

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

Maine Parent Federation Online Training
4/30/2020



Advancing the Rights of People with Disabilities Since 1977

160 Capitol Street, Suite 4
Augusta, Maine 04330

1.800.452.1948
207.626.2774

Atlee Reilly
areilly@drme.org

Ben Jones
bjones@drme.org

DISCLAIMER: This presentation and any accompanying materials are intended as an introduction to the legal rights of students in Maine. Nothing in this presentation should be considered legal advice. No attorney client relationship is created through this presentation.

Overview

1. Where are we now?

2. Walking through recent DRM Guidance

3. Q and A and Discussion

DRM Survey, Selected Responses

What level of contact have you had from school?

“We send emails back and forth as well as his teacher talking with my child for 30 minutes each school day”

“We have a daily hour long zoom with special ed. teacher; M/T/TH we have 30 min google hang out with therapist.”

DRM Survey, Selected Responses

What level of contact have you had from school?

“Very high level”

“Daily contact. It has been wonderful.”

“His whole life skills class meets daily via a zoom meeting. Speech and OT come to the class meetings. BCBA has emailed me a couple times.”

DRM Survey, Selected Responses

What level of contact have you had from school?

“none”

“My son’s special Ed teacher has had 2 face-to-face (google chats) meetings with our son in 6 weeks. Both lasted maybe 30 minutes. Neither included any academic instruction.”

“Zero contact with her teachers or staff from [District Name]”

DRM Survey, Selected Responses

What level of contact have you had from school?

“Regular contact by email, text, and video uploads to Google Classroom have been attempted but just don’t work with my son’s needs.”

“No direct contact, they have been out of school for 2 months”

“no direct contact. We receive emails weekly and we have been sent work sheets to do at home. she is making a website for interaction with online links.”

DRM Survey, Selected Responses

Please describe the educational services that are currently being provided.

“We got packets for him to complete”

“Google Classrooms. Speech therapy worksheets. PT emails with videos. The special ed classrooms are suggested links to websites and activities, nothing individual.”

“Email, google classroom with links to possible activities. No direct instruction. No attempt to meet the goals in the IEP”

“None”

DRM Survey, Selected Responses

Please describe the educational services that are currently being provided.

“It's basically been left up to us to provide everything and work full time from home. We are doing the best we can but are struggling. We don't feel like the school is meeting our son's needs at all.”

“The teacher provided work sheet packets”

“Me it's all on me”

Overview

1. Where are we now?

2. Walking through recent DRM Guidance

3. Q and A and Discussion

DRM Guidance from April 21, 2020

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

[https://drme.org/assets/brochures/Protecting-
the-Rights-of-Students-with-Disabilities-
Coronavirus-04.21.2020.docx](https://drme.org/assets/brochures/Protecting-the-Rights-of-Students-with-Disabilities-Coronavirus-04.21.2020.docx)

Or, visit [DRME.ORG](https://drme.org) and click the 'COVID-19' link.

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

- No.
- 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

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

- 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:
“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.”

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

- 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.
- 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?

- Just say no.
- 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.

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?

- 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. This is not OK.
- 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.”

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.
- An IEP meeting may be necessary during the COVID-19 disruption to address changing needs and/or specific barriers to accessing services during this time.
- These meetings will take place by remote means.

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?

- If you think an IEP meeting is necessary, make that request in writing and explain the reasons for your request
- Requesting a meeting requires the school to either:
 - hold the meeting as requested; or
 - issue a Written Notice explaining why they are refusing to hold an IEP meeting.

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.
- 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.”

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

- COVID Impact Services vs. Compensatory Education
- Some students will need a lot of services and detailed planning and coordination of supports across settings just to prepare them to return to a school building.
- 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.

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

- COVID Impact Services vs. Compensatory Education
- Did schools fail to provide access to remote learning or fail to provide SPED and related services to the greatest extent possible during the disruption?

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

- Many students 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?

- Not in any meaningful way.
- On 4/27, Secretary DeVos submitted a report to Congress as required by the CARES Act and very limited waivers to IDEA were recommended.
- <https://www2.ed.gov/documents/coronavirus/cares-waiver-report.pdf>

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

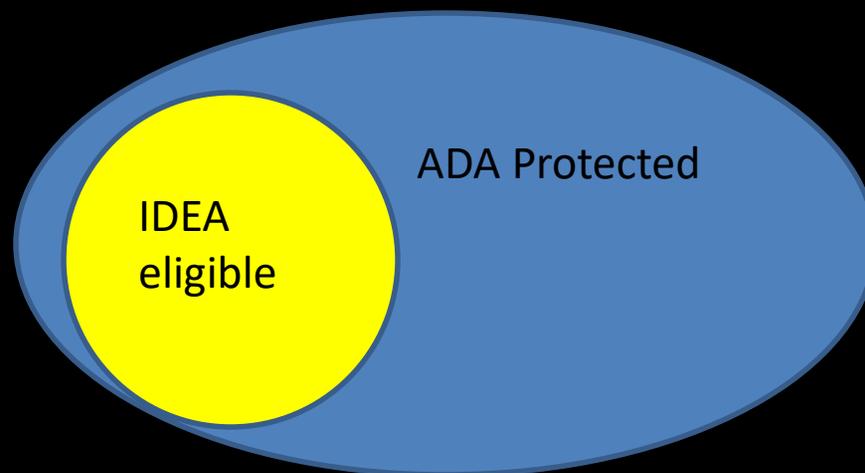
- “The Department is not requesting waiver authority for any of the core tenets of the IDEA or Section 504 of the Rehabilitation Act of 1973, most notably a free appropriate public education (FAPE) in the least restrictive environment (LRE).”
- “Schools can, and must, provide education to all students, including children with disabilities”
- “Parents or recipients of services must be informed of, and involved in, decisions relating to the provision of service”

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

- Finally, it is important to note that no one was 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.

Americans with Disabilities Act of 1990

- No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.
- RA and equal access
- Olmstead and most integrated setting



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?

- 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.

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

- Proposed waiver: “extend the IDEA Part B transition evaluation timelines (Part B initial evaluation), such that calculation of a timeline obligation shall resume no later than the day on which health and safety factors allow for face-to face meetings to resume and the toddler is able to be evaluated”
- “toddler may continue to receive Part C services after his or her third birthday and until a Part B evaluation is completed and an eligibility determination made”

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.
- 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.

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

- If your child needs support in accessing remote learning options, make specific requests for that support, in writing.
- 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.

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

- Finally, remember the core principles of the IDEA (we will review them briefly now)
- And insist on equal access to all of the opportunities provided to other students in the school (ADA/504)

The Individuals with Disabilities Education Act *in 1 slide...*

IDENTIFY children suspected of having a disability and needing services

EVALUATE them in all areas of suspected disability to determine if they need special education

SERVE students by providing FAPE in the LRE.

Free Appropriate Public Education

Provided in conformity with Individualized Education Program (IEP) and “reasonably calculated to enable a child to make progress appropriate in light of their circumstances”

Least Restrictive Environment

Students must be educated, to the maximum extent appropriate, with non-disabled peers.

COMPLY with procedural safeguards

Free Appropriate Public Education

Rowley - 458 U.S. 176 (1982):

Not required to maximize potential. Must provide a program based on the Student's unique needs and reasonably calculated to provide some educational benefit.

Endrew F. - 137 S. Ct. 988 (2017):

1) FAPE typically means providing services “reasonably calculated to permit advancement through the general curriculum”;

2) If that is not reasonable for a student, FAPE = “reasonably calculated to enable a child to make progress appropriate in light of their circumstances”

*but must be “appropriately ambitious,” and designed to help students meet “challenging objectives.”

Least Restrictive Environment

- Schools must ensure that “to the maximum extent appropriate, children with disabilities...are educated with children who are nondisabled.”
- Schools may only remove children with disabilities from regular education environments if “education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily”.

Individualized Education Program

Written statement developed, reviewed and revised by a required, team process, includes (among many other things):

- Statement of present levels of performance
- Statement of measurable annual goals
- Explanation of LRE
- List of special education and related services
- Description of accommodations, modifications, supplementary aids and services
- Transition planning for high school students

Individualized Education Program (cont.)

- Developed through a team process
 - Parent (or surrogate parent)
 - Student
 - Teachers (including regular ed.)
 - Administrator (someone knowledgeable about program options and that can commit resources)
 - Other individuals as determined by school or parent
- Revised at least annually
- Team must consider (among other things)...
 - Strengths of the child
 - Parental concerns
 - Academic, developmental and functional needs
 - Need for positive behavior interventions and supports

Specially Designed Instruction

- Specially designed instruction: means adapting, as appropriate to the needs of the child, “the content, methodology, or delivery of instruction” in order to:
 - Address the unique disability related needs of the child

AND

- “To ensure access of the child to the general curriculum, so that the child can meet the educational standards...that apply to all children”.

Related Services

- Related services: transportation and other supportive services as are required to assist a child with a disability to benefit from special education
- Includes the following services: speech language pathology, audiology, interpreting, psychological, physical therapy, occupational therapy, recreation (and therapeutic recreation), counseling, rehabilitation counseling, orientation and mobility, medical services for diagnostic or evaluation purposes, school health, nurse and social work, parent counseling and training, and transportation.

Supplementary Aids and Services

- Supplementary Aids and Services: Aids, services, and other supports that are provided in regular education, education related and in extracurricular and nonacademic settings “to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate”

IEP Meeting

“The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions...”

IEP team “should work toward consensus, but the [district] has the ultimate responsibility to ensure” that the child is provided an appropriate IEP

If the team cannot reach consensus, then the district must provide written notice of the proposals and refusals.

Procedural Safeguards

- Opportunity to examine all educational records
- Participate in meetings related to identification, evaluation, and educational placement
- Prior written notice whenever the District:
 - **Proposes** a significant change
 - **Refuses** to initiate a change requested
 - Regarding evaluation, educational placement or provision of a FAPE

Procedural Safeguards

Prior written notice must include:

- A description of the action proposed or refused
- An explanation of the above
- Notice of procedural safeguards
- Description of other options considered
- Description of factors relevant to the decision

Overview

1. Where are we now?
2. Walking through recent DRM Guidance
3. Q and A and Discussion

Questions?



1.800.452.1948

207.626.2774

Atlee Reilly

areilly@drme.org

Ben Jones

bjones@drme.org