Consortium of Directors of Special Education
Directions/Guidance From CDE ESSU Due to COVID19:

As a result of questions across regions related to evaluations and special education services, the Consortium held a conference call with Paul Foster and some of his staff on March 24. What follows are notes from that call, shared by the Consortium in hopes that it will clarify questions and assist AUs to determine steps moving forward as of March 24. The wording contained in this document reflects the Consortium’s interpretation of the conference call with CDE.

1. **What direction is CDE getting from the feds regarding IDEA waivers?** For example: around assessment timelines, provision of FAPE, flexibility re: use of IDEA funds

   CDE has not heard anything official about waivers. The National Association of State Directors of Special Education (NASDE) and other national organizations are reportedly working at the federal level to assist states. To date, in guidance from OSEP, there is no hint of waivers. In more general education calls, waivers for accountability and assessment have been discussed. CDE will continue to pay attention to messages and potential needs for waivers. Inevitably AUs will miss timelines because of this pandemic. Coding 61 and creating a trail that relates to schools being closed due to COVID 19 will be used to report to the feds.

2. **Is Prior Written Notice (PWN) required?** If so, please provide standardized wording and process for completing, including timelines. If not, please provide standardized wording for responding to parents, advocates, etc.

   CDE is not requiring or encouraging blanket PWNs. However, AUs should follow their own attorney’s advice. Since all students are out of school, students with disabilities are not being singled out or treated differently. Therefore, CDE is not recommending PWNs go out in mass. In terms of standard language for AUs that want to send out PWNs, because they are based on individual issues related to a student, standard language would be difficult to provide.

3. **Is an IEP amendment required?** If so, please provide standardized wording and process for completing, including timelines. If not, please provide standardized wording for responding to parents, advocates, etc.

   This is basically the same as PWN. CDE is not recommending or encouraging IEP amendments at this time. If the state starts seeing long term extended closures, this question may be re-visited. As with the PWN question, AUs are encouraged to consult with their local attorneys.
4. Will timelines be waived? (i.e. initial evaluations, annual reviews, triennials) If so, how will this be conveyed to parents, advocates, agencies, in a standardized and timely manner? If not, why not?

CDE is not hearing any relief about timelines. Guidelines from the weekend pointing to flexibility in the rules that might be able to be exercised right now:

Options under existing rules:
- An initial evaluation must be conducted within 60 days of receiving parental consent under IDEA, but IDEA does not contain an explicit timeline for making the eligibility determination.
- However, if a child has been found eligible to receive services under the IDEA, the IEP Team must meet and develop an initial IEP within 30 days of a determination that the child needs special education and related services.
- IEPs also must be reviewed annually. However, parents and an IEP Team may agree to conduct IEP meetings through alternate means. OSEP. OSEP encourages school teams and parents to work collaboratively and creatively to meet IEP timeline requirements.
- If making changes to a child’s IEP after the annual IEP Team meeting, the public agency may agree to not convene an IEP Team meeting for the purposes of making those changes, and instead develop a written document to amend or modify the child’s current IEP.
- A reevaluation of each child with a disability must be conducted at least every three years, unless the parents and the AU agree that a reevaluation is unnecessary.

CDE can do some additional exploration about what can be done with state rules.

CDE is ok with different AUs taking different positions. At the end of the day: the question to ask for each student: Was the decision reasonable? The AU should make the best decision they can based on the individual needs/situation of that child. Responsible and reasonable? Handle health and safety first. Do what is reasonable, practicable and essential. Communicate decisions to families. Any decision will be viewed in the context of this pandemic. There is flexibility for AUs to make decisions within the context of the individual child as well as the local area.

In terms of making determinations for individual students, it is important to develop a plan individualized to that child’s needs. But it is not reasonable to develop a PWN or IEP amendment for each child, particularly for children in large districts. Nor is CDE requiring it. Discussion focused on prioritizing students who are the most high needs, most impacted by the school closure. Provide assurance to parents that the school/AU will continue to work with them. There is FAPE and “COVID FAPE” - they are not going to look the same. For now, it is not reasonable, practical or essential to convene an IEP meeting for every child. If,
subsequently a child is struggling, then perhaps it is reasonable to convene an IEP team meeting to address that, on an individual student basis.

School districts are being given constant reminders to work with their local health departments. If local school districts are making the decisions regarding school closures, it will fall under the COVID category.

We understand there may be some advocacy efforts to maintain required timelines. This is of great concern given the limitations of remote access in attempting to complete a viable evaluation. Putting staff at risk to conduct in person evaluations is not acceptable nor defensible.

During school closures, special education needs to be comparable to the general education standard. If general education teachers are giving assignments and checking in with students on a weekly basis, that is the standard for special ed teachers. Not all elements of the IEP will be possible virtually.

When schools reopen, IEP teams will need to reconvene for some students and determine what was the impact of closure on the student, individually, child by child. There will be different situations to consider depending if the student is essentially where they were when school closed vs. a child who lost significant ground due to closure.

5. Discussion about administration of certain tests remotely:

If there is a question of legitimacy of a test administered remotely, CDE agrees that results would not be valid, or validity could be called into question. In that case, the evaluation timelines would need to be extended, with the reason being the COVID 19 pandemic. There would also then need to be anticipation of a backlog of evaluations when schools resume in person.

A subset of this is related to Rti online. Efforts need to be documented that AUs are doing the best that they can, document what the student is doing and level of their skills, and then make the best effort to move forward when schools resume in person.

Further discussion was around the possibility of developing a PWN if an evaluation is suspended partway through due to school closure, with subsequent potential date listed when school and face to face contact will resume and evaluation can continue. A caution was that this could be complicated by loss of instruction. If a PWN is created, be sure it is on an individualized basis and appropriate to this specific situation and use.

Another potential option is a letter to parents explaining that the AU can’t complete the evaluation due to the COVID and school closure situation. Could potentially cover it.
There was discussion about potential options in communicating with parents. The key is that any outreach shows that the AU is trying to move forward to the best of their ability. If the AU is called to defend their decisions, that kind of documentation will show attempts and every reasonable effort to move forward with fidelity and within timelines, for individual students. Situations will vary across communities and relationships with parents. There may be different judgements based on the context of that AU.

6. We appreciate the guidance from CDE regarding Part C evaluations but need more clarity. Some of the local Part C organizations may have closed, but are still referring children to AUs for evaluations. The guidance for K-12 is that the evaluation can be suspended and then completed when schools reconvene if the evaluation needs in-person involvement. We will code those that we’ve missed deadlines and write in the narrative “Due to Covid-19 Outbreak” or similar statement per CDE guidance. We have not received similar guidance for Part C and for Part C to Part B evaluations. We are aware of at least one region Part C community coordinator being adamant that evaluations must be completed within legal timelines and that agency is continuing to send Part C referrals. The field needs CDE support and firm guidance in this area.

As of the date of this conference call, March 24, additional guidance was issued jointly from Heidi White (CDE) and Christy Scott (CDHS) to special ed directors and child find coordinators. Essentially, anything discussed in this call applies to Part C as well. CDE does not want child find systems to work independently of AU systems. Those with questions are directed to contact Chris Miller and Laura Merrill. This includes letting them know if there are local issues. Don't want child find systems to work independently of AU systems.

CDE staff have heard concerns about CCBs being closed. Although physical locations may be closed, staff are still providing services virtually. This is also true with home visits, unless families choose not to participate. Christy Scott, CDHS, has reiterated OSEP’s direction for the 45 day timeline. This does not apply if family is not available due to exceptional circumstances (weather or natural disasters could be considered as reason, which could include COVID 19.) Issues re remote technology and validity of remote evaluations are relevant. Interviews, case by case, could be sufficient. Families, on a case by case basis, should be given information regarding evaluation options as specified above.

7. What guidance/direction/protection will CDE provide regarding issues around compensatory education? If it isn’t provided for gen ed students, is it required for special ed? How will it be funded? Will funding from CDE be available? Whether it will or won’t be required, AUs need clear and firm guidance from CDE, as well as standard language for AUs to use.

This will be an ongoing conversation. Some of the things to think about include:
● Reframing how to think about compensatory education

● Compensatory services due to COVID may be different. This is not a situation where we were obligated to provide but didn’t.

● Federal guidance states did the child regress or lose skills? Did they make progress on IEP goals? Perhaps the analysis should be around did they regress? Did they lose skills?

● Are there any lessons from previous natural disasters like Katrina or others?

● To what extent did the family and child take advantage of what was offered?

● It seems that there would be multiple considerations, layers of factors, many variables.

This will need further discussion and analysis.

8. Some AUs are needing to modify their approved written plan for use of IDEA funds, to redirect them to remote learning models currently being developed for students with disabilities. These are unanticipated costs, necessary due to the current closures of schools, and may not be aligned with the original AU document. What flexibility and support will CDE provide to allow redirection of these funds?

In the context of the big picture, it will be acceptable to use Part B funds to support students with disabilities during the COVID crisis. CDE will get back to the field with specifics, including documentation needed. It is important to consider how to “trade out” use of federal funds with general funds if at all possible. CDE’s priority is for maximum flexibility. If you can connect the dots to show how you are supporting students with disabilities under the COVID 19 conditions, it should be permissible. CDE is going to be as flexible as possible. AUs should prioritize around continuity of services to students. There is no information yet regarding potential additional funding.

9. What is the CDE direction and support for students currently placed in facilities? Are they expected to develop remote learning plans for their students? We have several AUs who understand that they were directed to both pay the facility their regular rate, but also assume responsibility for developing remote sp ed support for these students. If this is the case it doesn’t make sense nor is it acceptable.

It is CDE’s understanding that facility schools are trying to provide services remotely, but are not as technology rich as some AUs and so they are limited. CDE has not heard to date about the funding issues. Ultimately, the AU is responsible for FAPE, so the AU should consider what needs to be done to support the facility school as an extension of the AU. There is general concern about facility schools being funded during this period since their funding relies on attendance. CDE is talking with the Governor’s office about this. The Consortium believes strongly that virtual attendance at facilities should be funded just as local districts are being funded.
10. The Governor’s executive order prohibits "in-person instruction" until April 17. How does CDE interpret "in-person instruction" in light of some AU discussion to provide homebound and/or small group instruction?

Homebound and small group instruction is “in-person instruction.” In light of health and safety issues, there is just as much of a risk of virus being shared. Err on the side of health and safety. If a district superintendent and board of education determines that there is no face to face instruction, then there should be no in-person homebound or small group instruction.

11. Are there any guidelines around online products to use or not to use (video conferences platforms Zoom, Google hangouts)?

Not for specific products. A general recommendation is to disable recordings of Zoom meetings involving students so that FERPA does not come into play. There is general belief that the Google platform has built in precautions. It is important to consult with the AU technology staff related to capturing identifiable student information. If there is a Google Meet-up group, and a parent can see another child’s work and recognize that they are in special education, that is a legitimate concern. Consider what typically the AU uses if a parent is visiting a classroom and can observe other children’s work and/or behavior. Does the AU ask the parent to sign a confidentiality agreement not to share observations outside the classroom?

12. Given the unprecedented situation we are in, how will CDE ESSU ensure consistent messaging, across ESSU staff, to AU questions/issues, accessibility to identified ESSU staff, and flexibility in problem solving unique issues specific to an AU or region?

CDE hopes that this is a first step. Paul Foster met with the BOCES Association this same day and plans for a State Directors Leadership Team (SDLT) call 3-27. CDE is trying to create a Q/A document for the field and CDE staff to have access to. Call or email Paul if there are discrepancies or inconsistencies.

In addition, there was general consensus that the Consortium will continue to be available to CDE as a communication vehicle from the field to CDE and vice versa as the need arises over the coming weeks.