

Return to Learn for Students with IEPs

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Michigan Department of Education Office of Special Education



Special Education Priorities 1-3 for School Year 2020-2021

1. Ensure each student with an IEP has a current offer of a Free Appropriate Public Education (FAPE).
2. Develop a contingency learning plan for each student with an IEP ages three to 26, to be implemented when the full offer of a FAPE cannot be provided.
3. Consider the need for parent counseling and training as a related service.

Special Education Priorities 4-6 for School Year 2020-2021

4. Complete informal assessments for each student with an IEP.
5. Review the actual impact of the COVID-19 pandemic and determine whether recovery services may be warranted, by December 2020
6. Prioritize recovery services based on the provision of little or no special education services, or newly identified areas of need, since March 2020

Priority One

Prior to the start of the school year, or as soon as possible, ensure each student with an IEP has a current offer of a Free Appropriate Public Education (FAPE).

- a. Reference to a contingency learning plan should be written into the supplemental aids and services section of the IEP
- b. Include events which may trigger the implementation of the contingency learning plan

Priorities for Fall 2020

*Possible triggering events may include:

- The district is placed in a Phase I, II or III either by EO or community decision
- The district chooses a remote mode of instruction during Phase IV, V or VI
- A parent chooses to keep the student home due to health and safety issues
- Student illness due to COVID-19
- Household member quarantined due to exposure to COVID-19

Priority Two

Develop a contingency learning plan for each student with an IEP ages three to 26, to be implemented when the full offer of a FAPE cannot be provided

*Like a behavior intervention plan, the contingency learning plan is developed in accordance with the IEP as a separate document and is implemented in tandem with the IEP.

Contingency Learning Plans

- The IDEA requires a FAPE for students with disabilities.
- A contingency learning plan is not a requirement of FAPE.
- Contingency learning plans are a proactive way for districts to continue to provide a FAPE for students with disabilities.
- MDE: [Guidance to Address Return to Learn for Students with IEPs](#) (August 2020)
- OSEP: [Q&A on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak](#) (March 2020)

Contingency Learning Plan: Parent Refusal

- A contingency learning plan must be developed in collaboration and in agreement with the parent.
- MDE: [Guidance to Address Return to Learn for Students with IEPs](#) (August 2020)
- Districts have an obligation to provide a FAPE
- Collaborative problem-solving options:
 - Contact the District/ISD Director of Special Education
 - Request a facilitated IEP or mediation

[Special Education Mediation Services \(SEMS\)](#)

Contingency Learning Plan: Student Does Not Show Up for Remote Learning

- Districts are required to provide a free appropriate public education (FAPE).
- CLPs must be developed in collaboration and with agreement from the parent.
- Communication is very important during this time.
- What are barriers, limitations?
- MDE: [Guidance to Address Return to Learn for Students with IEPs](#) (August 2020)

Please note...

- *For districts in Phase IV, V, or VI *choosing* to operate remotely:
 - * IEP teams must first consider the student's needs and a range of alternate learning strategies including those for hands-on or in-person, that would otherwise be provided if districts were convened in a brick and mortar setting
 - * Contingency learning plans may need to include in-person services based on student need
 - * In the event the district is not able to provide in-person, services may need to be suspended and recovery or compensatory education services may need to be provided when districts return to in-person instruction.

Modes of Instruction (1):

Can schools offer both in-person and virtual learning options but only allow the online option for students with autoimmune issues?

- As the COVID-19 pandemic continues, districts must consider and protect the health and safety of all students and staff as FAPE is provided through a variety of modes of instruction.
- [34 CFR § 300.323](#) When IEPs must be in effect.
- When a district provides in-person instruction to students without disabilities, the district must also provide in-person instruction to students with disabilities, consistent with each IEP.

Modes of Instruction (2):

Can schools offer in-person services when parents who opted for virtual, after the in-person school day according to a teacher's schedule and not the parent's?

- IEP Team decision
- [34 CFR § 300.322](#) Parent participation
- Prior Written Notice
- Collaborative Problem-Solving options:
 - contact the District/ISD Director of Special Education
 - request a facilitated IEP or mediation

[Special Education Mediation Services \(SEMS\)](#)

Priority Three

Consider the need for parent counseling and training as a related service to assist parents in acquiring the skills necessary to support the implementation of their child's IEP.

*Parent counseling and training is intended to benefit the child by helping them make greater gains toward meeting IEP goals and objectives because important learning supports will be provided both at school and at home.

How Can Families Support A Child Who Typically Has A Parapro to Support Educational Needs?

MDE: [Guidance to Address Return to Learn for Students with IEPs](#) (August 2020)

- [34 CFR § 300.34](#) Related services includes parent counseling and training.
- Parent counseling and training are intended to strengthen important learning supports, provided both at school and at home, so students can access the general curriculum and make progress on IEP goals.
- Collaborative Problem Solving options:
 - contact the Director of Special Education for the District and/or ISD
 - request a facilitated IEP or mediation

[Special Education Mediation Services \(SEMS\)](#)

Priority Four

Complete informal assessments for each student with an IEP to determine the current instructional level of all identified areas of need, which may include new or emerging needs.

- * IEP teams should consider information and data collected prior to and during the interruption of instruction, including observations and information provided by the parents, and any formal or informal assessment data.

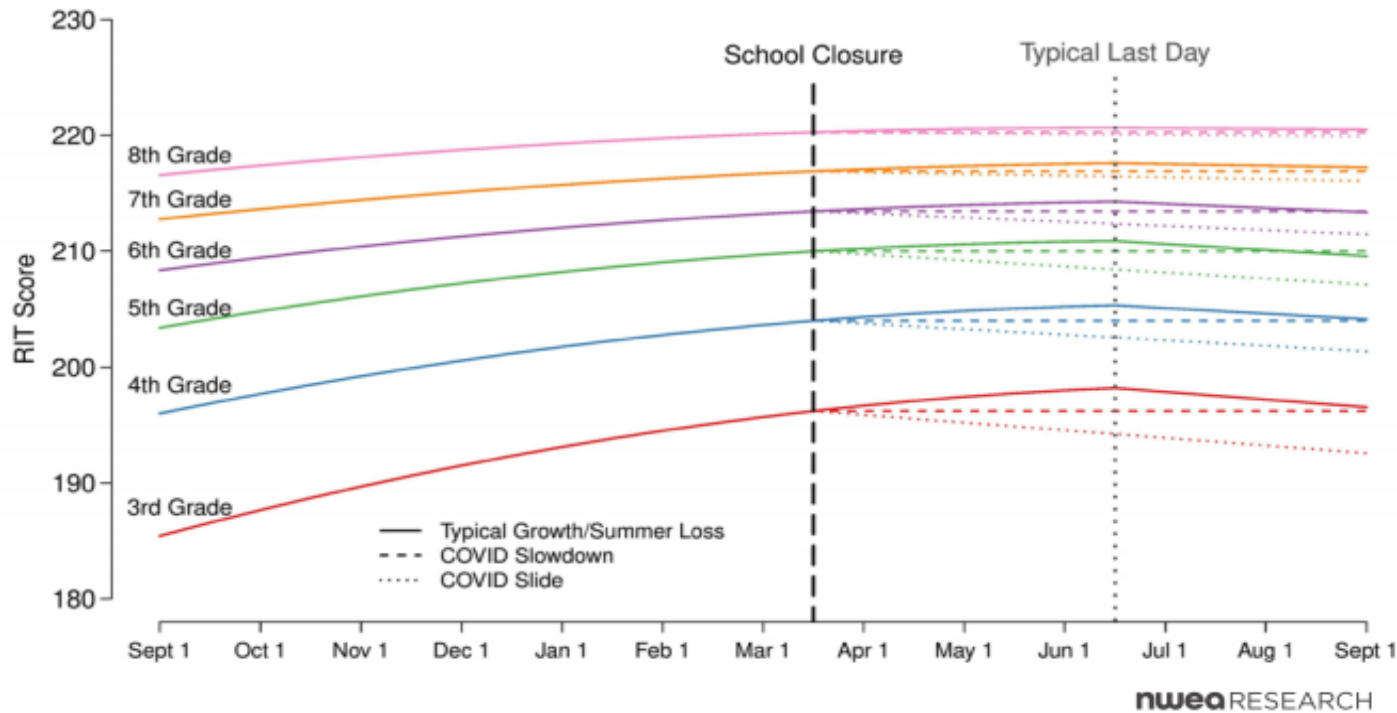
Priority Five

Review the actual impact of the COVID-19 pandemic and determine whether recovery services may be warranted, by December 2020

- Review student level data the in context of the universal loss for all students (same grade or age peers)
 - March 2020
 - June 2020
 - Consideration of any summer learning or ESY participation
 - Fall 2020 informal assessments of identified areas of need, including any new or emerging needs

Loss of Learning Opportunities for All

Figure 2. Reading forecast



[Northwest Evaluation Association \(NWEA\)](#) projected *rates of learning retention* which occurred prior to the public health emergency for all students:

- approximately 50% of math content
- approximately 70% of reading content

There will likely be further impact on students with IEPs.

Recovery Services Due to COVID-19

- Specific to students with disabilities
- Not mandatory
- Determined by the IEP team, including the parent
- Supplemental to the current IEP
- Not intended to replicate the current IEP
- Provided due to the loss of learning opportunities from March – June 2020 and the potential additional impact of the loss of special education and supports due to the COVID-19 pandemic.

Additionally, Recovery Services:

- Are based on individual student regression data compared to regression data for grade level peers
- Support individual needs and aligned to current IEP goals
- Support the achievement of annual goals and allow for progress in the general curriculum, without further delay
- Should be determined no later than December 2020
- Can be provided within the normal school day and during the summer
- Must be provided by September 30, 2021

How Are Recovery Services Determined: Data Collection

Individual student data review includes:

- The amount of instruction and special education services provided from May-June 2020 and any associated data
- Information and observations from parent(s) about access to education and level of engagement from March-June 2020
- Level of academic achievement and functional performance, including progress on all IEP goals prior to March 2020
- Progress in gen curriculum compared to grade level peers
- Prior ability to recoup skills and make progress after breaks in instruction.

Determining Whether Recovery Services are Warranted

Determinations will first consider an individual student's progress compared to same grade peers from March to June 2020.

- **When progress is the same or similar,** recovery services may not be warranted.
- **When progress is slower,** the interventions which will be provided to all students may need to be supplemented with recovery services and/or additional interventions through a tiered system of supports.

Determining Whether Recovery Services are Warranted (continued)

Determinations will also consider an individual student's progress on IEP goals from the last data source before March 2020, compared to present level data.

- **When no data is available**, current skill level is compared to performance, prior to March 2020.
- **When progress is significantly below** where it was before March 2020, recovery services may be warranted.
- **When there are new emerging needs**, recovery services may be warranted.

Recovery Services: Parent and District Disagreement

- Recovery services are **not mandatory**, so there is no entitlement for the student and no requirement for the district.
- Parents and districts should work together to determine the extent of the additional impact and how to support the impact.
- There is no legal remedy when there is disagreement with a district's decision to provide recovery services.
- When recovery services are determined, but the parent disagrees and believes there was a denial of FAPE, due process provisions under IDEA and MARSE are available.

When Should Decisions Be Made?

Decisions about whether, and to what extent, recovery services are warranted should be made as soon as possible *after sufficient data has been obtained, and **no later than December 2020.***

Scheduling options for providing recovery services, include:

- During the summer
- During the school day
- Any other time the IEP Team, including the parent, deems appropriate

Special note...

A reference to recovery services, may be written into a contingency learning plan.

Given a change in the mode of instruction, the provision of some recovery services may need to be suspended until districts are able to provide in-person instruction.

Priority Six

Prioritize recovery services for those students who received little or no special education services, or students who have newly identified areas of need, since March 2020

**NOTE: The IDEA Part B requirements include children 3-5 years of age*

Clarification of Priorities

Can A Link Replace A Parapro, When A Parapro is written into the IEP?

- The obvious answer is no.
- IEP development: FAPE is individualized, based on unique need, and determined by an IEP Team
- Contingency learning plan development: written in accordance with the IEP, the IEP Team may identify new/emerging/or different needs (socialization, engagement)
- Special education, related services, and supports may be different in a remote setting, but should still provide FAPE and allow the student to access the general education curriculum and make progress on IEP goals.
- MDE: [Guidance to Address Return to Learn for Students with IEPs](#) (August 2020)

My Child Needs A Parapro for Academics and Behavior During Virtual Learning so She Can...

- **unmute** in a timely fashion if called upon
- **remain focused** for learning
- **modify math** questions on the fly for full participation
- **read** questions **when print is too small**
- find ways to **zoom** in on screen
- **help navigate** to the 7 different programs being used (Buzz, Google Classroom)
- **adjust audio** settings on the Chromebook
- **print** things out when a more **hands-on approach is needed**
- **scribe** when writing long paragraphs
- **help find** homework assignments across platforms

Must the School Provide or Pay for an In-home Parapro?

A district must either develop a CLP, in collaboration with the parents, or fully implement the IEP when remote .

A contingency learning plan is based on a student's unique education and behavior needs and developed in accordance with the IEP, but does not have to have the same supports, programs and services.

- Supports, programs and services needed for remote instruction to allow for access and progress in the general education curriculum and IEP goals and will allow the student to participate with nondisabled peers in non-academic and extra curricular activities.

FAPE and ABA

FAPE and ABA:

Individualized Education Plan (IEP)

- IDEA requirement
- Developed by the IEP Team
- Educationally focused; includes special education programs, services & supports
- Meet eligibility criteria under MARSE (13)
- Individualized & based on educational needs of the child who meets criteria as a student with a disability

Individual Plan of Service (IPOS)

- DHHS requirement
- Developed by medical professional(s)
- Medically focused i.e. Applied Behavioral Analysis (ABA), etc.
- Diagnosed with behavioral or developmental disability
- Individualized and based on the medical needs of the child diagnosed with a disability.

Both the IEP and the IPOS...

- Must meet the individual needs of the child
- Include the need for collaboration between school & outside providers
- Coordinate services; may include
 - Phone calls, written communication, participation in planning meetings, support the generalization of goals and objectives across settings
- Minimize impact of the disability on the school, community & home life

Eligible Students

- May be entitled to both an IEP and an IPOS
- One cannot come at the expense of the other
- During school hours, regardless of the mode of instruction, the district has an obligation to provide FAPE through the implementation of the IEP
- Districts are encouraged but not required to coordinate with behavioral health providers, *however...*
- If the IEP Team determines the need for ABA services to support the implementation of the IEP, the district must provide the service as part of the provision of FAPE

Determining Need (1)

An IEP Team may determine a medically necessary treatment, such as ABA, is needed to:

- reduce a barrier to accessing educational support, AND
- must also determine the individualized special education program/services
- how the program or support will be provided and by whom,
- the amount and the frequency of the program and/or services, in this instance ABA, must be included in the IEP as part of the districts offer of a FAPE.

Determining Need (2)

When a district is operating under a Return to Learn Plan, MDE would expect medically necessary treatments, which have not been identified by an IEP Team as educationally necessary, to be ***provided after the virtual school day is complete.***

- Return to Learn Plans specify the mode of instruction for all students when in-person instruction cannot be provided
- “School Day” may be defined differently when providing for virtual or remote instruction

Determining Need (3)

When a district is operating in a traditional in-person format, medically necessary treatments, which have not been identified by an IEP Team as educationally necessary, must be ***provided outside of the school day***, so as not to compromise a student's right to FAPE.

FAPE and Mode of Instruction

1. IEP: In-person instruction
2. CLP: Remote instruction
3. CLP developed in accordance with IEP
4. CLPs are used when in-person instruction is not able to be provided.
5. Programs and services in CLP do not have to mirror the IEP
6. Students may require different types of supports for new and emerging needs in a remote setting.
7. When in-person instruction resumes, districts are required to implement the IEP.

Additional Points of Emphasis

- The IEP, not the IPOS, defines how the district will meet the educational needs of a student with a disability and the provision of a FAPE
- Eligibility for Medicaid reimbursement does not drive the decision to provide (or not provide) a medically necessary treatment
- Parent providers cannot be used to deliver a required service unless there is a separate contract with the district. The contract would be at the district's expense as part of meeting their obligation for the provision of FAPE.

Miscellaneous

Do 25-year-old students in their final year of high school get another year before aging out?

- R 340.1702 "Student with a disability"
- A student who reaches the age of 26 years after September 1 is a "student with a disability" and is entitled to continue a special education program or service until the end of the school year.
- MDE OSE [Guidance for Compliance with IDEA and MARSE During the COVID-19 Pandemic](#) (April 10, 2020)
- OSEP [Letter to Riffel](#), August 22, 2000

Face Masks: Discipline

Removals for failure to wear face masks are disciplinary removals. Districts must track removals on a pattern of removals worksheet to identify whether the removals constitute a change of placement which may result in the need other procedural safeguards.

- [Gathering Prohibition and Face Covering Order](#) (October 2020)
- CDC [Guidance for K-12 School Administrators on the Use of Masks in Schools](#)
- USDOE OCR [Questions and Answers for K-12 Public Schools In the Current COVID-19 Environment](#)

Supporting Students with 504 Plans in the Virtual Environment

The Michigan Department of Civil Rights:

1-800-482-3604 or email MDCCR-INFO@michigan.gov

USDOE OCR September 28, 2020: [Questions and Answers for K-12 Public Schools in the Current COVID-19 Environment](#)

- Consider policies/procedures for in-person instruction and masks.
 1. Does the student require xxx for FAPE?
 2. Would xxx compromise the health, safety, and well-being of students and staff?
 3. Would providing xxx avoid discrimination based on disability?



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Questions are the path to learning

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