

Special Education & Covid-19

Kimberly Glassman, Esq.
Law Office of Brian K. Gruber
Kimberly.Glassman@bkgpc.com

- * Participants will be muted
- * Presentation and Q&A will be recorded (including chat)
- * Event will run from 7:00pm to 8:30pm
- * Questions must be submitted in the chat

U.S. Department of Education

The [United States Department of Education](#) issued guidance regarding providing services to children with disabilities during the Coronavirus Outbreak.

- ❖ If a Local Education Agency closes and does not provide educational services to the general student population, then the LEA does not have to provide services to students with disabilities
- ❖ Once school resumes, the LEA must provide services in accordance with the child's IEP or 504 plan. The IEP team and 504 team must determine on an individual basis whether compensatory services are needed
- ❖ If an LEA continues to provide educational opportunities to general education students, the school system must also ensure that students with disabilities have equal access to the same opportunities and to the provision of FAPE.
- ❖ IEP teams may consider distance learning plans to be implemented during a closure caused by COVID-19. This may include online or virtual instruction, phone calls and other curriculum-based instructional activities.

What does this guidance mean?

The Maryland State Department of Education (MSDE) has issued further guidance for Maryland Local Education Agencies

- ❖ If a local public agency provides educational opportunities to the general student population, they must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE tailored to their individual needs
- ❖ Instruction to students with disabilities must be aligned with the general education plans. Students remain entitled to related services under their IEP.
- ❖ IEP teams should document what accommodations, modifications, supplemental aids and services, and IEP services can be implemented during the period of school closure. MSDE requires the school system to show that it has developed a written document and informed the parent and IEP team of those changes.
- ❖ Once schools reopen, the IEP team for each student must determine whether, and to what extent, compensatory education services are needed when there is a decline in skills or a lack of progress. The IEP team must also consider whether revisions to the IEP are needed.

Individualized Distance Learning Plans

- ❖ MCPS has been reaching out to parents to develop Individualized Distance Learning Plans (IDLP) which address the special education services being implemented during the period of school closure. Notice to document the IDLP.
 - ❖ Initially, the case manager is reaching out to the parent to discuss the plan and then issuing a Prior Written
 - ❖ If you disagree with the IDLP, you can request an IEP meeting to discuss the plan
 - ❖ The IDLP **does not** amend the IEP. After the IDLP is developed, MCPS is issuing a Prior Written Notice documenting the services to be implemented during the school closure and that the original IEP will become effective again when school reopens.
 - ❖ The MSDE guidance states that “consent” is not required to implement the IDLP. They simply have to document the plan and any disagreement with it, just as would occur with an IEP.
- If you disagree with the plan for your child, it is important to document your disagreement in writing and state that you do not waive your child’s right to FAPE

IDLP & FAPE

- ❖ The Department of Education and MSDE Guidance do not define “Free Appropriate Public Education” in the case of a state of emergency or school closure
- ❖ Though services may be different, FAPE should still be individualized for each student based upon unique needs and reasonably calculated to enable the child to make progress given his or her unique circumstances (*Endrew F.* standard), taking into account what is practical in light of the school closure
- ❖ Instruction may include online recordings, telephone, live classroom instruction, co-teaching during general education instruction, modification of materials, and other accommodations
- ❖ If you disagree with IDLP for your child or if your child is not getting modified instruction, needed accommodations, or services, document it in writing to the case manager.

Contents of the Prior Written Notice

- ❖ A prior written notice is the written notice required by the IDEA when the school proposes a change to the provision of services for your child.
- ❖ This prior written notice is being provided based upon the conversation with the parent/guardian and the case manager on (date), to develop an individualized determination including a review of the student's current needs, regarding how the student's IEP will be implemented consistent with the need to protect the health and safety of students with disabilities.
- ❖ This individualized distance special education learning plan includes the following proposed goals, supplementary aids, services and supports (SAS), and accommodations to be implemented in the least restrictive environment to the maximum extent appropriate to provide the student with a free appropriate public education.
- ❖ Due to the global pandemic and resulting closures of schools related to the Coronavirus (COVID-19), Montgomery County Public Schools and the parent have made an individualized determination regarding how special education and related services will be provided through distance instruction. This determination was made without an IEP team meeting by agreement with the parent.
- If you disagree with these statements for your child, notify the case manager and Principal in writing of your disagreement and that you do not waive your child's rights to FAPE

What if my child attends a non-public school?

MSDE has addressed educational continuity for students attending non-public special education day schools.

- ❖ The guidance issued for special education students generally equally applies to students who are placed in non-public special education settings
- ❖ MSDE will continue to pay tuition to non-public special education schools if the schools are providing student learning through instruction, telephone, packets, internet-based lessons or other distance learning approaches
- ❖ Each non-public is establishing its own process for continuing education. Contact your child's school for specific information
- ❖ If the school is not providing specialized instruction and/or related services, contact the non-public school monitor for your child's school
- ❖ Nothing in the MSDE guidance indicates that students placed in non-public special education schools are treated differently for the implementation of services online or through other alternative means

Implementation of Services & Student Privacy

- ❖ FERPA protects the privacy of student education records and gives parents rights with respect to their children's education records.
- ❖ FERPA prohibits educational agencies from disclosing personally identifiable information from a student's records without prior written consent of the parent. The Department of Education has issued guidance for FERPA related to Covid-19
- ❖ Given FERPA allows for consent to release information, I do not think FERPA poses a barrier to implementation of services. Parents can be asked to sign a consent.
- ❖ FERPA applies equally to general education and special education students. If it does not violate FERPA to schedule a Zoom class for general education, it stands to reason that scheduling a Zoom or other online class for special education is not a FERPA violation.
- ❖ Other platforms can be used for services, such as GoogleMeets or Google Hangouts

Implementation of Services & Student Privacy

- ❖ HIPAA provides privacy standards to protect patients' medical and health information from disclosure
- ❖ The US Department of Health & Human Services has issued guidance that addresses HIPAA compliance during the Covid-19 emergency. According to HHS, a provider can use “any non-public facing remote communication product that is available to communicate with patients” during this period of emergency. The guidance encourages providers to notify patients of the privacy risks in using these platforms.
- ❖ HHS states the following platforms represent that they are HIPAA compliant: Skype for Business/Microsoft Teams, Zoom for Healthcare, Google G Suite Hangouts Meet
- ❖ The HHS guidance specifically allows for flexibility in light of the current state of emergency
- ❖ Like FERPA, I do not think HIPAA creates a barrier to the implementation of services
- ❖ If your child is being denied services based on privacy laws, consider requesting written documentation of the basis for the decision, a different platform to implement the services, or MCPS payment for a private provider

Grading and Progress Monitoring

- ❖ To date, MCPS has not issued a public statement to how the 4th quarter will be graded
- ❖ There is ongoing discussion with MSDE about credit/no credit or pass/fail options
- ❖ There has been an emphasis thus far on flexibility and recognizing that not all students have access to the same level of supports – whether it be technology, access to the curriculum related to disability or other barriers

Annual Reviews, Evaluations and Other Timelines

- ❖ Timelines for annual reviews and to complete any outstanding evaluations remain in effect
- ❖ **BUT**, if an evaluation requires face-to-face meetings or observations or data to develop an IEP is inaccessible to the IEP team, then the evaluation or meeting can be delayed until school is open
- ❖ If the state of emergency ends over the summer, but school is not in session, evaluations and meetings can be completed over the summer
- ❖ Delays in completing evaluations or annual reviews can also be considered in a discussion about compensatory education

504 Plans

- ❖ The same general policies and procedures applicable to IEPs are also applicable to 504 plans
- ❖ 504 Case Managers are supposed to be contacting parents to discuss the accommodations, modifications and any applicable related services can be implemented during distance learning
- ❖ After that discussion, they are to document the Individualized Distance Learning Plan and send it to the parent
- ❖ If a 504 plan expires during the period of closure, MCPS will be scheduling phone or video meetings and rescheduling meetings that were scheduled during the time of the emergency closure
- ❖ If you have not heard from your child's case manager, contact the school and request a written plan for your child

Tips for Parents

- ❖ Be patient and ask questions
- ❖ Keep notes of what services are being provided and what is unable to be implemented while school is closed. Document that to your child's case manager and any concerns you are noticing at home
- ❖ Create your organization system – one for you and one for your child
- ❖ Ask for regular check ins with the special education teacher and/or case manager
- ❖ Be prepared to ask for compensatory education and/or an increase of specialized instruction in an IEP meeting. This can be when school reopens, but parents can also request an IEP meeting during the implementation of distance learning
- ❖ If you disagree with the IDLP, document your concerns and state that you will request an IEP meeting when school reopens to discuss your child's needs in light of the extended school closure
- ❖ If your child is not receiving modified material in order to access general education content, document and request assistance from your child's case manager

IEP Services & Compensatory Education

- ❖ Both the Department of Education and MSDE guidance state that when school reopens, IEP teams should consider the impact of missed services and the need for compensatory education on an individual basis
- ❖ If you are considering seeking reimbursement for privately acquired services while your child is not receiving the same level of services as is in the IEP, provide written notice of your intent to do so
- ❖ Compensatory education are services intended to remediate harm from a denial of FAPE or failure to implement an IEP
- ❖ If you are requesting compensatory education, be prepared to show harm or lack of progress
- ❖ You can do this by tracking your child's IEP goals, trying the skills with them at home, keeping notes and data on how your child accesses the content that is assigned by the school, time on task, need for prompts or assistance with grade level work
- ❖ If there are services that your child is not getting at all, such as social skills, pragmatic language, or other group driven skills, document your concern and potential need for additional services when school resumes
- ❖ It is not yet known how these missed services will be addressed systemically. The best way to protect your child is to document, ask questions, and seek additional support from your child's school.

Questions?

For more information, contact the Law Office of Brian K. Gruber

Kimberly Glassman, Esq.

Kimberly.Glassman@bkgpc.com

(301) 657-3777 x 8