



# DOE UPDATES

APRIL 2, 2020





# LEGISLATIVE UPDATE



# LEGISLATIVE UPDATE

- Bills that failed in committee or on the floor
  - HB 1173: prohibit a school board from denying an application for open enrollment from certain students with autism
    - Key take away – districts are straight out refusing open enrollment, make sure go through the process outlined and consult with sending district on whether services can be provided
  - HB 1201: provide for the distribution of a list of possible reasonable accommodations to students with disabilities.
    - Key take away – Brought by the dyslexia groups and parents, concerned not being presented a full scope of available accommodations. Can use the list of accommodations in the dyslexia handbook or accommodation manual as a means to discuss accommodations for they type of disability and then determine if appropriate for individual student.

# LEGISLATIVE UPDATE

- Bills that failed in committee or on the floor
  - HB 1210: require parental notice of a social and emotional learning questionnaire regarding a student.
    - Key take away: Parental concerns that they don't know what students or being asked or if there are student concerns. When seeking permissions for evaluation, particularly behavioral/emotional make sure parents understand what it will entail.
  - HB 1218: require responses and reporting regarding the testing, assessment, evaluation, or observation of students.
    - Key take away: Parents concerns that they are being left out of the process and not provided adequate information prior to meetings to make informed decisions. Work with parents to determine concerns and provide information. Could do a pre-meeting to go over preliminary report before official meeting if appropriate.

# LEGISLATIVE UPDATE

- Bills that failed in committee or on the floor
  - HB 1258: provide for child safety accounts for students subject to certain safety incidents.
    - Key take away – primarily related to bullying. If bullying is occurring follow district policy and be responsive. Make sure not due to disability.
  - SB 117: require the Department of Education to establish certain programs for children who are deaf and hard-of-hearing.
    - Key take away – Concerns from advocates that students are not afforded opportunities to use preferred method of communication and have opportunities to interact in this method with peers and other adults. Make sure addressing specific needs related to hearing in the IEP.
  - SB 123: make an appropriation for the Literacy Intervention Program and to declare an emergency.
    - Key take away – led to changes in capitol outlay allowable costs to include renewals of subscriptions.

# LEGISLATIVE UPDATE

- Bills that passed and sent to Governor
  - HB 1042: revise the special education property tax levy for school districts and to revise the state aid to special education formula.
  - HB 1175: define dyslexia for the purposes of special education and related services.
    - Key take away – adds definition to law, but no additional requirements. Still parental concerns that schools do not recognize or acknowledge dyslexia and therefore are not meeting needs.
  - HB 1228: include children with a hearing loss in the reporting criteria required for deaf and hard-of-hearing children.
    - Key take away – will report a count of students with hearing loss uni/bi laterally of 35db or more. Most likely will be a check box in Campus like 504 box. Create more awareness to make sure communication needs are appropriately address regardless of sped status.

# LEGISLATIVE UPDATE

- Some other key education topics:
  - K enrollment age of eligibility: concern that students may not be ready for K and districts may not be having meaningful conversations to help make decisions.
  - Immunization requirements: much opposition to waiving requirements.
  - Early Learning Council: much support for early learning, came down to disagreement over mandate of preschool or not and concerns that the council would push required preschool.

# FEDERAL NOTICE OF PROPOSED RULEMAKING

# SPP PROPOSED CHANGES

- Indicator 1: Graduation Rate
  - Revised to require the use of section 618 exiting data as the source rather than the adjusted cohort rate under ESEA. Targets are not required to be aligned to ESEA.
- Indicator 2: Dropout Rate
  - Revised to require the use of section 619 exiting data (removing the second option) beginning with the FFY 2021 SPP/APR, due February 1, 2023.

# SPP PROPOSED CHANGES

- Indicator 3: Statewide Assessment
- New Indicator 3A — (New Indicator 3A is prior Indicator 3B) Revised to require reporting on participation rates in three grades: grade 4, grade 8, and high school. States must report separately for reading/language arts and math for each grade.
- New Indicators 3B to 3F (replace prior Indicator 3C) Increase the reporting on proficiency based on different standards as follows. States must report separately for reading/language arts and math for grades 4, 8, and high school for each indicator. These data will be pre-populated from EDFacts.
  - New 3B - Proficiency rate for children with IEPs against grade level academic achievement standards.
  - New 3C - Proficiency rate for children with IEPs against alternate academic achievement standards.
  - New 3D - Improvement rate for the percent of children with IEPs proficient against grade level academic achievement standards.
  - New 3E - Improvement rate for the percent of children with IEPs proficient against alternate academic achievement standards.
  - New 3F: Gap in proficiency rates for children with IEPs and all students against grade level academic achievement standards.

# SPP PROPOSED CHANGES

- Indicator 4: Rate of Suspension/Expulsion
  - Revises the instructions to define “long-term suspensions and expulsions” as “a total of 10 or more cumulative days of removal in a school year,” which is consistent with how the State’s discipline data is collected under IDEA section 618; and adds a reference to “cell size” in addition to “n size” consistent with Indicators 9 and 10.
- Indicator 5: Placement
  - Revised to require States to submit child count and educational environments data for five-year-olds in kindergarten in the school-age LRE report rather than the preschool LRE report.

# SPP PROPOSED CHANGES

- Indicator 6: Placement 3-5
  - Revised to: disaggregate reporting by age (3, 4, and 5); adds a category to report on preschool children receiving special education and related services in the home; and allows States to report under this indicator only those five-year-olds who are enrolled in a preschool program.
- Indicator 7: Preschool Outcomes — No changes.
- Indicator 8: Parental Involvement
  - Adds additional requirements for analyzing and reporting on responses rates including comparing response rates from year to year.
  - Adds additional requirements to describe how states determine representativeness and beginning with the FFY 2021 APR, due February 1, 2023, requires states include race and ethnicity in their analysis in addition to at least one other demographic indicator.

# SPP PROPOSED CHANGES

- Indicator 9: Race/Ethnic Disproportionality — No changes.
- Indicator 10 : Race/Ethnic Disproportionality by Disability — No changes.
- Indicator 11: Initial Evaluation Timeline — No changes.
- Indicator 12: Preschool Transition — No changes.

# SPP PROPOSED CHANGES

- Indicator 13: High School Transition
  - Adds clarification on when a representative of another agency should be invited
- Indicator 14: High School Outcomes
  - Revised to provide flexibility on the definition used for competitive employment.
  - Also, similar to Indicator 8, adds additional requirements for analyzing and reporting on responses rates including comparing response rates from year to year.
  - Adds additional requirements to describe how states determine representativeness and beginning with the FFY 2021 APR, due February 1, 2023, requires states include race and ethnicity in their analysis in addition to at least one other demographic indicator.

# SPP PROPOSED CHANGES

- Indicator 15: Resolution Sessions — No changes.
- Indicator 16: Mediation — No changes.
- Indicator 17 (SSIP)
  - Proposes to provide an optional streamlined template that States will use for SSIP Phase III reporting, which will reduce burden.
  - Proposes to align the due date for Indicator 17 with Indicators 1-16 (moving the SSIP due date from April 1 to February 1).

# COVID-19 UPDATES

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State Offices working  
remotely through May 2



Public Schools physically  
closed, offering flex  
learning through May 2

# COVID-19 GUIDANCE

- This is guidance as of today at this time, this situation is rapidly evolving and new guidance is continually being added or updated so continue checking frequently.
  - South Dakota Department of Health facts and resources: [covid.sd.gov/](https://covid.sd.gov/)
  - SD Department of Education resources and information: [doe.sd.gov/coronavirus/](https://doe.sd.gov/coronavirus/)
    - Flex Learning Guidelines (from SD Department of Education) \*\*NEW April 1, 2020
    - COVID-19 Q&A for Schools (from SD Department of Education) \*\*Updated 3/27/2020
  - Federally Department of Education resources: [www.ed.gov/coronavirus](https://www.ed.gov/coronavirus)
    - FERPA and Virtual Learning PowerPoint (March 31, 2020)
    - Supplemental Fact Sheet Addressing Serving Children with Disabilities during COVID-19 national emergency (March 21, 2020)
    - Broad flexibilities provided to states to bypass ESSA mandated testing for the 2019-2020 school year due to COVID-19 national emergency. (March 20, 2020)
    - Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students [PDF, 385KB] (March 16, 2020)
    - OCR Short Webinar on Online Education and Website Accessibility (March 16, 2020)
    - Protecting Student Privacy: FERPA and the Coronavirus (March 12, 2020)
    - Questions and Answers on Providing Services to Children with Disabilities During the COVID-19 Outbreak (March 12, 2020)



March 25, 2020

### Joint Statement on Serving Students with Disabilities During COVID-19 Outbreak

(Pierre, SD) - The South Dakota Department of Education Special Education Programs, South Dakota Parent Connection, and Disability Rights South Dakota remain committed to the provisions of the Individuals with Disabilities Education Act (IDEA). We believe the rights of all students with disabilities must be maintained, even during school closures, in response to the COVID-19 outbreak.

It is our firm belief, despite the unprecedented challenge facing districts and families, that students with disabilities will be served by parties coming together to make decisions on how to provide services in a manner that ensures the health and safety of all parties and that allows for meaningful progress on IEP goals and educational standards.

During this time, we encourage all parties to keep communication lines open and work together. Meetings may need to be held by phone or video conferencing, but time and effort should be on ensuring continued provision of a Free Appropriate Public Education for students with disabilities to meet the IEP goals and services. At the conclusion of this outbreak, IEP teams can assess if services provided allowed the student to make sufficient progress on goals and educational standards, and then determine if any additional or compensatory services should be made available due to any limitations in the provision of a Free Appropriate Public Education.

Thank you for your attention to the health and safety of students and educational providers during this time. We will get through this by working together. If you have questions during this time, please feel free to reach out to the [Special Education Program representative for your region](#), [South Dakota Parent Connection](#), or [Disability Rights South Dakota](#).

# COVID-19 JOINT STATEMENT

## COVID GUIDANCE

- **How should school districts prepare and provide special education services if flex learning opportunities are utilized?**

When considering flex learning opportunities for students with special needs, districts should prioritize health and safety of students, staff and communities. Districts need to be flexible and consider employing a variety of delivery options. There is no defined or correct delivery method that will equitably meet the needs of all students. Districts should identify and acknowledge service delivery limitations and discuss how to implement a student's IEP plan to allow the student to meaningfully participate and progress in the general curriculum.

Districts should be communicating with parents prior to, during, and after a school closure regarding their child's IEP services. District leaders should identify communication methods to ensure there are opportunities for parents' questions and concerns to be addressed in a timely manner.

## COVID GUIDANCE

- **What if the district is not able to identify and provide an appropriate flex learning opportunity for a student with disabilities?**

Some districts may be in a position to continue teaching using distance learning methods; however, equity is a critical consideration. It is important to note that if educational services are being delivered to students in any form, in order for the district to remain open, those services must be provided to all students, including students who don't have access to technology at home, and students receiving special education services.

After an extended closure and/or flex learning opportunity, districts are responsible for reviewing how the closure impacted the delivery of special education and related services to students eligible for these services. Districts should plan to hold IEP team meetings when school resumes to address student-specific needs resulting from the closure and flex learning time. This might include discussions of compensatory education and/or extended school year (ESY) services made on a case-by-case basis.

## COVID GUIDANCE

- **What should a district do about timelines during closure and extended social distancing?**

Districts should consider ways to use distance technology (e.g., Zoom, conference calls, Microsoft Teams, Signal) to the extent possible to provide child find, hold initial and annual IEP meetings, and/or evaluation/eligibility meetings, if staff and parents are available but not able to attend in person. Continuing to complete IEP and evaluation/eligibility meetings will help decrease the workload when school resumes. If staff and/or parents are not available or believe their participation is impacted by the lack of an in-person meeting, districts should document the reason and complete the activity in a timely manner following the ending of school closures.

## COVID GUIDANCE

- **Should all student IEPs be amended when extended flex learning instruction caused by the COVID-19 pandemic is being offered to all students?**

The federal guidance received to date does not clearly state when a school district is required to amend an IEP based upon the need to move to a flex learning model due to the COVID-19 pandemic. In general, this is a change in how education is being offered for all students. Reasonable efforts to continue learning in an equitable manner to that being provided for general education should be provided to students with disabilities.

Students with disabilities should be provided flex learning opportunities that allow them to progress in the regular program and additionally be provided accommodations and/or additional services and supports to progress on IEP goals.

Clear lines of communication should be in place with families, and districts should keep documentation of the duration of flex learning and the instruction and supports provided. In some cases, particularly if programming is significantly different than what is being done for the majority of students, an IEP amendment and prior written notice may be necessary to document individualized decisions to meet the particular to the needs of the child.

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