

Fall 2020
School Reopening & COVID-19:
Regular and Special Education



health law **advocates**
Lawyers Fighting for Health Care Justice



Agenda

- MHAP for Kids
- Fall Reopening Plans
- Special Education
- Action Steps for Families



MHAP for Kids

Project of Health Law Advocates, a Massachusetts not-for-profit that provides pro bono legal representation to low-income residents having trouble **accessing** or **paying for** needed medical services.

Staff attorneys in 7 Family Resource Centers serving Suffolk, Middlesex, Essex, Hampden, Worcester, Norfolk, and Bristol counties

- Represent parents, guardians, and students in **special education** and **school discipline** matters
- Secure community-based mental health services
- Collaborate with Dept. of Children and Families, Dept. of Mental Health, and Dept. of Developmental Services
- Assist with **health insurance coverage** for behavioral health services

Fall 2020 – School Reopening Plans

- Local decision
- DESE required districts to submit a plan with three models
 - in-person, hybrid, and remote
 - Final plans were due August 14, 2020.
- Minimum day and hour requirements
 - 170 days
 - 850 hours for elementary schools
 - 935 hours for middle/high schools



Fall 2020 – District Plans

District Plans should be available on school district websites.

Boston Globe has a district plan tracker.

<https://www.bostonglobe.com/2020/08/04/metro/tracker-what-are-mass-school-districts-plans-reopening-this-fall-read-their-proposals/>



Prioritized student groups for in-person learning

Districts should prioritize in-person, full time learning for:

- **Students with disabilities**
- **English learners**
- Students whose parents/caregivers report they do not have access to reliable internet or a suitable learning space
- Students who are “significantly behind” academically
- Students who were disengaged or struggled significantly during previous remote learning periods
- Early learners (preK-5)



What does this mean for parents/caregivers?

- Parent/caregiver choice
- Reasonable transition periods between models may exist



In-Person Safety Measures

- Mask for second graders up and all adults
- Physical distancing of 3 feet with masks or 6 feet without masks
- Mandatory handwashing at the beginning of the day, at mealtimes, when taking masks on and off
- Stay home when sick
- Cohorts of students

Transportation

- **All** students must wear a mask on the bus
- 3 feet distance
- One student per bench, unless members of the same household.
- For students attending out-of-district placements, if the out-of-district placement is providing in-person instruction, then the school district **MUST** transport the student.
- Anticipate transportation problems

What happens when someone gets sick?

- Staff/student should stay home
- Self-isolate for at least 10 days and until at least 3 days with no fever
- Close contacts must either isolate and test 4 – 5 days after last exposure or self-quarantine for 14 days
- If a student gets sick at school, they will stay in the **medical waiting room** until they can go home.
- **Sick students should not be sent home on the bus.**

Remote Learning

Remote learning plans must include:

1. Plans to engage student participation/track attendance
2. Standards
3. Grading policy
4. Regular communication including appropriate interpretation and translation

DESE requires that remote learning programs include **regular, two-way communication** between students, educators, and families to ensure students and families have **meaningful opportunities to connect regularly** with staff.

English Language Learners

- All schools and districts must have a comprehensive plan for delivering English Learner Education (ELE) services remotely

Hybrid

- A/B cohort model
- High-needs students should be prioritized for full-time in-person learning when feasible
- Consider technology access

Technology

- Districts “must ensure that every student has adequate access to technology to engage in remote learning,” including access to an appropriate device and adequate internet.
- Districts must ensure students with students with IEPs have necessary computer devices, internet connectivity, and educator/parent training.

Attendance Requirements

- School attendance requirements are in force again, and districts are required to take daily attendance whether a student is in person or remote.
- Districts are required to “investigate extended absences and make and document reasonable efforts to locate the student and determine the reason for nonattendance.”

DCF COVID FAQ

Educators have been instructed by DCF to file a 51A when:

- “Schools has made multiple, documented attempts to reach a student/family/caregiver and they have gone unanswered/ignored and all opportunities to make contact (i.e., phone calls, email, reaching out to emergency contacts, etc.) have been exhausted.
- The student is repeatedly truant/missing from their school programming (i.e., not participating in remote learning, attending/participating in their academic programming, after multiple, documented attempts to engage the student/family/caregiver) and attempts to provide resources (i.e., internet access, computer support, paper materials, etc.) have been ignored or refused.”
- Wellness checks questions

[DCF Tip Sheet for Educators: Communicating with Students During Remote Learning](#)

Special Education

- School districts must provide a free and appropriate public education (FAPE)
- Students with disabilities, particularly **pre-schoolers** and those with **significant and complex needs**, should be prioritized for in-person instruction.
- School districts should cultivate “**excellent two-way communication with families.**”
 - All written and oral communication must be provided in the primary language of the home and in language that is understandable to the general public.

Special Education

How does DESE define students with “significant or complex disabilities”?

- Students already identified as “high needs” through the IEP process on the IEP form entitled “Primary Disability/Level of Need-PL3.” Such students must meet at least two of these criteria:
 - Services provided outside of the general education classroom;
 - Service providers are special education teachers and related service providers;
 - Special education services constitute more than 75% of the student’s school day;
- Students who cannot engage in remote learning due to their disability-related needs;
- Students who primarily use aided and augmentative communication;
- Students who are homeless;
- Students in foster care or congregate care; and/or
- Students dually identified as English Learners.

Priority Student Comparison

SPECIAL EDUCATION PRIORITY	REGULAR EDUCATION PRIORITY
<p>Pre-school students + students with significant and complex needs</p> <ul style="list-style-type: none">• “high needs” on IEP• Students who cannot engage in remote learning because of their disability;• Students who primarily use aided and augmentative communication;• Students who are homeless;• Students in foster/congregate care;• English Learners.	<ul style="list-style-type: none">• Students with disabilities*• English learners*• Students whose parents/caregivers report they do not have access to reliable internet or a suitable learning space• Students who are “significantly behind” academically• Students who were disengaged or struggled significantly during previous remote learning periods• Early learners (preK-5)

Special Education & Remote Learning

- Instruction and Services = structured lessons, teletherapy, video-based lessons, etc.
- NOT Resources and Supports = packets and assignments



Special Education Remote Learning


- Remote learning for special education students **must** include:
 - A regular and consistent schedule of classes, interventions, services and therapies as required by the student's IEP, offered synchronously or asynchronously;
 - Structured learning time designed so that the student can access state standards; and
 - Frequent interactions with teachers and other staff members to ensure participation.



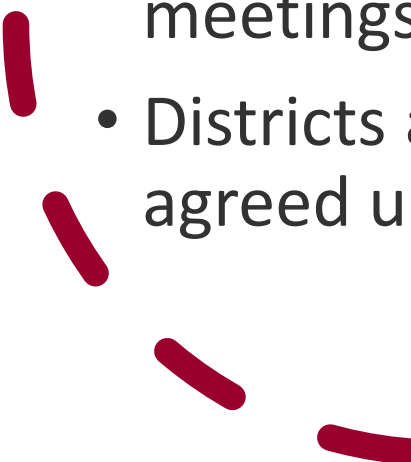
Students with significant or complex disabilities

- 1:1 in person instruction in the home or in a community-based setting
- Increased parent consults





Initial Evaluations, Re-Evaluations, Annual Reviews

- Expect a backlog of assessments and meetings.
 - School districts should continue to conduct annual review meetings
 - Districts should update the IEP as if students are attending school full time in-person
 - School districts cannot have blanket policies precluding Team meetings or evaluations from occurring.
 - Districts are encouraged to work with parents to reach mutually agreed upon extensions
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Evaluation and Meeting Disagreements

- If parent does not agree to the extension, the school district should document the reasons the district requires the extension in an N-1.
- Schools and districts cannot require parents to waive procedural safeguards when agreeing to an extension or to have a virtual IEP meeting.
- BSEA open for virtual mediations + hearings
- PRS accepting complaints

Early Intervention, Transition Services, MCAS

- Early Intervention services through an Individual Family Service Plan (IFSP) can be extended until October 15
- Chapter 688 referrals still happening
- State cannot require services to be provided after a student turns 22, but schools and families can reach an individualized determination that transition will be delayed
- Districts should plan for MCAS for 2020-2021 school year

Compensatory Services (Pre COVID-19)

Compensatory education is a court-created remedy for denials of special education services designed to make the student whole, by providing either the services that the student should have received or otherwise positioning them where they would have been if the services had been provided in the first place.

Examples of this equitable relief:

1. Hour for hour make up of services;
2. With expert opinion, grant services to put student in position they would have been; or
3. Extending age of eligibility of services beyond what is required by law to ensure student has access to necessary services.

Compensatory Services during COVID-19

- As described in DESE guidance on compensatory services released August 17, 2020
 - General Education Recovery
 - COVID-19 Compensatory Services (CCS)
 - New IEP Services

General Education Recovery

Although DESE notes that the term “General Recovery Support” is not defined in either state or federal law, it is being used increasingly by states to describe “the general education support that all students, including students with disabilities, may need to recover from educational gaps in learning or loss of skill – or even the impact on students’ emotional well-being – caused by the unexpected suspension of in-person education.”

DESE identifies three means by which General Recovery Support may be delivered to students: core instruction, Tiered Systems of Support, or through a District Curriculum Accommodation Plan (DCAP).

COVID-19 Compensatory Services (CCS)

COVID-19 Compensatory Services- not found in state or federal law – defined by the *Advisory* as “services that a student’s IEP Team determines are **needed to remedy a student’s skill or knowledge loss or lack of effective progress** that **resulted from delayed, interrupted, suspended, or inaccessible IEP services** because of the emergency suspension of in-person education related to the COVID-19 pandemic.”

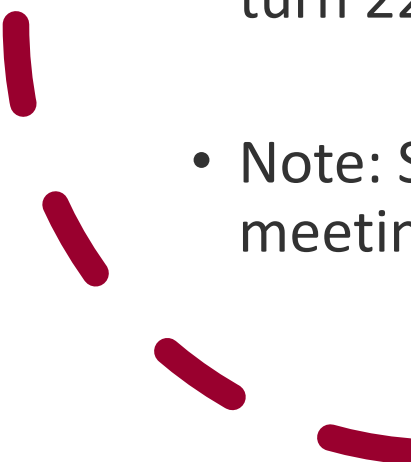
In a footnote, DESE distinguishes between COVID-19 Compensatory Services and compensatory services (“COVID-19 Compensatory Services are not the same as compensatory services”). Compensatory services are defined in the *Advisory* as an equitable remedy “ordered” “when a school has been found to have failed to provide a student with FAPE.”

How do we know if a student is entitled to CCS?

1. Are there services in the student's IEP that were not provided or they could not access?
2. To what extent has the student demonstrated regression?
3. Has the student failed to make effective progress toward their IEP goals and in the general curriculum?
4. Are there general education recovery supports that will support the student?
5. What CCS are necessary to address the special education needs?



December 15, 2020

- Prioritize COVID-19 Compensatory Services (CCS) IEP meetings for:
 - Students with complex and significant needs
 - Pre-school students
 - Students who turned 22 during suspension of in-person learning OR who will turn 22 within the first three months of the school year
 - Note: Some school districts are already disputing the need for these meetings.
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Priority Student Comparison

SPECIAL EDUCATION PRIORITY

Pre-school students + students with significant and complex needs

- “high needs” on IEP
- Students who cannot engage in remote learning because of their disability;
- Students who primarily use aided and augmentative communication;
- Students who are homeless;
- Students in foster/congregate care;
- English Learners.

REGULAR EDUCATION PRIORITY

- Students with disabilities*
- English learners*
- Students whose parents/caregivers report they do not have access to reliable internet or a suitable learning space
- Students who are “significantly behind” academically
- Students who were disengaged or struggled significantly during previous remote learning periods
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Potential Challenges to Compensatory Services during COVID-19

- 1. No body of law exists regarding CCS.
- 2. Districts will likely argue that recovery services are available to all students through General Education Recovery.
- 3. Districts will likely dispute whether services were “delayed, interrupted, suspended, or inaccessible,” especially for those students who struggled to access remote learning because of mental or behavioral health challenges.
- 4. In any BSEA proceedings, Districts are likely to file motions to dismiss CCS claims on the ground that CCS is not an obligation arising from the IDEA.

New IEP Services

The *Advisory* states that any new special education supports that a student may need due to the COVID-19 school closure should be determined “in accordance with the requirements of state and federal special education law.”

Notably, the *Advisory* specifically mentions “mental health needs” as a possible “new area of disability-related need” for students.

For students with new or increased mental health needs related to the COVID-19 school closure, parents and providers may be able to effectively advocate for increased or new IEP services without the need for additional assessments, if they can provide the school with written evidence of the child’s mental health challenges during the shutdown.

Resolving Disagreements

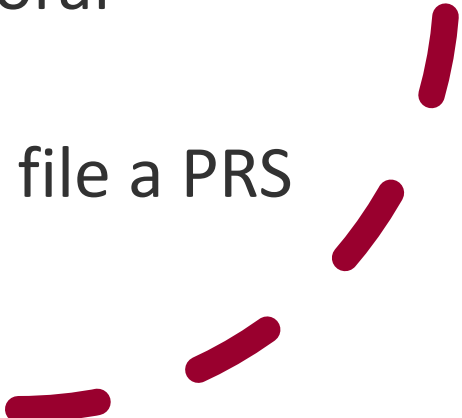
- PRS
- Mediation
- Due Process Request



Action Items for Families – Before School Starts

1. Review school district's website/communications with families to determine which learning model options(s) are available and submit preferences/applications
2. Reach out to school principal and/or special education administrator about access to technology (hardware, internet access)
3. Proactively communicate to school officials any barriers to engagement that existed last year, as well as possible solutions
4. Secure PPE for students returning to in-person instruction, including face masks and shields
5. If the student is placed in an out of district (OOD) school, review its reopening plans, as well as the school district's transportation plans for OOD schools

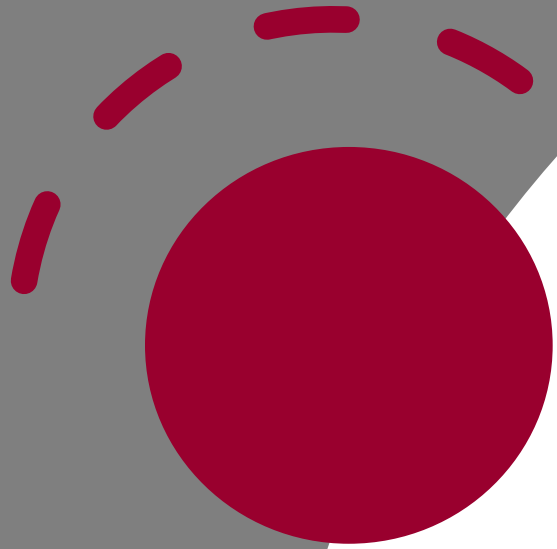
Action Items for Families – Once School Begins

1. Communicate, communicate, communicate!
 2. Keep track of when services aren't working, or if they are not available
 3. Communicate barriers to engagement right away (and repeatedly)
 4. Document attempts to communicate with school staff and resolve issues
 5. Document learning and behavioral regressions
 6. Contact a PRS specialist and/or file a PRS complaint
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Dispute Resolution for Families – Special Education

1. Request an IEP meeting re: compensatory services or changes to the IEP
2. Request an independent evaluation, either school-funded or through the student's health insurance
3. File a PRS complaint
4. Request mediation through the BSEA





Questions?