



200 West Baltimore Street, Baltimore, Maryland 21201

# Technical Assistance Bulletin

MarylandPublicSchools.org



## Division of Early Intervention and Special Education Services | Bulletin # 20-01

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Date: Guidance Relevant as of March 30, 2020

### SERVING CHILDREN WITH DISABILITIES UNDER IDEA DURING SCHOOL CLOSURES DUE TO THE COVID-19 PANDEMIC

#### Background

The State of Maryland, along with the rest of the nation, is currently faced with the pandemic threat of the novel coronavirus (COVID-19). In order to protect the health and safety of our communities, on March 12, 2020, the State Superintendent announced the closing of Maryland public schools from March 16, 2020 through March 27, 2020. In consultation with the Office of the Governor, the State Board of Education, and various public health officials, the State Superintendent announced on March 25, 2020 that schools would remain closed through April 24, 2020. While operations of school buildings has ceased, the Maryland State Department of Education (MSDE) has been working with local public agencies to ensure continuity of learning for all Maryland students.

As local public agencies submit to the MSDE plans for providing educational services to all students, they must also address concerns related to the provision of services to students with disabilities. The United States Department of Education (DOE) has issued multiple guidance documents:

[Non-Regulatory Guidance on Flexibility and Waivers for Grantees and Program Participants Impacted by Federally Declared Disasters](#)

[Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak \(March 2020\)](#)

[Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#)

These federal guidance are clear that the national health crisis does not abridge the rights of students with disabilities to a Free Appropriate Public Education (FAPE) and equal opportunity to educational services as their non-disabled peers, as required under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act (ADA).

## Purpose

The MSDE Division of Early Intervention and Special Education Services (DEI/SES) has created this fact sheet to address common questions raised by local public agencies, parents, and the advocacy community during this unprecedented time. This document is based on current federal guidance as of the date of publication (3/30/2020). The DEI/SES remains committed to supporting local public agencies as we navigate these rapidly evolving and challenging times. Local public agencies should also continue to consult with their legal counsel to ensure local continuity of learning plans and practices comply with applicable state and federal law.

## Part B

### ***FAPE OBLIGATIONS***

**Q: Are the requirements for the provision of a FAPE to students with disabilities waived in times of emergencies such as the COVID-19 pandemic?**

A: No. As the guidance from the DOE indicates, the IDEA does not provide the DOE with authority to waive the requirement to provide a FAPE, including meeting timelines for mandated actions under the statute, under any circumstances. This includes during the COVID-19 pandemic.

The MSDE recognizes that during these exceptional times, a FAPE must be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing education services to these students. However, many disability-related modifications and services may be effectively provided through alternative delivery options, such as distance technology, which comply with the directives of health and governmental officials related to the steps necessary to keep students and school staff healthy.

**Q: What is the obligation of the local public agencies to implement the Individualized Education Program (IEP) for students with disabilities if the public agency offers instruction through alternative delivery options while schools are closed?**

A: If the local public agency provides educational services to the general student population, such as through distance learning, it must provide equitable access to comparable opportunities to students with disabilities, tailored to their individual needs, to the maximum extent possible.

The DOE has made it clear that schools may not decline to provide general education instruction through alternative delivery models in order to avoid addressing matters pertaining to services for students with disabilities. Instead, decisions about the provision of education services must be based on consideration of the health, safety, and well-being of students and school staff.

In Maryland, instruction to students with disabilities is expected to be provided in alignment with the general education plans that each public agency is being required to develop. Students remain entitled to related services under their IEP. Local public agencies should consider how these services, such as speech and language therapy, may be provided virtually.

Concerns have been expressed that virtual instruction would compromise student privacy. The United States Department of Education, Student Privacy Policy Office (SPPO) provides guidance and resources for assisting public agencies with protecting the privacy of personally identifiable information when providing online educational services and virtual learning tools. This information can be found on the SPPO web-site at <https://studentprivacy.ed.gov>.

### ***EQUITABLE ACCESS TO EDUCATIONAL SERVICES***

#### **Q: What does equitable access to instruction mean?**

A: Equitable access to instruction for students with disabilities involves planning for appropriate modifications and accommodations based on each student’s needs and the differences created by the change in modality of instruction.

The local public agency must consider how current accommodations and modifications are provided in a physical classroom setting (e.g., extra time, redirection, small group, etc.) and what this would look like in a virtual environment to ensure educational benefit to each student. In many cases, instructional accommodations may be met in an online environment by providing additional supports, such as individualized telephone or video conferencing.

#### **Q: Is equitable access to instruction required for students placed in nonpublic separate special education schools?**

A: Yes. The local public agencies are expected to work collaboratively with the nonpublic schools to ensure continuity of services to students with disabilities and the continued availability of the full continuum of placements and service delivery options. This includes moving to virtual platforms for service delivery to the extent feasible and appropriate.

### ***PROVISION AND DOCUMENTATION OF SERVICES***

#### **Q: Must local public agencies hold IEP team meetings for every student to determine how a FAPE will be provided during the time of extended school closure?**

A: No. If the parent or the public agency believes that changes can be made to how services are provided while schools are closed, agreements to that effect can be made outside of the IEP team process, as has always been the case when changes are needed after the annual review has taken place each year.

The regulations state that in making changes to the IEP after the annual IEP review for a school year, the parent and the public agency may agree not to convene the IEP team meeting for the purpose of making those changes, and instead may develop a written document to amend or modify the IEP (34 CFR §300.324).

**Q: If changes are made by agreement between the public agency and the parent, is formal written parental consent required?**

A: No. The regulation states that changes can be made by agreement, and does not use the term “consent.” When promulgating the IDEA regulations, the DOE stated that the meaning of the terms “agree” and “agreement” are not the same as “consent.” The terms “agree” or “agreement” refer to an understanding between the parent and the public agency about a particular matter, which may be in writing, depending on the context (Federal Register, Vol. 71, No 156, August 14, 2006, p. 46551). The IDEA defines “consent” as an agreement in writing that reflects that the parent was fully informed of all information relevant to the matter for which it is sought, in his or her native language (34 CFR §300.9).

**Q: What documentation needs to be created to reflect amendment of the IEP by agreement of the parent and the public agency?**

A: As stated above, the regulations state that in making changes to the IEP after the annual IEP review for a school year, the parent and the public agency may agree not to convene the IEP team meeting for the purpose of making those changes, and instead may develop a written document to amend or modify the IEP. If changes are made in this manner, the public agency must ensure that the IEP team is informed of those changes. If the parent requests a revised copy of the IEP with the changes incorporated, this must be provided (34 CFR §300.324).

Therefore, in order to demonstrate compliance with these requirements, the public agency must show that it has developed a written document to amend the IEP, or has revised the entire IEP if requested by the parent, and that it has informed the parent and other members of the IEP team of the changes.

**Q: If an agreement cannot be reached with the parent about how a FAPE will be provided during the time of extended school closure, what can the public agency do in order to offer the student a FAPE?**

A: If the school-based members of the IEP team have the data needed to make decisions, the IEP team should be convened by teleconference or other means to address the student’s needs. For example, if a student has a private duty nurse (PDN) in school, but is not attending school, the school staff can either obtain agreement of the parent to suspend that service while schools are closed or convene an IEP team meeting to determine whether the student requires a PDN in the school building while the student is not in the building.

**Q: Is parental consent required to hold an IEP team meeting by teleconference?**

A: The IDEA states that when conducting IEP team meetings, the parent and the public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls (34 CFR §300.328). Therefore, written parental consent is not required.

**Q: If instruction is provided through an alternative delivery method and the services are not provided in the manner described by the IEP, will compensatory services be required when schools reopen?**

A: Once schools reopen, the IEP team for each student must determine whether, and to what extent, compensatory services are needed when there is a decline in the student's skills, or lack of progress in the general education curriculum or on the IEP goals during the extended school closure. The IEP team must also consider whether revisions to the IEP are required.

**Q: How must decisions made during the extended school closures be documented?**

A: The MSDE encourages the local public agencies to continue to utilize the forms currently in place for such decisions rather than creating new forms.

Teams should also take care to document specialized instruction, accommodations, and related services provided during school closures. This includes documenting dates, times, and duration of instruction and services provided to the student. This will enable the IEP team to later make determinations regarding any compensatory services that need to be provided.

Each local public agency should provide proactive and ongoing communication with parents, identifying the best communication channels to and from families and ensuring that there are real-time opportunities for questions and concerns to be addressed. This ongoing communication will help educators, administrators, and parents to consider any impact of the closure of schools on students' access to a FAPE.

### **FEDERAL AND STATE TIMELINES**

**Q: Is there flexibility with respect to the timelines for evaluations, reevaluations, and annual IEP reviews?**

A: No. As stated above, there is no authority to extend timelines under the IDEA. With respect to the timelines for 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*.

With respect to the timelines for conducting 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 must be delayed until school reopens.

If the parent is unable to attend meetings by virtual or telephonic methods, the team should document reasonable attempts to schedule meetings, as well as parent contact.

**Q: Are the timelines for due process waived during a period of extended school closure due to a national emergency?**

A: No, the timelines are not waived. However, as always, the Office of Administrative Hearings (OAH) can extend the timelines at the request of either party.

While a hearing may be postponed, pleadings should continue to be filed in a timely manner so that once the hearing resumes, there will be no additional delays.

**Q: Is there flexibility to extend the 30-day resolution period due to a national emergency?**

A: Yes. With respect to the 30-day resolution period, while the timeline is not waived, there is nothing in the IDEA that prevents the parties from agreeing to extend the timelines for this process as well.

**Q: Are the timelines for completing State complaint investigations extended during a national emergency that results in the closure of schools?**

A: No. However, with respect to State complaint investigations, the 60-day timeline has always been able to be extended for exceptional circumstances that exist with respect to a particular student. Therefore, if documents are not available for a specific student because of the closure of schools, the public agency can request that the timeline be extended, on a case-by-case basis. If the public agency represents to the MSDE that there are documents that will demonstrate compliance with the requirements, and can obtain access to those documents when schools reopen, the MSDE will extend the timelines to ensure that a thorough investigation is conducted.

## Part C

### ***SERVICE PROVISION***

**Q: Are local Infants and Toddlers Programs (LITPs) required to continue providing early intervention services to infants and toddlers with disabilities and their families during a COVID-19 outbreak if the offices are closed?**

A: If the offices of the early intervention program or provider are closed, then LITP services would not need to be provided to infants and toddlers with disabilities and their families during that period of time. If the offices remain open, but LITP services cannot be provided in a particular location (such as in the child's home) then the LITP must ensure the continuity of services, on a case-by-case basis and consistent with protecting the health and safety of the child, family, and service providers. Programs should consider providing services in an alternate location, using a different provider, or providing services through alternate means, such as tele-intervention or consultative services to the family. Determining how to provide Part C services in a manner that is consistent with the most updated public health and safety guidance is left to the discretion of the LITP and the provider(s) serving a particular child and family.

Even if offices remain closed, the DEI/SES strongly encourages LITPs to continue service delivery by alternate means. Providing open communication with families and ensuring continuity of services by alternate means during this pandemic is in the best interest of children and families in the program. Moreover, ensuring continuity of service delivery will ultimately reduce the number of Individualized Family Service Plan (IFSP) meetings that must be held and compensatory services that must be provided once offices reopen.

**Q: How do we document a missed service when Part C service providers are not working due to the Local Lead Agency/Local School System being closed?**

A: If local Part C service providers are not working due to the local lead agency being closed, use the Agency Closed/Weather reason for missed services. Timeline exceptions (45-day timeline, initiation of service delivery, and transition planning meetings) are available in the Maryland Online IFSP System. If offices are closed for an extended period and services are not provided for an extended period, the IFSP team must meet under 34 CFR 303.342(b)(1) to determine if changes are needed to the IFSP and to determine whether compensatory services are needed to address the infant's or toddler's developmental delay.

Each LITP needs to ensure continuity of services, on a case-by-case basis and consistent with protecting the health and safety of the child. The LITP/local service provider(s) may consult with families through a teleconference or other alternative method, such as email or video conference, consistent with privacy interests, to provide consultative services, guidance, and advice as needed. The MSDE, DEI/SES encourages LITPs to continue providing early intervention services by alternative means to the greatest extent possible.

**Q: Must LITPs provide compensatory services for all children once it reopens?**

A: Compensatory services must be considered for children when offices are closed for an extended period of time. Compensatory services are determined on a case-by-case basis. Early intervention providers must consider the impact of missed services on the ability of the child to achieve his or her IFSP Outcomes.

**Q: Can IFSP services be provided via tele-intervention?**

A: Yes. Early Intervention providers are encouraged to find creative ways to provide continuity of services during the COVID-19 virus pandemic. Resources are available to ensure staff have the training needed to conduct tele-intervention visits.

**Q: Can providers offer tele-intervention to families who typically have in-person services? Can this switch happen temporarily without an IFSP review, to avoid disruption in service?**

A: If services were being provided in the home then there is no need to change the IFSP for tele-intervention services in the home. The method of service delivery would be discussed and agreed upon by families and clearly documented. If, however, services were being provided outside of the home, the IFSP should be amended to reflect these changes.

**Q: If alternate services are provided for the same amount of total time but in shorter increments would this require an IFSP review meeting? For example, if the IFSP dictates 45 minutes 1x a month, can services be provided for 15 minutes, 3x a month while alternate services are taking place?**

A: Federal guidance dictates that early intervention have discretion to provide Part C services in a manner that is consistent with the most updated public health and safety guidance. Each LITP needs to ensure continuity of services, on a case-by-case basis and consistent with protecting the health and safety of the child, family, and provider. Therefore, if providers are making a good faith effort to provide the total time specified on the IFSP because it is in the best interest of the child and family, no IFSP revision needs to occur at this time. Providers should clearly document that the parent is requesting or accepting of the modified method of delivery. Changes to the frequency or intensity of services should not be made for administrative convenience.

***IFSP MEETINGS***

**Q: Is it an option to complete initial and other types of IFSP meetings over the phone?**

A: Families must be provided with an opportunity to participate in meetings with respect to the identification, evaluation, IFSP, placement of the child and the provision of appropriate early intervention services and transition to Part B or other services. The LITPs/local service providers may offer to hold, and parents may choose to participate in, meetings by alternative means.



**Q: Can Transition Planning Meetings (TPMs) occur virtually?**

A: Yes. Transition Planning Meetings may occur virtually or over the phone. The inclusion of a Part B representative is still in effect.

**Q: Can providers obtain verbal consent for changes to an IFSP?**

A: 34 CFR §303.7(b) states that parental consent must be in writing. Consent, as defined in the Part C regulations, means that the parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought. The provision of consent requires a signature. Therefore, simple agreement over the phone is not legally sufficient for IFSP initiation, reviews, or medical assistance consent. Since this is a federal requirement, a state cannot approve policies, procedures, or practices that are inconsistent.

**Q: Can we accept signatures via a scanned document or an electronic signature?**

A: Written consent may be provided by the parent in electronic form under Part C provided that the State lead agency or participating agency complies with the requirements in IDEA Part B and the Family Educational Rights and Privacy Act (FERPA). Under FERPA, "signed and dated written consent" includes a record and signature in electronic form that--"(1) Identifies and authenticates a particular person as the source of the electronic consent; and (2) Indicates such person's approval of the information contained in the electronic consent." (34 CFR § 99.30(d)).

**EVALUATIONS****Q: Is there flexibility with respect to the timelines for initial evaluations?**

A: No. The state has no authority to extend timelines under the IDEA. However, the 45-day timeline has two allowable exceptions. These exceptions are if the child or parent is unavailable due to exceptional family circumstance, or if the parent has not provided consent despite documented attempts by the LITP (34 CFR § 303.310(b)). In these situations, the LITP or provider must document application of the exception in the child's early intervention records. In situations when families and providers are displaced or when offices are closed, delays can be expected. LITPs must complete the initial evaluation, assessment, and IFSP meeting as soon as the exceptional family circumstance no longer exists and parental consent is obtained. If appropriate, an interim IFSP may be put into place with parental consent before the evaluation or assessment is completed.

**Q: What are some strategies to help facilitate eligibility evaluations during the COVID-19 pandemic?**

A: An evaluation for eligibility that includes all developmental domains and yields the necessary scoring to determine if the child has a 25% delay in at least one area or atypical development may be completed via tele-intervention. In addition, a child's medical and other records may be used to

establish eligibility (without conducting an evaluation of the child) under this part if those records indicate that the child's level of functioning in one or more of the developmental areas identified in §303.21(a)(1) constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under §303.21, including an infant with a physical or mental condition that has a high probability of resulting in a delay. If the child's part C eligibility is established under this paragraph, the LITP must conduct assessments of the child and family in accordance with paragraph (c) of this section.

**Q: How do we complete transition evaluations and move forward with transitioning children to Part B services when schools are closed?**

A: As stated in the Part B guidance above, there is no authority to extend timelines under the IDEA. With respect to the timelines for 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. If there is the ability to determine eligibility for Part B services using current present levels and updated information from Part C, then IEP eligibility meetings can occur virtually and if the child is Part B eligible, the family can be given the choice to continue receiving services through an IFSP or move to an IEP.

## Resources<sup>1</sup>

### PART B

#### USDE Disaster Guidance

DOE Fact Sheet Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students (March 16, 2020)

<https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf>

Non-Regulatory Guidance on Flexibility and Waivers for Grantees and Program Participants Impacted by Federally Declared Disasters (September, 2018)

<https://safesupportivelearning.ed.gov/sites/default/files/disaster-guidance.pdf>

Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities (March 21, 2020)

<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak (March 2020)

<https://sites.ed.gov/idea/files/ga-covid-19-03-12-2020.pdf>

#### Student Privacy

DOE Student Privacy Policy Office: FERPA and Virtual Learning Related Resources Fact Sheet (March 2020)

[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/FERPA%20%20Virtual%20Learning%20032020\\_FINAL.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20%20Virtual%20Learning%20032020_FINAL.pdf)

DHHS/DOE: Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records (Updated December 2019)

[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/2019%20HIPAA%20FERPA%20Joint%20Guidance%20508.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/2019%20HIPAA%20FERPA%20Joint%20Guidance%20508.pdf)

#### Virtual Learning for Students with Disabilities

DOE OSERS: Dear Colleague Letter re: Virtual Schools (August 5, 2016)

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/dcl--virtual-schools--08-05-2016.pdf>

Council of Administrators of Special Education: COVID-19 and Considerations for Special Education Administrators (March 21, 2020)

<sup>1</sup> Resources are not endorsed by the DEI/SES, and information contained therein should not be construed to be the position of the DEI/SES.

<https://docs.google.com/document/d/1zEH-ggCHSI7sRQy5IpPEC0FaP4Vw5Wm0uUooruNFmrl/preview>

Center on Online Learning and Students with Disabilities

<http://www.centeronlinelearning.res.ku.edu/>

Council for Exceptional Children (CEC): COVID-19 Information for Special Educators

[https://www.cec.sped.org/~media/Files/News/A%20Message%20on%20COVID19 %20Supporting%20Students%20with%20Exceptionalities.pdf](https://www.cec.sped.org/~media/Files/News/A%20Message%20on%20COVID19%20Supporting%20Students%20with%20Exceptionalities.pdf)

Dynamic Learning Maps Resources

<https://dynamiclearningmaps.org/professional-development>

State Educational Technology Directors Association (SETDA): eLearning Coalition

<https://www.setda.org/main-coalitions/elearning/accessibility/>

## PART C

Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak (March, 2020)

<https://sites.ed.gov/idea/idea-files/q-and-a-providing-services-to-children-with-disabilities-during-the-coronavirus-disease-2019-outbreak/>

ECTA Center - <https://ectacenter.org/>

<https://ectacenter.org/topics/disaster/coronavirus.aspx> - This page is updated on a daily basis with the latest information on funding and guidance for all birth-5 early childhood special education programs regarding this national emergency, as well as information on [talking to children and families](#).

<https://ectacenter.org/topics/disaster/tele-intervention.asp> - A number of states are providing distance learning to young children with disabilities and their families. Here, we have compiled information on [effectiveness](#), [service delivery](#), [technology and privacy](#), and [state guidance on tele-intervention](#).

<https://ectacenter.org/events/webinars.asp> - [Use of Tele-Intervention in Early Intervention \(IDEA Part C\): Strategies for Providing Services Under the COVID-19 Public Health Emergency](#) - This webinar explores Part C policy and infrastructure issues for states to consider addressing in order to establish and fund early intervention through video-based [tele-intervention](#), including:

- Funding Opportunities: Medicaid and private insurance
- Privacy Issues: HIPAA and FERPA
- Consent from families (What is needed?)
- Video Conferencing: Technology and Considerations

[Planning for the Use of Video Conferencing for Early Intervention Home Visits during the COVID-19 Pandemic](#) (prepared by Larry Edelman) suggests key topics to be addressed and provides information and resources to assist in planning how to use video conferencing for home visiting.

Dathan Rush, FIPP Director: This brief video shows how you can use tele-intervention during this time of social distancing and includes an overview of system requirements, how to plan a visit, the three parts of a virtual visit, and what conducting an tele-intervention visit looks like in action.

<https://www.assurethefuture.org/tele-intervention.html>

Robin McWilliam: Home visits have been suspended during the Covid-19 pandemic, but early interventionists can still provide supports to families. I discuss here how the principles of the Routines-Based Model match the demands of distance service delivery, the definition of tele-intervention, the research behind telepractice, how to use telepractice for the Routines-Based Interview, and how to use tele-intervention for home visits.

<https://naturalenvironments.blogspot.com/2020/03/tele-intervention-and-routines-based.html>

DEC Early Intervention Community of Practice:

An online community of practitioners, parents/caregivers, researchers, faculty, and advocates for families of young children birth to age three with developmental delays or disabilities

[deceisig.blogspot.com](http://deceisig.blogspot.com)

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