

SPECIAL EDUCATION SERVICES IN MARYLAND DURING COVID-19 SCHOOL CLOSURES

Law Offices of Mark B. Martin, P.A.

Alexandra Rosenblatt, Esq.

www.markmartinlaw.com

www.facebook.com/markmartinlaw

arosenblatt@markmartinlaw.com

(410) 779-7770

QUESTIONS?

- Post your questions and Yvonne will field them.
- No “I” questions
 - Please frame your questions as hypotheticals.

If you have particular questions about your child, we can talk more after the webinar. You can email me at arosenblatt@markmartinlaw.com

CURRENT STATUS

- Return date of April 24th--→ probably longer
- GO TO LIST OF DISTRICT ACTIONS

MARYLAND

- Most Maryland school districts have not taken any formal steps during the current closure and have been awaiting guidance from the Maryland State Department of Education.
- This is an unfortunate and unnecessary delay compared to school systems in many other states, which are already providing alternative but structured learning to their students.
- The State is still assessing local plans to deliver alternative instruction. This plan is expected to be announced by each school system in the coming days.
 - going to set minimum standards that each LEA has to meet and the LEA can exceed those standards. This will go through April 24th

USDOE INTERIM GUIDANCE, MARCH 2020

- **The U.S. State Department of Education (USDOE) Interim Guidance: “Questions and Answers” regarding special education services during the Coronavirus outbreak.**
- Dated March 2020. Disseminated March 12, 2020
- <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>.

USDOE INTERIM GUIDANCE, MARCH 2020

- If an LEA closes its schools because of COVID-19 and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time.
- When schools reopen, the IEP team will be required to make an individualized determination as to whether compensatory services are needed.

USDOE INTERIM GUIDANCE, MARCH 2020 (CONT.)

- If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA, or a plan developed under Section 504.
- Other provisions:
 - When school is open, but child is out sick with COVID
 - what to do if selective schools are closed but not others.

COPAA'S RESPONSE

- **The Council of Parent Attorneys and Advocates Statement on Student Rights Under IDEA During the COVID-19 Outbreak**
- Friday, March 13, 2020
- <https://www.copaa.org/news/493349/COPAA-Statement-on-Student-Rights-Under-IDEA-During-the-COVID-19-Outbreak.htm>.

COPAA'S RESPONSE (CONT.)

- COPAA has grave concerns about USDOE's position and believes the obligation to provide services remains.
- If schools close for an extended period of time, then the school/IEP team should determine whether the child is available for instruction and could benefit from homebound services such as instructional telephone calls, homework packets, Internet-based lessons, and other distance-based learning approaches.
- Since schools have developed plans for online learning for students, they also need to plan for students with disabilities.

MARCH 16, USDOE FACT SHEET

- <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf>
- the ADA and Section 504 of the Rehabilitation Act require that online learning and virtual learning tools be accessible to students with disabilities, and they must be compatible with the various forms of assistive technology that students might use to help them learn.
- Evaluations and re-evaluations that do not require face-to-face assessments or observations **may** take place while schools are closed, so long as a student's parent or legal guardian consents.

MARCH 20, 2020: STATE ASSESSMENTS WAIVER

- <https://www2.ed.gov/policy/gen/guid/secletter/200320.html>
- States can request a waiver, for the 2019-2020 school year, of the assessment requirements in section 1111(b)(2) of the ESEA, the accountability and school identification requirements in sections 1111(c)(4) and 1111(d)(2)(C)-(D), and certain reporting requirements related to assessments and accountability in section 1111(h).
- Through these waivers, the State would not need to administer its statewide assessments to all students, to make annual accountability determinations, to identify schools for support and improvement, or to provide data on its State and local report cards for assessment and accountability information

USDOE SUPPLEMENTAL FACT SHEET:

- March 21, 2020
- <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

USDOE SUPPLEMENTAL FACT SHEET, 3/21/20

- Ensuring compliance with the IDEA, Section 504, and the ADA should not prevent any school from offering educational programs through distance instruction.
- Schools should not opt to close or decline to provide distance instruction at the expense of students, to address matters pertaining to services for students with disabilities

USDOE SUPPLEMENTAL FACT SHEET, 3/21/20 **(CONT.)**

- FAPE: federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities. The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency. FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students.

USDOE SUPPLEMENTAL FACT SHEET, 3/21/20

-SPECIAL EDUCATION SERVICES:

- While it may be unsafe to provide hands-on physical therapy, occupational therapy, or tactile sign language educational services, many disability-related modifications and services may be effectively provided online. These may include, for instance, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing
- Consider practices such as distance instruction, teletherapy and tele-intervention, meetings held on digital platforms, online options for data tracking, and documentation. In addition, there are lowtech strategies that can provide for an exchange of curriculum-based resources, instructional packets, projects, and written assignments

SPECIAL EDUCATION SERVICES

PRACTICE TIPS

1. We need to be realistic and flexible.
2. We catch more flies with honey than vinegar 😊
3. Start by communicating with the people with whom you normally communicate.
4. Know what is being offered to general education students in your school or district.
5. Push them to be creative.

USDOE SUPPLEMENTAL FACT SHEET, 3/21/20 REGARDING IDEA TIMELINES

- As a general principle, during this unprecedented national emergency, public agencies are encouraged to work with parents to ***reach mutually agreeable extensions of time***, as appropriate

USDOE SUPPLEMENTAL FACT SHEET, 3/21/20 REGARDING IDEA TIMELINES

- IEP's
 - “parents and an IEP Team may agree to conduct IEP meetings through alternate means, including videoconferencing or conference telephone calls. 34 C.F.R. §300.328. Again, we **encourage school teams** and parents to work collaboratively and creatively **to meet IEP timeline requirements.**”
 - the parent of a child with a disability and the public agency may agree to not convene an IEP Team meeting for the purposes of making those changes, and instead develop a written document to amend or modify the child’s current IEP. 34 C.F.R. §300.324(a)(4)(i).

USDOE SUPPLEMENTAL FACT SHEET, 3/21/20 **REGARDING IDEA TIMELINES (CONT.)**

- Reevaluations: “when appropriate, any reevaluation may be conducted through a review of existing evaluation data, and this review may occur without a meeting and without obtaining parental consent, unless it is determined that additional assessments are needed. 34 C.F.R. §300.305(a)

USDOE SUPPLEMENTAL FACT SHEET, 3/21/20 REGARDING IDEA TIMELINES (CONT.)

- State complaints: COVID-19 pandemic could be deemed an exceptional circumstance if a large number of SEA staff are unavailable or absent for an extended period of time.
- Due Process Hearings:
 - Resolution sessions: IDEA “does not prevent the parties from *mutually agreeing* to extend the timeline because of unavoidable delays caused by the COVID-19 pandemic.”
 - Issuing decisions within 45 days: “a hearing officer may grant a specific extension of time **at the request of either party** to the hearing. 34 C.F.R. § 300.515(a) and (c)

USDOE SUPPLEMENTAL FACT SHEET, 3/21/20 REGARDING IDEA TIMELINES (CONT.)

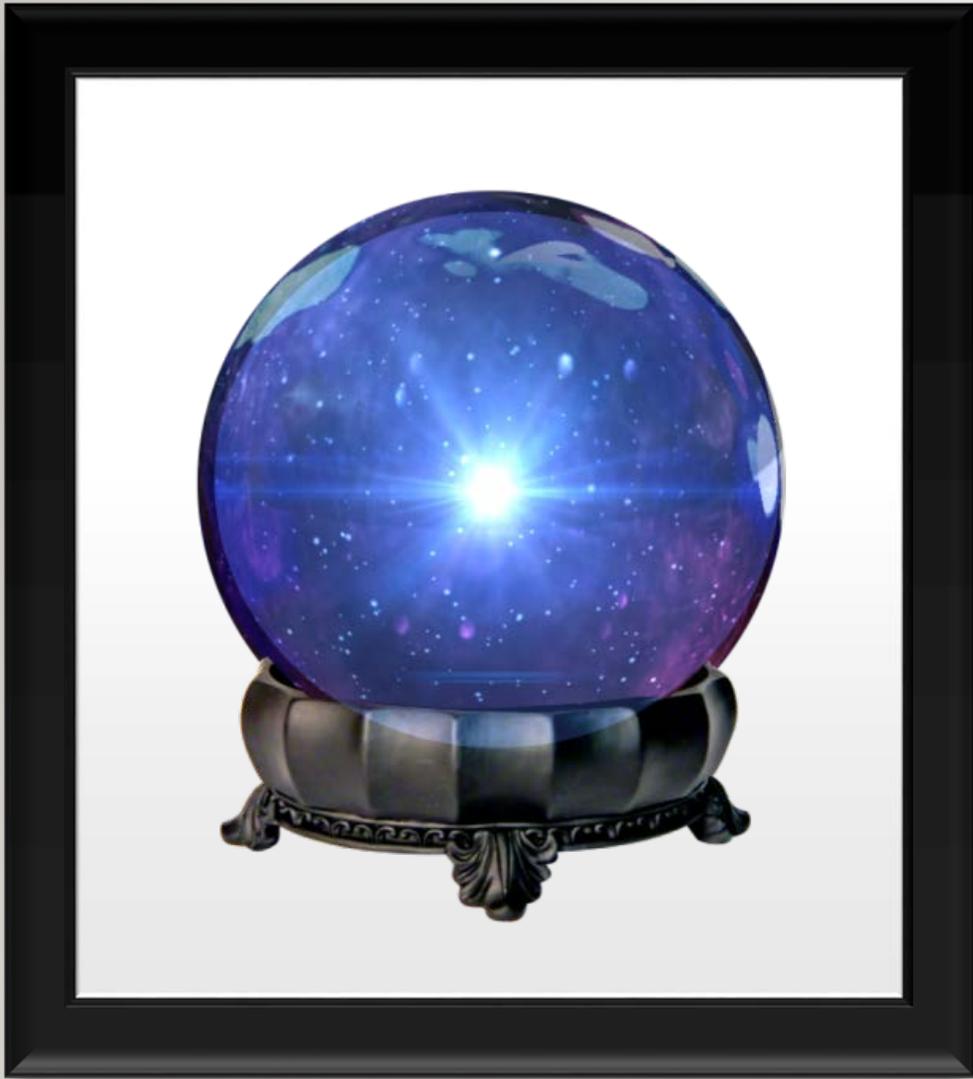
- Initial Eligibility Determination: 60 days of receiving parental consent under IDEA, or within the state established timeline within which the evaluation must be conducted. 34 C.F.R. § 300.301(c). Once the evaluation is completed, IDEA does not contain an explicit timeline for making the eligibility determination but does require that the IEP be developed in accordance with 34 C.F.R. §§ 300.320-300.324 (34 C.F.R. § 300.306(c)(2)).”
→ ***nothing about extending it during COVID-19 closures.***
- Initial eligibility for an IFSP: “The Department has previously provided guidance to states indicating that weather or natural disasters may constitute ‘exceptional family circumstances.’ The COVID-19 pandemic could be considered an “exceptional family circumstance.”

COMPENSATORY SERVICES: WHAT THE USDOE IS SAYING

- **March 2020 USDOE Interim Guidance:** [P]ersonnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements
- **March 21, 2020: Supplemental Fact Sheet:** If a student does not receive services after an extended period of time, the student's IEP Team, or appropriate personnel under Section 504, must make an individualized determination whether and to what extent compensatory services are needed consistent with the respective applicable requirements, including to make up for any skills that may have been lost.

COMPENSATORY SERVICES: PRACTICE TIPS

1. Study your IEP
2. Review January 2020 IEP progress reports. That is your baseline.
3. Take data
 1. Test skills that are in the IEP.
 2. Keep a notebook of what they can do.
 3. Record behavioral observations—attention/focus, refusal, etc.
4. It will be easier to argue that compensatory education is needed for discreet services where you can show harm



WHAT'S NEXT?

WHAT'S NEXT?

- State Superintendent will set minimum standards soon.
We will know more then.
- New legislation?
- Summer school as extension of school year and/or as compensatory education?

WHAT'S NEXT?

- Do what you can to get the services, supports and accommodations you need.
- But just like in any other times, our firm and other attorneys and advocates are still working remotely.
- Our firm has established remote capabilities and we can be reached through telephone, email, and video conferencing.
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