



Returning to School in Fall 2020

DD Council Town Hall

October 8, 2020

Presented by

Erin Diaz, M.Ed., J.D. and Mitchell D. Sickon, J.D.



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!



Contact Us

- Disability Rights Michigan (DRM)
 - Lansing:
 - 4095 Legacy Parkway, Lansing, MI 48911
 - (517) 487-1755 or (800) 288-5923
 - Marquette:
 - 129 West Baraga Ave., Ste. A, Marquette, MI 48955
 - (906) 228-5910 or (866) 928-5910
 - www.drnich.org