implementing the IDEA during (and relating to) this pandemic crisis. Unfortunately, a very small minority of parents' attorneys will use this disruption as a way to drum up legal fees and costs from school districts throughout the country.

We can confirm that a temporary reprieve from certain federal special education requirements, both procedural and substantive, is being discussed. The enormity of the COVID-19 crisis and the need for flexibility is palpable throughout the country. To expect school districts to strictly adhere to IEPs is not possible under the circumstances and will invite parents and attorneys to flood the system with due process complaints. This is untenable at a time when school personnel need to be focused on serving students instead of litigation. There is only so much room and we could keep at this for pages. Just know that it remains to be seen whether Congress will carry through with any such initiatives. We will keep you informed of any developments.

Q3. *Is FAPE still required for special education students?*

Yes. FAPE (free appropriate public education) will continue to be the legal analysis that school districts are held to when disputes arise regarding remote learning and related services delivered to students during this crisis period. However, we believe that what constitutes FAPE from March 17, 2020 until schools re-open will involve a different analysis than what we are accustomed to. Whether ISBE hearing officers and courts agree with us remains to be seen.

On March 22, 2017, the U.S. Supreme Court issued the *Endrew F.* decision which modified the *Rowley* FAPE standard as follows: “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP that is reasonably calculated to enable a child to make progress appropriate *in light of the child’s circumstances.*”

We can probably all agree that our ‘children’s circumstances’ have changed drastically since mid-March when schools closed. Consider also this language from the [Supplemental Fact Sheet](#) issued by the U.S. Department of Education (DOE) dated March 21, 2020:

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. In this unique and ever-changing environment, OCR and OSERS recognize that these exceptional circumstances may affect how all educational and related services and supports are provided, and the Department will offer flexibility where possible. However, school districts must remember that the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.

The Department understands that, during this national emergency, schools may not be able to provide all services in the same manner they are typically provided. While some schools might choose to safely, and in accordance with state law, provide certain IEP services to some students in-person, it may be unfeasible or unsafe for some institutions, during current emergency school closures, to provide hands-on physical therapy, occupational therapy, or tactile sign language educational services. Many disability-related modifications and services may be effectively provided online.

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.

Q4. Do school districts have an obligation to provide full IEP services during the COVID-19 school closure period?

During the Illinois *Act of God* days (March 17 - 30), there was no expectation that a full day of instruction or full complement of related services would be provided to any student, including students with IEPs and Section 504 Plans. Schools do not have to make up *Act of God* days and those days ‘count’ for purposes of the school calendar. For many school districts in Illinois, the instruction provided on *Act of God* days took the form of ‘e-learning’ instruction that had been developed for short-term use during ‘snow/cold’ days. E-learning was *never* designed to be implemented for more than about five days.

Days from March 31 on are considered ‘remote learning days’. ISBE’s new [Emergency Rule 5.10](#) (Remote Learning Days) requires that school districts develop remote learning plans to be implemented until the Gubernatorial Disaster period has ended. These days must be implemented for all students in grades pre-kindergarten through grade 12 and will count as pupil attendance days (*aka*, school days). We noticed that ‘grade 12’ was used instead of transition programming, but suspect it was simply a mistake by ISBE. We recommend that remote learning plans be developed for all students, including those between the ages of 18-21 being served in transition programs.

As discussed more fully in Q1 above, the specific details of each remote learning plan will be determined at the local level, by each school district to meet the needs of their own student population taking into account the school district’s own unique circumstances.

Q5. *If these days count as school days now, how will that impact special education timelines?*

Timeline questions are a bit tricky at the moment. Just remember that we are in a time of crisis and ISBE will have more important things to do than reprimand school districts for violating timelines. That's not to suggest it won't happen, but we can explain that what happened was out of our control. The 'Act of God' days from March 16-30 will not be considered 'school days' for purposes of timelines. We believe that the 'school day' clock will resume on March 31, 2020 (except for spring breaks, which would obviously not be counted as school days).

Q6. *Are remote learning plans grade-level-based or individual student-based?*

The remote learning plans that school districts develop and post on their websites will encompass the learning expectations for each grade level. For example, there will be a 'remote learning plan' for all 1st grade students who attend the district's schools. The vast majority of your 1st grade students who are special education eligible will follow that *exact same plan*.

Once the grade-level remote learning plans are in place, the analysis will then shift to the IEPs and Section 504 Plans that are in place for each student. Using our 1st grade example, case managers (or designees) must review the IEP and Section 504 Plans for the 1st grade students on their caseloads to determine whether any related services, supports, accommodations, etc., will be provided during the remote learning period.

This review must be done on a case-by-base, individualized basis. A student's case manager might decide that the remote learning plan for John should be modified to include less content, reduced assignments and chunking of assignments, or perhaps that the instruction for John during remote learning must be provided in two modalities, e.g., verbal and written. It could even be that the case manager recommends that John focus exclusively on speech-language goals instead of 1st grade coursework. There is really no 'wrong answer' here. Just make sure that meeting the individual needs of each student is the primary consideration.

Q7. *Are we required to provide related services during the school closure period?*

The ISBE 62-page [Remote Learning Recommendations](#) document issued on March 27, 2020 does not answer this question directly (see page 31). Although it states that "IEPs remain in place and should direct students' remote learning," it is instructive that the recommendations fail to make a single comment about whether related service must continue to be provided to students. Instead, the ISBE recommendations stress collaboration with other staff members as opposed to the delivery of direct services, e.g., related service providers "play a vital role in the daily instruction" of students, they remain "a part of the continued learning of our students," they should "assist in contacting families ... and helping with work," and they "should be working in collaboration with other educators to meet the needs of students with disabilities."

As such, the decision about whether related services will continue to be provided to students will be made at the local level. Some school districts have asked their related service 'teams' to create activities and choice boards based on developmental grade bands (e.g., preschool - K, grades K - 2, grades 3-5, grades 6-8, etc.) that address common developmental skills for each age group. Other school districts will conduct a more individualized analysis when determining what related services to provide to students and in what amounts. School districts will have discretion to make these decisions based on their own circumstances.

Q8. *A student's regular school week (or month) consists of 90% instruction and 10% related services. Can we use that same ratio to calculate related service minutes during remote learning?*

Again, school districts have broad discretion during the remote learning period to decide whether to provide related services and, if so, which ones. If the decision is made to provide related services to students, there is no reason why you can't use this ratio calculation as a guide, with the understanding that a student's individual needs should be taken into account when making a final decision. The concern is that when we become too formulaic in our approach, it generally exposes school districts to increased liability for a denial of FAPE.

Q9. *Can we limit the number of goals and objectives addressed during remote learning?*

Yes, this is entirely appropriate. It is unreasonable to expect that educators can replicate, at home through remote learning, the delivery of instruction and related services for students in the same manner that occurred before March 16th. As you design the remote learning and related service plans for your students during the COVID-19 closure period, we recommend that you select a limited number of goals (e.g., 1-3) per student that will continue to be addressed during remote learning.

Questions to consider:

1. Is the remote learning plan individualized, reasonable, appropriate and a good faith effort to allow the student to make progress on the selected goal(s)?
2. How does the remote learning instruction and related services help the student achieve readiness for the next grade level?
3. What accommodations and modifications, if any, does the student require to access remote learning and related services?
4. Identify any barriers to delivering those services remotely and take steps to remove those barriers or provide alternate services that allow the student to continue working toward the chosen goal(s).
5. Consider a holistic view of the students being served as you develop the remote learning plans. How might individual family circumstances affect the plan as a whole? How can you encourage families to let you know if they need assistance?

Q10. *Can we make FAPE decisions based on administrative considerations?*

The answer to this question is usually 'no'. However, the DOE's [Supplemental Fact Sheet](#) makes it clear that FAPE will be different during this extraordinary time. For example, if multiple staff members (and by logical extension, their family members) at Lincoln School are diagnosed with COVID-19, this will impact what services and the amount of services that can be provided to its students. A school system with multiple schools may be able to adapt and assign staff at other buildings to remotely serve the children enrolled at Lincoln School, but circumstances might also not allow this. The bottom line is that we believe administrative considerations can properly be taken into account during this emergency period. There are too many variables and moving parts associated with an emergency not to take administrative issues into account. Just be sure to document all decisions in writing and take other, non-administrative, factors into account as well.

Q11. *How will these decisions be made and who makes them?*

We recommend that school personnel make a determination regarding the remote learning and related services that will be provided to each special education eligible student during the period of school closure. These are local decisions made by school personnel based on their own unique circumstances. Decisions about **how** (the mode of delivery) the **type** (remote instruction/related services) and the **amount** (number of minutes slated to be delivered per day/week/month) must be individualized based on the student's unique needs, balanced with administrative considerations. The school team's recommendation should be conveyed to parents (and students, as appropriate) for their input.

Some school districts will ask their IEP teams to meet remotely and make these decisions for the students on their caseload, which is absolutely fine. However, we believe that these are emergency decisions that can be made by school personnel, so long as parents are notified and given an opportunity to provide input.

In other words, we do not believe that these decisions are placement changes. Instead, the transition to remote learning is the result of a world-wide health pandemic where all students are affected in a similar manner.

Q12. *What if parents disagree with the remote learning plan for their child?*

Document parental disagreement in writing (keep good notes). School personnel and parents will often be able to quickly resolve their dispute. If agreement is not reached, the recommendation made by school personnel will be implemented, unless parents decline to allow their child to participate. A prior written notice letter (PWN) is advisable in these situations and parents retain the right to request a due process hearing to dispute the school's recommendation. More on PWN letters and dispute resolution will follow later in this newsletter.

Q13. *Do IEPs or Section 504 Plans need to be amended?*

It is unacceptable to ask school personnel to devote time to paperwork during a pandemic crisis. This is an emergency situation that does not constitute a change of placement for your special education students.

Q14. *How do we implement behavior intervention plans for students remotely?*

Functional behavioral analyses and behavior intervention plans are written to support students with behaviors that impact the school environment. They are not designed or written to be implemented in the home. We generally do not recommend that you ask parents to collect data regarding student behavior, although this might be appropriate in certain circumstances. We recommend that you prioritize check-ins for students with BIPs to support their families during this difficult time.

Q15. *Will school districts be required to make up missed instruction and related services?*

The mandatory school closure period is a short-term, defined period of time when instruction is reduced for all students due to a pandemic health crisis outside of anyone's control. We view the mandatory closure period as a unique period of time when all students will receive fewer educational services without any expectation that those services will be made up in the future.

It is too soon yet to know whether extended school year (ESY) services will even be provided this summer. We also can't be entirely certain at this point whether school will begin on time as scheduled in the fall of 2020. These are discussions that must wait for another day. Until then, our position is that missed special education instruction and related services during the mandatory school closure period need not be made up. Disputes about this particular issue will almost certainly be part of our future, as discussed below.

MANAGING DISPUTES

Q16. *Can parents/guardians request compensatory education?*

Yes. Requests for compensatory education can be made through the ISBE due process hearing procedures and we have already received a few such requests in the office. We anticipate more in the weeks ahead. Compensatory education can be granted by a hearing officer only when a school district denies a student FAPE. The denial of FAPE commonly involves a failure of some sort and as was previously discussed, often hinges on whether a student made reasonable progress toward his/her goals and objectives in light of his/her circumstances.

For all of the reasons we have discussed, we encourage you not to worry about this aspect quite yet. We have a strong argument that FAPE is relaxed during times of crisis and, even if it is not officially, that the totality of the circumstances related to this global pandemic will greatly impact how we measure and determine FAPE. How we analyze and defend against these requests will become more clear over time and we will be right there with you. As you might expect, the notes and records that staff members maintain during this period will be imperative in defending against compensatory education claims and the like. Focus on good record keeping now and we will figure out compensatory education later, if it becomes necessary.

Q17. *Criticism from parents is difficult to manage right now, how should we respond?*

Remember that everyone is experiencing crisis and trauma right now, including parents. Stay on the high road and demonstrate grace under pressure. You and your staff will be on the receiving end of some highly charged communications criticizing your every decision. You will witness every stage of grief and then some. You can handle it, just like you always have. Major disagreements are likely to arise, and that's okay. Just breathe for now and rest assured that we are prepared to help you manage conflict on the other side.

A hundred years from now it will not matter what my bank account was, the sort of house I lived in, or the kind of car I drove ... but the world may be different because I was important in the life of a child.

Try to take good care of yourselves right now. It is just not humanly possible to serve others and be at your best when you are stressed and overworked. Go easy on yourself and know that it is okay to make mistakes as we learn and grow together during this difficult time. Your dedication and commitment to children knows no bounds and it does not go unnoticed or unappreciated.

Q18. *Parents have requested reimbursement/payment for private instruction and/or related services. How should we respond?*

Review and respond to each request as you would in the normal course. A PWN letter is probably also in order. Sample response:

I hope that this message finds you and your family in good health. Your request for reimbursement/payment for [instruction/private therapy] is denied. Our state and country are in an unprecedented time of crisis due to the COVID-19 pandemic and outbreak. All Illinois schools were closed by Executive Order of the Governor on March 16 until further notice. Our staff members have been working around the clock to prepare and arrange for remote learning opportunities to continue for our student population, including your child. More information about the provision of remote instruction and related services will be provided to you as it becomes available. If you wish to make arrangements for your child to receive private instruction and/or therapies, that is certainly your right; however, the school district will not pay any of the associated costs. If you have any questions or concerns, please let me know.

Q19. *What is a prior written notice (PWN) letter?*

The last time that IDEA was reauthorized (hard to believe, but in 2004), ‘prior written notice’ language was included in the procedural safeguards section. Commonly referred to as a PWN, the law specifies that when certain things happen, school personnel must write parents a letter answering seven specific questions. This letter is considered a PWN that comes in handy when a dispute arises and we are in a due process hearing. A PWN is a strange and complicated thing. It must be written in the parents’ native language (if feasible) and written so that it is understandable. We write them most commonly in the following situations:

- Parent requests an evaluation or IEP meeting and the school district denies the request.
- Parent or student (age 18+) revokes consent for special education services.
- Parent requests reimbursement for a private therapy or makes a unilateral placement.

The exact language from the regulation [34 CFR §300.503(a)] states that a school district must provide parents with a PWN whenever the school district: “(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.”

The DOE has prepared a [sample PWN notice](#) that we modify to fit the situation at hand. The seven PWN questions that must be answered are:

- Description of the action that the school district proposes or refuses to take
- Explanation of why the school district is proposing or refusing to take that action
- Description of each evaluation procedure, assessment, record, or report the school district used in deciding to propose or refuse the action
- Description of any other choices that the IEP team considered and the reasons why those choices were rejected
- Description of other reasons why the school district proposed or refused the action
- Resources for the parents to contact for help in understanding Part B of the IDEA
- How the parents can obtain a copy of a description of the procedural safeguards

SPECIAL POPULATIONS

Q20. How do we design remote learning for students who will be aging out of services?

Prioritizing services will be especially important for students who are aging out of services over the next few months. In these instances, school districts should identify the most important supports the student requires (individualized) and focus on providing those supports through remote learning. Transition planning is complicated by the fact that it focuses on community engagement, accessing public transportation, job experiences, etc., none of which are allowed or encouraged at the present time.

Depending on your school calendar, the mandatory school closure period consists of about 40-45 school days. Sound familiar? When we make an interim alternative education setting placement for students (drugs/weapon/serious bodily injury) it is considered a temporary, short-term placement. Reduced instruction and related services during a pandemic emergency are akin to that – we will take the position that this pandemic emergency is similarly temporary in nature.

As it relates to transition students, this remote learning period is a temporary disruption. Establish good communication with transition students and their families, deliver remote learning opportunities and related services as appropriate based on the students' individual needs and transition students will age out of services in the normal course on the day before their 22nd birthdays. Generally speaking, parents cannot invoke a student's 'stay-put' educational placement to require a student to remain in a transition program post age 22.

Q21. Do we have flexibility regarding the evaluations of early intervention students?

ISBE currently provides no flexibility in the timeline for evaluating students as they transition from Early Intervention. These evaluations must be completed and a placement recommendation made prior to the student's third birthday, in the normal course. ISBE guidance suggests that these evaluations be conducted through electronic means, which is difficult (if not impossible) to accomplish with a play-based assessment. To the extent appropriate, we encourage you to rely on existing information and communicate with Early Intervention providers to determine eligibility and services.

Q22. Are we responsible for providing remote learning and related services to students enrolled in public/private therapeutic day school and residential facilities?

Generally, no. It is ISBE's expectation that public schools will continue to pay the tuition costs for placements in public and private therapeutic day schools and that these facilities will provide remote learning and related services to their students. We expect that this will continue through at least the 2020 ESY period.

On March 26, 2020, ISBE enacted [Emergency Rule 23 Ill. Adm. Code 226.335](#) entitled 'Nonpublic Special Education Placement of Public School Students' which provides as follows: "During the mandated suspension of in-person instruction pursuant to the Gubernatorial Disaster Proclamation 2020-038 and Executive Orders 2020-05 and 2020-06, and for the duration of the Gubernatorial Disaster Proclamation, all approved special education private facilities may continue to invoice school districts and school districts shall continue to pay the per diem approved by the Illinois Purchased Care Review Board under Section 14-7.02 of the School Code. The State Board of Education will reimburse school districts for all approved special education private facility expenditures."

Without the assurance that these payments would continue to be made to private facilities, they might have to terminate the employment of critical staff members or no longer remain open to serve students.

It should be noted that this Emergency Rule does not address placements in *public* therapeutic days schools; legal counsel should be consulted to discuss these situations. Remote learning expectations and tuition/room and board payments for students attending residential placements should also be reviewed with counsel on a case-by-case basis.

TELETHERAPY SERVICES

Q23. *Can instruction and related services be provided through teletherapy?*

Yes. The United States Department of Education (DOE) recently provided guidance on meeting the needs of students with disabilities during the COVID-19 pandemic. The DOE stated that the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction virtually, online, or telephonically. The Illinois State Board of Education has also provided recent guidance indicating that schools may consider using teletherapy during the statewide school closure as an aspect of continuity of education afforded to students.

Similarly, the U.S. Department of Health and Human Services released [guidance](#) on March 17, 2020, that during this pandemic crisis, OCR (the Office for Civil Rights) will not investigate teletherapy that may otherwise violate HIPAA compliance as long as the application is private facing (*i.e.*, Skype, Google Hangouts, etc.) rather than public facing (*i.e.*, Facebook Live, TikTok, etc.). Although HIPAA does not generally apply to schools, this is welcome guidance that will translate to schools.

Many related service organizations such as ASHA (American Speech-Language-Hearing Association), AOTA (American Occupational Therapy Association), NASW (National Association of School Social Workers), NASP (National Association of School Psychologists) have provided teletherapy recommendations for their members.

Q24. *Should parents be present with their child during teletherapy?*

Generally speaking, no. Parents do not need to be present during teletherapy, but you should provide parents with notice that therapy will be provided through electronic means, explain that confidentiality cannot be guaranteed, and encourage parents to contact you with any questions or concerns. Can parents refuse teletherapy? Yes; be sure to document the refusal in writing and notify parents that the therapy will not be made up in the future.

We have prepared a 1-page parental consent form allowing the provision of instruction and related services through teletherapy that we are happy to provide you upon request. The key language on the consent form includes:

- The School District's Acceptable Use Policy is applicable during these sessions.
- Students should participate in a comfortable, quiet and private location to the extent possible.
- Audio/video recording of the sessions is not allowed.
- The School District cannot control or guarantee the confidentiality of sessions held on any remote electronic platform or application. District personnel cannot control who is listening or viewing the sessions in each household. Parents/guardians should consider this when deciding whether to consent to their child's participation.

- If Parents/Guardians decline to consent, the services will not be made up or provided in a compensatory manner. However, the School District will consider requests for alternative service delivery depending on each child's unique circumstances. Contact your child's case manager or building principal to discuss available options.
- Parents/Guardians may request that the sessions stop at any time by notifying their child's case manager or building principal in writing.
- School personnel will develop the date/time schedule for the session(s).

Q25. *Will teletherapy be appropriate for all students?*

While teletherapy will be appropriate for many students, it may not be the answer for all students. Make sure to consider whether it is appropriate for students on an individual basis. Factors to consider include whether technology is an effective tool for the student, the student's age and level of independence, the skills being addressed, the home environment and the student's social and communication skills. If teletherapy is not appropriate, provide hard copies of materials to students with remote instruction or related services provided over the telephone.

Q26. *Must we provide services in the same format, using the same methodology, that we used when school was in session?*

No. As mentioned above, decisions about remote learning and the delivery of related services should be determined on a case-by-case basis, and services may look different to address the needs of students and to accommodate this unique situation. Some methodologies lend themselves well to remote learning and others do not. It will be important to prioritize student needs and area(s) of focus, as well as the factors mentioned in the questions above.

Q27. *What if we schedule a session with a student during a specific time and the parent indicates it is not convenient?*

If a teacher or related service provider schedules a service for a specific time and the family indicates that time is not convenient, the provider would generally not need to rearrange the schedule. Rather, the provider should let the parent know that the child would not receive the service that week and should document this communication in writing.

Q28. *How should we progress monitor and document the services provided to students?*

Those service logs are going to come in pretty handy right now! Staff must record the date of service, minutes provided, and goal area(s) addressed. If progress monitoring can be accomplished through electronic means, you should collect progress monitoring data, but note any factors that you think may be impacting the student's progress (*i.e.*, use of remote technology, additional stress or anxiety the student may be experiencing, etc.). If you are unable to collect progress monitoring data, record this in writing and note why this information is unable to be collected at this time. It is likely that the goal(s) impacted will simply be continued when schools re-open and progress monitoring resumes in the normal course

Q29. *What if a student does not have access to a computer or internet?*

School district personnel should communicate with families to determine if teletherapy is an appropriate option and how to address any barriers that might be present.

In addressing the needs of students without internet access, districts must figure out how to make materials accessible. We've seen districts do this in very creative ways. For instance, school districts could potentially provide students with devices or individual hotspots. Another option is for bus drivers to run regular routes to drop off work packets at students' homes. School districts need to find creative ways to make materials accessible and provide services to students with disabilities.

Q30. *Will districts receive Medicaid reimbursement for services provided through teletherapy?*

According to [ISBE's March 18, 2020](#) guidance on special education services during the mandatory school closure, it is not clear at this time whether districts may submit claims for reimbursement for services provided during the mandatory school closures. ISBE encourages districts to contact the Illinois Department of Healthcare and Family Services with any billing questions. The Illinois Department of Healthcare and Family Services recently put out this statement indicating they are working to expand Medicaid coverage to include teletherapy services and will continue to provide updated information.

We encourage school districts to document services provided through teletherapy for Medicaid reimbursement in the event services are covered during the mandatory school closures.

IEP MEETINGS AND EVALUATIONS

Q31. *Are IEP and evaluation timelines still in effect?*

Generally, yes, except 'school-day' timelines (like the 60-school-day evaluation timeframe) were tolled from March 16-30. That said, ISBE has indicated that 'calendar-day' timelines remain in full force and effect. Continue to monitor mail and email in the normal course to make sure timelines are met. We have attached an updated copy of our special education timelines and can assist you in calculating dates as necessary.

Essential meetings related to IEPs and Section 504s should proceed in the normal course this spring, even if they are held in alternate manner. You will likely experience situations where parents request that meetings be rescheduled to the fall due to health or work issues. Use discretion in these situations and keep written records of all decisions that are made. Common sense can be your guide.

A key consideration in any meeting related to students with disabilities (regardless of whether students are attending school or learning remotely) is meaningful parent participation. Make every effort possible to continue to ensure that parents have meaningful participation in IEP meetings.

Q32. *What if we are in the process of a case study evaluation and we are unable to meet with the student to complete the assessments?*

This will likely depend on the assessments that are identified as necessary along with the individual student's needs. For instance, it may be appropriate to conduct interviews remotely, and some assessments are designed to be conducted electronically, in which case it would be appropriate to proceed with an evaluation.

If the student's case study evaluation requires an in-person assessment of the student (think psychological evaluation), we suggest documenting the delay in writing to the parent:

Your son/daughter's initial (or triennial) case study evaluation was due to be completed on or before [insert date], which was 60-school-days from the date you provided written consent. Unfortunately, your child's evaluation could not be completed within this timeframe due to the school closure ordered by the Governor of Illinois during the COVID-19 pandemic. When school resumes, staff members will complete the evaluation and an IEP meeting will be convened.

If the eligibility consideration is for a specific learning disability, [ISBE form 34-57M](#) allows parents to consent to an extension of the 60-school-day timeline. Just keep in mind that this form can only be used with regard to evaluations for a specific learning disability.

It is also advisable to consider the validity of the results of an evaluation when administered in an atypical manner or during a stressful time such as the COVID-19 pandemic. These factors may impact each student differently, so it is important to take this into consideration on a case-by-case basis.

Q33. *Must parents consent to hold an IEP meeting for their child electronically?*

ISBE says yes, that parents must consent in writing to electronic IEP meetings. Federal law provides that parents must simply 'agree' but we should try to defer to ISBE's interpretation. If parents do not consent, make a written record of their decision and you will hold the IEP meeting when school resumes. In these situations, it is best not to proceed with the IEP meeting, even if a timeline is not met. You should discuss individual situations with counsel to determine the best course of action. Sample language to parents (you can adapt this language to insert into the student's IEP summary when the meeting is eventually held):

As you are aware, Jane's annual review IEP meeting was scheduled to take place on [insert date]. Due to the school closure ordered by the Governor of Illinois due to the COVID-19 pandemic, we arranged for Jane's IEP meeting to be held electronically. However, you did not agree to participate in an electronic IEP meeting. For this reason, Jane's annual review IEP meeting was not conducted within the 1-year timeframe as required by law. The meeting will be held when school resumes and we are allowed to meet in-person.

When parents consent to electronic meetings, make sure that you instruct them about how to use the platform the meeting will be held on, e.g., Zoom, Google, Skype, etc. To document attendance, follow the same process you normally would when someone participates remotely. You can document attendance in the notes and/or the meeting sign in sheet.

Q34. *How do we respond if parents ask for a student to be retained in grade?*

Remind parents that the school closure period is a temporary, defined, emergency event that is affecting students through the entire country in equal measure. Retention in grade is not advisable but we do recommend that you consider the request and respond to parents as you would normally. We can respond with a PWN letter or we can convene an IEP meeting to discuss grade retention issues with the full IEP team.

Q35. *If not all IEP team members can participate remotely, can we still hold the meeting without them?*

Yes, so long as the parent consents to their excusal. Your IEP team should consist of at least one general education teacher, one special education teacher, a person with authority to bind the school district, and any related service provider relevant to the student or the meeting. These requirements have not changed as a result of the pandemic and you should continue to seek parent permission to exclude necessary members of the IEP team while holding a meeting electronically. If you know in advance that an IEP team member cannot be present, we recommend that you send the excusal form to parents in advance so that they can sign and return the form prior to the meeting. If that is not feasible, note the parents' verbal approval for the excusal and ask the parents to sign the excusal form after the meeting.

Q36. *What if parents need to sign a document during or after a meeting?*

You can mail or email parents copies of documents that require a signature. Document in the IEP notes how you intend to provide parents with copies. If you expect copies to be returned in the mail, consider whether it makes sense to provide a self-addressed, stamped envelope for parents to use in returning the documents.

Q37. *Are there other best practices for IEP meetings that we should follow during this time?*

During this time of increased uncertainty, it is especially important to work in advance to prepare for IEP meetings and to ensure that parents are afforded every opportunity to be full and active participants. We recommend:

- If possible, provide draft documentation in advance of the meeting so that all team members and parents have the opportunity to review them
- Contact the parent in advance and make sure they know how to use the technology you are using for the meeting
- Prepare and follow an agenda, if appropriate
- Make sure to do introductions and to identify yourself as you are speaking
- Prompt parents to ask questions and give input, not just during the parent concerns section
- Send finalized documents to the parent promptly and in a manner accessible to them (email, mail, etc.)
- Follow up with parents after the meeting to ask if they have any questions or concerns

the  **friday recap**

WEEK ENDING

April 3, 2020

**fireside chat series*

Join us **every Friday at 1:30 PM** as we slow the pace of information on COVID-19 issues affecting public schools in Illinois



Toll Free Dial in # (267) 930-4000



Participant Pin # 014-896-663



Questions about COVID-19 darcy@krihaboucek.com
cell: 708-921-3410



Technical Assistance nathan@krihaboucek.com

kriha **kb** boucek

2 TransAm Plaza Dr., Suite 450 • Oakbrook Terrace, IL 60181
krihaboucek.com • 630.394.3790

b



Cassie
Black

cassie@krihaboucek.com

Direct: (630) 332-0469

Cell: (312) 848-0432

b



Sara
Boucek

sara@krihaboucek.com

Direct: (630) 394-3792

Cell: (217) 781-4877

g



Kevin
Gordon

kevin@krihaboucek.com

Direct: (630) 394-3784

Cell: (708) 522-6712

j



Stephanie
Jones

stephanie@krihaboucek.com

Direct: (630) 394-3786

Cell: (314) 503-1299

k



Laura
Knittle

laura@krihaboucek.com

Direct: (630) 394-3783

Cell: (502) 599-7530

k



Darcy
Kriha

darcy@krihaboucek.com

Direct: (630) 394-3782

Cell: (708) 921-3410

l



Mohammed
Lakhani

mohammed@krihaboucek.com

Direct: (630) 394-3785

Cell: (630) 362-8115

s



Rob
Swain

rob@krihaboucek.com

Direct: (630) 394-3788

Cell: (630) 864-0278