

The Individuals with Disabilities Education Act (IDEA) is silent regarding the use of audio or video recording devices in the context of Individualized Education Program (IEP) team meetings. As a result, the U.S. Department of Education, Office of Special Education Programs (OSE) has consistently held that each State has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP team meetings. See [Letter to Savit, 67 IDELR 216 \(Jan 19, 2016\)](#); 64 Fed. Reg. 12406, 12477 (Mar 12, 1999). Based on that federal guidance, the Maryland State Department of Education (MSDE) has opted not to directly regulate in this area. MSDE has issued [long-standing guidance](#) regarding the use of recording devices at IEP team meetings. This brief summarizes that guidance.

Does MSDE require that all public agencies have a written policy or practice regarding the use of recording devices?

No. However, if there is no written policy that prohibits or limits the use of recording devices, the public agency must permit the recording of IEP team meetings.

Do all Maryland public agencies have a written practice or policy regarding the use of recording devices?

No. However, the majority of the public agencies do have a written practice or policy that has been submitted to MSDE. Each public agency should make these practices or policies available to their families.

Can a public agency prohibit the use of audio and/or video recording devices during IEP team meetings?

Yes, but there must be exceptions to require that recording is permitted if it is necessary to ensure that the parent understands the IEP or the IEP process, or to implement other parental rights under the IDEA. See [Letter to Anonymous, 40 IDELR 70](#) (June 4, 2003).

In Maryland, most public agencies permit audio recording of IEP team meetings either through policy, practice, or a lack of written guidance.

Are there any circumstances under which audio or video recording must be permitted?

Yes. If a public agency prohibits recording, it must provide exceptions so that a parent is not inhibited in their right to understand an IEP or the process or to exercise other parental rights.

How should the recording of the IEP team meeting be kept?

Any recording of an IEP team meeting maintained by the public agency is an "education record" protected under the IDEA and the Family Educational Rights and Privacy Act (FERPA), meaning that the recording should not be disclosed without consent from the family, absent very specific circumstances (consult your legal counsel for those exceptions) **The public agency must comply with a parent's request to access the recording within a reasonable time, but in no case later than 45 days after receipt of the request.** See [34 C.F.R. Part 99](#).

It is a public agency decision as to how they will maintain the recording, whether it will be on a thumb drive, a server, or elsewhere. However, **it must be accessible to the family if there is a request to review it as a part of the student's education record.**

What are some best practices in developing policy, practice, and guidance for audiotaping IEP Team Meetings?

Include guidance around consent. The public agency policy or practice for audiotaping should address the need for consent from meeting participants. Consider how consent can be efficiently obtained to maximize meeting time. Public agencies should consult with local legal counsel on compliance with relevant federal and State laws. Polling team members during meetings often takes a great deal of time away from the content of the meeting and is not encouraged.

If your policy, practice or guidance includes a requirement for advance notice of taping, ensure that the other party is aware that taping will not be permitted if it is not provided. Many of the public agency policies and practices require advance notice to the other party in order to record an IEP team meeting. Compliance with their procedures is often one of the requirements for the ability to record. Public agencies should proactively notify parents or guardians of their policies to avoid unnecessary delays to meetings.

If the meeting is convened virtually, and your policy, practice, or guidance does not permit video recording, do not turn off the cameras. Use external recording devices. While MSDE does not regulate audiotaping policy or practice, turning off cameras during virtual meetings may inhibit the full participation of the team and make the process much more difficult to understand. Teams and families are encouraged to use external taping devices in order to audiotape virtual meetings.

Contact Information

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