



200 West Baltimore Street, Baltimore, Maryland 21201

# Technical Assistance Bulletin

MarylandPublicSchools.org



## Division of Early Intervention and Special Education Services | Bulletin # 22-01

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Date: March 2022

### Special Education – Learning Continuity Plan – Requirement Ensuring Continuity of Special Education Services during Emergency School Closures

#### Background

During the 2021 Legislative Session, the General Assembly passed Senate Bill 300/House Bill 714: *Special Education – Learning Continuity Plan – Requirement*, which amends Md. Code, Education Article §8-405 *Parents' notice and attendance at meetings*. In response to the disruption of services to special education students during the extended school closures resulting from the COVID-19 pandemic, the amendment to the statute requires the Individualized Education Program (IEP) team to proactively develop a “learning continuity plan” (LCP) to be implemented during emergency conditions. The State Board of Education adopted regulations for the LCP requirement on February 22, 2022. This technical assistance bulletin addresses the changes to the law, regulations, and new responsibilities for the local education agencies (LEAs) and public agencies (PAs). A flowchart is also provided at the end of this document as guidance to show how this requirement must be implemented (see Figure 1).

#### The Law

Amended Educ. Art. §8-405 reads in relevant part:

(D) (1) IN THIS SUBSECTION, “EMERGENCY CONDITIONS” MEANS A PERIOD OF TIME OF 10 SCHOOL DAYS OR LONGER, DURING WHICH:

- (I) A CHILD WITH A DISABILITY CANNOT BE PROVIDED WITH AN INDIVIDUALIZED EDUCATION PROGRAM OR SPECIAL EDUCATION SERVICES AT SCHOOL; AND
- (II) THE SCHOOL IS PROVIDING INSTRUCTION IN SOME FORM TO ITS STUDENTS.

(2) (I) BEGINNING OCTOBER 1, 2021, AN INDIVIDUALIZED EDUCATION PROGRAM SHALL INCLUDE A LEARNING CONTINUITY PLAN TO IMPLEMENT DURING EMERGENCY CONDITIONS IN ORDER TO ENSURE THAT THE INDIVIDUALIZED EDUCATION PROGRAM IS PROCEEDING APPROPRIATELY DESPITE THE EMERGENCY CONDITIONS.

(II) A LEARNING CONTINUITY PLAN REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE DEVELOPED BY AN INDIVIDUALIZED EDUCATION PROGRAM TEAM AT THE TIME OF:

1. THE DEVELOPMENT OF A STUDENT’S INITIAL INDIVIDUALIZED EDUCATION PROGRAM; OR
2. THE NEXT SCHEDULED REVISION OF A STUDENT’S INDIVIDUALIZED EDUCATION PROGRAM.

(3) (I) WITHIN 10 DAYS OF AN INDIVIDUALIZED EDUCATION PROGRAM TEAM DETERMINING THAT EMERGENCY CONDITIONS EXIST, THE TEAM SHALL MAKE A REASONABLE ATTEMPT TO NOTIFY THE PARENT OR GUARDIAN OF A CHILD WHO REQUIRES AN INDIVIDUALIZED EDUCATION PROGRAM THAT A LEARNING CONTINUITY PLAN IS IN PLACE.

(II) IN CONTACTING A PARENT OR GUARDIAN UNDER THIS PARAGRAPH, THE INDIVIDUALIZED EDUCATION PROGRAM TEAM SHALL SEEK INPUT FROM THE PARENT OR GUARDIAN ON HOW THE LEARNING CONTINUITY PLAN WILL BEST OPERATE DURING EMERGENCY CONDITIONS.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE PROVISION OF SERVICES UNDER A LEARNING CONTINUITY PLAN DURING EMERGENCY CONDITIONS DOES NOT ALTER THE CHILD’S EDUCATIONAL PLACEMENT FOR PURPOSES OF A DUE PROCESS COMPLAINT BROUGHT UNDER § 8–413 OF THIS SUBTITLE.

(5) AN INDIVIDUALIZED EDUCATION PROGRAM TEAM SHALL PERIODICALLY UPDATE THE EMERGENCY LEARNING CONTINUITY PLAN.

### **Purpose**

The intent of the law is clear – to provide learning continuity for students with disabilities by proactively considering how a free appropriate public education (FAPE) may be delivered, with input from the parent, when brick and mortar school buildings are closed and the LEA/PA is providing some instruction to its students. In implementing the requirements of the law, the Division of Early Intervention and Special Education Services (DEI/SES) notes some important points:

- The Learning Continuity Plan (LCP) is not separate from the IEP, which is the legal document for eligible students ages 3 through 21, where the IEP team is required to describe what accommodations, modifications, and special education and related services are necessary to provide a student with FAPE.
- It is the obligation of the LEA/PA to provide a student with a disability with FAPE – regardless of the place or method of instruction (e.g., remote learning).
- The LCP must address what the student needs in order to receive FAPE; it is not determined by what the LEA/PA can provide due to financial, staffing, or other constraints.
- If the LEA/PA is unable to provide FAPE to a student with a disability during emergency conditions, it must consider compensatory education as a remedy.
- The DEI/SES revised the IEP forms and the Maryland Online IEP (MOIEP) system to incorporate the new LCP requirement. The DEI/SES added “IEP Planning for Emergency Conditions” to the

various sections of the IEP to capture how a student will be provided with FAPE during the emergency conditions.

## Questions and Answers

**Q1: What is required in the Learning Continuity Plan (LCP) referenced in Educ. Art. §8-405?**

**A1:** While Educ. Art. §8-405 does not provide a specific definition of the required components of the LCP, it is clear that the law was adopted to ensure that the IEP proactively anticipates how a free appropriate public education (FAPE) will be provided to a student if emergency conditions arise and traditional in-person learning in a school building cannot occur. Therefore, the Maryland State Board of Education has adopted regulations that address the IEP team responsibilities and the IEP document content requirements consistent with Educ. Art. §8-405(d). The revised regulations regarding the LCP requirement include COMAR 13A.05.01.03, COMAR 13A.05.01.08, and COMAR 13A.05.01.09.

**Q2: How do IEP teams document IEP Planning for Emergency Conditions?**

**A2:** The Learning Continuity Plan (LCP) is not separate from the IEP. *IEP Planning for Emergency Conditions* (i.e. the LCP) is integrated into the IEP form and format and is required as part of the IEP team process. (COMAR 13A.05.01.09A(1)(i)). *IEP Planning for Emergency Conditions* requires the same individualized analysis regarding what a student needs in order to receive FAPE as was required by IEP teams who amended or revised IEPs during the COVID-19 extended school closures to address remote learning.

*IEP Planning for Emergency Conditions* has been added to the applicable sections of the IEP, including:

- Instructional and Assessment Accommodations;
- Supplementary Aids, Services, Program Modifications and Supports;
- Secondary Transition Activities;
- IEP Goals;
- Services; and
- Extended School Year Services.

As part of the requirement, IEP teams must describe the methods through which IEP services will be delivered during emergency conditions and ensure the plan is updated, as appropriate, at least annually. (COMAR 13A.05.01.09G(2)).

**Q3: What constitutes “emergency conditions”?**

**A3:** Emergency conditions occur when an LEA/PA cannot implement a student’s IEP or special education services at school for a period of ten (10) or more days but continues to provide instruction to its students. It is the responsibility of the LEA, PA or school to determine that emergency conditions exist. LEAs should proactively adopt procedures for identifying emergency conditions and notifying parents (see question 4), and ensure all appropriate staff are adequately trained.

**Q4: What must the LEA/PA do if emergency conditions occur?**

**A4:** Within ten (10) days of the LEA, PA, or school declaring emergency conditions, the IEP team must make documented reasonable attempts to notify the student’s parent/guardian that the portions of the IEP developed for emergency conditions are in effect and seek input on how the IEP will best operate during the emergency conditions. The IEP team must make reasonable attempts to notify the family that the LCP is in place and ensure the previously developed plan remains appropriate within 10 days of the LEA, PA, or school determining that emergency conditions exist.

**Q5: What are “reasonable attempts?”**

**A5:** Interpretation of “reasonable attempts” under Educ. Art. §8-405(d) is consistent with the existing regulatory requirement for the LEA to notify the parent of their requested participation in the IEP meeting and obtain parental consent using the procedures in 34 C.F.R. § 300.322(d).

LEAs/PAs must keep a record of their attempts, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to the parents and any responses received; and
- Detailed records of visits made to the parent’s home or place of employment and the results of those visits.

**Q6: May LEAs wait ten (10) days to begin providing services in the event of emergency conditions?**

**A6:** No. The changes to the law do not constitute a waiver of a student’s continued right to FAPE. Instead, the changes require planning for an emergency and the added responsibility of notifying a family to ensure the plan developed at the IEP meeting is still appropriate.

**Q7: During emergency conditions, is the IEP still in effect?**

**A7:** Yes. *IEP Planning for Emergency Conditions* is a part of the IEP, and it outlines how FAPE is provided when the school building is closed. If the LEA/PA is unable to provide a FAPE through the implementation of the IEP, then it must consider the need for compensatory education services.

**Q8: If the IEP team implements an LCP during emergency conditions, is a student still potentially entitled to compensatory services?**

**A8:** Yes. If it is determined that the LCP was not reasonably designed to provide FAPE during emergency conditions and the IEP team did not review/revise the IEP, or if the LEA/PA did not ensure the parent or guardian had the opportunity to provide feedback about the appropriateness and operation of the plan during emergency conditions, a student may be entitled to compensatory education for the loss of FAPE. Similarly, if the LCP was not

implemented during emergency conditions, a student may be entitled to compensatory education for the loss of FAPE.

**Q9: If there are multiple emergency conditions in a school year, might the student be entitled to compensatory education for each time the school pivoted to the learning continuity plan?**

**A9:** Each time the LSS fails to provide a student with FAPE, the IEP team must consider the impact on the student and the need for compensatory education. As discussed in Q8, FAPE may be denied if the IEP team did not develop an IEP (including the LCP) reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances, or by failing to implement the IEP.

**Q10: If the parent doesn't utilize the dispute resolution options at the time the LCP is drafted (typically during the annual IEP team meeting), do they waive their right to seek compensatory education?**

**A10:** The LCP is no different than any other part of the IEP. As such, parents retain the same rights to dispute resolution that they have with the rest of the IEP. If the LCP was not developed in such a way that it was reasonably calculated to enable the student to make progress, the student may be entitled to compensatory education/recovery services.

**Q11: If schools are closed for greater than 10 days and no students are being provided with instruction, must the IEP team provide services through the IEP?**

**A11:** Generally, when an LEA/PA is not providing instruction to ANY students, it is not required to provide services to students with an IEP. The exception is if the student requires extended school year (ESY) services to receive a FAPE. If the individual student is eligible for ESY, then the IEP team will need to determine whether ESY services are required given the duration of the emergency conditions and the needs of the individual student.

## Resources<sup>1</sup>

**Maryland House Bill 714, 2021**

<https://legiscan.com/MD/bill/HB714/2021>

**Maryland Senate Bill 300, 2021**

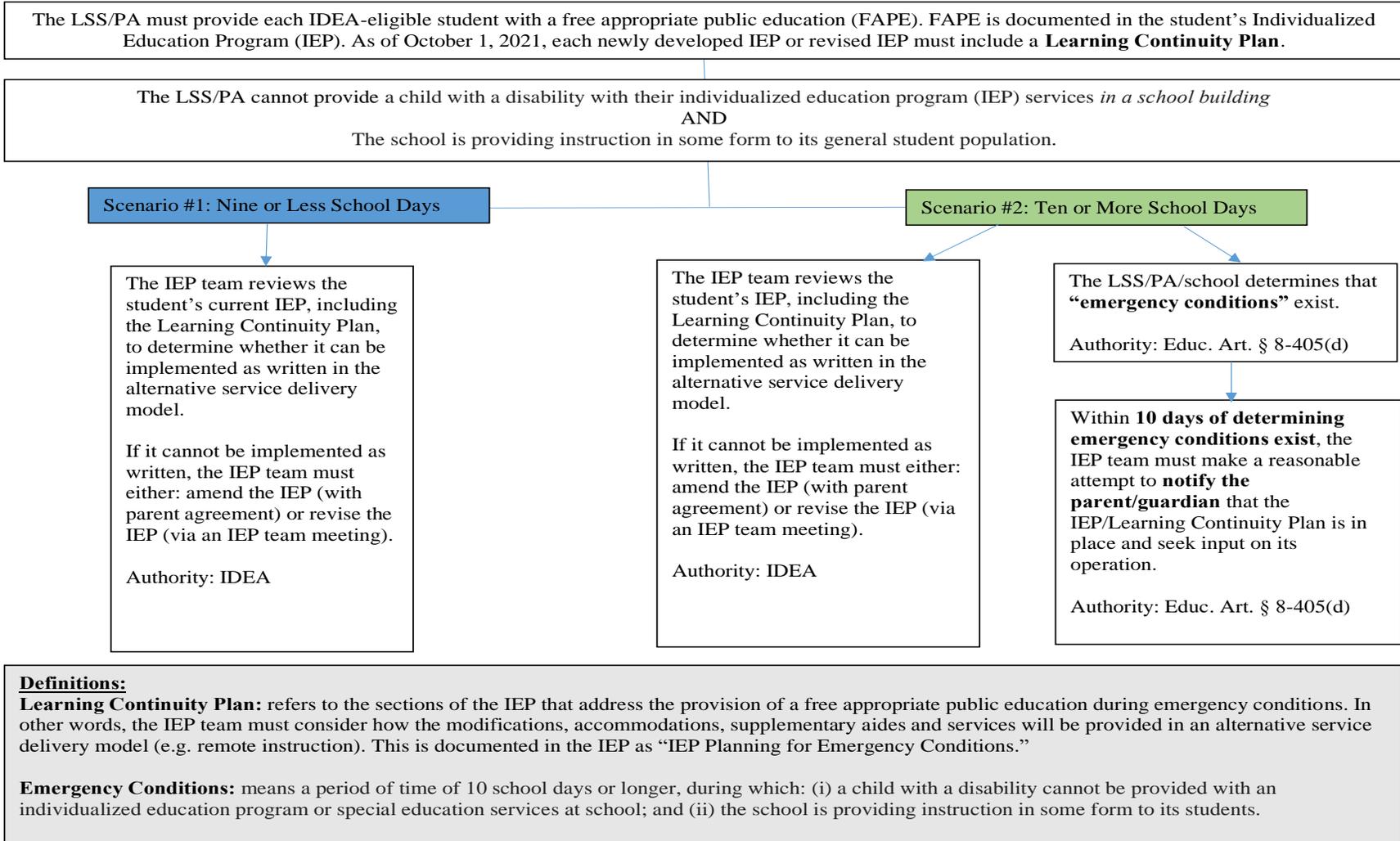
<https://legiscan.com/MD/bill/SB300/2021>

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<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.

Figure 1. Learning Continuity Plan Flowchart

**Understanding the Implementation of the Proposed Regulations for Learning Continuity Plan under Educ. Art. § 8-405(d)**



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For more information, call 410-767-0249  
MARYLAND STATE DEPARTMENT OF EDUCATION  
Division of Early Intervention and Special Education Services  
200 West Baltimore Street  
Baltimore, MD 21201

Mohammed Choudhury  
State Superintendent of Schools

Clarence C. Crawford  
President  
State Board of Education

Deann Collins Ed.D.  
Deputy State Superintendent for Teaching and Learning

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Early Intervention and Special Education Services

Larry Hogan  
Governor

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