

# Guidance on the Recommended Use of Contingency Learning Plans

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March 2022



Michigan Department of Education Office of Special Education



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# Guidance on the Recommended Use of Contingency Learning Plans

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## Introduction

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The federal *Individuals with Disabilities Education Act* (IDEA) and the Michigan Administrative Rules for Special Education (MARSE), require districts to provide special education and related services to students with individualized education programs (IEPs), ages three to 26. Despite the challenges posed during the COVID-19 pandemic and an ongoing public health emergency, Congress has waived no requirements of the IDEA.

Communities continue to struggle with COVID-19 outbreaks, which has resulted in complications in educating all students. MDE OSE reminds districts of not only their continuous obligations under the IDEA to provide a free appropriate public education (FAPE) to students with IEPs, but also of a process that may be used to meet that obligation during the uncertainty of the COVID-19 pandemic.

The purpose of this document is to share MDE OSE's continued recommendation regarding the use of contingency learning plans (CLP). CLPs are a way to ensure districts are able to provide FAPE for students with IEPs, including children three to five years of age, during potential quarantines and changes of modes of instruction that may occur due to the COVID-19 pandemic. Through this document, districts are encouraged to be proactive and prepare for COVID-19 related circumstances that could potentially compromise the provision of a FAPE and to utilize CLPs as a way to ensure the continued provision of a FAPE. Additionally, this document provides information regarding the development and implementation of CLPs, to families of students with disabilities, advocates, intermediate school districts (ISDs), and local districts, including public school academies (PSAs).

MDE OSE's recommendation to use CLPs, supports implementation of one of the key strategies outlined in the State of Michigan's COVID-19 Guidance for Operating Schools Safely<sup>1</sup>. The state of Michigan guidance ensures Michigan students and educators are as safe as possible in the classroom to enable in-person learning, and when in-person learning is not possible, MDE OSE's recommendation to use a CLP can ensure a seamless transition to alternate modes of instruction<sup>2</sup>. CLPs are used

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<sup>1</sup> [COVID-19 Guidance for Operating Schools Safely](#)

<sup>2</sup> [MI Safer Schools Guidance for Managing Students Exposed to COVID-19](#)

for pandemic purposes only and should not be used to address behaviors and disciplinary matters.

District's that choose to utilize CLPs will develop a CLP in accordance with an individual<sup>3</sup>. The CLP is designed to be implemented when the district is not able to provide the primary instructional delivery approach in the educational setting determined appropriate by the IEP team and should be listed in the current IEP.

As districts anticipate the appropriate mode of instruction, based on numerous variables pertaining to the COVID-19 pandemic, developing a CLP in accordance with each student's IEP will allow for proactive planning and meaningful parent participation.

This guidance is not intended to provide legal advice. For legal advice, please consult with the attorney representing your district.

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## **The MDE OSE Recommendation**

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In accordance with IDEA, at the beginning of the school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP<sup>4</sup>. The IEP, which is in place to start the school year, must be based on the unique needs of the individual child or student with a disability and must consist of a full offer of a FAPE. FAPE is based on a full instructional day and consists of the instructional programs, supports, and related services provided through the district's primary instructional delivery approach that are required to meet the student's needs.

Districts should continue to protect the health and safety of all students and staff as they strive to afford students with IEPs the FAPE they are entitled.

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<sup>3</sup> Parent as defined by §300.30 of the Individuals with Disabilities Education Act includes a biological or adoptive parent of a child with a disability; a foster parent unless state law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child; an individual acting in the place of a biological or adoptive parent with whom the child lives; or an individual who is legally responsible for the child's welfare, or a surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.

<sup>4</sup> [34 CFR §300.323 When IEPs must be in effect.](#)

An IEP is an entitlement under IDEA, and must be written to reflect the services, modifications, supports, and placements that support a student’s unique education and behavior-related needs and provide a FAPE to the student. The Office of Special Education and Rehabilitative Services (OSERS) and the Office of Special Education Programs (OSEP) have been clear that an IEP must not be written to accommodate a temporary situation, administrative convenience, or lack of time and resources. Therefore, MDE OSE reminds districts of the option to develop a CLP, which OSERS and OSEP have referred to in earlier guidance as a Distance Learning Plan, for a student with an IEP, as a best practice<sup>5</sup> and as a way to ensure the student continues to receive a FAPE when there is a disruption or interruption to their normal mode of learning. OSEP, introduced the concept of a Distance Learning Plan, which Michigan refers to as a CLP, during the H1N1 Pandemic in 2008.

While the IDEA or MARSE do not require the use of a CLP, MDE OSE strongly recommends districts use the CLP as a process to support districts and families in planning through the uncertainties of the COVID-19 pandemic. The CLP is a process MDE OSE has designed, based on the OSEP guidance<sup>6</sup>, to support each district in meeting their obligation to ensure a FAPE, despite the challenges posed by the COVID-19 pandemic. CLPs are not to be used for purposes unrelated to the COVID-19 pandemic, such as disciplinary purposes.

MDE OSE continues to encourage IEP Teams to be proactive and engage in collaborative conversations with families regarding the need for the development or revision of a CLP. Identifying the need for a CLP affords a student’s IEP Team an opportunity to reach an agreement as to the events that may trigger the implementation of the CLP when the district is unable to provide a full offer of a FAPE as written in a student’s IEP. The current IEP and the CLP, operating in tandem, will allow special education programs, services, and supports to be provided seamlessly as districts respond to students’, families’, communities’, and state health status, in light of the ongoing uncertainty caused by the COVID-19 pandemic.

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<sup>5</sup> [Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak. March 2020 \(PDF\) \(ed.gov\)](#)

<sup>6</sup> [Questions and Answers on Providing Services to Children with Disabilities during an H1N1 Outbreak \(PDF\) \(ed.gov\)](#)

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## What is a Contingency Learning Plan?

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A CLP is an individualized plan developed for a student with an IEP, in accordance with the student's current IEP. The CLP is developed in collaboration with the parent and is implemented only when the district is unable to implement the student's IEP, due to the COVID-19 pandemic and is only valid for the school year in which the CLP was developed. CLPs are used for pandemic purposes only and are not to be used for disciplinary purposes.

Whereas an IEP is an entitlement for a student with a disability under IDEA, a CLP is not. The federal OSEP first encouraged the use of contingency learning plans in 2008, in response to the H1N1 outbreak<sup>7</sup>. As the COVID-19 pandemic continues to impact the education of all students across the nation, once again CLPs are being recommended by OSEP and MDE OSE to ensure students with IEPs continue to receive a FAPE when a district is unable to fully implement a student's IEP.

Consistent with the federal IDEA requirements and in accordance with the current IEP, an individualized CLP is developed to enable the student to:

- advance appropriately toward attaining the student's annual IEP goals.
- be involved in and continue to make progress in the general curriculum or in appropriate activities, for children ages three to five.
- participate in extracurricular and other nonacademic activities; and
- be educated and participate in activities with their nondisabled peers to the maximum extent appropriate.

Additionally, once developed, CLPs are continuously updated to ensure the student continues to make progress. Revisions to CLPs may include, but are not limited to, additional or change in supports to ensure accessibility and equity, program or service times, or the identification and support of new or emerging needs.

Similar to a behavior intervention plan, a health plan, and an emergency intervention plan, MDE OSE recommends the use of a CLP, and the event(s) that may trigger the need for implementation of the CLP, to be referenced in the IEP.

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<sup>7</sup> [Questions and Answers on Providing Services to Children with Disabilities during an H1N1 Outbreak \(PDF\) \(ed.gov\)](#)

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## Contingency Learning Plan Development

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The development of a CLP is highly individualized and is in accordance with each student's IEP. The current or most recent IEP for each student is the offer of a FAPE that was developed based on the student's unique education and behavior-related needs and a full instructional day in the education setting that was determined appropriate by the IEP Team. Each student's IEP must be current to start the school year and is the basis for discussion regarding the development of a CLP.

Consistent with the requirements of IDEA, as a member of the IEP Team, parents must be provided meaningful participation and be fully informed of the special education programs, services, and supports available in the brick-and-mortar setting, as well as those provided in a CLP.

Although referenced in the supplementary aids and services section of the IEP, the CLP will exist separately from the IEP. Supplementary aids and services<sup>8</sup> enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate. Therefore, consistent with IDEA requirements, when determining the need for a CLP, IEP Teams will identify COVID-19 related events that may trigger the need for a CLP in the supplementary aids and services.

Possible triggering events may include:

- student illness due to COVID-19,
- symptoms of long COVID,
- student quarantine due to exposure to COVID-19, or
- school, district, or program closure due to COVID-19.

Changes to the CLP can be made, as needed, with input from the parent and without convening an IEP Team meeting.

Although IEP Team conversations and considerations regarding the need for a CLP may be somewhat universal, the student, family, district, and community events that would trigger the implementation of the plan are individualized within the context of the COVID-19 pandemic.

Input from parents on a regular basis is critical for students who are learning through a virtual mode of instruction. In a remote setting, parents are able to provide valuable information regarding their student's level of engagement with virtual learning, as well as successes and struggles. District staff are encouraged to

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<sup>8</sup> [Individualized Education Program Development: Supplementary Aids and Services](#)



maintain positive family-school relations and increase communications to determine the efficacy of a student's CLP.

If a parent believes their student has been denied a FAPE because a district failed to develop a CLP in accordance with a student's IEP or failed to implement the CLP, the parent may:

- contact the district's Director of Special Education to express concerns.
- contact Special Education Mediation Services (SEMS) to request a facilitated IEP Team meeting, which allows a neutral third-party to facilitate further discussion.
- contact SEMS9 to request mediation.
- file a state complaint, or request a due process hearing.

For more information regarding dispute resolution options<sup>10</sup> please visit the MDE Office of Special Education Dispute Resolution Options website.

Additional considerations regarding CLP development include, but are not limited to:

**Students Enrolled in 200-Day Programs:** CLPs developed as a result of the COVID-19 pandemic will include the duration of the 200-day program and may not need to be adjusted, revised, or adapted, unless the services provided during the summer will be different, or the services or supports during the summer portion of the 200-day program are not addressed in the original CLP.

**Students Enrolled in a Transition Program:** When districts are not able to provide in-person instruction, IEP Teams should consider each student's transition-related needs and any alternative strategies that could be implemented in a remote setting to address the transition-related needs. These alternate strategies, including frequency and duration, should be written as part of the CLP.

**Students Who Are Not Yet Eligible:** When initial eligibility cannot be determined due to the need for face-to-face assessment and observations for a student who is learning remotely, due to the COVID-19 pandemic, a district is encouraged to develop a CLP, in collaboration with the parent, for the student who is not yet eligible. The CLP should be based on the suspected disability and the needs that resulted in the request for an evaluation. In this situation, evaluation teams are

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<sup>9</sup> [Special Education Mediation Services](#)

<sup>10</sup> [MDE Special Education Dispute Resolution Options](#)



reminded of evaluation timeline requirements and the option of an extension to the evaluation timeline, when agreed upon by the parent.

**Students Transferring in from Another District or State:** Students with IEPs who transfer to a new district within Michigan or from out-of-state, must be provided with a FAPE upon enrollment in the new district within the same school year. FAPE must include services comparable to those described in the student's IEP from the previous district, until the new district either adopts the student's IEP from the previous district or develops a new IEP within 30 school days, or (in the case of an out-of-state student) conducts an evaluation<sup>11</sup>. Upon enrollment, a district must review and consider the previous district's offer of FAPE. The IEP Team is encouraged to develop a CLP, in accordance with the current or most recent IEP from the previous district, through the remainder of the 2021-2022 school year, or assess and develop a new IEP and offer of FAPE.

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## FAPE Reminders

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**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 student's IEP.**

34 CFR §300.34 of the IDEA<sup>12</sup> states related services includes parent counseling and training. The purpose of parent counseling and training is to assist parents in acquiring skills to support the implementation of their student's IEP. In some cases, this may involve helping the parent to gain skills needed to support IEP goals and objectives at home. This purpose can be accomplished by:

- assisting parents in understanding the educational needs of their child or student,
- providing parents with information about a child or student's development,
- providing support and basic information about a child or student's initial placement in special education, and
- providing parents with contact information about parent support groups, financial assistance resources, and other potential sources of information or support outside the school system.

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<sup>11</sup> [34 CFR § 300.323\(e\)-\(f\) – When IEPs must be in effect](#)

<sup>12</sup> [34 CFR § 300.34\(c\)\(8\)\(i\) – Parent Counseling and Training](#)

Parent counseling and training is intended to benefit children and students by helping them to make greater gains toward meeting their IEP goals and objectives and to strengthen important learning supports provided both at home and at school. Parent training may include individual technology training for a parent, so their student has access to virtual instruction, or for a parent to participate in IEP-related meetings.

For districts utilizing non-technology-enabled instruction at a distance, parent training may include, but is not limited to, providing training to support physical prompting, cuing, hand-over-hand assistance, or implementation of a specific curriculum for the student to make progress on IEP goals or the general curriculum. Additional considerations may include providing training on a piece of assistive technology the student requires to access instruction.

Districts are encouraged to talk with families to identify barriers to participation in their student's education, as well as identify barriers to their student's ability to make progress on IEP goals and have access to, and make progress in, the general curriculum.

Districts are reminded of Michigan Alliance for Families<sup>13</sup>, an IDEA grant funded initiative, which provides free information, support, and education for families of children and students, ages birth to 26, who receive or may be eligible to receive special education services.

**Be aware of child find obligations and/or the need to review and revise IEP's due to the adverse impact of long COVID-19.**

The Office of Civil Rights (OCR) and the Office of Special Education and Rehabilitation Services (OSERS) reminds states, ISDs, and member districts of the additional challenges some children and students may experience due to the long-term health effects from COVID-19. In the guidance released July 2021<sup>14</sup>, OCR and OSERS discuss the symptoms and child find obligations associated with long COVID, which is resulting in an adverse impact on the education of some children and students with and without disabilities.

It is critical for ISDs and member districts to be cognizant of children and students who are experiencing symptoms of long COVID or other conditions that are a result of COVID-19. Persistent symptoms of long COVID may trigger a district's child find

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<sup>13</sup> [Michigan Alliance for Families](#)

<sup>14</sup> [Long COVID under Section 504 and the IDEA: A Resource to Support Children, Students, Educators, Schools, Service Providers, and Families](#)



obligation, as some students may now require special education and related services under IDEA.

Children and students who are already identified as having a disability and who have or have not had COVID-19 may experience new or worsening symptoms related to their disability and/or COVID-19. IEP Teams should consider the need to review or revise a student's IEP to address the new education and behavior related needs, which might include new or different supplementary aids and services, programs and related services, or specially designed instruction.

As with any other student with an IEP, IEP Teams are reminded to consider the impact and potential changes to transition needs that may have occurred as a result of the COVID-19 pandemic, and update transition plans as appropriate.

Questions may be directed to the Michigan Special Education Information Line at 888-320-8384 or by email at [mde-ose@michigan.gov](mailto:mde-ose@michigan.gov).