**Protecting the Rights of Students with Disabilities During and After the COVID-19 Educational Disruption**

*Updated 04.21.2020*

Based on the latest recommendations from the Maine Department of Education (MDOE), students in Maine should anticipate a remote learning experience at least through the end of the 2019-2020 school year. School districts across Maine are in some stage of developing, updating, or implementing remote learning plans. At this point, schools still seem to be all over the map with regard to the depth and breadth of the distance learning services they are providing.

We are hearing from families all across Maine and, if you are struggling, please know you are not alone. DRM remains open and available to support students with disabilities during this difficult time. Please do not hesitate to reach out to DRM for support - <https://drme.org/contact>.

See below for some answers to frequently asked questions, links to federal and state guidance, and resources for parents and others working to support students during this difficult time. Keep min mine that everything is very fluid right now, and reasonable people might disagree with some of our answers to these questions. We anticipate updating this document again in about a month.

**COVID-19 Educational Disruption Questions and Answers**

**I have not had much contact with my child’s teachers or others in the school. Is this OK?**

No. Schools are not closed. School administrators, teachers, related service providers, and other staff are still working. It is reasonable to expect regular contact with the school. Schools have had over a month to adjust and plan and many have established distance learning plans that include regular contact with students. As MDOE recently stated: “Consistent communication and documentation with parents is vital in ensuring that SAUs and parents or guardians collaborate as a team, even though they are not in the same physical location.”[[1]](#endnote-1)

If you are not hearing from teachers, or you don’t believe your child is getting the support they need, contact school administration with your concerns. If communication issues persist, consider making a written request for an IEP team meeting so the team can work together to solve the problem.

**Is the school required to follow my student’s Individualized Education Program (IEP) during the COVID-19 educational disruption?**

Yes, but the IEP will be implemented in a context where all in-person instruction has been suspended. According to recent guidance by MDOE:

“Given that school buildings across the state of Maine are not providing school-based instruction, it is essential that SAUs focus on providing continued educational opportunities for all students in alternative ways. SAUs must ensure that students receiving special education have access to these opportunities. For students with IEPs, SAUs must ensure that each student is provided the special education and related services sufficient to meet the intent of the student’s IEP developed pursuant to the IDEA, to the greatest extent possible, in light of the suspended classroom instruction impacting all our students.”[[2]](#endnote-2)

First and foremost, students with disabilities must be given the supports they need to fully access the educational opportunities being provided to all students during this time. In addition, they should continue receiving the special education and related services they need to the greatest extent possible.

The delivery of special education and related services should continue to be based on the individual needs of each student as reflected in the current IEP. The alternative methods of service delivery will work much better for some students than for others. So if your child is having significant difficulties with accessing or benefitting from remote learning services, consider requesting an IEP Team meeting to work with the school to address the concerns.

**My school has asked me to agree to change my child’s IEP to reflect the services the school is able to provide due to the COVID-19 educational disruption. What should I do?**

You should resist efforts to remove services from the IEP during the COVID-19 educational disruption. An IEP should reflect the specialized instruction, related services, and supplementary services and supports that a student needs to address their disability related needs and to access the general education curriculum. There will be some services that a school cannot provide during this time. But that does not mean they should be removed from the IEP. If you are asked to consent to a reduction in the services on the IEP, you should politely decline.

We have heard that, if an IEP expires during this period of educational disruption, at least a few schools are issuing a new IEP and changing the dates. We do not believe this approach is appropriate and encourage parents to express their disagreement with it. It would be much more appropriate to follow the recent guidance from MDOE that “If the effective date of a student’s IEP lapses during the period of alternative learning, the student’s IEP will remain in effect until a new IEP is developed.”[[3]](#endnote-3)

**My school district has informed all parents that it will not be holding any IEP meetings until schools return to in person instruction. Is this OK?**

No. Although IEP teams do not need to meet for the sake of meeting, an IEP meeting may be needed during the COVID-19 disruption to address changing needs and/or specific barriers to accessing services during this time. For example, since families are now being asked to provide support to ensure access to distance learning opportunities, the IEP team may need to discuss whether parent training should be added as a related service to the IEP, to assist families in these efforts. There may also be significant disability related barriers to the initial remote learning approaches that should be discussed and addressed by the IEP team. And there are no doubt many children whose social, emotional, and behavioral needs have changed and increased in ways that may limit their ability to access the remote learning opportunities. There is a role for the IEP team in addressing these and other issues that may emerge.

If you think an IEP meeting is necessary, make that request in writing and explain the reasons for your request, indicating you recognize that while school buildings remain closed, IEP meetings will be held by phone or through other remote means. Requesting a meeting requires the school to either: a) hold the meeting as requested; or b) issue a Written Notice explaining why they are refusing to hold an IEP meeting. This decision must be individualized.

**Can I expect my child’s school to make up for the IEP service hours missed during the COVID-19 educational disruption?**

You can expect an individualized determination, through the IEP Team process, regarding the services that may be needed once in person instructional activities resume. We believe the appropriate approach will be individualized to each student’s needs. As MDOE recently stated, “If a child is unable to receive services for an extended period, the IEP team must make an individualized determination as to what extent compensatory services are needed.”[[4]](#endnote-4)

Some students with disabilities are going to need a lot of services and detailed planning and coordination of supports across settings just to prepare them to return to a school building. But other students with disabilities may not need much more than equal access to the whole-school approaches developed to support all students when they return from this educational disruption. Some students will need significant services targeted to recoup skills they have lost. Other students may have been able to maintain skills. The approach to compensatory services will need to be individualized and designed to address each student’s specific needs.

There will also be many students who, due to a combination of the impacts of their disabilities and this educational disruption, will have new needs that impact their ability to access the general education curriculum or otherwise receive a free and appropriate public education. Any new disability related needs or other barriers to accessing a free and appropriate public education will need to be addressed by the IEP team as well.

**I heard that the Individuals with Disabilities Education Act (IDEA) might be changing because of the COVID-19 educational disruption - is that true?**

Maybe. When Congress passed and the President signed the CARES Act on March 27, 2020, it directed Department of Education Secretary DeVos to write a report with recommendations to Congress for any waivers to the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, the Elementary and Secondary Education Act and the Carl D. Perkins Career and Technical Education Act of 2006, that the “Secretary believes are necessary to be enacted into law to provide limited flexibility to States and local educational agencies to meet the needs of students during the emergency.” Nationally, special education administrators are asking that some limited waivers be provided to timeline requirements regarding evaluation, eligibility, transition, complaints, and IEP teams, as well as waivers to data collection and compliance documentation. We should know whether Secretary DeVos recommends any waivers by April 27. Even then, Congressional action would be required.

We anticipate that if there are any waivers, they will be limited to providing flexibility regarding timelines for meetings, evaluations, and annual IEP reviews. Whether waived or not, as a practical matter, many timelines will be impacted by this educational disruption. But core requirements of the IDEA are unlikely to be waived – students will remain entitled to a free and appropriate public education, and parents will continue to be entitled to participate fully, as equal participants, in decisions regarding their child’s education.

Finally, it is important to note that no one is talking about any waivers to the Americans with Disabilities Act (ADA). The ADA requires that students with disabilities are provided equal access to all of the educational opportunities and other activities offered by their school, which includes the provision of accommodations and supports necessary to ensure access.

**What can a family do if they do not have internet access or access to adequate technology for children in the household to participate in distance learning?**

If your child is having trouble accessing distance learning, you should contact school administration to ask if they have resources available to help solve the problem. We understand that MDOE is working to ensure that students across Maine have the tools they need to participate in distance learning by providing Wi-Fi enabled tablets and internet access to schools for distribution. Contacting the building principal in your school will be the best way to access resources.

If a student with a disability is unable to access distance learning for reasons related to their disability, or if instruction is being provided in an inaccessible format, an IEP Team meeting should be called to address these concerns.

**I heard that Child Development Services (CDS) is not providing services during the COVID-19 disruption - is that true?**

No. Like schools, in-person services are suspended but CDS is open and providing services to early learners remotely. Families should have heard from CDS by now with a plan – if that is not the case, call the director of your CDS region or the statewide office in Augusta. <https://www.maine.gov/doe/learning/cds/contact>

In a recent notice to families, CDS stated that for children under age 3 - who may be eligible for IDEA Part C services - screening, evaluation, and development of Individual Family Service Plans (IFSP) may all be completed via phone or tele-practice.[[5]](#endnote-5) CDS has also indicated that if there is an issue transitioning a child from Part C to Part B during the COVID-19 disruption, that CDS will continue to provide services based on the child’s existing plan.

**What else should I be doing to make sure my child’s needs are being addressed appropriately?**

* Work to keep communication lines with the school open as much as possible.
* If your child needs support in accessing remote learning options, make specific requests for that support, in writing.
* Keep a log of any services that your child receives as well as other contacts with the school. And keep a journal or log of any changes you see in your child. Both of these will be important for conversations regarding compensatory services and supports that may be required when schools return to in person instruction.
* Consider requesting an IEP meeting (to be held by phone or video conference) to discuss any issues with access to remote learning or the continued provision of a free and appropriate public education.
* If you have a child that is placed by the IEP team at a non-public school, consider reaching out to the home school district to ask about their remote learning plan for all students and how your child can access to those opportunities.
* Contact DRM for services and support if difficulties continue or if your school district is not responsive to your requests - <https://drme.org/contact>.

**State and Federal COVID-19 Guidance**

MDOE PRIORITY NOTICE: “Updated Recommendations and Guidance from Commissioner Makin for Remainder of 19-20 School Year”, (April 2020), available at: <https://mainedoenews.net/2020/04/07/priority-notice-updated-recommendations-and-guidance-from-commissioner-makin-for-remainder-of-19-20-school-year/>

*Office of Special Services COVID-19 Communication* (MDOE, March 2020), which is available at: <https://mailchi.mp/maine/cu5lemq6y0-1320871?e=aa5efba723>

MDOE Director’s Corner (contains all the information MDOE is providing to schools regarding special education service delivery): <https://www.maine.gov/doe/learning/specialed/director>

The United States Department of Education (USDOE) has provided the following guidance to date regarding the rights of students with disabilities during COVID-19 related school disruptions:

* *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* (March 2020) <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>
* *Questions and Answers on Providing Services to Children with Disabilities during the Coronavirus Disease 2019 Outbreak*, (March 2020) <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>
* *Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students*, (March 2020) <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf>

**Additional Links and Resources**

Disability Rights Maine: <https://drme.org/news/2020/covid-19-resources-for-pwd>

Maine Association of Family Organizations (MAFO): <https://www.maine.gov/dhhs/ocfs/cbhs/family/mafo/index.shtml>

United States Department of Education: <https://www.ed.gov/coronavirus>

Maine Department of Education:

<https://www.maine.gov/doe/covid-19>

<https://www.maine.gov/doe/continuityoflearning>

<https://www.maine.gov/doe/learning/specialed/director>

Child Development Services: <https://www.maine.gov/doe/node/1670>

Maine Department of Health and Human Services: <https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/airborne/coronavirus.shtml>

Educating All Learners Alliance: <https://www.educatingalllearners.org/>

Learning Keeps Going: <https://www.learningkeepsgoing.org/free-tech-for-learning>

Think Inclusive: <https://www.thinkinclusive.us/covid-19/>

Center on Positive Behavior Interventions and Supports: <https://www.pbis.org/>

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DISCLAIMER

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1. *Continuity of Learning and Special Education During COVID-19*, MDOE Priority Notice (April 2016) ***a****vailable at*: <https://mailchi.mp/maine/cu5lemq6y0-1321088?e=d180c859be> [↑](#endnote-ref-1)
2. *Continuity of Learning and Special Education During COVID-19,* MDOE Priority Notice [↑](#endnote-ref-2)
3. *Continuity of Learning and Special Education During COVID-19*, MDOE Priority Notice [↑](#endnote-ref-3)
4. *Office of Special Services COVID-19 Communication,*  Maine Department of Education (March 2020), *available at*: <https://www.maine.gov/doe/learning/specialed/director> [↑](#endnote-ref-4)
5. For the latest news from CDS regarding the COVID-19 disruption, visit: <https://www.maine.gov/doe/node/1670> [↑](#endnote-ref-5)