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State Superintendent of Schools

TO: Members of the State Board of Education

FROM: Mohammed Choudhury

DATE: October 26, 2021

SUBJECT: COMAR 13A.05.01.03
Definitions
COMAR 13A.05.01.08
Individualized Education Program (IEP) Team Responsibilities
COMAR 13A.05.01.09
Individualized Education Program Document
PERMISSION TO PUBLISH

PURPOSE:

The purpose of this item is to request permission to publish amendments to Code of Maryland Regulations (COMAR) 13A.05.01.03 *Definitions*, COMAR 13A.05.01.08 *Individualized Education Program (IEP) Team Responsibilities*, and 13A.05.01.09 *Individualized Education Program Document* to reflect changes made to Md. Code, Education Article §8-405 during the 2021 legislative session.

REGULATION PROMULGATION PROCESS:

Under Maryland law, a state agency, such as the State Board, may propose a new or amended regulation whenever the circumstances arise to do so. After the State Board votes to propose such a regulation, the proposed regulation is sent to the Administrative, Executive, and Legislative Review (AELR) Committee for a 15-day review period. If the AELR Committee does not hold up the proposed regulation for further review, it is published in the Maryland Register for a 30-day public comment period. At the end of the comment period, Maryland State Department of Education (MSDE) staff reviews and summarizes the public comments. Thereafter, MSDE staff will present a recommendation to the State Board of Education to either: (1) adopt the regulation in the form it was proposed; or (2) revise the regulation and adopt it as final because the suggested revision is not a substantive change; or (3) revise the regulation and re-propose it because the suggested revision is a substantive change. At any time during this process, the AELR Committee may stop the promulgation process and hold a hearing. Thereafter, it may recommend to the Governor that the regulation not be adopted as a final regulation or the AELR Committee may release the regulation for final adoption.

BACKGROUND/HISTORICAL PERSPECTIVE:

Md. Code, Education Article §8-405 *Parents' notice and attendance at meetings* outlines statutory requirements related to the rights of parents of students with disabilities and procedural requirements for the Individualized Education Program (IEP) and special education process. During the 2021 Legislative Session, the General Assembly passed Senate Bill 300/House Bill 714: *Special Education – Learning Continuity Plan – Requirement*. In response to the disruption of services to special education students during the extended school closures resulting from the COVID-19 pandemic, the amendment to the statute requires the IEP team to proactively develop a “learning continuity plan” to be implemented during emergency conditions. Emergency conditions, as defined by the statute, means a period of 10 school days or longer during which the child with a disability cannot be provided with an IEP or special education services at school, and the school is providing instruction in some form to its students.

Within 10 days of determining that emergency conditions exist, the IEP team must make a reasonable attempt to notify the parent/guardian of the child with a disability that the learning continuity plan is in place, and to seek input from the parent/guardian on how the learning continuity plan will best operate during the emergency conditions.

Prior to passage of Senate Bill 300/House Bill 714, the Department required each local school system and public agency to review IEPs when they were no longer able to provide instruction in the school building. If the local school system or public agency could not provide a free appropriate public education, as described in the IEP, in the alternate service delivery model, the local school system or public agency had to revise or amend the IEP.

The amendment to Education Article §8-405 builds on this established process by: (1) requiring the IEP team to proactively develop a learning continuity plan in the IEP; (2) identifying emergency conditions under which the learning continuity plan in the IEP must be implemented; and (3) prescribing a specific timeline (i.e. 10 days) in which the IEP team must make a reasonable attempt to notify the parent/guardian and seek parent/guardian input.

The Division of Early Intervention and Special Education Services (DEI/SES) convened a workgroup session in August to receive input from local school systems and public agencies on necessary regulatory updates. The proposed changes ensure COMAR aligns with the Education Article.

EXECUTIVE SUMMARY:

Proposed amendments to the regulations include:

- Addition of the terms “Emergency Conditions” and “Learning Continuity Plan” to COMAR 13A.05.01.03 *Definitions*;
- Addition of planning for emergency conditions to the IEP Review requirements under COMAR 13A.05.01.08 *Individualized Education Program (IEP) Team Responsibilities*; and
- Addition of the learning continuity plan to the IEP Content and a new section describing the implementation and notification process under COMAR 13A.05.01.09 *Individualized Education Program Document*.

ACTION:

Request permission to publish the amendments to COMAR 13A.05.01.03 *Definitions*, COMAR 13A.05.01.08 *Individualized Education Program (IEP) Team Responsibilities*, and COMAR 13A.05.01.09 *Individualized Education Program Document*.

ATTACHMENTS:

COMAR 13A.05.01.03 *Definitions*

COMAR 13A.05.01.08 *Individualized Education Program (IEP) Team Responsibilities*

COMAR 13A.05.01.09 *Individualized Education Program Document*

Flowchart – *Understanding the Implementation of the Proposed Regulations for Learning Continuity Plan under Educ. Art. § 8-405(d)*

Sample – *Individualized Education Program (IEP)*, page 16

Md. Code Regs. 13A.05.01.03

Section 13A.05.01.03 - Definitions

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Accommodation" means practices and procedures, in accordance with the Maryland Accommodations Manual, that provide students with disabilities equitable access during instruction and to assessments in the areas of:

- (a) Presentation;
- (b) Response;
- (c) Setting; and
- (d) Scheduling.

(2) "Act" means the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401 -1419.

(3) "Assessment" means the process of collecting data in accordance with Regulation .05 of this chapter, to be used by the IEP team to determine a student's need for special education and related services.

(4) Assistive Technology Device.

(a) "Assistive technology device" means an item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability, in accordance with 34 CFR § 300.5.

(b) "Assistive technology device" does not include a medical device that is surgically implanted, or the replacement of such a device.

(5) Assistive Technology Service.

(a) "Assistive technology service" means a service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device,

(b) "Assistive technology service" includes:

- (i) The evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment
- (ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities;
- (iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (v) Training or technical assistance for a student with a disability or, if appropriate, the student's family; and
- (vi) Training or technical assistance for professionals, including individuals providing education or rehabilitation services, employers, or other individuals who provide services, employ, or are otherwise substantially involved in the major life functions of a student with a disability, in accordance with 34 CFR § 300.6.

(6) At No Cost.

(a) "At no cost" means the provision of all specially designed instruction without charge.

(b) "At no cost" does not include incidental fees that are typically charged to students without disabilities or to parents as a part of the regular education program, consistent with 34 CFR § 300.39(b)(1).

(7) "Audiology" means services which include:

- (a) Identification of students with hearing loss;
 - (b) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
 - (c) Provision of habilitative activities such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation;
 - (d) Creation and administration of programs for the prevention of hearing loss;
 - (e) Counseling and guidance of students, parents, and teachers regarding hearing loss; and
 - (f) Determination of the student's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- (8) "Autism" means a developmental disability that:
- (a) Does not include emotional disability as defined in §B(23) of this regulation;
 - (b) Significantly affects verbal and nonverbal communication and social interaction;
 - (c) Is generally evident before 3 years old;
 - (d) Adversely affects a student's educational performance; and
 - (e) May be characterized by:
 - (i) Engagement in repetitive activities and stereotyped movements,
 - (ii) Resistance to environmental change or change in daily routines, and
 - (iii) Unusual responses to sensory experiences.
- (9) "Business day" means a day when a public agency is open for business whether or not students are required to be in attendance for instruction.
- (10) "Career and technology education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.
- (11) "Charter school" means a school that operates under the supervision of the public chartering authority in accordance with Education Article, § 9-102, Annotated Code of Maryland.
- (12) Consent.
- (a) "Consent" means a parent:
 - (i) Has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;
 - (ii) Understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom; and
 - (iii) Understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
 - (b) "Consent" includes consent given to an action before a parent revokes consent, so that:
 - (i) If a parent revokes consent, that revocation is not retroactive and does not negate an action that occurred after the consent was given and before the consent was revoked; and
 - (ii) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the student's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.
- (13) "Consultation" means services provided to a teacher, parent, or other service provider, regarding a specific student, designed to support and enhance the implementation of a student's IEP.
- (14) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

- (15) "Critical life skill" means a skill determined by the individualized education program(IEP) team to be critical to the student's overall educational progress.
- (16) "Day" means a calendar day unless otherwise indicated as a school day or businessday.
- (17) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that the student cannot be accommodated solely as a student with deafness or a student with blindness.
- (18) "Deafness" means a hearing impairment which:
- (a) Is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification; and
 - (b) Adversely affects the student's educational performance.
- (19) "Department" means the Maryland State Department of Education.
- (20) "Early identification" means the implementation of a formal process for identifying a disability as early as possible in a child's life.
- (21) "Education record" means personally identifiable information, as defined by §B(55) of this regulation, about a student with a disability, maintained by a public agency, consistent with 34 CFR 99 and COMAR 13A.08.02.
- (22) Elementary School.
- (a) "Elementary school" means a public day or residential school that provides elementary education and programs in accordance with 34 CFR § 300.7, and Education Article, § 1-101, Annotated Code of Maryland.
 - (b) "Elementary school" includes:
 - (i) Elementary charter schools; and
 - (ii) Preschool programs.
- (22.1) Emergency Conditions.
- (a) "Emergency Conditions" means a period of time of 10 school days or longer, during which:
- (i) A child with a disability cannot be provided with an individualized education program or special education services at school; and
 - (ii) The school is providing instruction in some form to its students.
- (b) Emergency conditions do not include:
- (i) Disciplinary removals for 10 or more days under COMAR 13A.08.01.11; or
 - (ii) Students unable to participate in their school of enrollment due to a physical or emotional condition as described under COMAR 13A.03.05.
- (23) Emotional Disability.
- (a) "Emotional disability" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, that adversely affects a student's educational performance:
 - (i) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
 - (ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - (iii) Inappropriate types of behavior or feelings under normal circumstances;
 - (iv) A general, pervasive mood of unhappiness or depression; or
 - (v) A tendency to develop physical symptoms or fears associated with personal or school problems.
 - (b) "Emotional disability" includes schizophrenia.
 - (c) "Emotional disability" does not include a student who is socially maladjusted, unless it is determined that the student has an emotional disability.
- (24) "Equipment" means:
- (a) Machinery, utilities, and built-in equipment, and enclosures necessary to house the machinery, utilities, or equipment; and
 - (b) Other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including:

- (i) Instructional equipment and necessary furniture;
 - (ii) Printed, published, and audiovisual instructional materials;
 - (iii) Telecommunications, sensory, and other technological aids and devices;
 - (iv) Books, periodicals, and documents; and
 - (v) Other related materials.
- (25) Evaluation.
- (a) "Evaluation" means the process of reviewing:
 - (i) Information from parents;
 - (ii) Existing data; and
 - (iii) Results of assessment procedures used to determine whether a student has a disability, and the nature and extent of the special education and related services that the student needs.
 - (b) "Evaluation" means a review at a meeting of the IEP team and other qualified professionals, as appropriate, in accordance with 34 CFR §§ 300.304 - 300.311 and Regulations .05 and .06 of this chapter.
- (26) "Extended school year services" means the individualized extension of specific special education and related services that:
- (a) Are provided to a student with a disability beyond the normal school year of the public agency or nonpublic school the student attends, in accordance with the student's IEP
 - (b) Are provided at no cost to the parents of the student; and
 - (c) Meet the standards of the Department.
- (27) "Free appropriate public education (FAPE)" means special education and related services that:
- (a) Are provided at public expense, under public supervision and direction;
 - (b) Meet the standards of the Department, including the requirements of 34 CFR §§ 300.8, 300.101, 300.102, and 300.530(d) and this chapter;
 - (c) Include preschool, elementary, or secondary education; and
 - (d) Are provided in conformity with an IEP that meets the requirements of 20 U.S.C. § 1414, and this chapter.
- (28) "General curriculum" means the curricular content adopted by a public agency, or schools within a public agency, for students from preschool through secondary education.
- (29) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance, but which is not included in §B(18) of this regulation.
- (30) "Homeless students" means children and youth as defined by § 725 of the McKinney-Vento Homeless Assistance Act and COMAR 13A.05.09.
- (31) "Impartial hearing officer" means an administrative law judge appointed by the Office of Administrative Hearings to conduct a due process hearing in accordance with 34 CFR § 300.511(c) and Education Article, § 8-413, Annotated Code of Maryland.
- (32) "Include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.
- (33) "Independent educational evaluation" means assessment procedures conducted by a qualified individual who is not employed by the public agency responsible for the education of the student.
- (34) "Individualized education program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with 34 CFR §§ 300.320 - 300.324 and Regulations .08 and .09 of this chapter.
- (35) "IEP team" means a group of individuals responsible for:
- (a) Identifying and evaluating students with disabilities in accordance with 34 CFR §§ 300.301 - 300.311 and Regulations .04-.06 of this chapter
 - (b) Developing, reviewing, or revising an IEP for a student with a disability in accordance with 34 CFR §§ 300.320 - 300.328 and Regulation .07 of this chapter;

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(c) Determining the placement of a student with a disability in the least restrictive environment (LRE) in accordance with 34 CFR §§ 300.114 - 300.117 and Regulation .10 of this chapter.

(36) "Intellectual disability" means general intellectual functioning, adversely affecting a student's educational performance, that:

- (a) Is significantly subaverage;
- (b) Exists concurrently with deficits in adaptive behavior; and
- (c) Is manifested during the developmental period.

(37) Interpreting Services.

(a) "Interpreting services" means services for students who are deaf or hard of hearing

(b) "Interpreting services" include:

- (i) Oral transliteration services;
- (ii) Cued language transliteration services;
- (iii) Sign language transliteration and interpreting services;
- (iv) Transcription services, including Communication Access Real-Time Translation (CART), C-Print, and TypeWell; and
- (v) Special interpreting services for students who are deaf-blind.

(37.1) Learning Continuity Plan refers to the sections of the IEP that address the provision of a free appropriate public education during emergency conditions.

(38) "Limited English proficient (LEP)" means an individual who does not speak English as the individual's primary language and who has a limited ability to read, speak, write, or understand English.

(39) "Local school system (LSS)" means any of the 24 public school systems in the State responsible for providing a free appropriate public education to students with disabilities.

(40) "Mediator" means a qualified individual:

- (a) Selected by the Office of Administrative Hearings to conduct mediation in accordance with 34 CFR § 300.506, Education Article § 8-413, Annotated Code of Maryland, and Regulation .15B of this chapter; and
- (b) Trained in effective mediation techniques.

(41) "Medical services" means services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.

(42) Meeting.

(a) "Meeting" means a prearranged event when personnel of a public agency, a parent, and others who have knowledge or special expertise regarding the student, at the discretion of the public agency or the parent, come together at the same time and place to discuss matters related to the identification, evaluation, educational placement, and the provision of FAPE for a student with a disability.

(b) "Meeting" does not include:

- (i) Informal or unscheduled conversations with public agency personnel;
- (ii) Conversations on issues of teaching methodology, lesson plans, or coordination of service provision, if these issues are not addressed on the student's IEP; or
- (iii) Preparatory activities of public agency personnel necessary to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(43) "Modifications" means practices that change, lower, or alter learning expectations, in accordance with the Maryland Accommodations Manual.

(44) Multiple Disabilities.

(a) "Multiple disabilities" means concomitant impairments, such as intellectual disability-blindness or intellectual disability-orthopedic impairment, the combination of which causes such severe educational problems that the student cannot be accommodated in special education programs solely for one of the impairments.

- (b) "Multiple disabilities" does not include students with deaf-blindness.
- (45) Native Language
- (a) "Native language" means the language normally used by an individual who is limited English proficient, or the language normally used by the parent of the student in accordance with 34 CFR § 29.
- (b) "Native language" includes the language normally used by the student in:
- (i) All direct contact;
 - (ii) Assessment and evaluation;
 - (iii) The student's home; and
 - (iv) The student's learning environment.
- (c) "Native language" includes the mode of communication that is normally used by an individual:
- (i) Who is blind;
 - (ii) Who is deaf; or
 - (iii) With no written language.
- (46) "Nonacademic and extracurricular activities and services" means activities and services which may include:
- (a) Counseling services, athletics, transportation, health services, recreational activities, special interest groups, or clubs sponsored by the public agency
 - (b) Referrals to agencies that provide assistance to individuals with disabilities; and
 - (c) Employment of students, including employment by the public agency and assistance in making outside employment available
- (47) "Nonpublic school" means a day or residential educational program that is governed "Occupational therapy" means services which include:
- (a) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
 - (b) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and
 - (c) Preventing, through early intervention, initial or further impairment or loss of function.
- (48) Orientation and Mobility Services.
- (a) "Orientation and mobility services" means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community.
- (b) "Orientation and mobility services" includes:
- (i) Teaching students spatial and environmental concepts and use of information received by the senses, such as sound, temperature, and vibrations, to establish, maintain, or regain orientation and line of travel;
 - (ii) Teaching students to use the long cane or a service animal, as appropriate, to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
 - (iii) Teaching students to understand and use remaining vision and distance low vision aids, as appropriate; and
 - (iv) Other concepts, techniques, and tools, as determined appropriate.
- (49) Orthopedic Impairment.
- (a) "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a student's educational performance.
- (b) "Orthopedic impairment" includes impairments:
- (i) Caused by congenital anomaly, such as clubfoot or absence of some member;
 - (ii) Caused by disease such as poliomyelitis or bone tuberculosis; and
 - (iii) From other causes such as cerebral palsy, amputations, and fractures or burns which cause contractures.

(50) "Other health impairment" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that is adversely affecting a student's educational performance, due to chronic or acute health problems such as:

- (a) Asthma;
- (b) Attention deficit disorder or attention deficit hyperactivity disorder;
- (c) Diabetes;
- (d) Epilepsy;
- (e) A heart condition;
- (f) Hemophilia;
- (g) Lead poisoning;
- (h) Leukemia;
- (i) Nephritis;
- (j) Rheumatic fever;
- (k) Sickle cell anemia; or
- (l) Tourette syndrome.

(51) Parent.

(a) "Parent" means:

- (i) A biological or adoptive parent;
- (ii) A guardian;
- (iii) A person acting as a parent of a student, including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare;
- (iv) A foster parent with whom the student lives, if the foster parent has been granted limited guardianship for educational decision-making purposes by the court that has placed the child in foster care; or
- (v) A surrogate parent who has been appointed in accordance with 34 CFR § 300.519 and Education Article, § 8-412, Annotated Code of Maryland.

(b) "Parent" does not include:

- (i) An employee of a public agency responsible for the education or care of the child; or
- (ii) The State, if the child is a ward of the State.

(52) "Parent counseling and training" means:

- (a) Assisting parents in understanding the special needs of the child; and
- (b) Providing parents with information about child development.

(53) "Participating agency" means a public agency, other than the public agency responsible for the student's education, that is financially and legally responsible for providing or paying for the provision of transition services to the student.

(54) "Personally identifiable information" means information that includes:

- (a) The name of the student, the student's parent, or other family member;
- (b) The address of the student;
- (c) A personal identifier such as the student's Social Security number or student number; and
- (d) A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

(55) Physical Education.

(a) "Physical education" means the development of:

- (i) Physical and motor fitness;
- (ii) Fundamental motor skills and patterns; and
- (iii) Skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports.

(b) "Physical education" includes:

- (i) Special physical education;
- (ii) Adaptive physical education;
- (iii) Movement education; and

- (iv) Motor development.
- (56) "Physical therapy" means services provided by a qualified physical therapist or physical therapy assistant, in accordance with Health Occupations Article, § 13-101(h), Annotated Code of Maryland, and COMAR 10.38.03.02H.
- (57) "Psychological services" means services that include:
 - (a) Administering psychological and educational tests, and other assessment procedures;
 - (b) Interpreting assessment results;
 - (c) Obtaining, integrating, and interpreting information about student behavior and conditions relating to learning;
 - (d) Consulting with other staff members in planning school programs to meet the special educational needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
 - (e) Planning and managing a program of psychological services, including psychological counseling for students and parents; and
 - (f) Assisting in developing positive behavioral intervention strategies.
- (58) Public Agency.
 - (a) "Public agency" means a State or local government or quasi-government entity responsible for the provision of a free appropriate public education to students with disabilities.
 - (b) "Public agency" includes local school systems, the SEED School, the Department, the Department of Health and Mental Hygiene, the Department of Juvenile Services, the Maryland School for the Blind, the Maryland School for the Deaf, and the Department of Labor, Licensing, and Regulation.
- (59) "Public expense" means the cost of services paid or provided by a public agency at no cost to the parent.
- (60) "Qualified" means an individual who has met the State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individual is providing special education or related services.
- (61) "Recreation" means services which include assessment of leisure function, therapeutic recreation services, recreation programs in schools and other community agencies, and leisure education.
- (62) "Reevaluation" means an evaluation conducted after the initial evaluation in accordance with Regulation .06D of this chapter.
- (63) "Rehabilitation counseling services" means services provided:
 - (a) By qualified personnel in individual and group sessions that focus specifically on:
 - (i) Career development,
 - (ii) Employment preparation,
 - (iii) Achieving independence, and
 - (iv) Integration in the workplace and community of a student with a disability; and
 - (b) To students with disabilities by vocational rehabilitation services funded under the Rehabilitation Act of 1973.
- (64) Related Services.
 - (a) "Related services" means transportation and such developmental, corrective, and other supportive services as may be required to assist a student with a disability to benefit from special education.
 - (b) "Related services" includes:
 - (i) Speech-language pathology;
 - (ii) Audiology;
 - (iii) Psychological services;
 - (iv) Physical and occupational therapy;
 - (v) Recreation, including therapeutic recreation;
 - (vi) Early identification and assessment of disabilities in students;
 - (vii) Counseling services, including rehabilitation counseling;
 - (viii) Orientation and mobility services;

- (ix) Medical services for diagnostic or evaluation purposes;
 - (x) School health services, including school nursing services;
 - (xi) Social work services in schools; and
 - (xii) Parent counseling and training.
- (c) "Related services" does not include:
- (i) A surgically implanted medical device;
 - (ii) The optimization of the device's functioning;
 - (iii) Maintenance of the device; or
 - (iv) Replacement of the device.
- (65) "School day" means a day, including a partial day, when a public agency is open and students with and without disabilities are required to be in attendance for instruction in accordance with COMAR 13A.08.02.01H.
- (66) "School health services" means services:
- (a) Provided by a qualified school nurse or other qualified individual; and
 - (b) Designed to enable a student with a disability to receive FAPE as described in the student's IEP.
- (67) Secondary School.
- (a) "Secondary school" means a public day or residential school that provides secondary education in accordance with 34 CFR § 300.36, Education Article, § 2-205, Annotated Code of Maryland, and COMAR 13A.03.01.02H.
 - (b) "Secondary school" does not include education beyond grade 12.
- (68) "Service plan" means a written statement developed and implemented in accordance with 34 CFR §§ 300.131 - 300.144 and Regulation .16B of this chapter, that describes the special education and related services a local school system shall provide to a parentally placed private school student with a disability designated to receive services, including the location of the services and any transportation necessary.
- (69) "Social work services in schools" means services which include:
- (a) Preparing a social or developmental history of a student with a disability;
 - (b) Group and individual counseling with the student and family;
 - (c) Working with those problems in a student's living situation, such as home, school, and community, that affect the student's adjustment in school;
 - (d) Mobilizing school and community resources to enable the student to learn as effectively as possible in the student's educational program; and
 - (e) Assisting in the development of positive behavioral intervention strategies.
- (70) Special Education.
- (a) "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings.
 - (b) "Special education" includes speech-language pathology services, travel training, career and technology education, and instruction in physical education if the service consists of specially designed instruction.
- (71) "Specially designed instruction" means the adaptation of content, methodology, or delivery of instruction to address the unique needs of a student with a disability to ensure access to the general curriculum, so that the student can meet the educational standards that apply to each student within the jurisdiction of the public agency.
- (72) Specific Learning Disability (SLD).
- (a) "SLD" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, consistent with Department criteria.
 - (b) "SLD" includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
 - (c) "SLD" does not include students who have learning problems which are

primarily the result of visual, hearing, or motor impairments, intellectual disability, emotional disability, or environmental, cultural, or economic disadvantage.

- (73) "Speech or language impairment" means a communication disorder such as stuttering, impaired articulation, voice impairment, or language impairment that adversely affects a student's educational performance.
- (74) "Speech-language pathology" means services which include:
- (a) Identification of students with speech or language impairments;
 - (b) Diagnosis and appraisal of specific speech or language impairments;
 - (c) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
 - (d) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
 - (e) Counseling and guidance of parents, students, and teachers regarding speech and language impairments.
- (75) "Statewide assessment" means the testing procedures adopted by the State Board of Education to measure student or school performance, consistent with 20 U.S.C. § 1412(a)(16).
- (76) "Student with a developmental delay" means a student within the age range of 3 years old through 7 years old assessed and evaluated in accordance with Regulations .05 and .06 of this chapter as having:
- (a) A 25 percent or greater delay in adaptive, cognitive, communicative, emotional, physical, or social development;
 - (b) Atypical development or behavior as defined in COMAR 13A.13.01.03B(12)(b); or
 - (c) A diagnosed physical or mental condition as defined in COMAR 13A.13.01.03B(12)(c).
- (77) "Student with a disability" means a student, 3 years old through the end of the school year in which the student turns 21 years old:
- (a) Evaluated in accordance with Regulation .06 of this chapter as having:
 - (i) Autism,
 - (ii) Deaf-blindness,
 - (iii) Emotional disability,
 - (iv) Hearing impairment, including deafness,
 - (v) Intellectual disability;
 - (vi) Multiple disability,
 - (vii) Orthopedic impairment,
 - (viii) Other health impairment,
 - (ix) Specific learning disability,
 - (x) Speech or language impairment,
 - (xi) Traumatic brain injury, or
 - (xii) Visual impairment, including blindness; and
 - (b) Who, because of the impairment, needs special education and related services.
- (78) "Supplementary aids and services" means aids and services and other supports that are provided in regular education classes, other education-related settings, and extracurricular and nonacademic settings to enable a student with a disability to be educated with students without disabilities to the maximum extent appropriate in accordance with 34 CFR §§ 300.114 - 300.116 and Regulation .10 of this chapter.
- (79) Transition Services.
- (a) "Transition services" means a coordinated set of activities for a student with a disability, designed within a results-oriented process, that is focused on improving the academic and functional achievement of a student with a disability to facilitate the student's movement from school to post-school activities, including:
 - (i) Post-secondary education;
 - (ii) Career and technology education;

- (iii) Integrated employment, including supported employment;
 - (iv) Continuing and adult education;
 - (v) Adult services;
 - (vi) Independent living; or
 - (vii) Community participation.
- (b) "Transition services" also means activities based on the student's needs, taking into account the student's strengths, preferences, and interests.
- (c) "Transition services" include:
- (i) Needed activities in the areas of instruction, related services, community experiences, development of employment, or other post-school adult living objectives;
 - (ii) Acquisition of daily living skills; and
 - (iii) Functional vocational evaluation, if appropriate.
- (80) "Transportation" means services which include:
- (a) Travel to and from school and between schools;
 - (b) Travel in and around school buildings; and
 - (c) Specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for a student with a disability.
- (81) Traumatic Brain Injury.
- (a) "Traumatic brain injury" means an acquired injury to the brain, caused by an external force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance.
- (b) "Traumatic brain injury" includes open or closed head injuries resulting in impairments in one or more areas such as:
- (i) Cognition;
 - (ii) Language;
 - (iii) Memory;
 - (iv) Attention;
 - (v) Reasoning;
 - (vi) Abstract thinking;
 - (vii) Judgment;
 - (viii) Problem solving;
 - (ix) Sensory, perceptual, and motor abilities;
 - (x) Psychosocial behavior;
 - (xi) Physical functions;
 - (xii) Information processing; and
 - (xiii) Speech.
- (c) "Traumatic brain injury" does not include brain injuries that are:
- (i) Congenital or degenerative; or
 - (ii) Induced by birth trauma.
- (82) "Travel training" means providing instruction to students with disabilities, as appropriate, who require this instruction to enable them to:
- (a) an awareness of the environment in which they live; and
 - (b) Learn the skills necessary to move effectively and safely from place to place within that environment.
- (83) Visual Impairment.
- (a) "Visual impairment" means impairment in vision which, even with correction, adversely affects a student's educational performance.
- (b) "Visual impairment" includes partial sight and blindness.
- (84) Ward of the State.
- (a) "Ward of the State" means a child for whom a State or county agency or official has been appointed legal guardian, or who has been committed by a court of competent jurisdiction to the legal custody of a State or county agency or official with the express authorization that the State or county agency or official make

educational decisions for the child.

(b) "Ward of the State" does not include a foster child who has a foster parent who meets the definition of a parent as defined in §B(52)(a)(iv) of this regulation.

Md. Code Regs. 13A.05.01.03

Regulation .03B amended effective January 21, 2002 (29:1 Md. R. 24); May 7, 2007 (34:9 Md R. 826); October 5, 2009 (36:20 Md. R. 1530); May 16, 2011 (38:10 Md. R. 615); amended effective 43:26 Md. R. 1447, eff. 1/2/2017

Md. Code Regs. 13A.05.01.08

Section 13A.05.01.08 - Individualized Education Program (IEP) Team Responsibilities

A. IEP Development.

- (1) A public agency shall ensure that an IEP team meets to develop an IEP for a student with a disability within 30 days of the evaluation.
- (2) Transition from a Local Infants and Toddlers Program.
 - (a) If a child transitioning from a local infants and toddlers program is determined to be a student with a disability or developmental delay in accordance with Regulation .06B of this chapter, the public agency shall:
 - (i) Ensure that an IEP team meets in a timely manner to determine a child's eligibility for special education and related services before the child's third birthday;
 - (ii) Invite the child's local infants and toddlers service coordinator or other representatives of the local infants and toddlers program to assist with a smooth transition of services, consistent with Regulation .07A(8) of this chapter; and
 - (iii) Ensure that the student's IEP is in effect on the student's third birthday in accordance with Regulation .09 of this chapter if a child's family chooses to receive preschool special education services.
 - (b) The IEP team shall consider the student's individual family service plan when developing the child's IEP, in accordance with §A(2)(a)(i) of this regulation.
- (3) In developing an IEP, the IEP team shall consider and document:
 - (a) Strengths of the student;
 - (b) Concerns of the parent for enhancing the education of the student;
 - (c) Results of the initial or most recent evaluation;
 - (d) Communication needs of the student;
 - (e) Whether the student requires assistive technology devices and services;
 - (f) The results of the student's performance on Statewide, district-wide, or alternative assessment programs, as appropriate; and
 - (g) The academic, developmental, and functional needs of the student.
- (4) If a student's behavior impedes the student's learning or the learning of others, the IEP team shall consider strategies, including positive behavioral interventions, strategies, and supports, to address that behavior, as appropriate.
- (5) If a student is limited English proficient, the IEP team shall consider the language needs of the student as these needs relate to the student's IEP.
- (6) Blind or Visually Impaired Students.
 - (a) If a student is blind or visually impaired, the IEP team shall provide for instruction in:
 - (i) Braille and the use of braille, including textbooks in braille, unless the IEP team determines that instruction in braille is not appropriate for the student in accordance with 34 CFR § 300.324(a)(2)(iii), Education Article, § 8-408, Annotated Code of Maryland, and COMAR 13A.06.05.01; and
 - (ii) Orientation and mobility, unless the IEP team determines that instruction in orientation and mobility is not appropriate for the student in accordance with Education Article, § 8-408, Annotated Code of Maryland, and §A(6)(b)-(d) of this regulation.
 - (b) If the IEP team determines that instruction in orientation and mobility is not appropriate for the student, the IEP team shall order an orientation and mobility assessment, consistent with guidelines established by the Department, that:

- (i) Includes input from the student's parent or guardian;
 - (ii) Includes input from the student's classroom teacher; and
 - (iii) Takes into consideration the student's age, current and future needs, ability to function in familiar and unfamiliar areas, and ability to function under various lighting conditions.
- (c) To be qualified to conduct an orientation and mobility assessment under §A(6)(b) of this regulation or provide orientation and mobility instruction, an individual shall:
- (i) Hold a Bachelor's degree from an accredited college or university; and
 - (ii) Have completed any one of the credentialing options listed in §A(6)(d) of this regulation.
- (d) Credentialing Options. To meet the credentialing requirement under §A(6)(c) of this regulation, an individual may:
- (i) Hold a certificate as a Certified Orientation and Mobility Specialist (COMS) from the Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP);
 - (ii) Hold National Orientation and Mobility Certification (NOMC) from the National Blindness Professional Certification Board (NBPCB); or
 - (iii) Complete all requirements of a university-based program in orientation and mobility, including a supervised internship or externship in orientation and mobility.
- (7) If a student is deaf or hard of hearing, the IEP team shall consider the student's:
- (a) Language and communication needs;
 - (b) Opportunities for direct communication with peers and professional personnel in the student's language and mode of communication; and
 - (c) Academic level and full range of needs, including opportunities for direct instruction in the student's language and mode of communication.
- (8) When considering the factors as described in §A(3)-(7) of this regulation, if the IEP team determines that a student with a disability needs a particular device or service, including intervention, accommodations, or other program modifications, to receive FAPE, the student's IEP shall include a statement to that effect.
- (9) As a member of the IEP team, a regular education teacher of the student shall, to the extent appropriate, participate in the development of the student's IEP. Participation includes assisting in the determination of:
- (a) Appropriate positive behavioral interventions and strategies for the student; and
 - (b) Supplementary aids and services, program modifications, and supports for school personnel, consistent with 34 CFR § 300.320(a)(4) and Regulation .09A(1)(d) of this chapter.
- (10) The IEP team shall consider a student's need for transportation as a related service as defined in Regulation .03B(65) of this chapter to assist a student to benefit from special education in accordance with 34 CFR § 300.34.
- (11) Each public agency shall ensure that hearing aids or the external components of surgically implanted medical devices worn in school by students with hearing impairments are functioning properly, in accordance with 34 CFR § 300.113.

B. IEP Review

- (1) A public agency shall ensure that the IEP team meets periodically, but not less than annually, to review and revise the IEP, as appropriate, to:
- (a) Determine whether the annual goals for the student are being achieved;
 - (b) Address any lack of expected progress in the annual goals or in the general curriculum;
 - (c) Review data and information from assessment procedures conducted as part of the reevaluation in Regulation .06 of this chapter, as appropriate;
 - (d) Address any information about the student provided to or by the parent;

- (e) Address the student's anticipated needs; **[and]**
 - (f) *Address planning for emergency conditions; and*
 - (g) **[f]** Discuss other matters, as identified on the notice of the IEP team meeting.
- (2) Extended School Year Services.
- (a) At least annually, the IEP team shall determine whether the student requires the provision of extended school year services in accordance with Education Article, § 8-405, Annotated Code of Maryland.
 - (b) The IEP team shall consider:
 - (i) Whether the student's IEP includes annual goals related to critical life skills;
 - (ii) Whether there is a likelihood of substantial regression of critical life skills caused by the normal school break in the regular school year and a failure to recover those lost skills in a reasonable time;
 - (iii) The student's degree of progress toward mastery of IEP goals related to critical life skills;
 - (iv) The presence of emerging skills or breakthrough opportunities;
 - (v) Interfering behaviors;
 - (vi) The nature and severity of the disability; and
 - (vii) Special circumstances.
 - (c) Following the consideration of factors described in §B(2)(b) of this regulation, the IEP team shall determine whether the benefits the student with a disability gains during the regular school year will be significantly jeopardized if that student is not provided with an educational program during a normal break in the regular school year.
- (3) A parent of a student with a disability or a public agency may request a meeting at anytime to review and, as appropriate, revise the student's IEP.
- (4) After the annual IEP meeting for a school year, the parent of a student with a disability and the public agency may agree to develop a written document amending or modifying a student's IEP without convening an IEP team meeting as described in §B(1) of this regulation, in accordance with 34 CFR § 300.324(a)(4).
- (5) Changes to a student's IEP may be made by:
- (a) The student's IEP team, in accordance with §B(1) of this regulation; or
 - (b) Amending the student's IEP without redrafting the entire IEP, in accordance with §B(4) of this regulation.
- (6) If a student's IEP is amended, the public agency shall ensure the IEP that incorporates the amendments is:
- (a) Accessible to the student's service providers, as described in Regulation .09D(5) of this chapter; and
 - (b) Provided, on request, to the student's parent, consistent with 34 CFR § 300.324(a)(6).

Md. Code Regs. 13A.05.01.08

Regulation .08 adopted effective October 25, 1982 (9:21 Md. R. 2107)
Regulations .08 adopted effective December 23, 1991 (18:25 Md. R. 2757)
Regulation .08 amended effective May 7, 2007 (34:9 Md R. 826)
Regulation .08A amended effective January 21, 2002 (29:1 Md. R. 24); October 5, 2009

(36:20 Md. R. 1530); amended effective 43:26 Md. R. 1447, eff. 1/2/2017;
amended effective 44:20 Md. R. 946, eff. 10/9/2017

Md. Code Regs. 13A.05.01.09

Section 13A.05.01.09 - Individualized Education Program Document

A. IEP Content.

- (1) The IEP for a student with a disability shall include:
 - (a) A statement of the student's present levels of academic achievement and functional performance, including:
 - (i) How the student's disability affects the student's involvement and progress in the general curriculum, or
 - (ii) For a preschool student, as appropriate, how the disability affects the student's participation in appropriate activities;
 - (b) Measurable academic and functional annual goals, including benchmarks or short-term instructional objectives related to:
 - (i) Meeting the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general curriculum, and meeting each of the student's other educational needs that result from the student's disability; or
 - (ii) For a preschool student, as appropriate, to participate in appropriate activities.
 - (c) The special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, including staffing support, to be provided to the student, or on behalf of the student;
 - (d) Program modifications or supports for school personnel that will be provided for the student to enable the student to:
 - (i) Advance appropriately toward attaining the annual goals;
 - (ii) Be involved in and make progress in the general curriculum;
 - (iii) Participate in extracurricular and other nonacademic activities; and
 - (iv) Be educated and participate with other students with disabilities and students without disabilities;
 - (e) An explanation of the extent, if any, to which the student will not participate with students without disabilities in the regular class and in the activities, as described in §A(1)(e) of this regulation;
 - (f) A statement of any appropriate individual accommodations that are needed to measure the student's academic achievement and functional performance on Statewide or district-wide assessments, consistent with 34 CFR § 300.320(a)(6);
 - (g) If the IEP team determines that a student may not participate in a particular Statewide or district-wide assessment, documentation by the team of:
 - (i) Why the assessment, or part of an assessment, is not appropriate for the student;
 - (ii) How the student will be assessed; and
 - (iii) Why a particular alternate assessment is appropriate; and
 - (h) The projected dates for initiation of services, and modifications as described in §A(1)(c) and (d) of this regulation, including the anticipated frequency, location, and duration.
 - (i) A learning continuity plan to address the provision of a free appropriate public education during emergency conditions.
- (2) If a student requires extended school year services, the IEP shall include the specific special education and related services to be provided beyond the regular school year consistent with Regulation .08B(2) of this chapter.
- (3) Transition Services.
 - (a) Beginning not later than the first IEP to be in effect when a student turns 14 years old, and younger if appropriate, and updated annually, consistent with Education Article, § 21-305, Annotated Code of Maryland, the student's IEP shall include:
 - (i) The transition services, including course of study needed to assist the student reach those goals;
 - (ii) Appropriate measurable postsecondary goals based on age-appropriate transition assessments related to training, education, employment, and independent living, as appropriate; and

- (iii) A statement of needed transition services including, if appropriate, a statement of a public agency's and a participating agency's responsibilities or linkages, or both, before the student leaves the secondary school setting.
 - (b) If a participating agency fails to provide agreed-on transition services contained in a student's IEP, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of:
 - (i) Identifying alternative strategies to meet the transition objectives; and
 - (ii) If necessary, revising the student's IEP.
 - (c) The Act does not relieve a participating agency of the responsibility to provide or pay for a transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of the agency.
 - (4) Transfer of Rights at Age of Majority. Beginning not later than 1 year before the student reaches the age of majority under State law, the IEP shall include a statement that the student has been informed of the student's rights under Part B of the Act, if any, that will transfer to the student on reaching the age of majority in accordance with Education Article, § 8-412.1, Annotated Code of Maryland.
 - (5) Information included under one component of the student's IEP is not required to be repeated under another component.
- B. Report of Progress.**
- (1) An IEP shall include how a parent is to be regularly informed of the:
 - (a) Student's progress toward the annual goals; and
 - (b) Extent to which the progress is sufficient to enable the student to achieve the goals within a year.
 - (2) A parent of a student with a disability shall be informed of the student's progress at least as often as a parent is informed of a nondisabled student's progress.
 - (3) A public agency shall make a good faith effort to achieve the goals of a student's IEP as described in §A(1)(b) of this regulation.
 - (4) A public agency, teacher, or other individual may not be held accountable if a student does not achieve the growth projected in the IEP as described in §A(1) of this regulation.
- C. Students in Adult Correctional Facilities.**
- (1) Each school system is required to provide special education and related services to students with disabilities incarcerated in local adult correctional facilities located within the jurisdiction of the local school system to ensure FAPE as defined in 20 U.S.C. § 1401(9).
 - (2) The local adult correctional facilities identified in §C(1) of this regulation do not include adult correctional institutions under the jurisdiction of the Maryland Department of Public Safety and Correctional Services.
 - (3) The Department of Labor, Licensing, and Regulation provides special education and related services to students with disabilities incarcerated in adult correctional institutions identified in §C(2) of this regulation.
 - (4) The requirements of §A(1)(f) and (g) of this regulation do not apply to students with disabilities incarcerated in adult correctional facilities.
 - (5) The requirements of §A(3) of this regulation do not apply to a student with a disability incarcerated in an adult correctional facility, whose eligibility under Part B of the Act and this chapter will end before the student is eligible for release, based on the consideration of the sentence and eligibility for early release.
- D. IEP in Effect.**
- (1) A public agency shall ensure that an IEP is in effect before special education and related services are provided to a student with a disability within its jurisdiction, including students with disabilities:
 - (a) Placed in or referred to a nonpublic school by the public agency; or
 - (b) A public agency shall have an IEP in effect for a student with a disability at the beginning of a school year.
 - (2) A public agency shall implement an IEP as soon as possible after the meeting where the IEP is developed or revised, except as described in §D(4) of this regulation.
 - (3) Exceptions to §D(3) of this regulation are:
 - (a) When the meeting occurs during the summer or a vacation period; or

- (b) When there are circumstances that require a short delay, such as working out transportation arrangements.
 - (4) Each service provider, as defined in COMAR 13A.05.02.03B(3), responsible for the implementation of the IEP for a student with a disability shall:
 - (a) Have access to the IEP; and
 - (b) Be informed of the service provider's specific responsibilities, accommodations, modifications, and supports that shall be provided for the student in accordance with the student's IEP.
- E. Program for Students who Transfer School Districts.
- (1) Transfer Within the State. When a student with a disability with an IEP in effect in accordance with §D of this regulation transfers from one public agency to another public agency in the State, as specified in 34 CFR § 300.323(e), the public agency in which the student intends to enroll, in consultation with the student's parents, shall provide FAPE to the student, including services comparable to those identified in the former public agency's IEP, until the public agency:
 - (a) Adopts the student's IEP from the former public agency; or
 - (b) Develops, adopts, and implements a new IEP.
 - (2) Transfer from Outside the State. When a student with a disability with an IEP in effect in accordance with §D of this regulation transfers to a public agency in Maryland from another state, as specified in 34 CFR § 300.323(f), the public agency in which the student intends to enroll, in consultation with the student's parents, shall provide FAPE to the student, including services comparable to those identified in the former public agency's IEP, until the public agency:
 - (a) Conducts an evaluation in accordance with 34 CFR §§ 300.304 - 300.311 and Regulations .05 and .06 of this chapter; or
 - (b) Develops a new IEP, if appropriate, consistent with 34 CFR § 300.320 and Regulation .09 of this chapter.
 - (3) To facilitate the transition of a student described in §E(1) or (2) of this regulation, the new public agency in which the student enrolls shall take reasonable steps to promptly obtain the student's records from the previous public agency in which the child was enrolled, pursuant to 34 CFR § 99.31(a)(2), including:
 - (a) The student's IEP;
 - (b) Supporting documents; and
 - (c) Any other records relating to the provision of special education or related services to the student.
- F. Uniform IEP. Beginning July 1, 2008, each public agency shall use:
- (1) The Maryland Online IEP; or
 - (2) An IEP product that conforms to the form and format of the Maryland Online IEP, in accordance with 34 CFR §§ 300.320 - 300.328 and Regulations .08-.10 of this chapter.
- G. Learning Continuity Plan.
- (1) Consistent with A.(1)(i) of this regulation, each IEP shall include a learning continuity plan to ensure the provision of a free appropriate public education during emergency conditions.
 - (2) The learning continuity plan shall:
 - (a) Describe the methods through which the IEP services will be delivered during emergency conditions; and
 - (b) Be reviewed and updated, as appropriate, at least annually.
 - (3) The sections of the IEP that shall include planning for emergency conditions include:
 - (a) Instructional and Assessment Accommodations;
 - (b) Supplementary Aids, Services, Program Modifications and Supports;
 - (c) Secondary Transition Activities;
 - (d) IEP Goals;
 - (e) Services; and
 - (f) Extended School Year Services.
 - (4) Notification of Emergency Conditions.
 - (a) Within 10 days of the local school system, public agency, or school determining that emergency conditions exist, a member of the IEP team shall make a

documented reasonable attempt to notify the parent or guardian of a child that the plan for emergency conditions is in place.

- (b) In contacting the parent or guardian, a member of the IEP team shall ensure the developed plan is still appropriate and discuss how it will best operate during the emergency conditions.
- (5) Notwithstanding any other provision of law, the provision of services under a learning continuity plan during emergency conditions does not alter the child's educational placement for purposes of a due process complaint brought under Education Article, §8-413, Annotated Code of Maryland.

Md. Code Regs. 13A.05.01.09

Regulations .09 adopted effective December 23, 1991 (18:25 Md. R. 2757)

Regulation .09 amended effective January 21, 2002 (29:1 Md. R. 24); May 7, 2007 (34:9 Md R. 826)

Regulation .09C amended effective October 5, 2009 (36:20 Md. R. 1530)

Understanding the Implementation of the Proposed Regulations for Learning Continuity Plan under Educ. Art. § 8-405(d)

The LSS/PA must provide each IDEA-eligible student with a free appropriate public education (FAPE). FAPE is documented in the student's Individualized Education Program (IEP). As of October 1, 2021, each newly developed IEP or revised IEP must include a **Learning Continuity Plan**.

The LSS/PA cannot provide a child with a disability with their individualized education program (IEP) services *in a school building*
AND
The school is providing instruction in some form to its general student population.

Scenario #1: Nine or Less School Days

The IEP team reviews the student's current IEP, including the Learning Continuity Plan, to determine whether it can be implemented as written in the alternative service delivery model.

If it cannot be implemented as written, the IEP team must either: amend the IEP (with parent agreement) or revise the IEP (via an IEP team meeting).

Authority: IDEA

Scenario #2: Ten or More School Days

The IEP team reviews the student's IEP, including the Learning Continuity Plan, to determine whether it can be implemented as written in the alternative service delivery model.

If it cannot be implemented as written, the IEP team must either: amend the IEP (with parent agreement) or revise the IEP (via an IEP team meeting).

Authority: IDEA

The LSS/PA/school determines that **"emergency conditions"** exist.

Authority: Educ. Art. § 8-405(d)

Within **10 days of determining emergency conditions exist**, the IEP team must make a reasonable attempt to **notify the parent/guardian** that the IEP/Learning Continuity Plan is in place and seek input on its operation.

Authority: Educ. Art. § 8-405(d)

Definitions:

Learning Continuity Plan: refers to the sections of the IEP that address the provision of a free appropriate public education during emergency conditions. In other words, the IEP team must consider how the modifications, accommodations, supplementary aides and services will be provided in an alternative service delivery model (e.g. remote instruction). This is documented in the IEP as "IEP Planning for Emergency Conditions."

Emergency Conditions: means a period of time of 10 school days or longer, during which: (i) a child with a disability cannot be provided with an individualized education program or special education services at school; and (ii) the school is providing instruction in some form to its students.

Name: _____

Agency: _____

IEP Team Meeting Date: / /

INSTRUCTIONAL AND ASSESSMENT ACCOMMODATIONS

TIMING ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES (Intended for students with disabilities who have the accommodation documented in an approved IEP or 504 Plan prior to the date of test administration; and who use the accommodation routinely (with rare exceptions) during instruction and locally administered assessments, both before and after the test is administered.)	Instruction	MCAP	HSA Government	HSA MISA	MISA (Grades 5, 8)	Alt-MISA (DLM)	ELA and Mathematics DLM	ACCESS for ELLs	Kindergarten ACCESS for ELLs	Alt-ACCESS for ELLs	NAEP
5a: Extended Time <input type="radio"/> 1.5x <input type="radio"/> 2x <input type="radio"/> Other: _____	yes	yes	yes	yes	yes			yes*			yes
5b: Unique timing and scheduling accommodations	yes	*	*	*	*	*	*	*	*	*	*

This reflects allowable features and accommodations in our current testing programs. Please check your Test Administrators' Manual for the most up to date information.

* Consult assessment specific guidelines for detailed information.

Document basis for decision:

IEP Planning for Emergency Conditions:

Can instructional and assessment accommodations be implemented as written during emergency conditions resulting in the physical closure of school for 10 or more days?

YES NO If no, describe the changes needed to existing instructional and assessment accommodations: _____

Instructional and testing accommodations were considered and no instructional and testing accommodations are required at this time.

Document basis for decision: _____