

NUTTALL, MACAVOY & JOYCE, P.C.

ATTORNEYS AT LAW
MARSHFIELD PROFESSIONAL CENTER
1020 PLAIN STREET, SUITE 270
MARSHFIELD, MASSACHUSETTS 02050
TELEPHONE (781) 837-7428 FACSIMILE (781) 837-7498

THOMAS J. NUTTALL
MATTHEW W. MACAVOY
MICHAEL J. JOYCE

LEIGH W. MELLO
KELSEY M. PORCELLO
CRAIG F. KOWALSKI
CAROLYN J. WILSON

APRIL 3, 2020

FREQUENTLY ASKED QUESTIONS ON COVID-19-RELATED SCHOOL LAW ISSUES

DOCUMENTATION OF CRITICAL COMMUNICATIONS

Recent DESE guidance states that while parental consent to temporarily provide IEP services remotely is not required, notice must be given. What should this notice look like, and is an N1 required?

An N1 is not required. To ensure proper notice, an initial email should be sent to each student and parent/guardian that memorializes that the District will temporarily be providing a remote learning plan for IEP services during the school closures due to the COVID-19 public health crisis. Reference the good faith efforts that the District is taking to implement IEP services remotely, and as appropriate, during the period of closure. DESE has noted that not all IEP services can/will be implemented during the school closure. The notice should describe the student's individual remote learning plan, in its initial form. When the District is planning to roll out services incrementally, make note of that as well. After the initial email, email updates to families should be provided whenever the student's remote learning plan will be adapted. These email notices should also include a description of any important agreements or discussions held with parents regarding the remote provision of services during the closure.

How should Districts handle IEP Progress Reports?

Per regulation, progress reports for special education students must be issued with the same frequency as progress reports for general education students. Progress Reports should be issued when appropriate depending on your District's timeframe for when progress reports typically issue. A disclaimer should be written in the progress reports stating that the progress described is up to March XX, 2020, due to the school's closure from the COVID-19 public health crisis. This should be written within the report for each goal, and not just on a cover letter, so that if a progress report from a single goal is being viewed/analyzed in the future, this important contextual information will be clear to the reader.

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How would you recommend documenting communication with parents who agree to extend timelines?

Documentation of agreements from parents to extend timelines should be done in whatever way practical for your specific situation. You could consider creating a District-wide form and requesting a parent/guardian “Reply” email to confirm /reject the extension of timelines, but less formal documentation may be more efficient. For example, an email chain between a Team Chair and a parent/guardian in which the parent/guardian specifically agreed to or rejected a timeline extension would suffice. Best practice would be to print out the email and add a hard copy to the student’s file when school reopens. If an extension is agreed to over the phone, an email should be sent to the parent/guardian that confirms the agreement, and again, that email should be printed and put into the student’s file once school reopens.

LEGALLY COMPLIANT VIRTUAL TEAM MEETINGS

What steps should be taken to set up a virtual IEP meeting?

This is an IEP Team meeting, subject to all state and federal regulations, being held in a different format. The unique format necessitates providing some additional information to parents so that they may make an informed decision about participating. Provide the parent with advance notification that specifies what they would be agreeing to if they choose to participate in a virtual team meeting. For example, parents/guardians would be consenting to the use of technology to transmit voices/images, and to the distribution of meeting-related documents via e-mail. The notification should also inform the parents that the meeting may not be recorded without the specific prior written authorization of the District. Maintain a record of the parent’s email communication in which they consent to use a virtual method to have their child’s meeting. Provide the parent with a Team Meeting Invitation that specifies that the meeting will be conducted remotely/virtually, and that includes instructions as to how the parent should log in/call in, or otherwise be connected to the meeting. Make sure that an attendance sheet is maintained. A staff person should be designated as the note-taker and a summary of the meeting should be provided to the parent at the end of the meeting via email.

What if given employee illness, employee leave, and/or lay-offs, the District does not have the required Team members for a Team meeting?

Virtual IEP meetings are regulated in the same manner as in-person IEP meetings, which means all required Team members need to be present, unless you have obtained proper excusal from the parent/guardian (*see the next Q&A for more information on excusals*). This includes the need for a general education teacher to be present at the meeting. If you do not have access to excusal forms, memorializing the parent’s consent to the excusal by email, will be sufficient so long as we maintain it and add it to the file when school reopens. There will be challenges to scheduling a virtual Team meeting with all required Team members present. If you cannot properly excuse a Team member, then it is not worth holding the meeting. This meeting may need to wait until school re-opens and all Team members can be present. DESE has encouraged Districts and parents to work together regarding timelines and

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extensions. DESE has also clearly stated that the last signed IEP will remain in place as the “stay put” IEP until the IEP Team is able to meet and develop a new IEP.

If the parent agrees to the excusal of a member of the IEP Team, and we have the excused/non-participating Team member provide written input, can we move forward with the meeting?

The excusal process is the same for virtual meetings as in-person meetings:

A required member of the Team may be excused from the meeting, in whole or in part, if:

- The Parent and the District agree that the member’s attendance is unnecessary because:
 - the member’s area of the curriculum or related service is not being modified or discussed in the meeting; and
 - The parent provides written consent to the excusal.

- A required member of the Team may be excused from attending the meeting, in whole or in part, when the meeting involves a modification to or discussion of the member’s area of curriculum or related service if:
 - the member submits, in writing, input into the development of the IEP prior to the meeting; and
 - the Parent consents in writing.

What should we do about Early Intervention meetings?

In order to make eligibility determinations, the IEP Team must have the required Team members and the evaluation data to determine if a student has a disability and requires related services and/or specially designed instruction. If there is sufficient, relevant, recent data to make this determination, then a virtual meeting can be proposed. However, as stated by DESE, the health and safety of staff and students is the current priority, so if the evaluations cannot be completed in a valid manner that protects health and safety, then the District will need to seek an extension of timelines. When necessary, the District should work with the parents and early intervention to determine a plan to evaluate students being referred from early intervention when schools are re-opened. DESE may provide additional guidance on this topic as we move forward.

How do we develop Current Performance Levels for goals when we have not seen students since early March?

DESE encourages special education staff members to use whatever data they have on a student to assist in the development of the IEP. *See Coronavirus/COVID-19 Frequently Asked Questions for Schools and Districts Regarding Special Education, March 27, 2020*, available at: <http://www.doe.mass.edu/covid19/sped.html>. For instance, if the District had recently issued IEP Progress reports for the students, that information can be used for the Current Performance Levels. The N1 and other documents should indicate that the IEP, including current performance levels, is based on the information available from the last time that staff members worked directly with the student, and that, when warranted, additional changes may be made through the IEP Team process when school re-opens and more current data can be obtained.

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Should we address remote learning in the IEP?

If you are holding a Virtual IEP Meeting as an annual review, the Team should discuss the accommodations and/or modifications the student may need to access remote learning. This information should be documented in the N1 and not incorporated into the IEP document. The IEP will continue to reflect the accommodations, modifications, goals and service delivery as recommended for the Student within the school environment.

When we hold an annual review during the “shut-down” should we discuss potential compensatory services?

No. The Team should wait until after school re-opens to have a discussion about the potential need for compensatory services/additional services stemming from the school closure. The steps the District takes to provide services during the shut-down will be a significant factor in determining the need for compensatory services.

OUT OF DISTRICT PLACEMENTS

Are Districts required to continue making tuition payments to Out of District (OOD) special education day and/or residential schools during the school closures?

Governor Baker’s March 25, 2020 order closed special education day schools, but it did not require the closure of residential schools. If a school is open and a District student is in attendance, the LEA should continue making payments to the school. For OOD schools that are not open due to Governor Baker’s order, the Department of Elementary and Secondary Education (DESE) expects that Districts will continue to make tuition payments during the closures to maintain system capacity and provide continuity of services to the greatest extent possible. See [*On the Desktop: News from Commissioner Jeffrey C. Riley & the MA Department of Elementary and Secondary Education \(March 27, 2020\)*](#). In his statement released on March 27, 2020, Commissioner Riley stated that tuition payments will be eligible for reimbursement under the circuit breaker program if they exceed the statutory threshold and are otherwise eligible. While DESE has stopped short of requiring continued payments to OOD programs, Districts should consider the potential consequences of not continuing those payments (e.g. not having a placement for a child once school resumes).

Who is responsible for the provision of services to Out of District (OOD) students during the closures?

While DESE has made clear the expectation that special education schools continue to provide educational opportunities to their students during the closures, and many have done so, ultimately, the District remains responsible for the provision of a free appropriate public education for its students, including its Out of District students. Districts should reach out to OOD placements to learn more about what the OOD school is providing to students during the closure, and work with those schools to ensure students are able to access the opportunities provided.

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Who is responsible for providing/funding compensatory/additional services to an OOD student due to the closures?

When school re-opens, a student’s IEP Team must make a determination as to whether a student requires additional services as a result of the closures, and what those services are. If a student’s Team determines that he or she requires compensatory/additional services due to the closures, then those services could be provided by the OOD program, and funded by the District. While neither DESE nor the U.S. Department of Education have issued guidance clarifying this issue, it could be seen as analogous to home/hospital services that are provided to students attending OOD schools. See [Question and Answer Guide on the Implementation of Educational Services in the Home or Hospital, Massachusetts Department of Elementary and Secondary Education \(Revised August 2018\)](#). “If the school district continues to pay the costs of the placement in order to hold the enrollment status of the student in an educational collaborative program or a public or private special education school during the student's confinement to home or a hospital, the respective collaborative or public or private school must provide at no additional cost to the school district appropriate educational and special educational services...” *Id.* While we do not have specific guidance on this subject yet from DESE or the U.S. Department of Education, Districts should keep in mind that they are ultimately responsible for the provision of FAPE and educational services for their students.

STAY SAFE AND HEALTHY AND LET US KNOW HOW WE MAY ASSIST YOU.

Nuttall, MacAvoy & Joyce, P.C.
1020 Plain Street, Suite 270
Marshfield, Massachusetts 02050
Telephone: (781) 837-7428
Facsimile: (781) 837-7498
www.nmjedlaw.com

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