



Returning to School in Fall 2020

DD Council Town Hall

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Disability Rights Michigan (DRM)

Our mission is to advocate for and protect the legal rights of people with disabilities.

DRM provides information and referral, publications, training, facility monitoring, abuse/neglect investigation, systemic advocacy, and individual representation in selected areas.



Background: Special Ed Law

- The Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §§ 1400 et seq.
 - Regulations at 34 CFR 300 et seq. (federal)
- Michigan Administrative Rules for Special Education (MARSE)
 - R 340.1700 et seq (state)
- Section 504 Rules
 - 34 CFR 104 et seq. (federal)



What IDEA Should Do

- Improve results in school.
- Make sure everyone has an equal chance for:
 - full participation;
 - independent living; and,
 - economic self-sufficiency.
 - IDEA, 20 USC § 1400(c)(1)



Access for All

- Eligible students have a right to education.
- School has “child find” duty to identify, locate, and evaluate students who may have disabilities.
- “All” includes eligible students who have been suspended or expelled.



What is Education?

Under the IDEA, education is interpreted as both:

- Academic Performance

Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, **even if the child has not failed or been retained in a course or grade, and is advancing from grade to grade.** 34 CFR 300.101(c)

and

- Functional Performance

Includes behavior, social skills, and mobility skills such as walking, getting around, etc. 71 Fed. Reg. at 46661.



No IDEA Waivers

- During the COVID-19 pandemic, the U.S. Department of Education did not grant ANY waivers of IDEA's requirements.
- Districts must continue to:
 - provide each eligible student with a FAPE.
 - engage in child find activities.
 - evaluate and abide by timelines.
 - comply with IDEA and MARSE.



Remedies for Last Spring

- Recovery Services for Foregone Learning
 - MDE-created
 - “address regression in skills, and to accelerate a student’s progress”
 - Determine need by December 2020.
 - MDE guidance: <https://bit.ly/2GBm7fk>
- Compensatory Education
 - File a state complaint or due process hearing request



Ensuring a Safe Return

- Per Public Act 149 of 2020, each District (and charter school) created an extended COVID-19 learning plan
 - In conjunction with local health dept.
 - Approved by ISD (or charter authorizer).
 - Check school's website.
- Local health depts. can also issue orders to control the COVID-19 pandemic.



Recent Federal Guidance

- **New OSEP Guidance – Sept. 28, 2020**
 - <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-provision-of-services-idea-part-b-09-28-2020.pdf>
- **New OCR Q&A–Sept. 28, 2020**
 - <https://www2.ed.gov/about/offices/list/ocr/docs/qa-covid-20200928.pdf>
- **Both answer Covid-related questions**



The IEP – A student's plan for continuing progress





The IEP

- The educational program for a student with a disability is developed through the IEP process.
- The IEP must provide a free, appropriate public education (FAPE) for the student in the least restrictive environment (LRE)
 - LRE will look different for different students based on local pandemic conditions



FAPE

- Free means at no cost to the parent
- “Appropriate” IEP — the *Endrew F.* standard
 - must be tailored to the unique needs of a particular child
 - IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances
 - “educational program must be appropriately ambitious in light of [the student’s] circumstances.”



FAPE

- FAPE is:
 - Individualized
 - According to student's need
 - Providing different accommodations and services if needed for virtual
- FAPE is NOT:
 - Picking curriculum
 - Choosing personnel
 - Parental convenience



Contingency Learning Plans

- Viewed as an extension of the IEP and part of IEP implementation.
- Must provide a FAPE.
- Must be created with meaningful participation from parent.
- Concept created by OSEP and MDE, not in IDEA or MARSE.



CLPs cont.

- Discuss at the IEP meeting what would trigger the use of the CLP.
 - Ex: District goes virtual, entire state does virtual, student has a compromised immune system, etc.
- These “triggering events” would be included in the IEP.
- It is possible the student’s CLP has already been triggered.



CLPs cont.

- Because this is for FAPE at home, the services and supports will likely look different.
- May need different AT provided.
 - In addition to whatever District is already providing all students.
- Consider Parent training in IEP, not to replace teacher, but to assist parent.
 - District is still responsible for a FAPE.



CLPs cont.

- Doctor's note not needed to trigger a CLP.
 - Stay away from homebound if possible.
 - Homebound is meant to be self-study
 - Historically, districts have limited homebound services to the minimum amount of time allowed based on student funding requirements (two nonconsecutive hours per week and related services), NOT on what's needed for a FAPE.



Resolving Issues





Informal Problem-Solving

- District must still provide a FAPE
 - in-person, virtual, or hybrid
- Communicate with the District in writing
 - Email counts!
- If they respond by phone, follow up with an email
 - Restate your understanding.
 - Give an opportunity to correct and misunderstanding.



Informal Problem-Solving

- Tie back to student's need
- Clearly express specific concerns
 - My student can sit at a computer and focus for 5 minutes in Reading class.
 - My student has been having trouble getting out of bed in the morning and is making comments like “ _____ .”
 - My student can independently complete 3 multiplication problems, but needs 1:1 assistance to complete any word problems.
 - Due to my student's vision and posture, she cannot read from the computer screen provided.



Informal Problem-Solving

- Use proactive strategies:
 - Request Evaluations
 - Review and Revise the IEP
 - Reconvene for lack of progress
 - Or do an IEP amendment
 - REPEAT
- Extended School Year (ESY) services



Informal Problem-Solving

- Right to an Independent Educational Evaluation (IEE)
 - For each evaluation that the District performs, if you disagree with eval's findings, you can request an IEE.
 - Evaluator of your choosing with some parameters outlined by the District such as overall cost.
 - As a response, District may 1. grant request or 2. file for due process to defend eval.



Formal Problem-Solving

- File a state administrative complaint
 - MDE-OSE investigates and issues decision within 60 days.
 - Per MDE-OSE, CLPs are subject to state complaints as IEP implementation.
 - One year look back from date of filing.



Formal Problem-Solving

- File a Due Process Hearing Request
 - Administrative hearing before an Administrative Law Judge.
 - Highly recommend retaining an attorney.
 - Two-year statute of limitations to file complaint.



Resources





Resources

Resource Title	Link	Description
OSEP-Ideas that Work-Continuity of Learning During COVID-19	https://osepideasthatwork.org/continuity-learning-during-covid-19	OSEP homepage for continuity of learning assistance
Highlighting Strategies & Practices in Providing Related Services to Enhance the Continuity of Learning During COVID-19 for Children with Disabilities	https://osepideasthatwork.org/sites/default/files/Webinar2-Highlighted-Resources.pdf	Resources provided by the national organizations for related service providers – speech, OT, PT, SW, etc.
Same as above	https://www.youtube.com/watch?v=9IsGISA3x-Q&feature=youtu.be	The entire recorded session facilitated by OSEP-Ideas that Work on related services during COVID.



Resources cont.

Resource Title	Link	Description
Academic Support for Students with Disabilities	https://annenbergbrown.edu/sites/default/files/EdResearch_for_Recovery_Brief_2.pdf	Research-based brief regarding how schools can intervene to reduce learning gaps in students with disabilities.
Evidence-Based and Promising Practices to Support Continuity of Learning for Students With Disabilities	https://osepideasthatwork.org/sites/default/files/SWDLearning-Providers-508.pdf	Practices and Resources to Support Related Service Providers — helpful for parents to understand the vocabulary and make IEP suggestions.
National Center on Deaf-Blindness	https://www.nationaldb.org/	Includes COVID resources



Resources cont.

Resource Title	Link	Description
Early Childhood Technical Assistance Center	https://ectacenter.org/topics/disaster/ti-service.asp	Utilize technology and COVID-specific resources with the youngest students
Least Restrictive Environment in the Wake of COVID-19: A Brief from the National Association of State Directors of Special Education	https://www.nasdse.org/docs/NASDSE_LRE.pdf	Discussed the LRE requirement and gives examples of how that looks in traditional, hybrid, and virtual instruction.
The Fuchs Research Group at Vanderbilt University	https://frg.vkcsites.org/	For educators, but discusses assessments, so parents can understand the types of interventions and what assessments measure.



Final Thoughts





Recent Developments

- Mich. Supreme Court found the 1945 law delegating emergency powers to the governor unconstitutional.
 - Friday, October 2, 2020.
 - EOs issued after April 30 are invalidated.
 - Typically, 21-day stay before implementation.
- Look at your district's plans.
- MDHHS issued emergency order Oct. 5 requiring students over 5 to wear masks.
- Stay tuned!



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