


Maryland Center for Developmental Disabilities

## Return to School for Students with Disabilities during the COVID-19 Pandemic

*Mallory Legg, Esq.*

July 14, 2021

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### ASHA disclosures

- Financial:
  - Kennedy Krieger Institute salaried employee.
- Non-Financial:
  - None.



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### Polls & training worksheets for continuing education

For staff attending the training *virtually*:

1. Please answer all of the interactive polls. Polling will verify of your attendance.
2. Please keep your camera on to ensure that our presenters can see you. If you would like to participate in Q&A, use the "raised hand" feature in Zoom.

For staff viewing the training *on-demand*:

1. Please complete the Lunch & Learn training worksheet.
2. Email your worksheet to Michael Molinaro at [molinaro@kenedykrieger.org](mailto:molinaro@kenedykrieger.org) after you have viewed the entire training.



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### Objectives

1. Highlight relevant laws and guidance related to special education law and the COVID-19 pandemic.
2. Identify potential eligibility for compensatory education/recovery services.
3. Locate resources related to special education law during the COVID-19 pandemic.



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### Presentation overview

- Relevant laws
- Federal guidance
- State guidance documents
- Extended school year
- Miscellaneous hot topics
- Federal guidance on return to school for medically complex students
- Compensatory education/recovery services
- Resolving disputes
- Resources
- Q&A



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# Relevant Laws

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## Relevant laws

- Individuals with Disabilities Education Act (IDEA)
  - Part B: Individualized education program (IEP)
  - Part C: Individualized family service plan (IFSP)
- Section 504 of the Rehabilitation Act (Section 504)
  - Section 504 plan



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# Federal Guidance

*United States Department of Education (USDOE)*

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## USDOE guidance documents

- Guidance documents intended to provide clarity to the public about existing statutes and regulations.
- Summary of highlights from USDOE guidance documents.



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## Federal guidance documents

- Questions and Answers on Providing Services to Children with Disabilities During the COVID-19 Outbreak (March 2020)
- Supplemental Fact Sheet: Assessing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities (March 21, 2020)
- Implementation of IDEA Part B Provision of Services in the COVID-19 Environment (September 28, 2020)
- A few others (link provided at end of presentation)



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## FAPE

- No matter the instructional delivery approach (remote/distance, in-person, or hybrid), state educational agencies (SEAs), local educational agencies (LEAs), and individualized education program (IEP) teams are responsible for ensuring that a free appropriate public education (FAPE) is provided to all students with disabilities.



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## Services

- Local education agency (LEA) must ensure that, to the greatest extent possible, students with disabilities (SWDs) are provided the special education and related services identified in their IEP or Section 504 plan.



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## Provision of services

- The IEP team should consider a variety of instructional methods and settings when determining how a student's special education and related services will be provided.
  - E.g., if the student is participating in in-person instruction, the IEP team should also consider how the IEP would be implemented during remote/distance and hybrid instruction should circumstances change.
    - Consider alternate available instructional methodologies and delivery methods (e.g., online instruction, teleconference, direct instruction via telephone or videoconferencing, consultative services to parent).



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# State Guidance Documents

*Maryland State Department of Education (MSDE), Division of Early Intervention/Special Education Services*

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### MSDE technical assistance bulletins

- 20-01: Serving Children with Disabilities under IDEA during School Closures due to the COVID-19 Pandemic
  - 20-01 Supplement: Recovery Efforts to Support a Continuum of IFSP Service Delivery during the COVID-19 Pandemic and Beyond
- 20-02: Providing Continuity of Learning to Students with Disabilities Through Nonpublic Special Education Schools during COVID-19
- 20-03: Providing Continuity of Learning to Students with Disabilities during COVID-19
  - Five supplements that provide additional guidance on specific topics.
- 20-04: Providing Continuity of Learning to Deaf, Hard-of-Hearing, Blind, Low-Vision, and DeafBlind Students during COVID-19
- 20-05: Navigating Secondary Transition Services for Students with Disabilities during COVID-19
  - 20-05 Supplement: Tips for Recovery Planning for Secondary Transition

  
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### MSDE technical assistance bulletins

- 20-06: Continuity of the IFSP for Young Children (Birth - Age 4) with Developmental Delays/Disabilities and their Families during Extended School/Closure due to the COVID-19 Pandemic
  - Supplement: Tips for Collaborating to Provide Special Education Services in Childcare and Community-Based Programs Across Varied Service Delivery Models
- 20-07: Providing Continuity of Learning for Students with Disabilities who require Extensive, Intensive, Individualized Instruction and Support during the COVID-19 Pandemic
  - Supplement: Tips to Support Mask Wearing for Students with Disabilities
- 20-08: Supporting the use of Assistive Technology in a Virtual and/or Distance Learning Environment
- 20-09: Recovery Efforts: Addressing the Provision of FAPE through Alternative Service Delivery Models for Students with Disabilities during the Re-Opening of Schools
  - Four supplements that provide additional guidance on specific topics.

  
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### MSDE technical assistance bulletins

- 20-10: Recovery Efforts: Addressing the Reopening of Nonpublic Special Education Schools
- 20-11: Interagency Coordinating Council (ICC), which captures the roles and responsibilities of the State Interagency Coordinating Council (SICC) and each Local Interagency Coordinating Council (LICC)
- 21-01: Interprofessional Collaboration: Related and Support Services
- 21-02: Special Education Citizens Advisory Committee (SECAC) Questions & Answers

  
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## MSDE guidance documents

- A Parents' Guide to Navigating Compensatory Education/Recovery Services during the COVID-19 Pandemic
- Supporting Students with Disabilities During COVID and Afterwards
- A Parents' Guide: Navigating Special Education during the COVID-19 Pandemic
- Extended School Year (ESY) Services during the COVID-19 Pandemic
- TIPS documents



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# Extended School Year

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## Extended school year services

- Extended school year (ESY)
  - Special education and related services that are:
    - Provided to a child with a disability beyond the normal school year of the public agency;
    - Provided in accordance with the child's IEP;
    - Are at no cost to the parents of the child; and
    - Meet the standards of the SEA.



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### ESY services

- The IEP team *must* consider if a student's IEP has goals related to critical life skills and:
  - regression /recoupment
  - degree of progress
  - emerging life skills or breakthrough opportunities
  - interfering behaviors
  - nature and severity of the disability
  - special circumstances
- Team *must* also determine if student's ability to make progress during the year is in jeopardy if he/she does not receive ESY.



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### Tips for ESY services

- The IEP team should hold a meeting before the end of the school year to determine eligibility for ESY services.
- If the team does not schedule a meeting automatically, the parent/guardian should request an IEP team meeting in writing.
  - Request a meeting so that there is enough time to appeal the decision before ESY services begin.
- The IEP team should review eligibility for ESY each year.



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### ESY, continued

- ESY services must be available as necessary to provide FAPE to students with disabilities.
  - Includes remote/distance instruction.
- ESY is not intended to make up for past denials of FAPE.
  - Compensatory education/recovery services = separate discussion.
- ESY services are often provided during the summer. If a student was eligible for ESY services during summer 2020 but the services were not delivered due to COVID-19, the LEA should consider providing ESY services during the normal school year, during school breaks or vacations where appropriate to meet the student's needs.



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### ESY and the 2021-2022 school year

- Most LEAs are offering a choice for ESY (virtual/in-person).
- Check LEA website for plans for ESY and fall 2021.



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# Miscellaneous Hot Topics

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### Masking

- As of July 1, 2021, masking is no longer required in any setting, including Maryland schools.
  - Counties/LEAs can go beyond the requirement and require masks.
- Office for Civil Rights (OCR) recognized that in some instances, such as where a child with a disability has extreme sensory issues and cannot tolerate wearing a face covering in school or at all, enforcing a face covering requirement could impede the child's ability to receive a FAPE.
- School districts should make reasonable modifications in their policies, practices, or procedures, including any addressing the use of face coverings, when those modifications can be made consistent with the health, safety, and well-being of all students and staff, and are necessary to avoid discrimination on the basis of disability.



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## Virtual schools

- Many LEAs are creating virtual school options for students.
  - Some virtual schools will be general education only environments while others will offer special education services as well.
  - LEAs are required to develop an appropriate IEP and then determine the least restrictive environment where the IEP can be implemented.
  - If the IEP cannot be implemented in the virtual school and the student would not receive a FAPE in the virtual school, then the virtual school is not an appropriate placement.
    - IEP team should discuss any potential issues.
- MSDE Virtual Schools and IDEA Q&A (May 20, 2021).

  
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# Federal Guidance on Returning to School for Medically Complex Students

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## Student with COVID

- What if a student with a disability acquires COVID-19 and is absent for an extended time period (generally more than 10 consecutive school days) once schools reopen?
  - IEP team must consider homebound services if recommended by a physician (e.g., online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available).
    - School personnel must follow appropriate health guidelines.
  - If the student does not receive services during this time, the IEP team must determine whether the student requires compensatory education/recovery services.

  
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## High risk of medical complications

- What if a student with a disability is at high risk of severe medical complications if they return to school once schools reopen?
  - Absent for 10 consecutive school days or less:
    - Online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities are not considered a change in placement.
  - Absent more than 10 consecutive school days
    - IEP/Section 504 team must meet to consider change in placement to homebound instruction.
    - For students with IEPs, the IEP team must issue a prior written notice proposing the change in placement.

  
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## Contingency plan

- Can an IEP team consider a distance learning plan in a child's IEP as a contingency plan in the event of a COVID-19 outbreak that requires the school's closure?
  - Yes, but teams are not required to.
  - May include the provision of special education and related services at an alternate location, provision of online or virtual instruction, provision of telephone calls, and may identify which special education and related services, if any, could be provided in the child's home.
  - Provides opportunity to agree on a plan and triggering circumstances to promote a more seamless transition.

  
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## Maryland legislation

- **SB 300/HB 714: Learning Continuity Plan – Requirement**
  - Requires that every IEP contain a learning continuity plan to be implemented during emergency conditions, as defined by the law.
  - Requires notification to the parent of the implementation of the learning continuity plan (within 10 days), input from the parent on how to best operate during emergency conditions, and allows a review of the successes and failures of the IEP during the 2020-2021 school year, by October 1, 2021, and amendments to the IEP based on that review.
    - Effective: July 1, 2021

  
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# Compensatory Education/Recovery Services

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## Compensatory education/recovery services

- IEP team must make an individualized determination when schools resume normal operations whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.
  - The purpose is to remediate the negative impact experienced by the student due to the loss of FAPE.




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## MSDE guidance: compensatory education/recovery services

- LEAs will need to determine whether the educational services provided to the student during the period of school closure and re-opening, were reasonable to allow the student to make progress in the general education curriculum and on their IEP goals.
- In situations where a **FAPE** (i.e., instruction, related services, and supplementary aids and supports) **was not or could not be provided, AND the student was negatively impacted** (i.e., a regression of skills or lack of progress in the curriculum or on IEP goals), the student will require compensatory education/recovery services.
  - IEP teams will need to review data and may need to consider conducting updated formal assessments.
  - May not directly reflect missed services 1:1.




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# Resolving Disputes

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## Ways to resolve disagreements

1. Request an IEP meeting to discuss concerns
  - First step for compensatory education/recovery services proposal
2. Contact the Office of Special Education for the county
3. File a complaint with the state department of education
4. File a request for mediation in writing
  - An informal meeting with an independent mediator
  - Both parties must agree to mediate
5. Participate in a resolution session
6. File a request for a due process hearing
  - Formal and expensive proceeding




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## Filing a state complaint

- Parents/advocates/attorneys can file a written complaint with the state department of education (MSDE in Maryland), if they believe a child's rights have been violated. A copy of the complaint must also be sent to the local director/coordinator of special education.
- Examples of possible complaints:
  - Student did not receive services set forth in IEP.
  - School system failed to conduct timely evaluations.
  - School system violated discipline procedures.
  - MD only looks at procedural, other states consider both procedural and substantive.
- State's department of education must complete its investigation within 60 calendar days.
- The 60-day period can be extended if the parent and school system agree to engage in mediation or other alternative means of dispute resolution.
- The complaint must be filed within one year of the violation.




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**Federal guidance: June 22, 2020**

- IDEA Part B Dispute Resolution in COVID-19 Environment Q&A Documents (June 22, 2020)
- Highlights some exceptions (e.g., virtual mediations/due process hearings) during the COVID-19 pandemic.
  - No update to indicate when they will end.

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# Resources

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**Resources**

- Federal guidance:
  - <https://www.ed.gov/coronavirus/program-information#speced>
  - <https://sites.ed.gov/idea/topic-areas/#COVID-19>
- Maryland State Department of Education guidance:
  - Technical assistance bulletins and guidance documents:  
<http://marylandpublicschools.org/programs/Pages/Special-Education/TAB.aspx>

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## Resources, continued

- State Protection & Advocacy agency
  - "Disability Rights STATE NAME"
  - Disability Rights Maryland: <https://disabilityrightsmd.org/>
- Guides for parents:
  - Disability Rights Maryland COVID-19 resources and parent guides: <https://disabilityrightsmd.org/coronavirus/>



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## Q&A

If you would like to participate in Q&A, please use the "raised hand" feature in Zoom. The moderator will call on attendees as time permits



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