



Special Education during the COVID19 Pandemic

Q&A with Leslie Seid Margolis, Managing Attorney
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LEGAL DRIVERS

Each student with a disability must be provided, to the greatest extent possible, the special education and related services identified in the student's Individualized Education Program (IEP) that was developed according to the Individuals with Disabilities Education Act (IDEA) (34 CFR §§300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504)). This includes the provision of supplementary aids and services, program modifications, and accommodations required to meet the student's individual goals.

TWO MONTHS AGO . . .

In order to provide a Free Appropriate Public Education (FAPE) during this unprecedented time, the student's instructional team should have

- **reviewed the IEP** to determine if services could be implemented remotely with no changes or with some changes;
- **amended the IEP** if any changes were required for implementation (i.e., to reflect provision of services online or to reflect that a particular service could not be provided online, such as in-school administration of medicine);
- **implemented the amended IEP** in a distance learning environment (via a separate document HCPSS calls a **continuity of learning plan**)

TWO MONTHS IN . . .

Time to evaluate IEP implementation and student progress. Is there a need for adjustment to the supports and services being provided?

- Data are critical for determining any potential new needs of the student stemming from the change in the instructional delivery method as well as for analyzing the impact on the student's progress in the general education curriculum.
- Once regular school operations resume, the IEP team will need to determine whether and to what extent a student has experienced regression and/or failed to make progress. (MSDE TAB #20-03)

DATA COLLECTION: PARENT ROLE

While it is the school system's responsibility to conduct progress monitoring, it is important for parents to know what their child was able to do (baseline) on March 13, when schools closed, and what their child is able to do when schools reopen.

Data can also support a parent's discussion for necessary changes to the Continuity of Learning Plan. Parents can request an IEP meeting at any time to discuss this plan.

Parents should keep notes, a journal, videos or whatever will help them mark their child's progress or lack of progress during this period of time.

THINGS TO DOCUMENT

- Are there environmental concerns that promote or interfere with learning?
- What is the student's response to instruction and services?
- What is the frequency and duration of services provided?
- What goals are being addressed?
- How effective are the supports and services?
- Is work modified as needed / are accommodations provided?
- What barriers or challenges impact learning or access to instruction?

RECOVERY AND MITIGATION EFFORTS

- Health and safety considerations
- Additional, new, or different services and/or accommodations
- Compensatory education
 - Not an hour for hour calculation
 - Based on individual assessments of the student
 - IEP teams will have to meet when schools reconvene to determine present levels of performance before designing a program and placement
 - Services will have to be provided based on assessed needs

TRANSITIONING YOUTH

- Secondary transition plan may need to be amended during the extended school closure
- Individual secondary transition services /activities must be implemented to the greatest extent possible through virtual or online learning, remote instruction, and computer-based instruction
- For a student who is 21 and in their final year of school, the IEP team may discuss extending the student's education beyond June to complete IEP goals/objectives that were unmet due to the closure (compensatory education)

COVID₁₉ RESOURCES

Howard County Autism Society

<https://howard-autism.org/resources/hcas-resources/coronavirus-hcas-updates/>

Maryland State Department of Education (MSDE) Technical Assistance Bulletins related to Special Education

<http://marylandpublicschools.org/programs/Pages/Special-Education/TAB.aspx>

Disability Rights Maryland

<https://disabilityrightsmd.org/>

HCPSS Updates

<https://www.hcpss.org/>

Parents Place of Maryland (ppmd.org) Parent Tips

https://www.ppmd.org/resource_category/covid-19-issues/

QUESTIONS AND ANSWERS



Q: Is the school system obligated to provide the specific intervention or methodology through distance learning that my child was receiving in school?

A: There is no guidance in the law about this, and MSDE has not addressed this issue previously. While there may be no requirement that the same methodology be used at home as in school (and parents, in general, do not have control over the methodologies a school uses), if the child is not benefitting from the intervention being used, that is an issue to raise in an IEP meeting. The IEP team should discuss whether there is a different way of providing the services so that the child would benefit.

Q: What are the ramifications if my child's disabilities prevent participation in the distance learning program proposed by the school system or if I am unable to support my child to participate?

A: Although there is not specific guidance from the state on this, it is critical that children are not penalized because they may not have been able to fully participate or because their parents were not able to support their child's participation. This is an issue that will require advocacy, as we do not want the inability to participate in online learning to be a barrier to a child receiving services they may need in the future.

Q: Will there be 4th quarter progress data, and should we expect to have meaningful annual IEP meetings?

A: There have been IEP meetings conducted and timelines should be honored. There should be 4th quarter data. It may not look exactly as it would have if the child was in school, but at a minimum there should be data collected on the goals being addressed during the school closure. In addition to online learning data being collected by the remote learning systems, if there is group instruction or individual therapy, data should be collected by those teachers or providers. Parents may add their own notes and observations to the discussion.

Q: When schools reopen, what will happen with students who, because of their disabilities, are unable to practice social distancing, wear masks, or take other preventative safety measures?

A: We do not yet know the state or local school system guidance on the return to school. Some students may need additional services on their IEP to learn social distancing behaviors, for example. In general, parents may need training and additional support to help their children with the return to school. There may need to be services and supports added to the IEP (such as social stories or additional therapeutic support , for example) to help students transition back into school learning and the school environment.

Q: Will distance learning continue when schools reopen? If so, will my child's continuity of learning plan remain the same?

A: The continuity of learning plans were not intended to be long-term plans. Additional discussions will need to take place, whether schools remain closed or children return to school, and plans will need to be revised. IEP teams will have to meet to decide whether additional, new, or different services are necessary.

Q: If a parent disagrees with the number of goals on the amendment, how can they advocate for additional goals?

A: MSDE has issued guidance that the starting point for any discussion about IEP goals should begin with the *current and complete* IEP, and what can be implemented to the greatest extent possible. If it is not possible to implement the full IEP, the Continuity of Learning plan (amended IEP) dictates the goals that will be addressed. It is not unreasonable for a parent to ask for additional IEP goals to be included; for example, four reading goals rather than only two. If the school team disagrees, then they should explain why that is an unreasonable request. If necessary, an IEP meeting can be requested.

Q: Is it true that a parent can request a discussion with the IEP team if the parent wishes to amend the Continuity of Learning Plan?

A: The law allows IEPs to be amended outside of the IEP process if the parent agrees to the amendment. Signatures are not necessary. If you do not agree, however, that should trigger an IEP meeting with all of the same procedural safeguards. Parents always have a right to ask for an informal conversation or a formal IEP meeting to discuss revision to the amended IEP, the Continuity of Learning Plan.

Q: If a child was not found eligible for ESY before the school closure, and the parent feels there has been a significant regression since the school closure, can ESY be reconsidered?

A: ESY is not meant to be “makeup” time for education that has been missed or regression during the school closure. Such discussions about how to close any gap that has occurred in educational services and academic progress will take place once schools partially or fully reopen. If an ESY redetermination meeting is requested, the same ESY eligibility questions will be asked. Together parents and the school team will have to decide if the child meets the eligibility requirements. It should be a very individualized discussion.

Q: If a parent is not able to assist their child in their education during the school closure, what kind of support should they ask of the school system? If the parent privately pays for a tutor to sit with their so that they may access online learning, can parents request reimbursement?

A: There is not guidance on this from the state or HCPSS. Parents should keep a record of any expenses they incur to support their child's instruction in distance learning or increased therapy services. There is no guarantee there will be reimbursement but, if there is, records will be necessary. In the discussion of a child's progress, it will be important to note what additional help was provided and may still be necessary.

Q: If a parent finds that their child is making more progress at home and decides that homeschooling may be worth considering, how would homeschool affect the provision of IEP services?

A: Homeschooling is a serious consideration at any time. Parents should visit MSDE's guidance on homeschooling. There are specific requirements. If a parent withdraws their child from school, the child will no longer access a public education or the IEP services provided through the public schools. Any related services the child received while in public school (e.g., speech, OT) would no longer be available to the child.

Q: With regard to outside (private) evaluations, at what point should parents provide these reports to the IEP team? What is the school system's responsibility to consider outside evaluations.

A: The law requires that IEP teams consider outside evaluations—they must review them and discuss whether (and why) they agree or disagree with the content and recommendations of the evaluation. This discussion must be documented. It is up to parents when they provide the information, but they should give teams time to review documents prior to the actual IEP meeting. Access to documents is necessary for both parents and school teams in order for everyone to be prepared to discuss the documents meaningfully.

Q: How can a parent find out what data a teacher is taking during the online sessions?

A: According to MSDE, teachers are required to monitor progress. Parents may ask how data is being collected on goals during the school closure. While parents are not required to take data, they can express an interest in monitoring progress by using the teacher's data collection sheets at home. If parents need training to collect data or monitor progress, this training should be added to the IEP and the Continuity of Learning Plan.

Q: Are schools going to be required to do something different in the fall? Perhaps posting webinars for students to watch at night if their parents are not able to assist them during the day?

A: We do not yet know what the recovery plan will look like and how local jurisdictions will provide services. MSDE has a draft recovery plan, but final decisions have not been made. Parents should continue to give input to the school system and to advocacy groups so that stakeholders are heard. Many factors have to be considered for school systems. Individualized conversations based on the individual child's (and family's) needs will have to take place as well.

Q: If a child is not benefitting from the telehealth appointments for speech, should a parent opt out of this service?

A: Parents should carefully consider the decision to opt out of recommended IEP services. If the child is not able to make meaningful progress through the telehealth sessions, alternate methods of accessing/delivering a related service (i.e., speech or OT) should be discussed based on the child's *individual* needs. Parents are advised not to make unilateral decisions. Data should be used as the basis of these discussions and decisions.



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