



# Illinois State Board of Education

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## **Frequently Asked Questions for Special Education on the Transition to In-Person Instruction**

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The vast impact of the COVID-19 pandemic on the educational landscape in Illinois began March 17, 2020, with the mandatory suspension of in-person instruction.

On May 5, 2020, Governor JB Pritzker announced the Restore Illinois plan, which lays out a public health approach to safely reopen our state. Executive Order 2020-40, filed on June 4, 2020, allowed schools to reopen for in-person instruction in Phase 3. In-person instruction is strongly encouraged in Phase 4; however, it is critical to note that this does not signify a return to pre-pandemic operations. Appropriate social distancing, face coverings, enhanced sanitation measures, and other accommodations will be necessary to ensure the safety of students, staff, and their families.

During Phase 4, IDPH guidelines for Illinois schools will:

- Require use of appropriate personal protective equipment (PPE), including face coverings;
- Prohibit more than 50 individuals from gathering in one space;
- Require social distancing be observed, as much as possible;
- Require that schools conduct symptom screenings and temperature checks or require that individuals self-certify that they are free of symptoms before entering school buildings; and
- Require an increase in schoolwide cleaning and disinfection.

All public and nonpublic schools in Illinois serving prekindergarten through 12th grade students must follow these guidelines.

It is important to note that these requirements are subject to change pursuant to updated public health guidance and changing public health conditions. School leaders should remain alert for any updates.

The purpose of this document is to serve as a supplemental resource to districts and other serving entities on special education topics during the preparation for, and transition to, return to in-person instruction. While the topics herein are presented for consideration during preparation for return to in-person instruction, determinations by districts and other serving entities are to be in accordance with the framework of the Office of Governor JB Pritzker and the Illinois Department of Public Health (IDPH).

Successful service to students with disabilities in anticipation of, and during, transition to in-person instruction remains dependent upon ongoing collaboration and communication between districts and other serving entities, their school boards and governing boards, administration, legal counsel, personnel, parents and guardians, and other agencies regarding good faith efforts toward innovative approaches to ensure safety, and meet the unique needs of all students, regardless of their disability.

This supplemental document, anticipated to evolve as new information becomes available, cannot and does not provide any additional waiver or flexibility from compliance with federal and state laws. Districts, special education cooperatives, private special education schools, alternative schools, charter schools, and nonpublic private parochial schools should reference:

- [federal resources](#), including:
  - [U.S. Department of Education Q&A](#)
  - [U.S. Department of Education Supplemental Fact Sheet](#)
  - [Office for Civil Rights \(OCR\) Fact Sheet](#)
- state [resources](#), including:
  - [Frequently Asked Questions for Special Education During Remote Learning](#);
  - ISBE/IDPH transition considerations, including
    - [Part 1: Considerations for Closing the 2019-20 School Year](#)
    - [Part 2: Updated Summer School and Other Allowable Activities](#)
    - [Part 3: Starting the 2020-21 School Year](#)
  - Fall Learning Recommendations - *coming soon*
- local health departments
- their board, administrators, and counsel.

## EXTENDED SCHOOL YEAR

### 1. How should determinations for Extended School Year Services (ESY) be made?

Determinations for ESY are individualized decisions made by the IEP team based on the extent to which a student requires ESY services in order to receive a free appropriate public education (FAPE). ESY is not synonymous to summer school. Additionally, ESY is not synonymous with compensatory services. ESY includes special education and/or related services provided beyond the normal school year or normal school hours for the purpose of providing FAPE. The purpose of ESY is to address needs that arise when a break in instruction would result in severe regression in acquired skills and not being able to recoup those skills in a reasonable time period upon a return to regular services and instruction, or to address any other need identified by an IEP team. Loss or potential severe regression in a specific skill without recoupment within a reasonable time period may qualify a student for ESY if such regression would negatively impact the child's ability to make meaningful progress in light of his or her unique circumstances.

In determining student need due to the mandatory suspension of in-person instruction, the IEP team may consider the student's regression, if any, and the time it takes the student to regain the skills upon resuming in-person instruction. The team may consider retrospective data (existing information), predictive data (circumstantial considerations), or history of skill regression/recoupment.

Participating in general summer school programs available to all students, where offered, does not require a decision by an IEP team, other than with respect to the supplementary aids, accommodations, and modifications that may be needed to support a child's participation in summer school.

### 2. Are districts and other serving entities permitted to conduct ESY and summer school through in-person instruction during Phase 4 of the Restore Illinois Plan?

Yes, districts and other serving entities may offer ESY and summer school instruction in-person in Phase 4; however, the determination of whether to conduct allowable activities will remain a local decision by the district or other serving entity in collaboration with their local health department.

Should a district or other serving entity determine, in collaboration with their local health department, to offer ESY and summer school instruction in-person in Phase 4, the district or other serving entity must follow all safety requirements outlined by IDPH including:

- Require use of appropriate personal protective equipment (PPE), including face coverings;
- Prohibit more than 50 individuals from gathering in one space;
- Require social distancing be observed, as much as possible;
- Require that schools conduct symptom screenings and temperature checks or require that individuals self-certify that they are free of symptoms before entering school buildings; and
- Require an increase in schoolwide cleaning and disinfection.

Please reference [ISBE and IDPH Part 3 Joint Transition Guidance for additional recommendations](#).

### **3. Is there a minimum instructional hour requirement for ESY?**

No. ESY services must be provided when the child's IEP team, on an individual basis, determines that ESY services are necessary to ensure a FAPE to the student. Decisions regarding the number of hours a student will participate in ESY should take into consideration any requirements for course completion by a school district if such course is required to address the selected IEP goals that are to be supported during ESY.

Both state and federal regulation and law require that special education students who have ESY services provided for in their Individual Education Plans (IEPs) must be provided all special education services as documented on their IEP for ESY. Please note that the former requirement for schools to offer 60 hours of ESY in order to be eligible for reimbursement is no longer in effect under Evidence Based Funding.

Private special education schools approved under Section 14-7.02 must also adhere to summer term operating schedule requirements, including hours of instruction, as outlined in 23 Illinois Administrative Code 401.10(a)(3)(B) and 401.130(b).

## **COMPENSATORY SERVICES**

### **4. When can compensatory services, including compensatory services for related services, be considered?**

During the period of mandatory suspension of in-person instruction, the requirement to provide FAPE continued to exist, to the maximum extent possible. In an instance where a district or other serving entity has denied FAPE to a student, compensatory educational services may be an appropriate remedy under the IDEA. In the present circumstances, compensatory services could be an appropriate remedy in the event a district or other serving entity demonstrated inability or denial to provide FAPE during the time that the child was entitled to FAPE. Compensatory education is designed to be an equitable remedy, and as such, there is no obligation to provide day-for-day or minute-for-minute compensation of missed education. Compensatory educational services should be determined on a qualitative basis, by looking at the totality of the circumstances for each student and determining the amount of service needed to remedy the educational deficits resulting from a failure to provide FAPE. In making individualized determination as to whether a student is owed compensatory education, IEP Teams should also consider services provided during remote learning and the ability of the student to access any services during remote learning.

Because compensatory education services are an equitable remedy, parental input is important and parent information and concerns should be considered in determining if compensatory education services are owed, the amount of services needed, and how the services will be delivered.

Due to the nature of the COVID-19 pandemic and the resulting unprecedented circumstances of interruption to the typical operation of district and other serving entities, this guidance on compensatory education services cannot provide an answer to every circumstance. Districts and other serving entities should consult with their local board and legal counsel for additional guidance on providing compensatory education services as a remedy for denial of FAPE.

Compensatory education services may be provided during the summer, school year, before school, or after school if mutually agreed upon by the district or other serving entity and the student's parent or guardian. An offer of compensatory education services may include the intended service provider, but there is no requirement that the service provider be the same as outlined in the student's IEP.

## EVALUATIONS

### **5. How should IEP Teams address evaluations for special education services that were unable to be completed during the mandatory suspension of in-person instruction?**

The Illinois Administrative Code, at 23 IAC 226.110(d), requires that upon completion of the identified evaluation assessments, but no later than 60 school days following the date of written consent, the determination of eligibility shall be made and the IEP meeting be completed. A school day is any day that students are in attendance for instructional purposes. 34 CFR 300.11. Pursuant to the Emergency Amendment to Part 5, Remote Learning Days, which began March 31, 2020, were deemed pupil attendance days for calculation of the length of a school term under Section 10-19 of the School Code. Accordingly, Remote Learning Days after March 31, 2020 contribute to the calculation of timelines. Remote Learning Planning Days, generally, do not constitute days for calculation of timelines because students are not in attendance for instructional purposes on Remote Learning Planning Days. If 60 school days remained in the 2019-2020 school year after the date that parent consent was obtained, then the district or other serving entity is required to complete the evaluation within this timeline.

If fewer than 60 school days remain in a school year after the date that parent consent was obtained, the eligibility determination must be made and the IEP meeting must be completed prior to the first day of student attendance in the following school year. Accordingly, for any evaluation initiated prior to the mandatory suspension of in-person instruction on March 17, 2020, an eligibility determination and IEP meeting must be completed prior to the first day of school for the 2020-21 school year.

If any portion of the identified evaluation could not be completed due to lack of parent/guardian consent or health and safety regulations, then the district must document the missing portions in the evaluation section of the IEP, along with the reasons those portions could not be completed. IEP teams should complete missing portions of the evaluation as early as during Phase 3 in alignment with the June 4, 2020 IDPH and ISBE Part 2- Transition Joint Guidance document titled *Updated Summer School and Other Allowable Activities*, or as soon as possible once the district or other serving entity returns to in-person instruction, after which the IEP team should be convened to review the results and determine or revisit eligibility and develop or revise the IEP, as appropriate.

Districts should make every effort to complete all unfinished evaluations initiated in their district as promptly as possible. If a student has moved and has enrolled in another district, the new district of enrollment would be responsible for completing the evaluation. The new district would enter the code 02

in I-STAR for Indicator 11 to indicate that the child enrolled in the district after parental consent was received in another district but before eligibility could be determined. Districts should, however, expedite evaluations and not delay completion due to the student being new to the district.

If the student is in eighth grade in an elementary district and will be enrolling in a high school district, the elementary district would be responsible for the evaluation until such time that the student leaves the elementary district (I.e., the completion of ESY if applicable since ESY is an extension of the school year.)

Evaluations can still be held virtually to the greatest extent possible; however, districts and other serving entities may conduct evaluations in person as long as they adhere to all state and local safety guidelines during the administration of evaluations.

**6. Could the waiver of extension of the 60-day timeline permitted for evaluations for specific learning disabilities apply to evaluations for other disabilities for evaluations during the suspension of in-person instruction?**

The federal special education regulations at 34 CFR 300.309(c) allow the 60-school-day timeline to be extended when conducting an evaluation of a student with or suspected of having a specific learning disability. Such extension may only occur through mutual written agreement of the child's parent or guardian and a group of qualified professionals. The pre-existing extension form for special learning disability evaluations regarding the 60-school day timeline may not be used for other disability areas; however, as a general principle, during the COVID-19 pandemic, districts and other serving entities were encouraged to work with parents and guardians to reach mutually agreeable extensions of time, as appropriate. Only for evaluation extensions during the COVID-19 pandemic for which districts or other serving entities had a written mutually agreed upon extension of an evaluation, the district may code the acceptable timeline exception in I-STAR as code 09. In the absence of a written mutually agreed upon extension, then another ISTAR reason for the delay is required for Indicator 11 reporting purposes.

## **CLASS SIZES**

**7. Are special education classrooms required to adhere to the social distancing requirements outlined in ISBE's guidance?**

Yes. Special education classrooms are required to follow social distancing requirements.

Schools and districts are encouraged to provide in-person instruction, especially to students with IEPs. If schools and districts are unable to provide fully in-person instruction while meeting IDPH safety requirements, remote and blended remote learning days may be utilized. If class sizes are reduced, classrooms must still adhere to regulations regarding staffing requirements and provision of services by appropriately licensed personnel.

**8. If general education class sizes are reduced upon return to in-person instruction, should districts or other serving entities submit an application for deviation approval if there are more than 30% of students with IEPs, excluding students receiving speech services only, in a general education class?**

Yes, to the extent practicable. The provisions for class size remain in effect upon return to in-person instruction in addition to adherence to social distancing guidelines. Districts and other serving entities should review class composition, including percentage of students with IEPs in the class period, to ensure

that each class has a proportionate percentage of general and special education students and approved age range to the extent practicable. If circumstances prohibit the adherence to the general education class size provisions for special education purposes, districts or other serving entities should submit an application for deviation approval, available at <https://www.isbe.net/Pages/Special-Education-Deviation-Applications.aspx> to [DEV@isbe.net](mailto:DEV@isbe.net) for review for approval.

## **HOMEBOUND SERVICES**

### **9. May districts and other serving entities provide in-person homebound and home instruction? Are there any special precautions districts or other serving entities should employ when providing instruction in a student's home?**

Yes, districts and other serving entities may provide in-person homebound or home instruction when such service is required by a student's IEP; however, districts and other serving entities are encouraged to consult with local public health officials, and/or legal counsel to ensure that the home setting is compliant with state and local orders and health and safety guidance and procedures. Districts and other serving entities may reference the June 23, 2020, IDPH and ISBE Part 3 Transition Joint Guidance document titled [Starting the 2020-21 School Year](#) for additional guidance regarding current health and safety protocols.

Special precautions include the wearing of face coverings and other PPE appropriate to their duties frequent hand hygiene, conduct symptom and temperature checks before entering a student's home, regularly clean and sanitize equipment and materials, restrict the sharing of items, and limit capacity in any space while adhering to social distancing guidelines. District or other serving entity personnel who show any signs or symptoms of illness should not enter a student's home. Similarly, should a student show any signs or symptoms of illness, district or other serving entity personnel should not enter the student's home.

Districts and other serving entities should consider providing learning materials and tools that can remain in the child's home. Consideration can be given to a hybrid approach of instruction which could include an individual providing services to a student virtually and in-person in order to minimize physical contact when appropriate. Depending on the circumstances, homebound or home instruction may continue to be delivered entirely through remote instruction as long as the minimum of two hours of direct instruction are provided. For special education students with IEPs, the nature, extent, and service delivery model should be determined by the child's IEP team.

## **HEALTH & SAFETY FACTORS**

### **10. What should schools consider for the return of students with disabilities who are medically-fragile or immunocompromised to in-person instruction?**

Generally speaking, the board of education in each district may determine when, for compulsory attendance purposes, a student's absence is reasonable due to concern for the safety or health of the student. Student safety must be the primary consideration when determining how to meet the needs of students with disabilities who are medically-fragile or immunocompromised upon return to in-person instruction. Schools and districts should review the Centers for Disease Control and Prevention's list of those who are at higher risk of severe illness if they are exposed to the coronavirus. Districts and other serving entities may convene an IEP meeting to review the student's health care plan and determine any potentially harmful effects that may result from potential risk of exposure to COVID-19 as in-person instruction resumes. IEP Teams should consider if the return to in-person instruction would place the

student at higher-risk of infection or severe illness. If it would, the IEP Team may consider how to address this risk to the student, including consideration of alternative placement options such as continuing the implementation of remote learning, a hybrid of virtual and in-person homebound instruction, or other appropriate service delivery and placement options in the student's least restrictive environment. 34 C.F.R. §§ 300.114-300.116.

Should the student with a disability who is medically-fragile or immunocompromised return to in-person instruction, districts and other serving entities should consider special cleaning needs and any personal protective equipment (PPE) requirements to ensure student safety. Communication with parents or guardians early and often about the process for return to in-person instruction and any additional considerations to meet the unique needs of the student should occur.

Districts and other serving entities should also ensure full compliance with IDPH safety requirements, including social distancing policies as much as possible and take into consideration individual student circumstances, such as wheelchair use, when planning for new traffic patterns around a school.

Districts and other serving entities may reference the June 23, 2020, IDPH and ISBE Part 3- Transition Joint Guidance document titled *Starting the 2020-21 School Year* for additional guidance regarding current health and safety protocols.

**11. How can social distancing guidelines be adhered to during provision of services using the methodology of physical prompting and cueing?**

IDPH requires the use of face coverings by all individuals in a school building during Phase 4 of the Restore Illinois Plan. Gloves or other PPE may be worn by district or other serving entity staff and by the student when providing services that require hand-over-hand instruction and other methodology of physical prompting and cueing. There is significant evidence that face coverings provide protection and decrease the spread of COVID-19. Ensure that the face covering fully covers the mouth and nose, and that the covering fits snugly against the sides of the face with no gaps. All supplies and equipment used by the student and adult should be sanitized regularly.

**12. What considerations should be made regarding service animals upon return to in-person instruction?**

The CDC provides that COVID-19 may be contracted by service animals following close proximity to exposure of an infected individual. Districts and other serving entities should consider protecting the health of students and their service animals upon return to in-person instruction by disallowing direct contact or handling of the animal by other students or personnel and by walking the animal on a leash outside the building while maintaining social distancing guidelines remaining 6 feet apart from other students or personnel outside.

## **IEP & OTHER MEETINGS**

**13. When may in-person meetings, including IEP meetings, mediations, and due process hearings resume?**

Pending any travel restrictions placed upon contracted mediators and hearing officers and agreement amongst the parties, districts and other serving entities may resume in-person meetings, including IEP meetings, mediation and due process hearings, special education evaluations and staff meetings and professional development.

During any in-person meeting, all IDPH requirements must be met including but not limited to wearing appropriate PPE, requiring social distancing be observed, as much as possible, complying with capacity limits, and require symptom and temperature screenings. Parents or guardians and additional participants should continue to be afforded the opportunity to participate via alternative means.

**14. How should districts and other serving entities determine if an IEP meeting should be held following the return to in-person instruction to discuss changes to an IEP when student progress may have been impacted by remote learning, including changes related to specialized instruction needed (e.g., methodology, content, delivery of instruction), minutes provided for special education or related services, or changes in educational placement?**

Districts and other serving entities should determine to hold an IEP meeting following the return to in-person instruction based on the requirements of law, required timelines and student need, including the level of documented progress of the student or following receipt of parent or guardian request for a meeting. If a child is not making expected progress toward his or her annual goals, the IEP Team must revise, as appropriate, the IEP to address the lack of progress. Although the public agency is responsible for determining when it is necessary to conduct an IEP Team meeting, the parents of a child with a disability have the right to request an IEP Team meeting at any time. If a child is not making progress at the level the IEP Team expected, despite receiving all the services and supports identified in the IEP, the IEP Team must meet to review and revise the IEP if necessary, to ensure the child is receiving appropriate interventions, special education and related services and supplementary aids and services, and to ensure the IEP's goals are individualized and ambitious. The U.S. Department of Education clarified this aspect of student progress in its December 7, 2017 Q&A (United States Department of Education, 2017, p. 8).

When reviewing IEPs, IEP Teams might consider if changes are needed to the methodology, content or delivery of instruction to allow the student to receive the necessary specialized instruction to address the impact of any lack of progress documented during remote learning. Additionally, IEP Teams may consider changes in minutes, service delivery or educational placement to meet the unique needs of the student.

## **SPECIAL EDUCATION AND RELATED SERVICES**

**15. How may special education and related services provision be impacted by student or adult use of a protective face covering for safety?**

IDPH requires all individuals in school buildings, including all public and nonpublic schools that serve students in prekindergarten through grade 12, must wear face coverings at all times unless they have a medical contraindication, are younger than 2 years of age; have trouble breathing; or are unconscious, incapacitated, or otherwise unable to remove the cover without assistance. Consideration should be given to the impact that staff wearing protective face coverings may have on students with disabilities. Particular attention should be given to students with hearing loss or communication deficits. Districts and other serving entities may need to consider adapted face coverings with plastic to allow for access to a speaker's lips and facial expressions, use of assistive technology, or other supports to assist a child in receptive language processing and effective communication.

Additionally, consideration should be given to the impact of protective face coverings on students who suffer from a respiratory disease, sensory processing sensitivity, and/or expel bodily fluids orally. Due to these conditions, the wearing of a face covering may not be feasible for these students.

In addition, some students with disabilities may refuse to wear the face covering for various reasons unknown to staff. Students with disabilities who are unable or refuse to wear a face covering may be provided reasonable accommodations per the Americans with Disabilities Act. Schools should contact their legal counsel regarding possible exemptions and accommodations for students who may receive an educational and/or health harm due to the wearing of a face covering in the school setting.

Districts and other serving entities should consider how to meet the needs of any student for whom wearing a face covering may cause harm or impediment. Districts and other serving entities should consult families and medical professionals, as appropriate. It is recommended that schools require physicians notes for students and staff who are not able to wear a face covering. Consideration of these situations must be addressed so that students and staff members understand and normalize that some persons may not be wearing a face covering and these situations do not need any intervention from others.

**16. What should districts and other serving entities consider when addressing the social and emotional needs of students with disabilities upon return to in-person instruction?**

Districts and other serving entities should consider that the impact of the COVID-19 pandemic and mandatory suspension of in-person instruction will have, and currently affect, each student differently. Districts and other serving entities can assist families in preparing students with disabilities who struggle with changes in routine or understanding personal boundaries for the return to in-person instruction by providing social narratives about the return to school and advanced notice regarding anticipated changes to the environment that the child may experience upon return. District and other serving entity personnel may offer additional social work or counseling service or increased social and emotional (SEL) programming during the time of transition. School personnel can find additional resources to meet social and emotional needs at <https://www.isbe.net/mentalhealth>.

**17. How will district and other serving entities provide access for and integrate itinerant staff and/or visiting specialists upon return to in-person instruction?**

Itinerant teachers and visiting specialists who serve students with disabilities in low-incidence populations such as Deaf or Hard of Hearing, Deaf-Blind, and Blind/Low Vision must continue to provide services for their students to uphold FAPE. Itinerant staff and visiting specialists may be responsible for students in different buildings or across districts or other serving entities. It is crucial that districts and other serving entities communicate with each other regarding established safety requirements as far as the use of PPE and whether an employee can visit more than one district or serving entity during the same school day. It is recommended that districts and other serving entities consult with their local or state health departments on these issues. It will be necessary to provide a safe space for in-person services while maintaining social-distancing requirements and for collaboration between the district or serving entity, itinerant/specialist, and family to determine which services can be done remotely versus in-person.

**18. What should schools consider regarding return to in-person instruction for students who require job coaching, job shadowing, or other post-secondary transitions goals provided off campus?**

During the limited return to in-person instruction, districts and other serving entities are encouraged to meet the transition plans of students with disabilities through appropriate methods including, but not limited to, task bins, scripted lessons, manipulatives, picture or video sequencing tasks, virtual field trips, online work experience, online volunteer opportunities and career exploration research. IEP Teams are encouraged to engage in further discussion and assessments with students and their families regarding any

changes in the student's interests or preferences displayed during the mandatory suspension of in-person instruction pertaining to current transition plans and future postsecondary goals.

It is recommended that districts and other serving entities consult with their local health department and legal counsel when resuming off campus transition services.

## **PRIVATE SPECIAL EDUCATION SCHOOLS**

### **19. If a student's resident school district is operating remotely but the student is placed in a private special education school that is operating in person, must the resident district continue to provide transportation?**

Students placed in private special education schools remain the responsibility of their resident district. The district will remain responsible for provision of educational services to the student, including transportation.

Provision of transportation is addressed in 23 Illinois Administrative Code 226.330(e) and 226.750(b)(6) clarifying that the school district of residence shall be responsible for the payment of tuition and the provision of transportation for a student placed in a nonpublic day program receiving in-person instruction. Please review the student transportation section of the Part 3 Joint Transition Guidance for safety measures that must be followed. Private special education schools must monitor students loading and unloading at the facility for adherence to expectations set forth by IDPH.

### **20. How can a private special education school ensure maintenance of their facility's fire inspection compliance? Is a private special education school able to return to in-person instruction if a passing, violation-free report of inspection is expired?**

All private special education schools approved under Section 14-7.02 of the Illinois Administrative Code may obtain a fire inspection from either the Office of the State Fire Marshal or local governmental agency to meet Application for Eligibility compliance pursuant to 401.10(a)(4) and Health and Safety Requirements compliance pursuant to 401.220(a).

Regulatory language specifically provides in 401.10(a)(4) and 401.220(a) that an inspection report for the private special education school is to be made available from an inspection conducted by a local governmental agency if the State Fire Marshal's report is unavailable.

Any private special education school approved under Section 14-7.02 of the Illinois Administrative Code may contact their local governmental agency to request an inspection be conducted of their building prior to expiration of the current fire inspection report. Any private special education school is encouraged to promptly contact the Special Education Department at ISBE in the event the school experiences difficulty with scheduling the fire inspection and has been denied the inspection from the State Fire Marshal and the local government agency.

In the event any private special education school approved under Section 14-7.02 does not make available a copy of the most recent inspection report indicating no violations prior to the date of expiry of the existing inspection, the status of the facility will be assigned as Pending Further Review due to noncompliance with requirements outlined in Sections 401.10(a)(4) and 401.220(a) which may substantially affect the safety of, or provision of appropriate education to, the students enrolled but does not constitute imminent danger. The private special education school shall have 40 business days to remedy the noncompliance through submission of a passing, violation-free fire inspection report. As the status of Pending Further Review does not constitute imminent danger, in-person instruction may occur at

the private special education school for presently enrolled students, however, a public school district shall not make new placements into the private special education school until the noncompliance has been remedied, and the status of the private special education school has been reinstated to Approved pursuant to 23 Illinois Administrative Code 401.30(a)(3).

**21. Will return to in-person instruction result in changes to private special education schools billing resident school districts for tuition and/or room and board per diem and receipt of payment? Will return to in-person instruction result in changes to resident school districts being reimbursed for these tuition and/or room and board per diem payments?**

As ISBE's Emergency Amendment to Part 226 provides, "School districts will be reimbursed for special education private facility tuition expenditures per the statutory formula under Section 14-7.02 of the School Code. School districts will be reimbursed for special education room and board expenditures under Part B of the federal Individuals with Disabilities Education Act, as prescribed in Section 14-8.01 of the School Code."

During return to in-person instruction, when a private special education school is designated by a student's IEP Team as the serving school following the district's certification of inability to meet the student's needs, the resident district shall be responsible for the payment of tuition as outlined in the enacted Nonpublic Facility Placement Contract (19-83) pursuant to 23 Illinois Administrative Code 401.110(g) and 23 IAC 226.330(e). The private special education school will bill the resident school district at the rate established by the Illinois Purchased Care Review Board and the resident school district will continue to be reimbursed for special education private school tuition expenditures per the statutory formula under Section 14-7.02 of the School Code and reimbursed for room and board expenditures under Part B of the federal Individuals with Disabilities Education Act pursuant to Section 14-8.01 of the School Code.

**22. How will on-site reviews for private special education schools be conducted in accordance with regulatory requirements?**

Travel by Illinois State Board of Education personnel shall be determined in alignment with the framework from the Office of Governor JB Pritzker and the Illinois Department of Public Health. ISBE staff will adhere to all Agency safety mandates, including the use of protective face coverings and other PPE, and maintain social distancing of at least 6 feet of physical distance, when observing classrooms and interviewing staff during scheduled on-site reviews at private special education schools once travel is safely permitted.

**23. Are private special education schools required to maintain adherence to regulatory class size and age range requirements during remote and in-person Learning?**

Yes, the age range of students within a special education grouping shall not exceed four years at the elementary level and six years at the secondary level pursuant to 23 IAC 401.140(b) and 23 IAC 226.720(b) in a private special education school. If more than five students, but up to a maximum of ten, are assigned to any class in a private special education school pursuant to 23 IAC 401.140(c), the class must be staffed by both a licensed/certified special education teacher and full-time paraprofessional or other professional staff for a student to staff ratio of 10:2 in addition to any individual aides required by students IEPs. Alternately, a total of five students is permitted in a class staffed solely by a licensed/certified special education teacher for a student to staff ratio of 5:1. During in-person learning, class sizes must also maintain alignment with guidance from the IDPH and local health department.

**24. Can a private special education school have smaller class sizes than allowed in 23 IAC 401.140(b) and 23 IAC 226.720(b) upon return to in-person instruction?**

Yes. Private special education schools may elect to decrease class sizes during transition to in-person instruction, at the discretion of the school, so long as staffing compliance is maintained for provision of services by appropriately licensed personnel pursuant to 23 IAC 401.10(a)(8), 23 IAC 401.140(b)(c), and 23 IAC 401.240(a), and class sizes maintain alignment with guidance from IDPH and local health departments.

*NOTE: Requirements are subject to change pursuant to updated public health guidance and changing public health conditions.*