

State Superintendent of Schools

TO:	Members of the State Board Education		
FROM:	Mohammed Choudhury		
DATE:	February 22, 2022		
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 ADOPTION		

PURPOSE:

The purpose of this item is to request adoption of 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*. These regulations are in response to Senate Bill 300/House Bill 714 from 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 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

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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 education agency and public agency to review IEPs when they were no longer able to provide instruction in the school building. If the local education agency or public agency could not provide a free appropriate public education, as described in the IEP, in the alternate service delivery model, the local education agency 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 education agencies 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.

The State Board reviewed 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 at the October 26, 2021, State Board meeting and granted permission to publish.

The proposed regulations were published in the Maryland Register on December 17, 2021. During the thirty-day comment period, the MSDE received one (1) public comment. A summary of the comment along with a copy of the submission is attached. The commenter was in support of IEP teams planning for emergency conditions but had two (2) concerns about the regulations. First, the commenter was concerned that parents will have been deemed to have waived the right for compensatory education if the Learning Continuity Plan is implemented and the parent

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has not challenged it. However, under the proposed regulations, during an emergency school closure, the education agency must contact the parent to ensure the learning continuity plan in the IEP is still appropriate. An IEP, including the learning continuity plan, is appropriate if it is drafted to provide a free appropriate public education (FAPE) to the individual student. If the learning continuity plan is not written to provide FAPE, or if the local school system is unable to implement the learning continuity plan, the MSDE would expect the local education agency to discuss compensatory education as a remedy for any failure to provide FAPE. This was the MSDE's expectation throughout extended school closures, and the MSDE will continue to make this requirement clear in guidance and technical assistance to the locals.

Second, the commenter was concerned about language in the statute and regulation regarding "a documented reasonable attempt" to notify parents if the Learning Continuity Plan is going into effect. The MSDE is interpreting the requirement in the proposed regulation for the local education agency to make reasonable attempts to notify the parent to be consistent with the existing regulatory requirement for the local education agency to notify the parent of their requested participation in the IEP meeting. Under existing regulation, to meet reasonable efforts, the local education agency must document its attempts to obtain parental consent using the procedures in 34 C.F.R. § 300.322(d). It requires that school systems/public agencies to keep a record of their attempts, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to the parents and any responses received; and
- Detailed records of visits made to the parent's home or place of employment and the results of those visits.

The MSDE will ensure that guidance and technical assistance to the locals on implementation of the new regulations will include this information and expectation.

Based on a thorough review of the comment, the MSDE recommends no changes to the language of the regulation.

ACTION:

Request adoption of 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 Summary of Comments Comment Submission

ACG 4430, 4730, 4920, 4930, 5030, 5050	RAC 5H	Both	\$1,249.46	\$973.25	\$1,067.68
ACG 4930, 4940, 5060	RAC 6H	Both	\$1,680.86	\$1,309.28	\$1,436.31
ACG 5070	RAC 7H	Both	\$2,579.16	\$2,009.00	\$2,203.91
HIV	19—64	Both	\$3,135.78	\$3,135.78	\$3,135.78

[(e)](i)—[(h)](l) (text unchanged)

[(i)] (m) An MCO is eligible to receive the subsequent very low birth weight payment in [B(4)(c)] B(4)(g) of this regulation if the mother:

(i)—(ii) (text unchanged)

(iii) Is eligible to receive *either* hydroxyprogesterone caproate *or vaginal progesterone*;

(iv) Has received the first hydroxyprogesterone caproate injection *or first weekly dosing of vaginal progesterone* between 16 weeks gestation and 24 weeks gestation and continued receiving injections *or vaginal dosing* until delivery or week 37 gestation; and

(v) Has received at least 2 hydroxyprogesterone caproate injections *or two weeks of daily vaginal progesterone use*.

(5) (text unchanged)

C. (text unchanged)

D. Interim Rates Adjustments.

(1) Under the circumstances described in D(2) and (3) of this regulation, the Department shall adjust the capitation rates set forth in B(4)(a) [and], (b), (e), and (f) of this regulation to reflect changes in service costs during the contract year due to an occurrence listed in D(2) of this regulation.

(2) The Department shall adjust the payment rates specified in [\$B(4)(a)-(d)] \$B(4)(a)-(h) of this regulation to reflect service cost changes that qualify under \$D(3) of this regulation and result from:

(a)—(d) (text unchanged)

(3) The Department shall make an interim rates adjustment if the effect of an occurrence listed in D(2) of this regulation is sufficient to result in program-wide overpayment or underpayment of at least 0.2 percent because of the difference between:

(a) Service cost projections used to develop the rates set forth in B(4)(a) [and], (b), (e), and (f) of this regulation; and

(b) (text unchanged)

(4)—(6) (text unchanged)

(7) The Department shall make an interim rates adjustment in Calendar Year 2022 to account for changes in acuity due to alterations in redetermination and enrollment processes related to COVID-19.

DENNIS R. SCHRADER Secretary of Health

Title 13A STATE BOARD OF EDUCATION

Subtitle 05 SPECIAL INSTRUCTIONAL PROGRAMS

13A.05.01 Provision of a Free Appropriate Public Education

Authority: Education Article, §§2-205, 7-305, 8-301—8-307, 8-3A-01— 8-3A-08, and 8-401—8-416; Human Services Article, §§8-401—8-409; Labor and Employment Article, §§11-801 and 11-901 et seq.; State Government Article §9-1607.1; Annotated Code of Maryland

Federal Statutory Reference: 20 U.S.C. §§1411—1416; Federal Regulatory References: 34 CFR 99, 300, and 301

Notice of Proposed Action

[21-206-P]

The Maryland State Board of Education proposes to amend Regulations .03, .08, and .09 under COMAR 13A.05.01 Provision of a Free Appropriate Public Education. This action was considered by the State Board of Education at their October 26, 2021, meeting.

Statement of Purpose

The purpose of this action is to align special education regulations with changes made to Education Article, §8-405, Annotated Code of Maryland, during the 2021 legislative session. To ensure students with disabilities are provided with a free appropriate public education (FAPE), the statute requires each Individualized Education Program (IEP) to include a Learning Continuity Plan for implementation during emergency conditions. The proposed amendments define the Learning Continuity Plan and emergency conditions, specify its inclusion in the IEP, and provide a process with timelines for communication with the parent during emergency conditions.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. Expenditures increase by approximately \$115,000 in FY 2022 to cover one-time costs to the Maryland State Department of Education (MSDE) for the Maryland online IEP revisions, ELEVATE Maryland monitoring database system alterations, and IEP translation services. Some local school systems may incur database, translation, and training costs to meet the bill's requirements.

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II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(F+)	Approximately \$115,000
66,		\$115,000
B. On other State	NONE	
agencies:	NONE	
C. On local		
governments:	(E+)	Unknown
	Benefit (+) Cost (-)	Magnitude
		-
D. On regulated		

D. On regulated	
industries or trade groups:	NONE
E. On other industries	
or trade groups:	NONE
F. Direct and indirect	
effects on public:	NONE

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. Expenditures increase by approximately \$115,000 in FY 2022 to cover one-time costs to the Maryland State Department of Education (MSDE) for the Maryland online IEP revisions, ELEVATE Maryland monitoring database system alterations, and IEP translation services.

C. Some local school systems may incur database, translation, and training costs to meet the bill's requirements.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has an impact on individuals with disabilities as follows:

The proposed action will ensure additional education planning for students with disabilities to help ensure that a free appropriate public education (FAPE) is provided in the event of an emergency condition resulting in school closure. The proposed action will also ensure that communication between the local school systems and parents to address the provision of FAPE occurs in a timely manner during emergency conditions.

Opportunity for Public Comment

Comments may be sent to Marcella Franczkowski, Assistant State Superintendent, Division of Early Intervention and Special Education Services, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0238 (TTY 410-333-6442), or email to marcella.franczkowski@maryland.gov, or fax to 410-333-2488. Comments will be accepted through January 18, 2022. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the State Board of Education during a public meeting to be held on February 22, 2022, at 9 a.m., at 200 West Baltimore Street, Baltimore, MD 21201.

.03 Definitions.

A. (text unchanged)

- B. Terms Defined.
 - (1)—(22) (text unchanged)

(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" does 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)—(37) (text unchanged)

(37-1) "Learning Continuity Plan" means the sections of the IEP that address the provisions of a free appropriate public education during emergency conditions.

(38)—(85) (text unchanged)

.08 Individualized Education Program (IEP) Team Responsibilities.

A. (text unchanged)

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)—(d) (text unchanged)

(e) Address the student's anticipated needs; [and]

(f) Address planning for emergency conditions; and

- [(f)](g) (text unchanged)
- (2)—(6) (text unchanged)

.09 Individualized Education Program Document.

A. IEP Content.

(1) The IEP for a student with a disability shall include:

(a)—(f) (text unchanged)

(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)—(ii) (text unchanged)

(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[.]; and

(i) A learning continuity plan to address the provision of a free appropriate public education during emergency conditions.

(2)—(5) (text unchanged)

B.—F. (text unchanged)

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 following sections of the IEP shall include planning for emergency conditions:

(a) Instructional and Assessment Accommodations;

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(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.

> MOHAMMED CHOUDHURY State Superintendent of Schools

Subtitle 07 SCHOOL PERSONNEL

13A.07.11 Student Suicide Prevention and Safety Training

Authority: Education Article, §§2-205, 6-122, and 6-704, Annotated Code of Maryland

Notice of Proposed Action

[21-205-P]

The Maryland State Board of Education proposes to amend Regulations .02 and .03 under COMAR 13A.07.11 Student Suicide Prevention and Safety Training. This action was considered by the State Board of Education at their October 26, 2021, meeting.

Statement of Purpose

The purpose of this action is to expand language on suicide prevention that requires in-service training to enable educators to recognize student behavioral health issues; recognize students experiencing trauma or violence out of school and refer students to behavioral health services; and, if the school is a community school, address support for any students needing the services at a community school.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. Local school systems may need to purchase training materials such as on-line presentation or pre-made products addressing these issues. There is no impact on the Maryland State Department of Education.

	Revenue (R+/R-)		
II. Types of Economic Impact.	Expenditure (E+/E-)	Magnitude	
A. On issuing agency:	NONE NONE		
B. On other State agencies: C. On local governments:	(E+)	Unknown	

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	Unknown
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Unknown

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

C. Cost of training materials that have been updated to meet the requirements of the legislation. Cost should be minimal and may be covered by previous training materials.

D. Possible source of income if they develop training materials.

F. Positive benefit to help prevent student suicide. Parental fiscal impact if more suicidal ideation is reported and parents take their child to a mental health professional to prevent suicide. Parent insurance should cover costs.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has an impact on individuals with disabilities follows:

Depression rates may be higher for students with disabilities. This training will help certificated staff be aware of suicidal thoughts and behaviors in all students.

Opportunity for Public Comment

Comments may be sent to Dr. Lynne Muller, Section Chief, Student Services and School Counseling, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-3364 (TTY 410-333-6442), or email to lynne.muller@maryland.gov. Comments will be accepted through January 18, 2022. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the State Board of Education during a public meeting to be held on February 22, 2022, at 9 a.m., at 200 West Baltimore Street, Baltimore, MD 21201.

.02 Definition.

A. In this chapter, the following [term has] *terms have* the [meaning] *meanings* indicated.

B. [Term] Terms Defined.

(1) "Behavioral Health" means:

(a) Promotion of mental health, resilience, and well-being;

(b) Treatment of mental and substance use disorders; and

(c) Support for individuals who experience these conditions or are in recovery from these conditions, and for their family and community.

(2) "Certificated school personnel" means an individual who holds a certificate from the Maryland State Department of Education in:

[(1)] (*a*)—[(9)] (*i*) (text unchanged)

(3) "Trauma" means when an individual is exposed to an overwhelming event, or series of events, and is rendered helpless in the face of intolerable danger, anxiety, or instinctual arousal.

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MARYLAND REGISTER, VOLUME 48, ISSUE 26, FRIDAY, DECEMBER 17, 2021

COMAR 13A.05.01.03, 13A.05.01.08, 13A.05.01.09 Summary of Comments (a complete copy of comments)

Submitted By:	Major Comments	Revision to Proposal?	MSDE Response
Education Advocacy Coalition	Concern that parents will be deemed to have waived their right to seek compensatory services if the LCP is utilized and parents have not challenged it.	No	Under the proposed regulations, during an emergency school closure, the school system must contact the parent to ensure the learning continuity plan in the IEP is still appropriate. The MSDE's expectation is that the notification would ensure that the learning continuity plan is drafted to provide a free appropriate public education (FAPE) to the individual student. If the learning continuity plan is not written to provide FAPE, or if the local school system was unable to implement the learning continuity plan, the MSDE would expect the local school system to discuss compensatory education as a remedy for any failure to provide FAPE. This was MSDE's expectation throughout extended school closures, and MSDE will continue to make this requirement clear in guidance and technical assistance to the locals.
	Concern about the term "a documented reasonable attempt" to notify the parent that an LCP is in place and question whether "reasonable" would have the same definition as in the requirement to provide reasonable attempts to obtain parental participation in IEP Meetings.	No	 MSDE is interpreting the requirement in the proposed regulation for the local school system to make reasonable attempts to notify the parent to be consistent with the existing regulatory requirement for the local school system to notify the parent of their requested participation in the IEP meeting. Under existing regulation, to meet reasonable efforts, the local school system must document its attempts to obtain parental consent using the procedures in 34 C.F.R. § 300.322(d). It requires that school systems/public agencies to keep a record of their attempts, such as: Detailed records of telephone calls made or attempted and the results of those calls; Copies of correspondence sent to the parent's home or place of employment and the results of those visits. MSDE will ensure that guidance and technical assistance to the locals on implementation of the new regulations will include this information and expectation.

Education Advocacy Coalition

for Students with Disabilities

January 18, 2022

Via Electronic Mail

Ms. Marcella Franczkowski Assistant State Superintendent Division of Early Intervention and Special Education Services Maryland State Department of Education 200 West Baltimore Street Baltimore, Maryland 21201

Re: Comments Regarding Special Instructional Programs (Continuity of Learning Plans)

Dear Ms. Franczkowski:

The Education Advocacy Coalition (EAC) appreciates the opportunity to comment on the proposed regulations to implement the changes to the Education Article made by Senate Bill 300/House Bill 714 (Special Education—Learning Continuity Plan) during last year's General Assembly session.

The proposed regulations add a new section G to COMAR 13A.05.01.09 (Individualized Education Program Document) requiring the development of a learning continuity plan to address the provision of a free appropriate public education (FAPE) during emergency conditions when a child with a disability cannot be provided with IEP implementation at school and the school is providing services in some form to its students. Although the intent of the legislation and of the proposed regulations is to ensure that students with disabilities continue to receive FAPE even during emergency conditions, for many students, this simply is not possible unless services are in-person and students have access to their peers. EAC members are concerned that parents will be deemed to have waived the right to seek compensatory education if the continuity of learning plan is utilized and they have not challenged it.

EAC members are also concerned about how the IEP team will notify parents that the emergency plan is in place, who will make the decision about whether the plan remains appropriate or not, whether the plan can be challenged and how. The regulation requires "a documented reasonable attempt" to notify the parent if the continuity of learning plan is going into effect. Is this the same as the reasonable efforts required by the IDEA to notify parents of meetings and attempt to obtain their participation? Is only one attempt required to notify a parent that an emergency plan will be put in place? We believe that it is confusing to have two different standards of what constitutes a reasonable effort or attempt to reach a parent, and that the IDEA's definition of reasonable efforts to reach a parent should apply.

Thank you.

Sincerely,

Leslie Seid Margolis Chairperson

(Over)

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Selene Almazan, Selene Almazan Law, LLC Rene Averitt-Sanzone, The Parents' Place of Maryland Linda Barton, MS.Ed., Education Advocate Elizabeth Benevides, Howard County Autism Society Ellen A. Callegary, Law Offices of Ellen A. Callegary, P.A. Rich Ceruolo, Parent Advocacy Consortium Michelle Davis, ABCs for Life Success Jennifer Engel Fisher, Weinfeld Education Group Lisa Frank and Andrea Bennett, Special Kids Company Ann Geddes, Maryland Coalition of Families Beth Ann Hancock, Charting the Course, LLC Kalman Hettleman, Independent Advocate Rosemary Kitzinger and Marjorie Guldan, Bright Futures, LLC Ande Kolp, The Arc Maryland Rachel London, Maryland Developmental Disabilities Council Mark B. Martin, Law Offices of Mark B. Martin, P.A. Ellen O'Neill, Atlantic Seaboard Dyslexia Education Center Rebecca Rienzi, Pathfinders for Autism Jaime Seaton, BGS Law, LLC Karleen Spitulnik, Decoding Dyslexia Maryland Ronnetta Stanley, Loud Voices Together Guy Stephens, Alliance Against Seclusion and Restraint Maureen van Stone, Mallory Legg, and Alyssa Thorn, Project HEAL at Kennedy Krieger Jessica Williams, Education Due Process Solutions, LLC Liz Zogby, Maryland Down Syndrome Advocacy Coalition