



200 West Baltimore Street, Baltimore, Maryland 21201

# Technical Assistance Bulletin

MarylandPublicSchools.org



## Division of Early Intervention and Special Education Services | Bulletin # 20-02

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**Date: April 6, 2020**

### **Providing Continuity of Learning to Students with Disabilities Through Nonpublic Special Education Schools during COVID-19**

#### **Purpose**

This Technical Assistance Bulletin (TAB) outlines guidance for a continuation of learning for students with disabilities receiving services through our nonpublic special education schools and the applicable billing practices during the COVID-19 response. Frequently asked questions with responses and resources are included to further support effective implementation.

#### **Background**

In response to the COVID-19 pandemic, on March 12, 2020 the State Superintendent of the Maryland State Department of Education (MSDE) closed Maryland schools from March 16, 2020 through March 27, 2020. On March 25, 2020, the school building closures were extended through April 24, 2020 with the announcement that local public agencies were to develop continuity of learning plans to provide alternative forms of education for students during the extended school closures. On March 27, 2020, the State Superintendent issued a memo to Maryland’s Nonpublic Special Education Schools regarding the COVID-19 Pandemic. This memo supports the continuity of learning for Maryland’s continuum of services for students with disabilities offered through our local public school systems and our nonpublic special education school partners. In addition, the parameters for the continuation of funding for the Nonpublic Tuition Assistance Program (NTAP) during the COVID-19 State of Emergency is defined.

On March 31, 2020, the MSDE Division of Early Intervention and Special Education Services (DEI/SES) convened a collaborative virtual meeting with Local School Systems (LSSs) and nonpublic special education partners. This virtual meeting operationalized continuity of learning for students served in the nonpublic special education schools and the approved billing exception approved by the MSDE.

## **Continuity of Learning for Students with Disabilities Served in Nonpublic Special Education Schools**

Despite the impact of the COVID-19 pandemic on the normal operations of education and school buildings, the right to a Free Appropriate Public Education (FAPE) and the obligation of the local school system (LSS) to provide a FAPE to students with disabilities remains unchanged. As each LSS begins to provide educational services by alternative methods to the general student population, the LSS must ensure that each student with a disability is provided with a FAPE, implementing specially designed instruction to the maximum extent possible. This includes all students placed by public agencies/schools in our partner nonpublic special education schools.

During COVID-19, it is necessary for the LSS, nonpublic school (NPS), and parent to work in collaboration to amend the Individualized Education Program (IEP) for each student enrolled. The parent's documented agreement with amendments to the IEP made outside of the IEP process are consistent with the LSS process and documented through the new continuity of learning plan developed by the LSS. This discussion begins with a review of the approved IEP. The student's needs and performance, instructional goals and objectives, and identified related services should be considered. A review of additional supports and accommodations is important as well as consideration of the support services unique to the nonpublic school and accessible by the student on a daily basis when he/she was in the school building. Shifting to providing instruction in a virtual or distance learning environment requires an assessment of resources, technology, and the method of instruction to be used that are accessible to the student, service providers, and teachers. Following the parent's agreement, the amendments to the IEP need to be shared with the appropriate service provider/teacher prior to implementation. To develop the written IEP amendments for each student's individualized distance or virtual learning plan, consider:

- Alternative method(s) to deliver instruction
- Availability and accessibility of technology
- Prioritization of student goals and objectives
- Related service needs
- Behavioral needs (Behavior Implementation Plans, as appropriate)
- Independent level(s) of teacher and student technology use
- Role of and support for parents and family members key to the instructional process; parents need a clear understanding of parent/student expectations
- Daily schedule for instruction and daily routines
- Instructional staff and related service providers to implement the amended IEP; provide professional development to support, as necessary
- Method to monitor progress
- Ongoing communication system between NPS, parent, and, as necessary, the LSS

In summary, during this unprecedented time, each amended IEP should provide specially designed instruction to the maximum extent possible to prevent regression and promote learning. These amendment decisions with parent agreement are recorded using the method identified by the LSS that is responsible for the provision of a FAPE. The LSS and NPS continue their established partnership to review progress and adjust, as needed, each student's learning plan.

**Q: Is the NPS limited in its methods to provide instruction in a distance or virtual learning environment?**

**A:** No. The discussion to amend the IEP should include the methodology for providing opportunities for continued learning to the maximum extent possible. Consideration should be given to the availability of technology, the student's and teacher's skill base with using the technology, and the most effective way to engage the student in the learning process considering the needs of the student and family. The discussion must first consider the health and safety of the student, family and employee, as well as, the Governor's stay-at-home order.

**Q: What do we do when the implementation of the amended IEP is unsuccessful, and/or the individualized plan was too rigorous or not rigorous enough, and/or unforeseen barriers occurred?**

**A:** Through the collaborative partnership between the LSS, NPS and parent, a system for ongoing communication is essential to monitor progress and the effectiveness of the plan. The LSS, NPS, and parent convene a virtual meeting to revisit the amendment and revise the plan, as appropriate (documenting the revisions and parent agreement each time).

**Q: What if the IEP goals and objectives will not be changing? Do we still need an amended IEP conversation and documentation?**

**A:** Yes. At a minimum, the method of delivery of instruction has changed and requires a conversation with parent to provide a clear understanding of expectations during virtual or distance instruction (how things will be different), to document, and to obtain parent agreement.

**Q: Will there be a statewide "amendment" form or will this be county by county and/or school to school?**

**A:** No. Each LSS will identify the local process and the required documentation to amend each student's IEP and obtain parent agreement during COVID-19. Historically, the MSDE has not required or provided a universal form to document decisions and parent agreement/disagreement to amend an IEP. The NPS should use the process and documentation method of the LSS to amend the student's IEP to provide continuity of instruction, to the maximum extent possible, during this unprecedented time.

**Q: How will the NPS communicate the virtual or distance learning model that will be offered during school closure?**

**A:** Each NPS will certify to the LSS what services they are able to provide during the school closure.

## **Billing Exception Guidelines Aligned with NTAP under COVID-19**

A billing exception was approved and issued on March 27, 2020, by the MSDE State Superintendent to address funding of Nonpublic Special Education Schools. Subject to any federal or State action amending these provisions, a commitment to funding nonpublic placements will continue during this unprecedented time. The NPS shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to the COVID-19 pandemic.

The *MSDE Annual Program Cost Sheet Program Year 2019-2020* documents all costs at 100% and is the reference document for all approved rates for each NPS program. Guidelines within this TAB (#20-02) apply to billing for services under the Nonpublic Tuition Assistance Program (NTAP) as documented by individual student cost sheets and applications. Billing guidelines and practices as outlined in the *Nonpublic Special Education School Cost Approval Process Fiscal Year 2020 Manual* are in place unless otherwise noted in this TAB.

### **Q: Do NTAP cost sheets and applications need to be completed at this time?**

**A:** NTAP cost sheets and applications identifying new placements, discharges, or revisions up to and including March 13, 2020 should be completed and submitted, as soon as possible, to the MSDE following established procedures. The NTAP cost sheet and application process is suspended effective March 30, 2020 and will be reinstated when schools resume normal operations.

### **Q: How will the NPS communicate days of services and calculate billing accurately?**

**A:** The MSDE, DEI/SES Nonpublic Special Education Section has designed a customized spreadsheet for each NPS program that captures days of services and related services and guides the billing process. Excel notebooks and instructions to complete the spreadsheet will be provided, as soon as possible, to each NPS.

### **Q: How will this billing exception impact the reconciliation process for Fiscal Year 2020?**

**A:** The MSDE, DEI/SES Nonpublic Special Education Section is actively working to address the challenges of a multi-step reconciliation process. Guidance will be provided at the *Nonpublic Special Education Annual Fiscal Meeting* scheduled for May 6, 2020.

**Billing Exception for March 16, 2020 through March 27, 2020**  
**(Initial school closure)**

The NPS may bill each enrolled student's full costs for the initial school closure period of ten school days (from March 16, 2020 through March 27, 2020). This includes the standard education per diem rate and the student's related and supplemental services (unbundled services) that would have been delivered had the school been open during this time period.

The NPS follows its established billing protocol and submits invoices, as usual, to the fiscally responsible LSS.

**Q: The NPS is providing residential services as outlined in the IEP and funded by the LSS. May the NPS bill for these services?**

**A:** Yes. The cost of the residential services is part of the student's full cost and would have been provided during the initial closure period.

**Q: Can NPS programs bill 100% of the per diem rate plus all related services including one-to-one, counseling, occupational therapy, and music therapy?**

**A:** Yes. For the initial ten days of school closure, NPS programs may bill 100% of *Standard Education and Related Services Rates*, and *Related Services/Supplementary Aides, Program Modifications* as the student's full cost reflecting what would have been provided during this period had the school been open.

**Billing Exception for March 30, 2020, through April 24, 2020**  
**(Extended school closure period)**

**Standard Education and Related Services (Program Cost sheet Section III A & B)**

- Each NPS may bill 85% of the approved per diem daily rate for each day the NPS is unable or does not provide standard services as documented on the amended IEP, agreed upon by the LSS, NPS, and parent.
- Each NPS may bill 100% of the approved per diem daily rate for each day the NPS provides standard services aligned with the amended IEP and agreed upon by the LSS, NPS, and parent.

**Related Services/Supplementary Aides, Program Modifications (Program Cost Sheet Section III D unbundled services)**

- When line item services with approved hourly rates are delivered the nonpublic school may bill 100% of the hourly rate for the actual services delivered.
- The hours of line item services billed may not exceed the hours of services that would have been billed if the school was open and in full operation.

**Q: What do *Standard Education and Related Services* include? What defines the standard per diem rate?**

**A:** *Standard Education and Related Services* is the base daily rate that is applied to all students in the school/program. On the program cost sheet, it appears as the “per diem \$” listed in Section III A, *Standard Education and Related Services*. It includes all classroom direct instructional services, and all “bundled” related services. This per diem rate is established during the cost approval process. The per diem rate includes all salaries for administrators, teachers, classroom assistants, and salaries for related services that have been “bundled” into the rate during the budget process. In addition, this daily rate includes all costs for employee benefits, supplies, operational costs, and indirect costs. This rate does not include any related services that have been listed as “line item costs” on the program cost sheet under Section III D. For more information, reference the *MSDE Nonpublic Special Education School Cost Approval Process Fiscal year 2020 Manual*.

**Q: When may the NPS begin billing 100% for standard services?**

**A:** The 100% billing rate begins on the date that the amended IEP (with parent agreement) is implemented by the NPS.

Additionally, the MSDE recognizes that many NPSs have been actively developing a schoolwide plan to support virtual or distance learning as well as communications with parents prior to implementation of the amended IEP. The LSS and NPS may agree upon a start date for billing at 100% beginning as early as March 30, 2020 to cover these activities.

To clarify:

- A billable day at 100% is a day that the school is in operation and is scheduled to implement a student’s amended IEP.
- A billable day at 85% is a day that the school is not scheduled to implement a student’s amended IEP.

**Q: A student’s IEP in place prior to March 13, 2020 requires two hours of counseling a week, but the amended IEP outlines one hour of virtual counseling a week to be provided by the student’s social worker using a telecommunication method. How many hours may be billed during the week?**

**A:** The amended IEP documentation informs the delivery of services during the COVID-19 response. The NPS bills for one hour of counseling for the actual service delivered and aligned with the amended IEP services. The billing exception limits the billing to 100% of the current approved per diem. Therefore, no more than two hours of counseling may be billed for any week.

**Q: May the amended IEP include one-to-one services? May the NPS bill for these services and necessary professional development for the one-to-one staff?**

**A:** When the approved IEP reflects one-to-one services, these services should be considered when amending the IEP services. Reflective discussion about the need and the delivery model for the service is critical. The health, and safety of the student, family, and employee as well as the Governor's stay-at-home mandate must be considered. One-to-one actual services, if agreed to and outlined through the amended process to provide continuity of learning, may be billed. Hours necessary for training may not be billed. These costs are considered during the cost approval process; training and professional development costs are included in the approved hourly rate listed on the program cost sheet.

**Q: Some NPS programs bundle one-to-one support services in their daily rate. Will they be paid 85% of the total daily rate including the bundled one-to-one? If yes, this is not equitable for schools that do not bundle the one-to-one support services?**

**A:** One-to-one services are listed on program cost sheets as line item costs for all nonpublic schools as one-to-one (classroom aide) and/or one-to-one (non-classroom aide). One-to-one services are unbundled for all NPS programs.

### **Billing Medicaid Flexibility**

There has been a temporary expansion of the Medicaid regulations to permit delivery of telehealth services to the home during this pandemic, effective March 12, 2020, until further notice. Please refer to the following website for information regarding the Telehealth Program: <https://mmcp.health.maryland.gov/Pages/telehealth.aspx>. Nonpublic schools and contractors should bill all eligible services as outline in these expanded regulations and provided during this emergency period.

### **State & Federal COVID-19 Relief Opportunities**

Nonpublic special education schools that are not able to service students or can only nominally serve students may explore and take advantage of State and Federal COVID-19 relief opportunities to offset State/local funding. These State opportunities include the Maryland Small Business COVID-19 Emergency Relief Grant Fund and Small Business Administration COVID-19 Disaster Assistance Loans. Please refer to information provided through the Maryland Coronavirus (COVID-19) Information for Business website at [govstatus.egov.com/md-coronavirus-business](http://govstatus.egov.com/md-coronavirus-business) for additional information.

## RESOURCES

### Documents

- [Technical Assistance Bulletin #20-01: \*Serving Children with Disabilities under IDEA during School Closures due to the COVID -19 Pandemic\*](#)
- *MSDE Nonpublic Special Education School Cost Approval Process Fiscal Year 2020 Manual*
- Nonpublic Billing Exception Memo: *COVID-19 Pandemic*

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