

Special Education

April 2020

- ***What are the expectations for instruction and/or instructional supports for students with disabilities?***

The MSDE recognizes that during these exceptional times, a Free Appropriate Public Education (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.

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 United State Department of Education (USDE) 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 Individualized Education Program (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>.

- ***What are the requirements for IEP meetings?***

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.

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. In particular, 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. Prior to implementation of the amended IEP, parent agreement is required.

During school closure, the IEP team should be convened by teleconference or other means to address the student's needs (including initial, annual, or reevaluation IEP team meetings) if the school-based members of the IEP team have the data needed to make decisions. 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 to hold a meeting via teleconference is not required.

- ***Will there be waivers for special education requirements and deadlines?***

At this time, there is no authority to extend timelines or requirements 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.

- **Are there additional resources and/or funding available for students with disabilities?**

In response to the extended school closure, the Division of Early Intervention/Special Education Services (DEI/SES) has developed Technical Assistance Bulletins (TABs) to support Local School Systems (LSSs) and Public Agencies (PAs). The first two of a seven TAB series can be found on the DEI/SES website. The DEI/SES has also provided the following flexibility guidelines to help local school systems (LSSs) support continuity of learning for students with disabilities in a virtual and/or distance learning environment:

- Comprehensive Coordinated Early Intervening Services (CCEIS)
 - SFY 2019 and SFY 2020 funds may be used to purchase technology, supplies, materials, and other resources to support virtual and/or distance learning during COVID-19. Any technology, supplies, materials, and other resources purchased with CCEIS funds must be used to address the root cause in the identified area(s) of significant disproportionality.
 - Funds may be used for students with disabilities and students without disabilities.
 - Flexibility is granted to budget amendments and realignment for technology purchases.
 - Caution: Be thoughtful and intentional in the amount you dedicate to respond to COVID-19 for grants ending on 9/30/2020 and 9/30/2021, respectively, because funding will be necessary to implement your CCEIS Plan once schools resume to normal operations.
- Passthrough funds
 - SFY 2019 and SFY 2020 funds may be used to purchase technology, supplies and materials, and other resources to implement distance learning for students with disabilities to respond to COVID19
 - Federal guidelines for the use of IDEA funds remain in place and have not changed for the purchasing of technology.
 - Flexibility has been granted to increase the cap placed on technology purchases; however, technology purchased can only be used for students with disabilities or for staff providing services to students with disabilities.
 - The LSS is responsible for maintaining procedures regarding tracking and inventory control.
- Local Implementation for Results (LIR) Grants
 - The DEI/SES has provided LIR discretionary funding grant opportunities to each LSS for the local implementation of the DEI/SES strategic imperatives (Early Childhood, Secondary Transition, Access/Equity/Progress). Flexibility has been given to each LSS to make amendments to their LIR focus and resources to support the implementation of Specially Designed Instruction in a virtual and/or distance learning environment during the extended school closure period.
- Medicaid billing (additional source of funding)
 - An expansion of Medicaid billing has been granted for LSSs, PAs, and nonpublic schools to maximize Medicaid funding. Flexibilities allow for the use of a telehealth mode to replace an "in person" contact in the provision of any health related service delivered through an Individualized Family Service Plan (IFSP) or IEP-except nursing, transportation, audiology, and therapeutic behavioral services.

The United States Department of Education (USDE) has provided the following resources to help support states and local school systems support students with disabilities:

- [DOE Fact Sheet Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#) (March 16, 2020)
- [Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities](#) (March 21, 2020)
- [Non-Regulatory Guidance on Flexibility and Waivers for Grantees and Program Participants Impacted by Federally Declared Disasters](#) (September, 2018)
- [DOE OSERS: Dear Colleague Letter re: Virtual Schools](#) (August 5, 2016)
- ***What are the requirements for IEP meetings?***

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.

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. In particular, 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. Prior to implementation of the amended IEP, parent agreement is required.

During school closure, the IEP team should be convened by teleconference or other means to address the student's needs (including initial, annual, or reevaluation IEP team meetings) if the school-based members of the IEP team have the data needed to make decisions. 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 to hold a meeting via teleconference is not required.

- ***Will there be waivers for special education requirements and deadlines?***

At this time, there is no authority to extend timelines or requirements 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.

- ***Are there additional resources and/or funding available for students with disabilities?***

In response to the extended school closure, the Division of Early Intervention/Special Education Services (DEI/SES) has developed Technical Assistance Bulletins (TABs) to support Local School Systems (LSSs) and Public Agencies (PAs). The first two of a seven TAB series can be found on the DEI/SES [website](#). The DEI/SES has also provided the following flexibility guidelines to help local school systems (LSSs) support continuity of learning for students with disabilities in a virtual and/or distance learning environment:

- Comprehensive Coordinated Early Intervening Services (CCEIS)
 - SFY 2019 and SFY 2020 funds may be used to purchase technology, supplies, materials, and other resources to support virtual and/or distance learning during COVID-19. Any technology, supplies, materials, and other resources purchased with CCEIS funds must be used to address the root cause in the identified area(s) of significant disproportionality.

- Funds may be used for students with disabilities and students without disabilities.
 - Flexibility is granted to budget amendments and realignment for technology purchases.
 - Caution: Be thoughtful and intentional in the amount you dedicate to respond to COVID-19 for grants ending on 9/30/2020 and 9/30/2021, respectively, because funding will be necessary to implement your CCEIS Plan once schools resume to normal operations.
- Passthrough funds
 - SFY 2019 and SFY 2020 funds may be used to purchase technology, supplies and materials, and other resources to implement distance learning for students with disabilities to respond to COVID-19
 - Federal guidelines for the use of IDEA funds remain in place and have not changed for the purchasing of technology.
 - Flexibility has been granted to increase the cap placed on technology purchases; however, technology purchased can only be used for students with disabilities or for staff providing services to students with disabilities.
 - The LSS is responsible for maintaining procedures regarding tracking and inventory control.
- Local Implementation for Results (LIR) Grants
 - The DEI/SES has provided LIR discretionary funding grant opportunities to each LSS for the local implementation of the DEI/SES strategic imperatives (Early Childhood, Secondary Transition, Access/Equity/Progress). Flexibility has been given to each LSS to make amendments to their LIR focus and resources to support the implementation of Specially Designed Instruction in a virtual and/or distance learning environment during the extended school closure period.
- Medicaid billing (additional source of funding)
 - An expansion of Medicaid billing has been granted for LSSs, PAs, and nonpublic schools to maximize Medicaid funding. Flexibilities allow for the use of a telehealth mode to replace an “in-person” contact in the provision of any health related service delivered through an Individualized Family Service Plan (IFSP) or IEP-except nursing, transportation, audiology, and therapeutic behavioral services.

The United States Department of Education (USDE) has provided the following resources to help support states and local school systems support students with disabilities:

- [DOE Fact Sheet Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#) (March 16, 2020)
[Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities](#) (March 21, 2020)
- [Non-Regulatory Guidance on Flexibility and Waivers for Grantees and Program Participants Impacted by Federally Declared Disasters](#) (September, 2018)
- [DOE OSERS: Dear Colleague Letter re: Virtual Schools](#) (August 5, 2016)