

# Special Education Law During the COVID-19 Pandemic

*Mallory Legg, Esq.*

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# ASHA Disclosures

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



# Poll question #1

- Are you a parent, educator, advocate, attorney, clinician, combination, or someone else?



# Presentation overview

- Relevant laws
- Federal guidance
- Brief overview of Maryland State Department of Education (MSDE) guidance
- Federal guidance on returning to school
- Dispute resolution
- Tips
- Resources
- Q&A



# 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





# 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.



# March 2020 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)



# Poll question #2

- True/false: Students with disabilities must always receive a free appropriate public education (FAPE), even when schools are closed (not providing any instruction).



# 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.



# Guidance: September 28, 2020

- Implementation of IDEA Part B Provision of Services in the COVID-19 Environment (September 28, 2020)



# 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 children with disabilities.



# FAPE, continued

- A FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students.
  - Many accommodations, modifications, and services can be effectively provided online.
- Guidance includes a list of IDEA timelines that may need to be extended.





# 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).



# IEP team member excusal

- Members can be excused from attending some or all of the IEP meeting if the parent and LEA agree, in writing:
  - That the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting; OR
  - The team member submits written input on the development of the IEP to the parent and the IEP team prior to the IEP meeting.



# IEP amendment process

- Parent and LEA may agree to modify the IEP without an IEP meeting by developing a written document to amend or modify the existing IEP.
  - Cannot take the place of the annual IEP meeting.
  - Parent can request a revised copy of the IEP with the changes incorporated.



# Initial evaluation timeline

- Must be conducted within 60 days of receiving parental consent for evaluation.
  - Exception if a parent repeatedly fails or refuses to produce the child for evaluation.



# Initial IEP meeting timelines

- Within 30-days of determining a child needs special education and related services, the LEA must develop an IEP for the child.



# Initial and annual IEP meetings

- LEAs must take steps to ensure that parents are afforded the opportunity to participate in an IEP meeting by notifying them of the meeting early enough to ensure they can attend and by scheduling the meeting at a mutually agreed upon time and place.
  - When face-to-face meetings are not feasible or practicable, USDOE encourages use of alternate means (e.g., telephone, video conference) if acceptable to the parents and other IEP team meeting participants.



# Reevaluation

- Reevaluation must occur once every three years, unless the parent and the LEA agree that a reevaluation is unnecessary.
- Social distancing measures may make administering some in-person assessments impracticable.
- LEAs should investigate all appropriate assessment instruments and tools to determine if some can be administered or completed remotely during the pandemic.



# MSDE timeline guidance

- Evaluations and reevaluations:
  - If these require face-to-face meetings or observations, they will need to be delayed until school reopens.
  - If they do not require face-to-face assessments or observations, and the school staff possess the data needed, they can be conducted by teleconference or other means to complete the process, if the parent consents.
- Annual reviews:
  - If they do not require face-to-face meetings and school staff possess the data needed, IEP team meetings can be held by teleconference or other means to complete the process, if the parent agrees.
  - If the team members do not have access to the data needed to make decisions, the annual review may be delayed until school reopens, if the parent agrees.





# ESY

- 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.



# 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 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.



# Poll question #3

- What is one word that describes your experience with distance learning?



# Guidance: June 30, 2020

- IDEA Part B Procedural Safeguards in the COVID-19 Environment (June 30, 2020)



# Electronic/digital signatures

- LEAs can accept a digital signature to indicate that the parent consents to their child's initial evaluation, reevaluation, or the initial provision of special education and related services.



# IEP meeting documents

- Prior written notice (PWN) must be provided within a reasonable time if it proposes or refuses to initiate or change the identification, evaluation, educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child.
  - If the parent has previously agreed, or agrees during the pandemic, the prior written notice can be provided through email.
  - “Reasonable time” is not defined, but LEAs should make every effort to ensure that written notice is provided as soon as possible prior to the proposed or refused action (check your state for a specific timeline).
- Procedural safeguards can be provided via email if the parent agrees, or previously agreed, to receive an electronic copy.



# Masking

- Centers for Disease Control and Prevention (CDC) has advised use of cloth face coverings.
- 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.



# Masking in Maryland

- **School staff** must wear cloth face coverings while in the school building, on school grounds when not contraindicated due to a medical condition, intellectual or developmental disabilities, or other conditions or safety concerns;
- All students age 5 years and above, school staff, and bus drivers must wear a cloth face covering while **on school bus** when not contraindicated due to a medical condition or developmental or safety considerations;
- Other adults must wear cloth face coverings when they must enter the school building or grounds for essential functions;
- **Students age 5 years and above**, especially students in middle and high school, must wear cloth face coverings in the school building and on school grounds when not contraindicated due to a medical condition or developmental or safety considerations;
- The use of cloth face coverings is recommended for pre-kindergarten students below age 5 years on the school bus, in the school building and on school grounds when not contraindicated due to a medical condition or developmental or safety considerations and should be guided by the “Guidance for Use of Cloth Face Coverings in Child Care Programs”;
- Cloth face coverings should not be worn by children **under 2 years** and anyone who has trouble breathing or is unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.





# 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



# MSDE technical assistance bulletins cont.1

- 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.



## MSDE technical assistance bulletins cont.2

- 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



# MSDE guidance documents

- 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



# Federal Guidance on Returning to School

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# Student with COVID

- What if a SWD 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 services.



# High risk of medical complications

- What if a SWD 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.





# 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.



# Compensatory 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.



# MSDE compensatory services guidance

- 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.



# Poll question #4

- True/false: State and local education agencies can provide the same compensatory services package for all students with disabilities.



# Resolving Disputes

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# How Do You Resolve Disagreements?

1. Request an IEP meeting to discuss concerns
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



# 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.



# Guidance: June 22, 2020

- IDEA Part B Dispute Resolution in COVID-19 Environment Q&A Documents (June 22, 2020)





# Collaboration

- Encourages parents, educators, and administrators to collaborate creatively to continue to meet the needs of students with disabilities.
  - School may not be able to provide all services in the same manner as they are typically provided during the COVID-19 pandemic.
  - Timely communication is important.



# State complaint timeline

- State complaint 60-day timeline can be extended on a case-by-base basis.
  - “Exceptional circumstances” exception.
    - SEA cannot categorically determine that it will not undertake complaint resolutions during the pandemic based solely on the assumption that COVID-19 is an exceptional circumstances.



# Mediation

- Parties can agree to conduct the mediation through alternative means (e.g., video conferences or conference calls) so long as the state's procedures do not prohibit mediation from occurring in this manner.



# Resolution sessions

- Parent and LEA can mutually agree to extend the timelines until a face-to-face meeting could occur.
  - Exception: due process complaint that addresses disputes about disciplinary removal (can be conducted virtually).
- Can meet virtually subject to the parent's agreement for all resolution sessions.



# Due process hearings

- Can be conducted via videoconference and/or conference call if a hearing officer concludes that such procedures are consistent with legal practice in the state.
- Hearing officer can grant timeline extension at the request of either party.



# Tips

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# Tips

- Remember that this is a new situation for everyone. Guidance documents can point us in the right direction, but new questions and concerns will arise.
- Work creatively and collaboratively with the IEP team as much as possible.
- Visit the LEA's website and review the current plan for the 2020-2021 school year.
- Collaborate with clinicians for suggestions that can be shared with the IEP team.
- Parents, teachers, and clinicians should share creative ideas to track the child's behavior and progress at home.
- Parents should communicate with teachers and school-based providers if they are experiencing difficulties with distance learning.



# 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:
  - Technical assistance bulletins and guidance documents:  
<http://marylandpublicschools.org/programs/Pages/Special-Education/TAB.aspx>



# 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/>



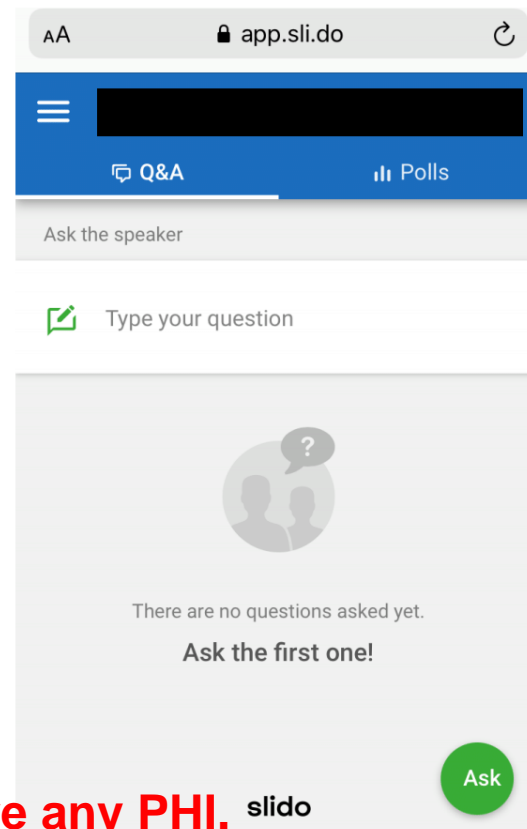
# Q&A

## Question & Answer (Q&A) Segment.

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# Contact information

**Mallory Legg, Esq.**

Staff Attorney, Project HEAL

[Legg@kennedykrieger.org](mailto:Legg@kennedykrieger.org), 443-923-9571

**Project HEAL intake line: 443-923-4414**

[www.projectheal.kennedykrieger.org](http://www.projectheal.kennedykrieger.org)

