Problem Solving for Student Success

Collaborative Problem-Solving Guidelines

Educational Management Team Guidelines

Special Education Procedures

Montgomery County Public Schools
Rockville, Maryland

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VISION

A high-quality education is the fundamental right of every child. All children will receive the respect, encouragement, and opportunities they need to build the knowledge, skills, and attitudes to be successful, contributing members of a global society.

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Acknowledgment

The Problem-Solving Project Team would like to acknowledge Dr. Frieda K. Lacey, deputy superintendent of schools, whose vision and leadership guided the development of the handbook, *Problem Solving for Student Success.*

In addition, the team is grateful for the input and feedback provided by many staff members and advisory groups as they reviewed the documents, as well as the support and expertise from the Office of the Chief Technology Officer in developing the electronic tools for documentation and referral.

MONTGOMERY COUNTY PUBLIC SCHOOLS

ROCKVILLE, MARYLAND

Published by the Office of Communications and Family Outreach for
the Office of Special Education and Student Services

2290.09 • EDITORIAL, GRAPHICS & PUBLISHING SERVICES • 9.09 • 1,650

PROBLEM SOLVING FOR STUDENT SUCCESS

Introduction

Problem Solving for Student Success is a guide that provides the information and resources necessary to develop, implement, monitor, and document interventions for students. The purpose of this guide is to help ensure clarity and consistency as school staff implement these practices and procedures in our work to ensure a successful school experience for all students.

The guide is divided into three sections. Collaborative Problem-Solving (CPS) Guidelines, Educational Management Team (EMT) Guidelines, and Special Education Procedures.

CPS promotes the success of all students and therefore, all schools are expected to implement a problem-solving process within the general education setting. This process supports the Montgomery County Public Schools (MCPS) college-ready trajectory, it addresses the state and federal regulations related to monitoring a student's response to interventions, and it assists schools in meeting federal mandates such as the *No Child Left Behind Act*.

EMT is a multidisciplinary school-based team with expertise in teaching and learning, problem solving, and interventions. It is a more formal and more intense level of problem solving than was implemented during CPS. EMT assures that all general education resources are utilized and that interventions are intensive and coordinated to help students experience success in the general education setting.

Special Education Procedures guide MCPS Individualized Education Program (IEP) teams and others involved in decision making for students who have or may have a disability that is recognized under the *Individuals with Disabilities Education Act of 2004 (IDEA 2004)* and Maryland special education statues and regulations. The procedures are consistent with MCPS Policy IOB: *Education of Students with Disabilities,* and the mission and major mandates of the Office of Special Education and Student Services.

The information and resources provided in this guide will help every MCPS staff member to ensure that every student receives the respect, encouragement, and opportunities needed to build the knowledge, skills, and attitudes necessary to experience school success and to be productive, contributing members of a global society.

CPS

Collaborative Problem-Solving Guidelines

Educational Management Team Guidelines

Special Education Procedures

Collaborative Problem-Solving Guidelines

Montgomery County Public Schools

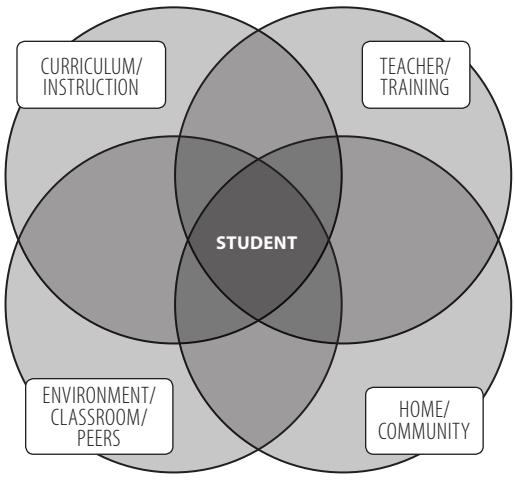
COLLABORATIVE PROBLEM-SOLVING GUIDELINES

Introduction

Problem solving that supports student success occurs every day throughout Montgomery County Public Schools (MCPS). These processes occur in general education classrooms, grade-level and content teams, and in school meetings including Educational Management Team (EMT) and Positive Behavioral Interventions and Supports (PBIS). A variety of collaborative problem-solving processes are currently in place in schools. Schools that are implementing effective problem solving are encouraged to continue those processes. In cases where schools have yet to establish a collaborative problem-solving process, or for those schools that are struggling with their process, these guidelines are designed to help develop and improve structures and processes that support and enhance student academic achievement and ensure that all students are college ready by 2014.

PURPOSE

Collaborative problem solving promotes the success of all students and, therefore, all schools are expected to implement a problem-solving process within the general education setting. This process supports the MCPS college-ready trajectory, and it assists schools in meeting federal mandates such as the *No Child Left Behind Act*. Collaborative problem solving also addresses the Maryland State Department of Education expectations related to monitoring a student's response to interventions. Additionally, when a student is referred to the EMT, evidence of previous problem solving and early interventions are required. Problem solving in the general education setting helps to reduce the disproportionate identification of African American and Hispanic students for special education services. Collaborative problem solving also addresses the issues that can result in the disproportionate suspension of African American and Hispanic students. Collaborative problem-solving processes promote shared ownership for student, school, and system success.



Factors that May Influence Learning and Behavior

GETTING STARTED

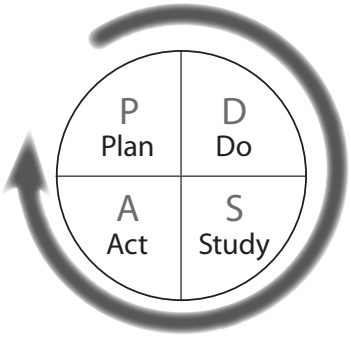
Each school day, teachers throughout MCPS adjust lesson plans and management strategies to meet the needs of every student. At times, teachers may need additional support to identify why a student is not successful and determine the most effective intervention. Simply stated, collaborative problem solving is when two or more people discuss and analyze a problem together. In these discussions, the following factors that can impact student performance are considered: curriculum and instructional expectations; teacher skill and knowledge; classroom/school environment and peer interactions; and home/community issues. Collaborative problem-solving processes provide a framework to examine all factors that may influence student learning and behavior.

ESSENTIAL STEPS IN PROBLEM SOLVING AND GUIDING QUESTIONS

Each school will use a collaborative problem-solving process within the general education setting that functions effectively within the school's organization and structure. Schools have the flexibility to maintain, select, or develop a problem-solving process. To bring consistency among schools, all collaborative problem-solving processes used will be documented on MCPS Form 272-10: *Documentation of Interventions,* and will include the essential steps described below that are aligned with the Baldrige Plan-Do-Study-Act (PDSA) process, which is used by schools and offices throughout MCPS for continuous improvement.

STEP 1. Define the problem . . . . . **PLAN**
STEP 2. Develop an intervention
STEP 3. Implement the intervention . . . . . **DO**
STEP 4. Evaluate the effectiveness of the intervention . . . . . **STUDY**
STEP 5. Continue, modify, or end the intervention . . . . . **ACT**

A series of guiding questions has been provided to clarify each step in the process. They are intended as a guide. To complete a step, a response to each question is not required.



STEP 1: Define the problem (PLAN)

Guiding Questions:

- What is the problem?
- What are three or four observable symptoms of the problem?
- How is the problem impacting teaching and learning?

Problem solving is successful and interventions succeed only when the specific problem or concern is clearly defined. This is a crucial step in problem solving. The following tasks are critical when identifying the problem to be addressed:

1. Define the problem(s) in observable and measurable terms. Compare the student's current level of performance to the expected level of performance.
2. Examine and explore relevant academic, behavioral, and social information, as well as the relationships between these factors, to confirm the problem(s). Data to review may include, but are not limited to the following:
   - Attendance
   - Office referrals and suspension data
   - Classroom observations
   - Previous assessments—curriculum based, standardized, and educational/psychological
   - Teacher input
   - Student/parent input
   - Report card grades and comments
   - Previous problem-solving plans (e.g., academic intervention plan (AIP), functional behavioral assessment, behavior intervention plan)

STEP 2: Develop the intervention (PLAN)

Guiding Questions:

- What intervention will reduce or eliminate the problem?
- What steps need to be taken to implement the intervention?
- What resources are required?
- Who will be responsible for the implementation?
- What data will be measured during implementation?

The intervention selected must be directly linked to the identified problem. The intervention should be tailored to the individual student's need and should result in progress. The following tasks are critical when developing an intervention:

1. Develop a goal statement.
2. Develop a schedule for implementation and assign responsibilities for monitoring the intervention and collecting data.

STEP 3: Implement the intervention (DO)

Guiding Questions:

- Is the intervention being implemented as planned?
- Who will monitor implementation?

Fidelity of implementation is key to accurately measure the effectiveness of the intervention. The following tasks are critical when implementing an intervention:

1. Implement the intervention, following the schedule designed.
2. Monitor the intervention and collect data.

STEP 4: Evaluate the effectiveness of the intervention (STUDY)

Guiding Questions:

- Was the intervention implemented with fidelity?
- Do data verify the intervention is effective?
- Should any part of the intervention be modified?

Once implementation is underway, data must be collected and analyzed to determine progress toward the goal and the effectiveness of the intervention. The website—http://www.studentprogress.org— offers numerous Web seminars on progress monitoring and the use of curriculum-based measures. The following tasks are critical when evaluating the effectiveness of the intervention:

1. Confirm the fidelity of intervention implementation.
2. Analyze data collected to determine if the student is making progress toward the goal.

STEP 5: Continue, modify, or end the intervention (ACT)

Guiding Questions:

- Was the intervention effective?
- Should the intervention be continued, modified, or discontinued?

Depending on the results of the intervention implementation, the problem may be resolved, improved, or remain unchanged. If the intervention is effective and the problem is resolved, the intervention can be discontinued. If the intervention is only partially effective, the intervention should be modified to better meet the needs of the student. If the intervention is ineffective, return to the appropriate planning step, and develop a new intervention.

PROBLEM SOLVING WITHIN A TIERED-SERVICE DELIVERY MODEL

Intervention

Tier 3: Add Intensive Targeted Interventions

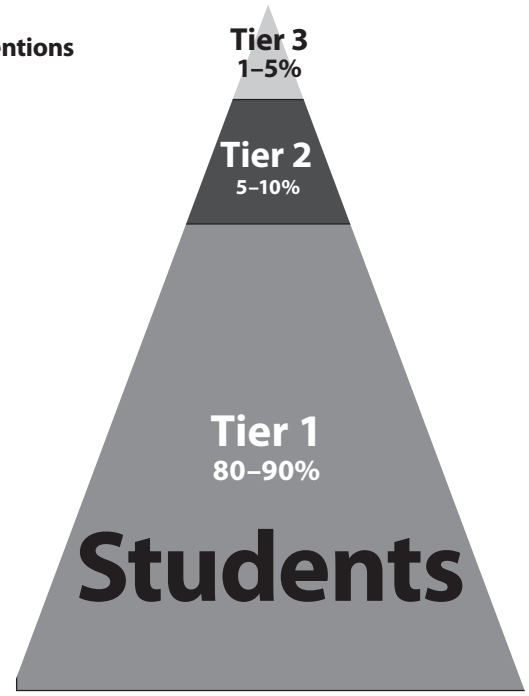
- More individualized
- Increased frequency and duration

Tier 2: Add Targeted Interventions

- Small groups/individuals
- Supplemental services

Tier 1: General Education Program

- All students
- Preventive, proactive



Consultation

EMT

Grade-Level or Content Team

Teacher/Parent or Teacher/Teacher

Problem solving works most effectively within a tiered-service delivery system. This system incorporates increasing intensities of instruction and intervention in direct proportion to their individual student needs. Consistent with a tiered-service delivery model, collaborative problem solving occurs at different levels as well. It can be as simple as an informal consultation between teacher and parent/guardian, consultation between colleagues, or formal consultation with an established problem-solving team. The expectation is that problem solving occurs and interventions are implemented with fidelity prior to referral for consideration of special education eligibility.

Tier 1

Tier 1 is the general education classroom. Classroom teachers problem solve throughout their entire teaching day. Examples include altering a lesson plan that does not seem to be working well; changing the seat of a talkative or inattentive student; and reteaching a skill based on a review of student work. These types of informal problem solving are routine and do not need to be documented. When informal problem solving does not resolve the issue and the teacher wants to document classroom interventions, then a collaborative problem-solving process is appropriate. Examples might include helping a student to increase the number of known sight words; helping a student to improve reading fluency; helping a student remain on task; and improving attendance. In these instances, the teacher might collaborate with the parent, or colleague, and student, if appropriate. Typically, the general instructional program provided at this tier meets the needs of 80–90 percent of students.

Consultation: Teacher/Parent/Guardian or Teacher/Teacher

- The teacher and parent/guardian or the teacher and a colleague collaborate to discuss and develop an intervention and to create a method to monitor student progress.
- Consultation is documented.

Who may be involved?

- Teacher(s)
- School-based specialist(s)
- Parent/guardian
- Student, if age appropriate

Tier 2

Tier 2 adds supplemental services to the core instructional program delivered within Tier 1. At Tier 2, school staff use the resources and skills available within the school building to determine which supplemental services are most appropriate. Examples of supplemental services at this tier might include extended guided reading, increased mathematics instructional time, and programs such as *Read 180, Read Naturally, Understanding Math, Corrective Reading,* and *FASTT Math*. Other supplemental services might involve counseling groups, functional behavioral assessments (FBAs), and behavior intervention plans (BIPs). In these instances, the teacher collaborates with a team that may

include grade- or content-level colleagues, school-based specialists, or student services team members, as appropriate. Typically, this tier of service is required to meet the needs of 5–10 percent of students.

Consultation: Grade-level or Content Team

- Using school procedures, the teacher accesses more formal problem-solving assistance either through existing grade-level or content team meetings.
- Prior problem-solving documentation is reviewed.
- Consultation is documented.
- The problem is defined, an intervention is selected, and an implementation plan is developed that includes how data is collected and analyzed to determine progress.

Who may be involved?

- Student, if age appropriate
- General education teacher(s)
- Special education teacher(s)
- Parent/guardian
- School counselor
- Student services staff (pupil personnel worker [PPW]), school psychologist, school health technician or school nurse
- School-based specialist(s)

Tier 3

Tier 3 adds intensive services in addition to the core instructional program delivered within Tier 1 and the supplemental services delivered in Tier 2. Again, school staff use the resources and skills available within the school building to determine which intensive services are most appropriate. Examples of Tier 3 intensive intervention services might include many of the supplemental services provided in Tier 2 but with increased frequency and/or duration and a more individualized implementation strategy. Additional Tier 3 intensive services also might include short term individualized counseling services, a FBA/BIP, and coordination with service providers outside of MCPS such as a "Children with Intensive Need" referral to the Local Collaboration Council. In these instances, the teacher collaborates with the EMT. These more individualized and intensive services are required to meet the needs of 1–5 percent of students.

Consultation: Education Management Team (EMT)

- The School Problem-solving Team/EMT is a group of skilled staff members who are well-versed in problem solving, interventions, data collection, and progress monitoring.
- The referring teacher becomes part of the EMT.
- Prior problem-solving documentation is reviewed at this meeting.
- At this level of problem solving, support is provided to the teacher to ensure that the intervention is implemented with fidelity, that data are collected and analyzed, and to ensure the intervention resolves the problem.

Who may be involved?

- Student, if appropriate
- General education teacher(s)
- Parent/guardian
- School administrator
- School counselor
- Student services staff (PPW, school psychologist, school health technician or school nurse)
- School-based specialist(s)

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Online Resources

Council for Exceptional Children, www.CEC.sped.org

Dynamic Indicators of Basic Early Literacy Skills
dibels.uoregon.edu/dibels_what.php

Intervention Central
www.interventioncentral.org

National Association of School Psychologists (NASP)
www.nasp.org

National Association of State Directors of Special Education,
www.nasdse.org

National Center on Student Progress Monitoring
www.studentprogress.org

National Research Center on Learning Disabilities
www.nrcld.org

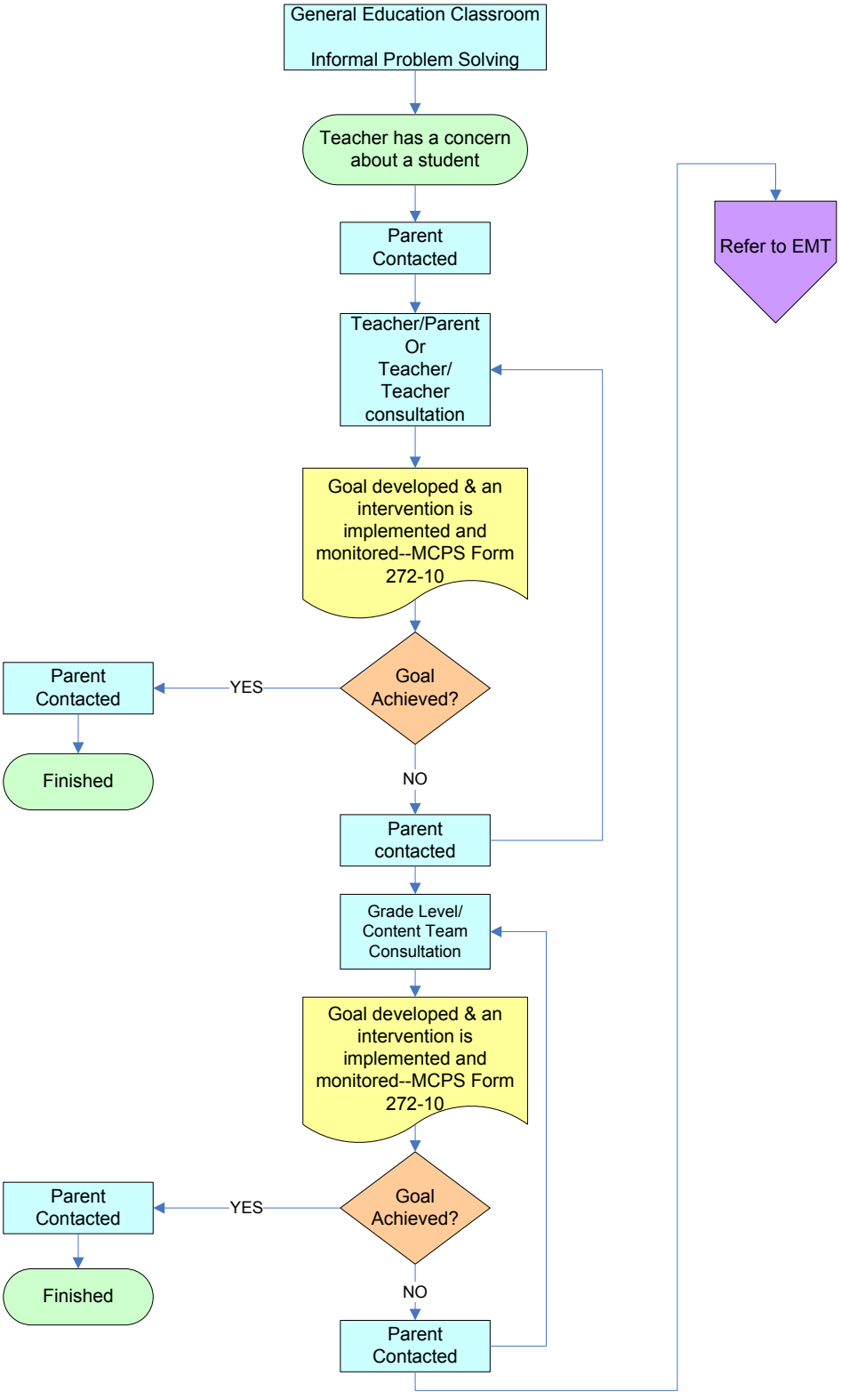
Office of Special Education and Rehabilitative Services—Ideas that Work
www.ed.gov/about/offices/list/osers/osep/index/html

Positive Behavioral Interventions and Supports
www.pbis.org/main.htm

U.S. Department of Education Institute of Education Sciences
ies.ed.gov/ncee/wwc/publications/practiceguides/

Virginia Instructional Support Teams
www.pen.k12.va.us/VDOE/studentsrvcs/IST/;
What Works Clearing-house
ies.ed.gov/ncee/wwc

Collaborative Problem-Solving Process Map



EMT

Educational Management Team Guidelines

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EDUCATIONAL MANAGEMENT TEAM GUIDELINES

Introduction

The Educational Management Team (EMT) is a multidisciplinary school-based team with expertise in teaching and learning, problem solving, and interventions. It is a formal and more intensive level of problem solving (Tier 3) used when interventions provided for a student were not successful in Collaborative Problem Solving (Tier 1 and Tier 2). The team meets regularly and acts as a resource to all school staff members regarding students who are not meeting academic or behavior expectations based on documentation. The purpose of the EMT is to ensure that all general education resources are utilized and that interventions are targeted and coordinated to help students achieve. Team members use their expertise to analyze student performance data and recommend classroom accommodations and interventions to increase academic achievement and participation, as well as to positively impact social and behavioral growth. EMT also may recommend a screening for consideration of special education services.

This document will outline the EMT process within the tiered instructional framework that aligns with the Maryland State Department of Education publication *A Tiered Instructional Approach to Support Achievement for All Students: Maryland's Response to Intervention Framework (2008–2009).*

GETTING STARTED

Problem Solving Within Tiered Service Delivery

Problem solving works most efficiently within the multiple tiers of an intervention service delivery system. The tiered system incorporates increasing intensities of instruction or intervention that are provided to students in direct proportion to their individual needs. The tiered system is typically depicted by a triangle graphic:

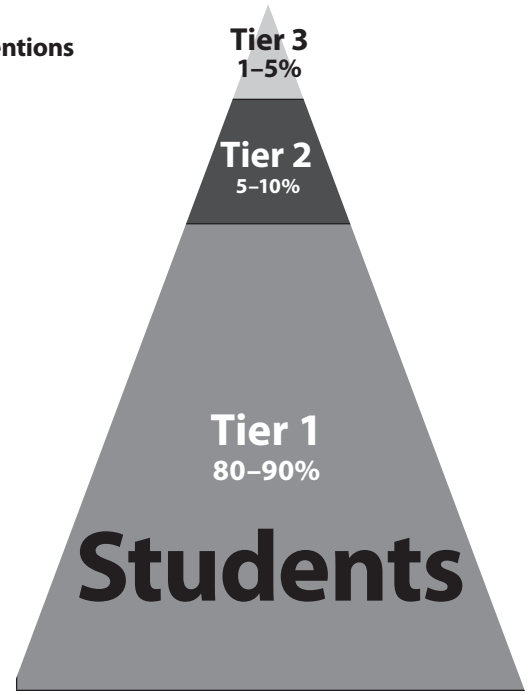
PROBLEM SOLVING WITHIN A TIERED-SERVICE DELIVERY MODEL

Intervention

Tier 3: Add Intensive Targeted Interventions
- More individualized
- Increased frequency and duration

Tier 2: Add Targeted Interventions
- Small groups/individuals
- Supplemental services

Tier 1: General Education Program
- All students
- Preventive, proactive



Consultation

EMT

Grade-Level or Content Team

Teacher/Parent or Teacher/Teacher

The problem-solving process takes place within each tier of the service delivery model. As indicated in the *Collaborative Problem-Solving Guidelines, Guidelines for Schools,* the purposes of the first level, Tier 1, of problem solving are as follows:

- Identify the issue or concern, using specific and observable terms.
- Ensure parents and teachers have a common understanding of the issue or concern.
- Implement an intervention strategy to address and resolve the issue or concern.
- Document the results of the intervention strategy.

The purposes of the second level, Tier 2, of problem solving are as follows:

- Involve additional staff in the analysis of the issue or concern.
- Develop and monitor additional intervention strategies to address the issue or concern.
- Monitor and collect data on the impact of the intervention strategy.
- Document the results of the intervention strategy.
- Resolve the issue or concern or seek more formal problem-solving assistance.

The third level, Tier 3, of problem solving moves to EMT. The purposes of Tier 3 are as follows:

- Provide in-depth problem analysis.
- Document the intervention plan and assist with ongoing data collection.
- Monitor effectiveness and fidelity of the intervention.
- Assist with decision making for instructional changes.
- Determine the need for additional resources

THE COMPOSITION OF THE EDUCATIONAL MANAGEMENT TEAM (EMT)

Composition of the EMT is determined by the administrator and school staff, and will vary slightly on a case-by-case basis. The principal or designee acts as the team's chair. Team members may include the following:

- Principal/administrator, as EMT chair
- Referring general education teacher
- Parent(s)/Guardian(s)
- School counselor
- School psychologist
- Pupil personnel worker
- School health nurse
- School-based specialists, such as staff development teacher, reading specialist, mathematics content coach, or literacy coach
- Special education teacher
- Speech-language pathologist
- ESOL staff (teacher, counselor, parent community coordinator)

Parent Involvement

Parents/guardians are a critical component of collaborative problem solving and are involved throughout the process. Parents must receive advance notice of the meeting date and time and understanding that they are invited to participate in the meeting. Parents should always be informed of any program changes involving their child, including the starting date and outcomes of any interventions. A summary of student progress related to the intervention is communicated with parents at regular intervals.

Tasks of The EMT

1. Data Gathering
2. Intervention Planning and Implementation
3. Progress Monitoring
   a. Collect data
   b. Analyze data
   c. Evaluate effectiveness of intervention
4. Data-based Decision Making

Data Gathering

It is expected that the EMT will conduct a thorough review of the referred student's strengths and weaknesses. The review should consider a spectrum of formal and informal information that is available from the student's educational record (cumulative school file), work samples, results of prior interventions implemented through collaborative problem solving, and anecdotal data and information from school staff and the parent. If the team determines that additional information is needed for the purpose of planning an intervention in the general education classroom setting, the team may request that the classroom teacher, reading specialist, ESOL teacher or other general education staff provide that information. In general, additional information gathered does not include individual standardized assessment, as might occur during a screening or referral for special education services.

What do teachers need to do before referring to the EMT?

- Engage in the collaborative problem-solving process.
- Consult with parents, colleagues, and student services staff, as appropriate.
- Define the problem and develop an intervention plan.
- Implement the intervention plan as prescribed.
- Collect data on student progress.
- Evaluate the effectiveness of the intervention plan and continue, modify, or end the intervention, as appropriate.

What information and documentation is needed at the EMT meeting?

- MCPS Form 272-10: *Documentation of Interventions.*

- Data that has been collected during the implementation of the intervention plan may include charts, graphs, logs, etc.
- Data that demonstrate whether the student is making progress toward identified objectives.
- A summary of the student's strengths and weaknesses. This includes a review of the student's educational record, an analysis of work samples and test results, and anecdotal information from current and previous teachers. A classroom observation is optional.
- Documentation of parent involvement in problem solving
- Hypotheses for why the past and current interventions may not be working
- MCPS Form 272-9: *Teacher Referral.*

Intervention Planning And Implementation

The EMT builds upon intervention planning and implementation that started during previous collaborative problem solving. The purpose of intervention planning is to design an appropriate intervention that is directly linked to the review and analysis of the data gathered. The intervention must be specific to the needs of the referred students. The EMT may consider a wide range of interventions before deciding on specific interventions to be implemented. In many cases, the EMT will recommend that a combination of interventions be implemented. The interventions that are recommended must address the identified problem, be targeted toward the area of need, and match the student's learning style.

Successful intervention plans link to structures and strategies already in place in the classroom. Examples of this are interventions that are embedded in grade-level curriculum and instruction, such as story starter, graphic organizers, cooperative learning activities, and incremental rehearsal. In addition, motivational strategies may need to be included in the intervention plan to encourage behavior change. These strategies may include on-task incentives, student point cards, celebrations of student achievement, and positive reports (phone calls or notes) to parents.

EMT identifies an intervention through consultation with the referring teacher. Interventions can be developed in the following areas:

- Academic
- Behavioral
- Social/emotional skills

The following additional information may be gathered as needed:

- Analysis of work samples
- Performance on county and state assessments
- Observation by EMT member(s)
- Review of data by school-based expert (staff development teacher, reading specialist, mathematics content coach, literacy coach, or ESOL teacher)

The intervention plan must address the following questions:

- What are the specific interventions to be used?
- What materials are needed to implement the interventions?
- When will the interventions be implemented?
- Where will the interventions be implemented?
- Who will implement the interventions?
- What is the duration and frequency of intervention?
- What data will be collected to determine the success of the intervention?
- How frequently will these data be collected?

Implementation of an intervention should ensure the following:

- The intervention is implemented as designed.
- The student receives positive reinforcement and frequent feedback.
- The parent is kept informed as the intervention plan is implemented.

Progress Monitoring

Progress monitoring is the process of collecting and analyzing data at set intervals to determine student progress and evaluate the effectiveness of the intervention plan. It examines student progress toward the identified goal. The process begins by setting goals for the student, based on the student's present level of performance and his/her expected rate of skill acquisition, and ends with a decision to continue, modify, or end the intervention, based on the data collected.

1. Write goals and objectives that—
   a. are SMART (Specific, Measurable, Attainable, Realistic, and Timely);
   b. identify and describe the conditions under which the behavior is to be performed; and
   c. establish performance criteria.
2. Determine data collection tools and data collection schedule—
   a. select the data collection tools;
   b. establish a schedule for when the data will be reviewed; and
   c. collect response to intervention data at least six times.
3. Implement the intervention with fidelity.
4. Represent the data graphically (i.e., log or chart)* or in writing
   a. establish baseline;
   b. set the goal (target);
   c. measure student performance; and
   d. record the data.

*It is a recognized best practice to graph a student's response to an intervention. When graphing data, include the following:

- Establish baseline
- Set the goal (target)
- Draw the aimline (connects baseline and goal)
- Measure and plot student performance

- Connect student performance points

5. Evaluate the data
   a. Analyze the data
   b. Determine if sufficient progress toward the goal is being made.
      (1) If yes, continue the intervention
      (2) If no, modify the intervention or change the intervention

Data-based Decision Making

EMT determines about how well the student is responding to an intervention by analyzing student performance data. If data indicate that an intervention was successful, the EMT can recommend incorporating the intervention into the general education program or discontinuing the intervention if it is no longer needed. If data show the intervention has resulted in partial progress toward the established goal, EMT can recommend continuing the intervention or modifying it to strengthen the intensity of the intervention. If data indicate that the intervention is not resulting in progress toward the identified goal, EMT can recommend either a substantially modified intervention or an alternate intervention.

Parents should be informed about the student's response to all interventions. Progress may be communicated via written notes, progress reports, and phone calls, or during parent conferences.

1. Based on what the data reveal, make the following instructional adjustments:
   a. Continue intervention
   b. Increase number or length of intervention sessions
   c. Provide more intensive interventions
   d. Discontinue intervention
   e. Referral for screening for consideration of special education services
2. Communicate progress—parents are informed about student progress via the following:
   a. Communication logs or written notes to parents
   b. Conferences
   c. Progress reports
   d. Phone calls

When does the EMT determine to screen a student for consideration of special education services?

The EMT may suspect that a special education disability is adversely affecting the educational performance after careful analysis of a student's response to an intensive intervention.

The EMT must ensure that these criteria are met—

- problems and goals were identified accurately;
- the interventions that were implemented are logically designed to address the identified problem(s);
- interventions were implemented with fidelity;
- the student's response to intervention(s) was monitored and documented;
- data analysis occurred and intervention was modified or changed, as appropriate; and
- the student did not meet established target or goal.

If all of the above criteria have been met, the EMT may refer a student to an IEP screening meeting when, despite a series of documented interventions, analysis shows the student has not made appropriate progress and staff have reason to believe that the student may have an educational disability that requires special education, and possibly, related services.

An IEP screening meeting shall be convened when a parent requests consideration for special education services.

RESOURCES FOR ACADEMIC AND BEHAVIORAL INTERVENTIONS

Intervention Central (An array of meaningful, easy-to-implement interventions.):
www.interventioncentral.org/

Literacy website:
www.carnegie.org/literacy/initiative.html

National Association of School Psychologists (NASP) website:
www.nasponline.org

National Center for Learning Disabilities:
www.ncld.org/

Positive Behavioral Interventions and Supports Maryland:
www.pbismaryland.org

Response to Intervention (RTI) Action Network:
www.rtinetwork.org/

Substance Abuse & Mental Health Services Administration (SAMSHA) (information from the federal government):
www.samhsa.gov/

Student Progress Monitoring:
www.studentprogress.org/

Technical Assistance Center on Positive Behavioral Interventions and Supports:
www.pbis.org

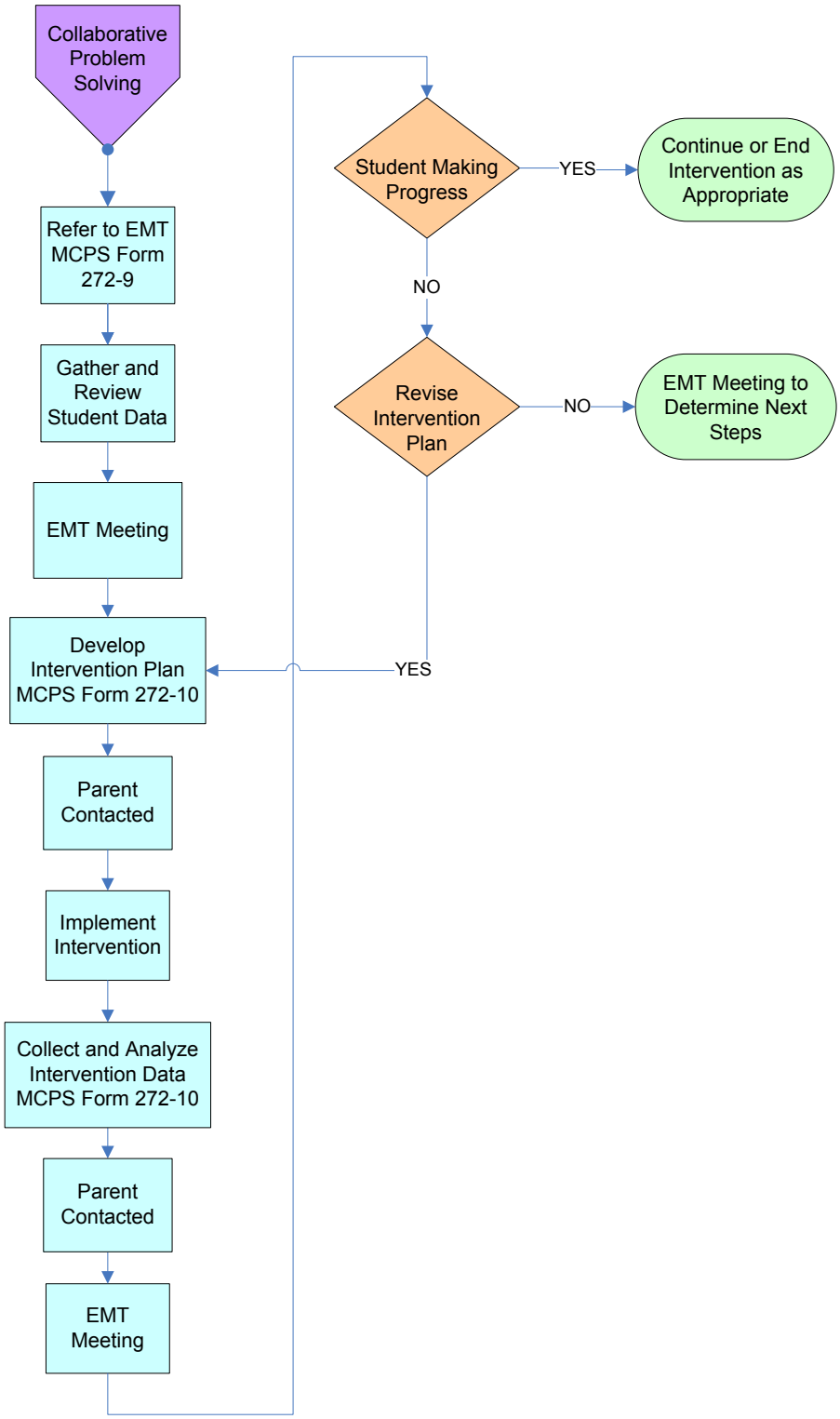
UCLA Center on Mental Health:
smhp.psych.ucla.edu/

UMD Center for School Mental Health Assistance:
csmh.umaryland.edu/

University of Kansas—Center for Research on Learning:
www.kucrl.org/

U.S. Department of Education Institute of Education Sciences
ies.ed.gov/ncee/wwc/publications/practice guides/

Educational Management Team Process Map



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INTRODUCTION

FOREWORD

The *Special Education Procedures Handbook* has been developed to guide Montgomery County Public Schools (MCPS) Individualized Education Program (IEP) teams and others in decision making for students who have or may have a disability that is recognized under the *Individuals with Disabilities Education Act of 2004 (IDEA 2004)* and Maryland special education statutes and regulations. The handbook reflects the commitments of the Board of Education of Montgomery County's Policy IOB, *Education of Students with Disabilities,* and the mission and major mandates of the MCPS Office of Special Education and Student Services (OSESS).

The first sections of the handbook delineate the legal requirements for conducting Child Find activities; referring students for consideration of their eligibility for special education; and conducting screenings, evaluations, and reevaluations. Subsequent sections address IEPs, including implementation of a statewide IEP starting in January 2007;[1] IEP team meetings; MCPS special education services and placement decision making; discipline of students with disabilities; and procedural safeguards. Updates of the handbook will be disseminated on Outlook.

Mission of the Departments of Special Education

Department of Special Education Services: The mission of the MCPS Department of Special Education Services (DSES) is to provide and monitor the delivery of a comprehensive and seamless continuum of services for students with disabilities from birth through the end of the school year in which the student turns 21 years of age to ensure access to the MCPS curricula and improved achievement for all students with disabilities, in compliance with IDEA 2004 and the *No Child Left Behind Act of 2001 (NCLB).*

Department of Special Education Operations: The mission of the MCPS Department of Special Education Operations (DSEO) is to provide schools with the highest quality resources and services that are essential to the educational success of students with disabilities. The DSEO ensures that the rights of parents and children with disabilities are protected, that students who require service in a nonpublic special education school receive the services they need, that noneducational services are provided to eligible students with autism under the Autism Waiver; that federal Medicaid funds are secured for all eligible IEP health-related services, and that educators have the necessary resources to improve educational results for children with disabilities by supporting system improvement activities.

Major Functions of the Departments of Special Education Services/Operations

Department of Special Education Services (DSES): The DSES collaborates with the MCPS Office of School Performance, Office of Curriculum and Instructional Programs, and Office of Organizational Development to do the following:

- Develop, coordinate, and enhance efforts to promote collaboration between general and special education teachers to improve the performance of students with disabilities on county and state accountability measures.
- Recommend programs, develop training, and coordinate and monitor the implementation of scientifically research-based interventions and strategies to ensure that state of the art curricula, instruction, and behavioral practices are provided to students with disabilities.

DSES also does the following:

- Promotes and coordinates the use of technology necessary to facilitate the unification of special and general education to meet the needs of every student.
- Provides ongoing monitoring of school-based, cluster, and countywide programs to reduce the overrepresentation of African American students in special education and ensure the provision of a free and appropriate public education for students with disabilities as required by state and federal mandates.

Department of Special Education Operations (DSEO) does the following:

- Has overall responsibility for the Placement and Assessment Services Unit (PASU), the Equity Assurance and Compliance Unit (EACU), the Medical Assistance Program, and the Autism Waiver Program.
- Monitors each unit and program to ensure implementation of continuous improvement activities in alignment with the MCPS strategic plan.
- Coordinates MCPS implementation of the statewide online IEP.
- Coordinates budget and staffing for the Department of Special Education Operations and Department of Special Education Services.

Highlights from the Strategic Plan for Special Education

The *Strategic Plan* of DSES and DSEO includes the following goals:

- Increase the percentage of students with special needs achieving at or above proficiency level measured by state, local, and other assessments, including the Alternate and Modified Maryland School Assessments (MSA).
- Develop and implement a process for determining staff and resource allocation to provide each student with access to appropriate special education services.

1. See chapter VI: *Developing, Reviewing, and Revising IEPs.*

- Increase the number of students in least restrictive environment (LRE) categories A (outside the general education class less than 21 percent).
- Decrease the number of students served in LRE category C (outside the general education class more than 60 percent).
- Ensure that all school-based problem solving and IEP teams use neutral, nondiscriminatory screening and evaluation procedures for identifying students with emotional disturbance (ED), intellectual disability (ID), and a specific learning disability (SLD).
- Support systemwide early intervention and culturally responsive instructional practices that help eliminate any misclassification of African American or other minority students in the disability categories of ED, ID, and SLD.
- Develop and communicate clear, standard practices and procedures to parents, staff, students, and other community members.

Technical Assistance

For technical assistance regarding the provision of special education services and compliance with special education legal requirements, contact your special education cluster supervisor, program supervisor, or related services supervisor. Questions concerning implementation of the statewide online IEP may be directed to the online IEP project manager in DSEO at 301-279-3166. Names and phone numbers of the supervisors are available on the MCPS website.

Forms, Letters, and Other Documents Referenced in this Handbook

Forms, letters, or other documents that can be accessed in the online IEP system are listed throughout this handbook, followed by the superscript**.** Unless otherwise indicated, forms, letters, or other documents not followed with the superscript may be accessed on—

- the Special Education folder on Outlook;
- the Special Education website *www.mcps.k12.us/departments/specialed/*; or
- the MCPS Forms website *www.montgomeryschoolsmd.org/departments/forms/*.

The *Procedural Safeguards—Parental Rights* brochure, which is referenced throughout this handbook, can be found in every MCPS school and can be accessed on the Special Education website.

> *Note:* The online system will be available online in January 2010. Until that time, forms identified with the ^{e} superscript are available on the MCPS Forms website. Model letters are available on the Special Education website.

Legal References

COMAR 13A.05.01, .02 and .03

Education Article, Title 8, Subtitles 3 and 4, Annotated Code of Maryland

Pub. L. 107-110: No Child Left Behind Act of 2001 (NCLB) and 34 CFR Part 200

Pub. L. 108-446: Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) and *34 CFR Part 300*

Recent Changes to State Requirements for Students Receiving Special Education Services

- This information is regarding recent changes to the Maryland Code affecting Individualized Education Program (IEP) team meetings for students receiving special education services.

- On April 8, 2010, SB 540/HB 269 *Child with a Disability—Individualized Education Program* passed in both houses of the Maryland state legislature. Governor Martin O'Malley recently signed this legislation which revises the Maryland Code to include new requirements for school personnel to comply with the following:

    - At least five business days before a scheduled IEP or other multidisciplinary team meeting, school personnel must provide parents with an accessible copy of each assessment, report, data chart, draft pages of the IEP, work samples, or any document the team plans to discuss at the meeting.

    - Any documents prepared by a school psychologist or other medical professional may be provided to the parents orally and in writing at least five business days prior to a scheduled IEP team meeting.

    - School personnel are not required to comply with the "five-day rule" if there is an extenuating circumstance. Schools must document the extenuating circumstance and communicate that information to the parents.

    - Not later than five business days after the meeting, school personnel must provide the parents, in an accessible format, a copy of the completed IEP, or if it has not been completed, a draft copy of the IEP.

- Failure to comply with these requirements does not constitute an automatic finding that the student was denied a Free Appropriate Public Education. However, since the intent of this bill is to increase the level of parental participation, noncompliance may be found to affect a parent's opportunity to participate in the IEP team meeting.

- The requirements go into effect on July 1, 2010.

- The Maryland State Department of Education (MSDE) is in the process of drafting a Question and Answer document to assist schools in implementing this new requirement.

- Communication Plan
    - A projected Communication Plan is attached.
    - Pending guidance from MSDE, the Department of Special Education Services and the Department of Special Education Operations will develop procedures for implementation of this new regulation.

Action

- Please share this memorandum and the attachment with building administrators, secretarial, special education staff members, and others involved in the IEP process. It is critical that staff members involved in summer IEP team meetings are made aware of this legislative change.

- Pending the development of procedures that will be disseminated according to the attached Communication Plan, documents that will be used to develop IEPs for meetings that occur after July 1, 2010, should be mailed to parents at least eight days prior to the scheduled meeting.

Attachment

Communication Plan

Group	Projected Timeline	Method
School Administrators MCEA, MCAP Leadership	June 2010	June 2010 Memorandum (May also attend Professional Development Sessions for other groups)
Central Office Special Education Staff	June 2010	Professional Development Session
Secondary Resource Teachers	July 2010	Professional Development Session
School Psychologists	July 2010	Professional Development Session
Secondary Resource Counselors	July 2010	Professional Development Session
Pupil Personnel Workers	August 2010	Professional Development Session
Elementary Resource Teachers	September 2010	Professional Development Session
Related Service Providers	September 2010	Professional Development Session

This e-mail message has been approved for distribution by Dr. Frieda K. Lacey, deputy superintendent of schools. No hard copy will be provided.

ACTION REQUESTED

Office of Special Education and Student Services
MONTGOMERY COUNTY PUBLIC SCHOOLS
Rockville, Maryland

August 12, 2010

MEMORANDUM

To: All Principals

From: Chrisandra A. Richardson, Associate Superintendent CAR/BW

Subject: ACTION: Implementing Changes to Maryland Regulations Regarding Individualized Education Program Team Meetings

Summary

- You were informed by a June 11, 2010, memorandum about recent changes to Maryland regulations requiring that "at least five (5) business days before a scheduled Individualized Education Program (IEP) team meeting or other multidisciplinary education team meetings, the parents are to receive an accessible copy of each assessment, report, data chart, draft IEP, or other documents the team plans to discuss at the meeting." At that time, the Maryland State Department of Education (MSDE) had not provided guidance regarding the new regulation, and it was unclear as to how systemwide implementation would take place.
- MSDE has subsequently provided technical assistance to help local education agencies to develop policy and procedures to comply with this regulation. MSDE Technical Assistance Bulletin 20 (Attachment A) is attached for your reference.
- Selected countywide parent groups have been provided with basic information about the changes (Attachment B). This also has been posted electronically on the "Quick Notes" and the special education Web pages.
- The Office of Special Education and Student Services has developed procedures to assist schools. Attached you will find a process map (Attachment C) that outlines the various options that parents may elect to receive information prior to the IEP team meeting.
- The special education supervisor assigned to your quad/quintcluster will present information about Montgomery County Public Schools (MCPS) implementation of these new requirements during cluster meetings following the August 17, 2010, Administrative and Supervisory meeting.

Action

- Parents must notify your school of the method they prefer to receive the required documents. Attached is the letter for parents to select their preferred method of receiving the information (Attachment D). It is suggested that the letter be sent home with special education students along with other information given to students on the first day of school. You may access this letter in different languages by following this link:

  http://www.montgomeryschoolsmd.org/departments/specialed/infomcps.shtm

- This five-day requirement is included as an "event" in the Online Administrative Student Information System/Special Services (O/SS) tool. When the event is generated, a checklist is generated and a cover letter for parents is developed documenting the information that is sent. These two documents are to be completed, saved, printed, and included in the student's confidential file. You may access the parent letter in different languages by following this link:

  http://www.montgomeryschoolsmd.org/departments/specialed/OSSresources/translations.shtm

  Parents may choose to receive these documents in any of the following ways:

  - Parents may elect to receive information via United States Mail. Note that the event in O/SS must be generated 10 days prior to the scheduled meeting. Documents must be sent via United States Mail at least eight days before the meeting.

  - Parents also may elect to receive the IEP documents electronically through an Edline portal or as e-mail attachments. For secondary students, parents who have not already elected to be assigned an Edline portal should contact the Edline coordinator at your school. Information regarding establishing an Edline portal for elementary and pre-k students will be provided via memorandum as soon as possible. Documents should be collected at least six days prior to the scheduled meeting. All documents that are provided to parents through the Edline portal or sent to parents as e-mail attachments must be converted into PDF files prior to making them available electronically.

  - Parents may elect to come to your school to pick up the IEP documents. In these cases, the O/SS event should be generated at least six days prior to the meeting. All documents, including the parent letter, should be placed in a sealed envelope marked "confidential" for parent pick up. Staff should contact parents by telephone to notify them that the documents are ready for pick up at least five days prior to the scheduled meeting. Parents should be asked to provide written confirmation that the documentation was received. A sample form is attached (Attachment E).

- IEP documents may be sent home with the student. In these cases, the event should be generated at least six days prior to the meeting. All documents, including the parent letter, should be placed in a sealed envelope marked "confidential" and given to the student. Parents must be contacted by telephone to inform them that the documents were sent home with the child and to confirm receipt.

- In cases where there are extenuating circumstances and it is not possible to provide parents with the documents at least five days prior to the meeting, the extenuating circumstances **must** be documented both in the parent letter and on the checklist.
- The cover letter to the parents and the checklist should be printed and placed in the student's confidential file.
- In addition, Maryland regulations require that schools provide parents a copy of the completed IEP "not later than five (5) business days after a scheduled IEP or other multidisciplinary education team meeting." If the IEP isn't completed by the fifth business day, schools must provide parents a draft copy of the IEP.

Questions

- Please contact Ms. Alison B. Steinfels, supervisor, Equity Assurance and Compliance Unit, for technical assistance at 301-517-5864 or via e-mail.

CAR:rp

Attachments

Copy to:

Executive Staff	Mrs. Ferrell	Dr. Newton	Ms. Steinfels
Mr. Bartels	Mrs. Langford-Brown	Mrs. Pattik	Mrs. Wilkes
Mrs. Blum	Mrs. Mason	Mrs. Piacente	Dr. Newman
Mrs. Collins	Mr. Neff	Dr. Steinberg	Mr. Prouty

Approved: Frieda K. Lacey/jpl

Frieda K. Lacey, Deputy Superintendent of Schools

MARYLAND STATE DEPARTMENT OF EDUCATION
Achievement Matters Most

Technical Assistance Bulletin 20

June 2010

Division of Special Education/Early Intervention Services

Senate Bill 540 (SB 540) & House Bill 269 (HB 269) Provision of Accessible Copies of Documents to Parents

In 2010, the Maryland General Assembly passed House Bill 269 (HB 269) and Senate Bill 540 (SB 540). These bills amended Education Article §8-405 of the Annotated Code of Maryland. This statute now requires school personnel to provide parents with an accessible copy of each assessment, report, data chart, draft Individualized Education Program (IEP), or other document the IEP team or other multidisciplinary education team plans to discuss at that meeting. These documents must be provided to parents at least five (5) business days before the scheduled meeting. On May 20, 2010, Governor Martin O'Malley signed both the House (HB 269) and Senate (SB 540) versions into law. Senate Bill 540 was recorded as the official bill effective as of July 1, 2010. As a result, school personnel are required to ensure the following actions occur:

Before an IEP or other multidisciplinary education team meeting:

- At least five (5) business days before a scheduled IEP team meeting or other multidisciplinary education team meeting, the parents are to receive an accessible copy of each assessment, report, data chart, draft IEP, or other document the team plans to discuss at the meeting. In accordance with Individuals with Disabilities Education Act (IDEA) regulations, 34 CFR §300.11(b), and the Code of Maryland Regulations (COMAR) 13A.05.01.03B(9), a "business day" is defined as Monday through Friday, except for federal or State holidays, when a local school system(LSS) or public agency (PA) is open for business whether or not students are required to be in attendance for instruction.

- An assessment, report, data chart, or other document prepared by a school psychologist or other medical professional that either team plans to discuss at the meeting may be provided to parents orally **and** [emphasis added] in writing prior to the meeting. [Education Article §8-405(c)(2)(i), Annotated Code of Maryland]

- If school personnel are unable to provide an accessible copy of the material(s) at least five (5) business days before the scheduled meeting because of an extenuating circumstance, school personnel are to document and communicate to parents the nature of the extenuating circumstance that prevented school personnel from providing accessible copies of the material(s). [Education Article §8-405(c)(2)(ii), Annotated Code of Maryland]

After an IEP or other multidisciplinary education team meeting:

- Not later than five (5) business days after a scheduled IEP or other multidisciplinary education team meeting, appropriate school personnel are to provide parents an accessible copy of the completed IEP. If the IEP has not been completed by the fifth business day after the IEP team meeting, school personnel shall provide the parents with the draft copy of the IEP. [Education Article §8-405(d), Annotated Code of Maryland]

In accordance with Education Article §8-405(e), Annotated Code of Maryland, failure of school personnel to comply with the timelines and actions listed above for providing copies of reports in advance of a meeting or copies of a child's completed IEP following the IEP team meeting does not constitute a substantive violation of the requirement to provide a free appropriate public education (FAPE).

Questions and Answers

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1. *How does this new statute affect the parents of a child with an IEP, or a child who may need special education services? How should an LSS or PA ensure parents understand why they are receiving more documents be sent to them prior to scheduled IEP or multidisciplinary education team meetings than they received previously because of a change in the law?*

   The passage of this new statute requires school personnel to provide the parents with a copy of certain documents relating to the development of a child's IEP at least five (5) business days before the scheduled meeting. The law also requires that a copy of the completed IEP must be provided to parents not later than five (5) business days after the scheduled meeting.

   Each LSS and PA is required to develop and maintain local policies and procedures which comply with federal and State requirements, including the recent amendment to Education Article §8-405, Annotated Code of Maryland. Accompanying this bulletin are two sample cover letters an LSS or PA may consider providing parents along with the documents prior to a scheduled IEP or multidisciplinary education team meeting. LSSs and PAs are not required to use either of the samples.

2. *Does the new law apply to the development, review, and revision of an Individualized Family Service Plan (IFSP) for infants, toddlers, and children receiving services through Maryland Infants and Toddlers Program?*

   No. The statute applies only to students with disabilities, 3 years old through the end of the school year in which the student turns 21 years old, who receive or may be eligible to receive special education and related services in accordance with an IEP under Part B of IDEA.

3. *Does this law apply to "school personnel" in nonpublic special education facilities?*

Yes. If a student's IEP cannot be implemented in a public school program, the local school system is required to take steps to ensure that the student is provided FAPE. A nonpublic school shall contact the local school system to request an IEP team meeting to review the student's IEP, as appropriate. The local school system shall initiate and conduct meetings to review the student's IEP, in accordance with COMAR 13A.05.01.16A. Documents that the IEP team plans to discuss must be provided at least five business days prior to the meeting.

4. *Are schools only required to send parents a copy of the draft IEP before the meeting?*

No. The statute states, "At least five (5) business days before a scheduled meeting of the individualized education program team or other multidisciplinary education team for any purpose for a child with a disability, appropriate school personnel shall provide the parents of the child with an accessible copy of each assessment, report, data chart, draft individualized education program, or other document that either team plans to discuss at the meeting."

5. *Is a service provider's portfolio of a child's class work or assessment protocols considered 'documents' that must be provided to parents prior to an IEP team meeting or other multidisciplinary education meeting?*

Yes if, as set forth in the statute, the IEP team plans to discuss the entire portfolio or assessment protocols at the meeting, appropriate school personnel must provide an accessible copy of each assessment, report, data chart, draft IEP, or other document to the parents at least five (5) business days before the scheduled meeting. Any document that the IEP team does not plan to discuss does not need to be provided prior to the meeting.

6. *Are documents prepared by school psychologists included among documents which must be provided at least five (5) business days before the scheduled meeting?*

Yes if, as set forth in the statute, the IEP team plans to discuss documents at the meeting, then an accessible copy of the documents must be provided. Documents that the IEP team does not plan to discuss do not need to be provided prior to the meeting.

Additionally, the statute states, "An assessment, report, data chart, or other document prepared by a school psychologist or other medical professional that either team plans to discuss at the meeting may be provided to the parents orally and in writing prior to the meeting." A school psychologist or other medical professional may orally share this information with the parents prior to the scheduled meeting, as well as provide accessible copies to parents at least five (5) business days before the scheduled meeting.

7. *Often parents provide or agree to allow medical reports from their child's physician or counselor to be sent local school systems and public agencies. Does the statute require local school systems to re-release those documents to the child's parents?*

   Yes if, as set forth in the statute, the IEP team plans to discuss the reports at the meeting, an accessible copy of each report must be provided to the parents. Documents that the IEP team does not plan to discuss do not need to be provided prior to the meeting. Additionally, the requirements of 34 CFR §§99.32(a) and 99.33(a) do not apply if the disclosure or re-disclosure is to the parents of the child.

8. *Are reports prepared by the school nurse considered to be reports prepared by a medical professional?*

   The statute discusses reports from 'a school psychologist or other medical professional' but does not otherwise define 'medical professional.' Under the statute, if the IEP team plans to discuss a document from a medical professional at the meeting, then an accessible copy of the document must be provided at least five business days before the meeting. A school system may also orally provide documents from medical professionals.

9. *Does the statute allow school personnel to schedule a time for parents to come in to pick up materials? Does it require all documents to be mailed by US Mail? Is faxing or e-mailing reports acceptable? Does the statute require the mailing of the psychological report with the other reports? May a LSS or PA provide the documents electronically?*

   The statute does not specify how school personnel must provide documents to the parents at least five (5) business days prior to a scheduled IEP team meeting or other multidisciplinary education team meeting. Consistent with 34 CFR § 99 and 34 CFR §§300.610—300.626, the LSS or PA would need to take the necessary steps to protect the confidentiality of personally identifiable information and the integrity of the process as required under state and federal privacy requirements, including COMAR 13A.08.02. Also, in accordance with 34 CFR §300.615, if a document includes information on a student other than the parents' child, the parents have the right to inspect and review only the information in the document relating to their child. Redacting the other student's name from the document may allow the document to be reviewed.

10. *May parents waive the receipt of the documents prior to the team meeting? May parents agree to a different timeline (three (3) days instead of five (5) days)? Are schools allowed to provide these documents to parents less than five (5) business days before the meeting? To provide the documents at the IEP meeting?*

    The statute does not address a parent's waiver of the law. If school personnel are unable to provide the parents with an accessible copy of the materials to be discussed at the IEP team meeting at least five (5) business days before the scheduled meeting, school personnel must document and communicate to the parents the nature of the extenuating circumstance that prevented school personnel from providing parents with accessible copies of the materials.

11. *Are LSS/PA's only required to provide documents which the parents have not received previously?*

Under the statute, if the IEP team plans to discuss a document at the meeting, an accessible copy of the document must be provided at least five (5) business days before the meeting. Documents that the IEP team does not plan to discuss do not need to be provided prior to the meeting.

12. *Is class work considered a document to be provided if the teacher decides to discuss certain assignments at the IEP team meeting?*

The statute states, "At least five (5) business days before a scheduled IEP team meeting or other multidisciplinary education team meeting, the parents are to receive an accessible copy of each assessment, report, data chart, draft IEP, or other document the team plans to discuss at the meeting." A student's class work would be included in "other documents" if the IEP team plans to discuss the student's class work assignments at the IEP team meeting.

13. *If school personnel send a student's behavior charts home to parents daily, are school personnel required to send additional documentation to the parents prior to the IEP team meeting or other multidisciplinary education team meeting?*

If the IEP team plans to discuss the documents at the meeting, then under the statute, an accessible copy of the document must be provided at least five (5) business days before the meeting. Documents that the IEP team does not plan to discuss do not need to be provided prior to the meeting.

14. *Currently LSSs are required to provide parents of students with disabilities written notice of a scheduled IEP team meeting at least ten (10) calendar days in advance of the meeting. Does this new law require a second mailing within five (5) business days of the scheduled meeting? Are two (2) separate mailings now the requirement?*

The statute does not address this issue. In accordance with COMAR 13A.05.01.07D(2), each LSS and PA must send written notice to parents at least ten calendar days prior to a non-expedited IEP team meeting. Under Education Article §8-405, Annotated Code of Maryland, LSS's and PA's must provide parents with an accessible copy of each assessment, report, data chart, draft IEP, or other document the team plans to discuss at the meeting at least five (5) business days prior to the scheduled meeting. Each LSS and PA is required to meet both requirements. The method in which these timelines are met is dependent upon local policy and procedures.

15. *What documentation must an LSS or PA maintain to demonstrate that documents were sent to the parents as required?*

The statute does not address this issue. The LSS or PA should have policies and procedures to ensure copies of written notices of IEP team meetings and additional information to be discussed at the IEP team meeting are provided to parents within the timelines specified by State law and regulations. The policies and procedures should include information on how school personnel document what documents were provided and when and how the documents were provided to parents.

16. *If parents do not understand the documents received five (5) business days prior to a scheduled meeting, are school personnel required to explain the documents to the parent prior to the scheduled meeting?*

The statute neither requires nor prohibits the review of the provided documents by school personnel with parents prior to the scheduled meeting. Please note that the statute does include a provision that allows school psychologists and other medical professionals to provide documents orally and in writing.

17. *Are school personnel who provide an assessment, report, data chart, draft IEP, or other documents to parents prior to the scheduled meeting now required to attend the scheduled meeting?*

No. The statute does not change the required members of a student's IEP team, as set forth in 34 CFR §300.321(a) and COMAR 13A.05.01.07A. The statute only requires the provision of an accessible copy of documents to the parents at least five (5) business days prior to a scheduled team meeting.

18. *What is meant by "extenuating circumstance"? What examples of these circumstances are provided?*

The statute does not define or give examples of extenuating circumstance. Schools will therefore determine "extenuating circumstances" on a case-by-case basis. When LSS or PA personnel identify an extenuating circumstance, they must document the extenuating circumstance and communicate the circumstance to the parents of the child.

19. *When it is necessary to schedule an expedited IEP team meeting to address a student's disciplinary issues, determine the placement of the student with a disability not currently receiving educational services, or to meet other urgent needs of the student to ensure the provision of FAPE, consistent with COMAR 13A.05.01.07D(2), would that be an extenuating circumstance?*

The statute does not define or give examples of extenuating circumstance. An "extenuating circumstance" is determined on a case-by-case basis. It is the responsibility of LSS or PA personnel to document and communicate to parents the nature of the extenuating circumstance that prevented school personnel from providing parents with accessible copies of the materials at least five (5) business days before a scheduled IEP team meeting or other multidisciplinary education team meeting. The LSSs/PAs are responsible for developing policies and procedures that address maintaining documentation of extenuating circumstances and the manner in which that information was communicated to parents.

20. *If, during the team meeting, a document not previously disclosed is to be reviewed, should the meeting end, given that the parents of the child did not have a chance to review the document five (5) days prior to the meeting?*

The statute does not address this issue. The statute requires school personnel to determine what documents need to be discussed at an IEP team meeting in order to develop, review, and/or revise a student's IEP. LSS/PA policies and procedures must address how copies of documents are provided to parents at least five (5) business days prior to a scheduled meeting. Local policies and procedures should also address procedures when accessible copies of information are not provided to parents within the specified timeline prior to the meeting. These procedures should also address whether or not the failure to provide that information to the parent five (5) business days prior to the scheduled meeting is an extenuating circumstance.

21. *Will the parents get a copy of their child's completed IEP? When should the parents receive this?*

Yes. Not later than five (5) business days after a scheduled IEP or other multidisciplinary education meeting, appropriate school personnel are to provide parents an accessible copy of the completed IEP. If the IEP has not been completed by the fifth business day after the IEP team meeting, the parents must be provided with an accessible draft copy of the IEP.

22. *Would a school's failure to meet these timelines be a denial of a child's FAPE?*

Under the statute, failure of school personnel to comply with the timelines to provide parents accessible copies of information at least five (5) days prior to a scheduled meeting, or a copy of the child's IEP following the IEP team meeting, does not constitute a substantive violation of the requirement to provide the student a FAPE. Additional guidance will be issued at a later date.

23. *If the purpose of the IEP team meeting is to determine whether or not the student is a student with a disability and/or to determine the special education, related services, supplementary aids, services, program modifications, and supports a student may need, may school personnel "draft" an IEP?*

Yes. There is nothing in IDEA or COMAR that prevents LSS or PA personnel from conferring and developing a proposal for discussion by the IEP team at the scheduled meeting. It is the responsibility of LSSs and PAs to develop local policies and procedures to ensure a student's IEP team meets to develop an IEP for the student within 30 days of a determination that the student's need for special education and related services. As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

24. *What is a "multidisciplinary education team meeting?*

The term "other multidisciplinary education teams" is mentioned after IEP team meetings. The "other multidisciplinary education team" is not an IEP team but is another school team, which includes the child's parents and meet to discuss a child with a disability.

25. *Is a "business day" the same as a calendar day?*

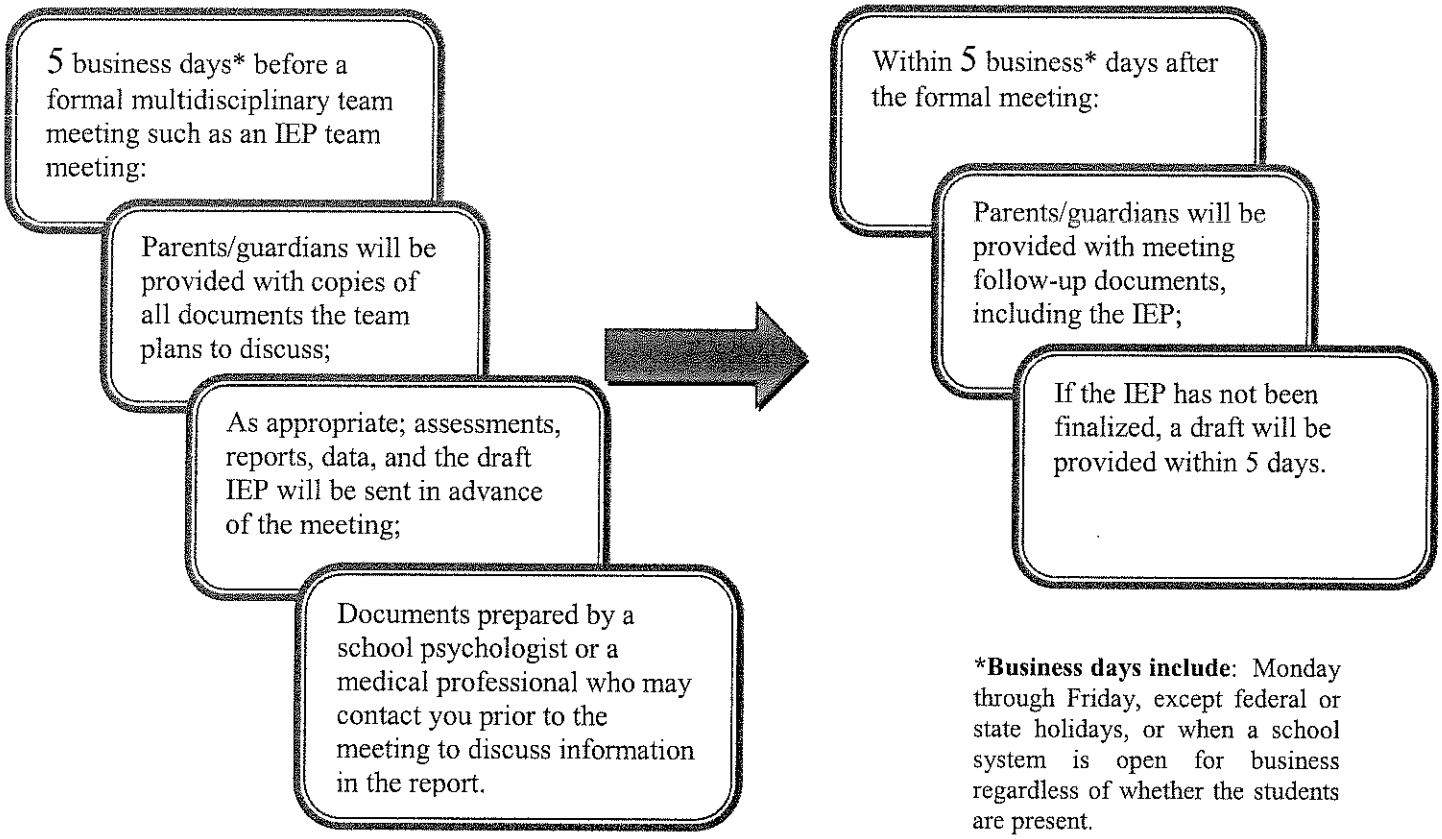
No. In accordance with 34 CFR §300.11 and COMAR 13A.05.01.03B(9) a business day is defined as "Monday through Friday, except for federal or State holidays, when a local school system or public agency is open for business whether or not students are required to be in attendance for instruction."

26. *What does the law mean when it states that the parents are to receive "accessible" copies?*

The law does not define "accessible copy." Examples may include a format other than print, such as Braille, larger print, electronic format, audio file, etc. IDEA and COMAR do not require that each assessment, report, data chart(s), draft IEP, or other document the IEP team or other multidisciplinary team plans to discuss at that meeting be written in an individual's native language. [OSEP Letter to Boswell, September 4, 2007]

What's new in special education?

To better support family involvement in the Individualized Education Program (IEP) team or other multidisciplinary team meetings, new legislation in Maryland helps to ensure that families receive important documents before the scheduled meeting. The chart below explains the requirements which must be implemented by July 1, 2010.



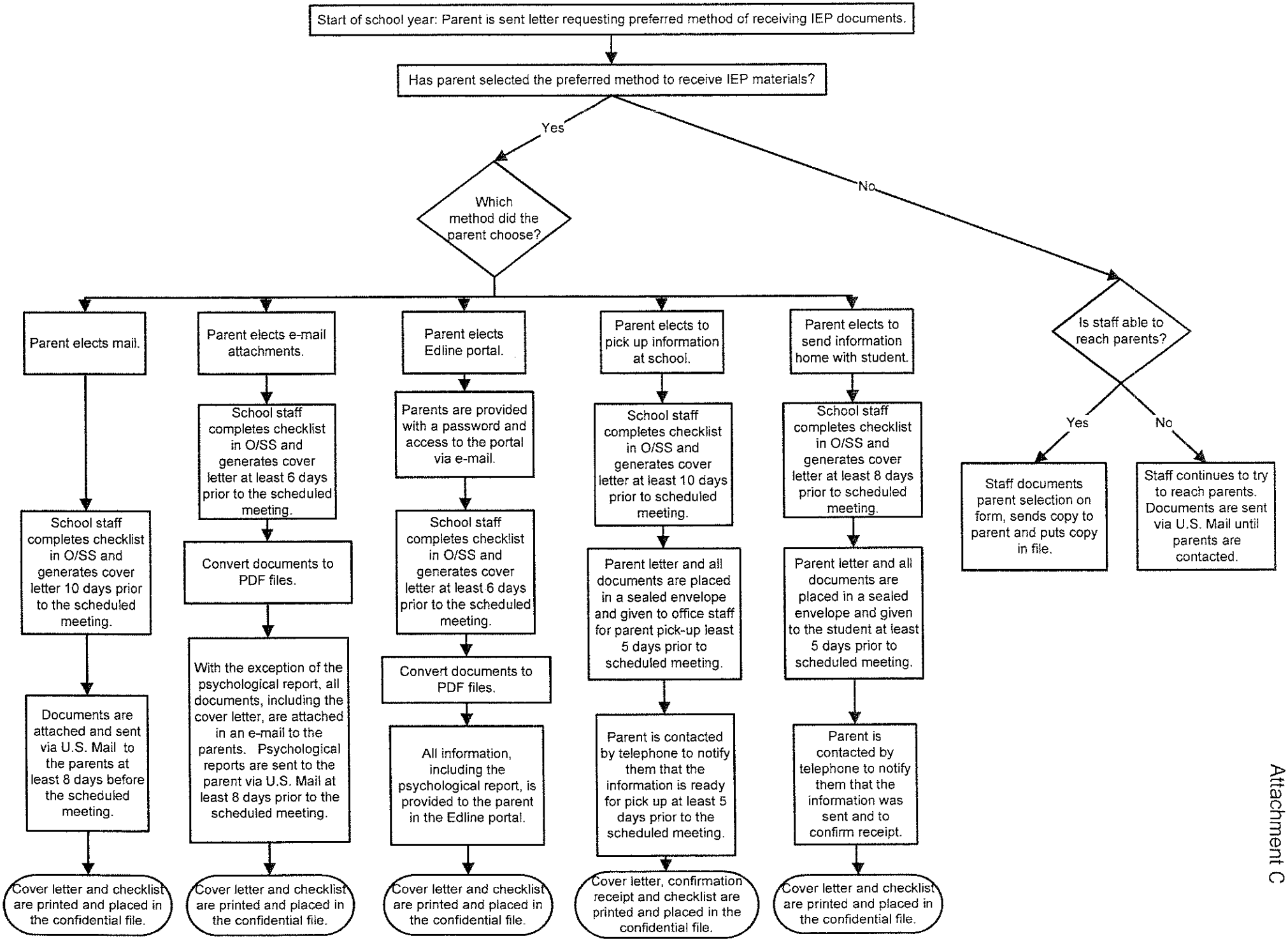
***Business days include**: Monday through Friday, except federal or state holidays, or when a school system is open for business regardless of whether the students are present.

- This provision does not apply to parent conferences or other informal meetings.
- There is no requirement to provide translations of any assessment, report, data chart, or other document.
- If school staff is unable to provide you with copies of the materials at least five (5) business days before the scheduled meeting due to an extenuating circumstance, the reason must be documented and communicated to you.
- If you do not receive the required documents in a timely basis, there is not an automatic denial of your child's right to a Free Appropriate Public Education (FAPE).
- If you believe that a federal or state regulation concerning the provision of FAPE is not being followed, you have the right to file a state complaint.
- If you disagree with the determinations and recommendations of the IEP team, you have the right to initiate mediation or a due process complaint, or to request an Administrative Review of your child's case.

The Office of Special Education and Student Services is developing a process to ensure the most timely, safe, and effective way to provide you with documents before and after a meeting. If you are interested in reading the entire bill, it can be found at the following Web address: http://mlis.state.md.us/2010rs/chapters_noln/Ch_665_sb0540E.pdf.

Please contact Ms. Alison B. Steinfels, supervisor, Equity Assurance and Compliance Unit, at 301-517-5864 with any questions.

Five Day Disclosure of Documents for IEP Team Meeting (no extenuating circumstance)



Attachment C

Attachment D

[SCHOOL LETTERHEAD]

[DATE]

Re: Documents Provided Before an Individualized Education Program Team Meeting

Dear Parents:

Recent changes to the state of Maryland Regulations require that parents be provided with information that will be discussed at your child's Individualized Education Program (IEP) team meeting and, when appropriate, a draft of your child's IEP, at least five (5) business days before the scheduled meeting, and a final or draft IEP with the decisions provided within five (5) business days after the meeting. Although there may be extenuating circumstances for some meetings where it is not possible to do so, for the majority of your child's IEP team meetings you will receive any report, assessment, data chart, draft IEP, or other document that the IEP team plans to discuss at the meeting at least five (5) business days in advance.

Enclosed you will find a form permitting you to receive the information in a way that is most convenient for you. Please note that you may change your selection at any time by notifying your child's case manager. A brief description of the options is included below. If you need additional information, please contact your child's case manager.

Edline: This is a secure way to receive information electronically. You will be given a user name and password to enter the portal. Any information that will be discussed at your child's IEP team meeting, as well as a final or draft IEP with the recommendations made at the meeting, will be available through this portal.

E-mail attachments: The documents will be attached as files and sent to your e-mail address. Any individual who has access to your e-mail account can view the documents. If the IEP team will be discussing a psychological report, this will be sent to you via United States Mail.

United States Mail: The documents will be mailed to you via United States Mail approximately eight (8) business days prior to the meeting.

School pick up: The documents will be in a sealed envelope and available for you to pick up at the front office of the school.

Sent home with students: The documents will be in a sealed envelope and sent home in your child's book bag.

It is very important that we provide you with the documents in a way that you will be able to access them in a timely and secure manner. Please complete the attached form indicating how you would like to receive this information and return it as soon as possible to your child's case manager.

Parent Response Form

Maryland law requires that parents receive a copy of documents that will be discussed at an Individualized Education Program Team meeting five business days prior to the date of the meeting. Please indicate below how you wish to receive these business documents. Please check only one. You may change your selection at any time.

_____ 1. Receive via the Montgomery County Public County (MCPS) Edline system. The Edline system is a secure website established for parents to access confidential student information such as grades. This preferred option provides the best security if the parents have access to a computer to login to the Edline system.

_____ 2. Receive via e-mail. The documents, with the exception of psychological assessments, will be sent to the e-mail address below.
E-mail address: _____

_____ 3. Receive via U.S. Mail. The documents will be sent to the current address in the MCPS enrollment system.

_____ 4. Parent/guardian will pick up documents at school.

_____ 5. Documents can be sent home with student.

Parent/Guardian Signature:

_____

Parent/Guardian Printed Name:

_____

Date: _____

Parental Choice received orally by:

MCPS Staff Member Signature: _____

MCPS Staff Member Printed Name: _____

Date: _____

Attachment E

[School Letterhead]

Confirmation of Receipt of Documentation for Individualized Education Program (IEP)

Student's Name: _____

Date Parent Picked up Information: _____

_____
Parent Signature

_____
Date

Recording Special Education Hours on Individualized Education Programs

This is to provide clarification to Individualized Education Program (IEP) teams when determining and reporting instructional special education service hours to ensure accuracy during the development and review of student IEPs. In order to properly budget for and allocate special education staff members to meet the diverse student needs in each building, it is critical to accurately report the needed instructional special education service hours on IEPs.

IEP teams are required to ensure that each student's IEP allows for a Free Appropriate Public Education (FAPE). As defined by the *Individuals with Disabilities Education Improvement Act of 2004* (IDEA), FAPE is an educational program that is individualized to a specific child, designed to meet that child's unique needs, provides access to the general education curriculum, meets the grade-level standards established by the state, and from which the child receives educational benefit. The provision of FAPE includes specialized instruction and related services that prepare the student for further education, employment, and independent living. Just as the expectation for including students with disabilities with their nondisabled peers in the least restrictive environment (LRE) increases, so has the number of general educators providing direct special education services to these students. These services include supports ranging from the provision of accommodations to providing direct, specialized instruction.

The continuum of LRE educational classroom environments includes general education, cotaught, supported, self-contained, and separate schools. Cotaught classes are taught by both a general educator and a special educator. Supported classes are taught by a general educator with support from a special education paraeducator.

There are some students who require enhanced staffing, also known as critical staffing, in order to access the LRE. These students have an adult assigned to provide support for a part or all of their day, assisting in areas including, but not limited to, academic, motor, self-help, and behavioral needs.

As your IEP team meets to develop and review IEPs, please be sure they are appropriately determining and reporting special education service hours. Please refer to the attached directions to assist in determining when special education service hours are to be included in the IEP.

Please refer specific questions to the special education supervisor and/or instructional specialist assigned to your cluster.

DIRECTIONS FOR RECORDING SPECIAL EDUCATION HOURS ON INDIVIDUALIZED EDUCATION PROGRAMS

Self-contained classes are taught by a special educator (in both comprehensive and special schools). Hours in self-contained classes are to be documented on the Individualized Education Program (IEP) as special education service hours.

Cotaught classes are taught by both a general educator and a special educator. The student with an IEP is receiving instruction in the general education environment. Hours can be appropriately documented as special education service hours on the IEP given the consistent direct instruction and support provided by **special education staff**.

Supported classes are taught by a general educator with support from a special education paraeducator. The student with an IEP is receiving instruction in the general education environment and hours can be appropriately documented as special education service hours on the IEP given the consistent direct instruction and support provided by **special education staff**.

General education classes are taught exclusively by a general educator. When a student with an IEP receives instruction from a general educator, without the presence of a special educator or special education paraeducator in the classroom, the following must be in place in order to include those instructional hours as special education service hours on a student's IEP:

- Implementation of the student's IEP (e.g., delivers specialized instruction or an intervention such as Read 180 or Soar to Success to address goal/objectives identified in the IEP);
- Regular meetings with a special educator to discuss student needs and the delivery of specialized instruction (e.g., documented evidence of coplanning and/or consultation and awareness of instructional responsibilities related to implementing the IEP);
- Documentation of the delivery of specialized instruction (e.g., notations on lesson plans); and
- Collaboration with the special educator to document student progress regarding specific IEP goals and objectives (e.g., progress is discussed regularly; completion of Form 272-5 or 272-6 to provide quarterly progress towards goals with input from the general education teacher responsible for specific content areas).

Providing accommodations and/or modifications without direct specialized instruction does not suffice for documentation as special education hours on an IEP.

Critical staffing

There are some students who require enhanced staffing, also known as critical staffing, in order to access the LRE. These students have an adult assigned to provide support for a part or all of their day, assisting in areas including, but not limited to, academic, motor, self-help, and behavioral needs. Regardless of the number of hours provided by these staff members, these hours are **not** to be included as special education service hours. The supports provided by these staff members are to be recorded in the Supplementary Aids, Service, Program Modifications and Supports section of the IEP. Indicate the location and manner of support as this section of the IEP is completed.

CHILD FIND

IN GENERAL

Under IDEA 2004, MCPS has the responsibility to—

- identify, locate, and evaluate all children with disabilities, regardless of the severity of their disabilities, from birth to 21 years of age—
  - residing in the county, including homeless children,[1] wards of the state, and children suspected of having a disability and needing special education, even though they have not failed or been retained in a course or grade and are advancing from grade to grade; or
  - enrolled by their parents in private schools, including religious, elementary, and secondary schools, located in Montgomery County; and
- develop and implement a practical method to determine which children with disabilities are currently receiving special education and related services.

Child Find for Children Ages Birth to 3

The Montgomery County Infants and Toddlers Program (MCITP) in the Montgomery County Department of Health and Human Services provides the single point of entry and Child Find activities for children birth to age 3 and their families who reside in Montgomery County. When there is a concern about the achievement of developmental milestones of an age-eligible child, the child is referred through the single point of entry to a regional interagency service center for assessment and, if eligible, Individualized Family Services Plan (IFSP) development and services. Services are provided in the natural environment, which is typically the home or child care setting and include developmental evaluations and assessments.

The telephone number for the single point of entry for children aged birth to 36 months old is 240-777-3997.

The MCPS Child Find Process for Children Ages 3 to Kindergarten-eligibility Age

The MCPS Child Find/Early Childhood Disabilities Unit sponsors free developmental screening clinics for preschool children who reside in the county or nonresident children who attend preschool programs (ages 3 to age of kindergarten eligibility) located in the county and approved by the Maryland State Department of Education (MSDE).[2] The purpose of the clinics is to identify children with possible developmental delays that could impact their learning and who need further assessment. Vision and hearing screenings also are available at the clinics, which are held in various locations in the county. Prior to the screenings, parents complete a Preschool Child Find Questionnaire.[3] Residents provide a copy of the child's birth certificate and two documents proving the parent and child are bona fide residents of Montgomery County. Nonresidents submit verification of enrollment on letterhead from the child's Montgomery County preschool.

Children for whom there are existing evaluations may not need to attend the screening clinic. The assessment data are reviewed by MCPS staff to determine appropriate follow up.

Staff members annually conduct outreach activities to inform the general public and personnel in private schools about the MCPS Child Find program. Information regarding referral, screening, and other services, as well as the contact person and phone number, is included in—

- media announcements on local television;
- brochures sent to physicians, private schools, and child care providers;
- activities designed to reach individuals within the county who are not proficient in English;
- information provided to the Montgomery County referral hotline (Child Link); and
- information provided to early childhood service providers in an interagency cross-training document.

Child Find information is available in Spanish, Chinese, Korean, Japanese, Cambodian, and Vietnamese.

Please contact the Child Find/Early Childhood Disabilities Unit at 301-929-2224 for further information or call the 24-hour referral line, 301-929-2222, to leave contact information. Parents of nonresident children attending a private preschool in Montgomery County approved by MSDE should call the MCPS Placement and Assessment Services Unit (PASU) at 301-279-3726 to request a preschool referral packet.

The MCPS Child Find Process for Students over Kindergarten-eligibility Age

MCPS Students: Child Find for children enrolled in MCPS consists of the referral procedures described in the *Initial Referral/Screening* section of of this handbook.

> *Note:* Children who are age-eligible for kindergarten[4] whose parents choose to have them exempted from kindergarten are subject to this process. The children must be enrolled in a licensed child care or family child care program and attend kindergarten the next year.

1. See MCPS Regulation JED-RD, *Enrollment of Homeless Students*.
2. Children ages 3 through 5 are considered to be parentally placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the following IDEA 2004 definition of "elementary school": "a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law."
3. Available through the MCPS Child Find/Early Childhood Disabilities Unit.
4. In school year 2006–2007 and thereafter, the kindergarten entry date is age 5 or older on September 1 of the school year in which the child applies for entrance.

Parentally Placed Private School Children with Disabilities and Home-schooled Students

The Child Find process for children who attend private or religious schools located in Montgomery County, regardless of whether they live in or out of Montgomery County, and for children who reside in Montgomery County who are being home schooled is the same as that followed with MCPS students. Parents should contact PASU at 301-279-3726 to request information and a referral packet.

Legal References

20 USC §§1401(3) and (6); 1412(a)(3); 1412(a)(10)(A)(ii)

34 CFR §300.13, .111, .131

INDIVIDUALIZED EDUCATION PROGRAM TEAM MEETINGS

GENERAL REQUIREMENTS

What Is/Is not an Individualized Education Program Team Meeting?

IEP Team Meetings: An IEP team meeting is conducted in accordance with special education law and regulations and includes a group of individuals who are responsible for—

- evaluating and identifying students with disabilities;
- developing, reviewing, or revising IEPs for students with disabilities;
- determining the placement of students with disabilities in the least restrictive environment; and
- making manifestation determinations.

Meetings that are not IEP team meetings: The following meetings are not IEP team meetings and do not involve a legal requirement for parent participation: informal or unscheduled conversations involving school and school system personnel; conversations on issues such as teaching methodology, lesson plans, or coordination of service provision, if these issues are not addressed in the student's IEP; or preparatory activities to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

In addition, the screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered an "evaluation for eligibility" for special education and related services, and thus does not require an IEP team meeting. Likewise, school-based problem solving team meetings and an "intake conference" with a parent involving a student with a disability who is transferring to MCPS from another Maryland school system or from an out-of-state school system are not IEP team meetings.

Composition of an IEP Team

Minimum Requirements: At a minimum, each IEP team must include the following:

- The parents of a child with a disability.
- At least one regular education teacher (if the child is, or may be, participating in the regular education environment).
- not less than one special education teacher, or, if appropriate, at least one special education provider of such child.
- An MCPS representative who is—
  - qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities; knowledgeable about the general education curriculum; and
  - knowledgeable about the availability of MCPS resources.
- An individual who can interpret the instructional implications of evaluation results; this requirement may be met by one of the MCPS professionals listed above.
- The student, whenever appropriate.

At the discretion of the parent or MCPS, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate, may be members of the IEP team. It is MCPS practice to have the professional(s) who is/are most qualified in the student's suspected disability and who has/have conducted recommended assessments attend the IEP team meeting when eligibility for special education is considered.

An interpreter must be provided if the parent cannot communicate in English[1] or requires a sign language interpreter.[2]

> *Note:* "Parent" is defined in the federal IDEA 2004 regulations as follows:
> "(1) A biological or adoptive parent of a child;[3]
> (2) A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;
> (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the state if the child is a ward of the state);
> (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
> (5) A surrogate parent who has been appointed in accordance with…the Act."

When transitioning a child from Infants and Toddlers services to IEP services: At the request of the parent, the Infants and Toddlers (I&T) coordinator or other representative(s) of the I&T program shall be invited to the child's initial IEP team meeting to assist with the smooth transition of services.[4] The IEP team must consider the child's Individual Family Service Plan (IFSP) when

1. Use MCPS Form 311-10: *Request for Interpreters.*
2. See *Procedures for the Provision of Sign Language Interpreters for Parents* on the MCPS website.
3. The federal regulations provide that the biological or adoptive parent of a child, when attempting to act as the parent under the Act and when more than one party is qualified to act as a parent, must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child or unless a judicial decree or order identifies a specific person(s) to act as the parent or to make educational decisions.
4. An MCPS representative must attend the child's local I&T transition planning meeting, which must be held at least 90 days prior to the child's transition to Part B services, if the parents elect to transition to Part B at the child's third birthday.

determining eligibility and developing an IEP for Part B services. The IEP must be in effect by the child's third birthday, unless the parents elect to access the Extended IFSP option. In cases where the parents elect Part B services, if the IEP is not developed by the child's third birthday, the IEP team must document the reason for the delay on the IEP.

When considering transition services: The student must be invited to attend any IEP team meetings if a purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals. If the student does not attend the IEP team meeting, the IEP team must take other steps to ensure that the student's preferences and interests are considered, including interviewing the student. Normally, this interview is conducted by the transition support teacher. The interview must be documented on the student's IEP.

> *Note:* Until a student reaches the age of majority under state law, unless the rights of the parent to act for the child are extinguished or otherwise limited, only the parent has the authority to make educational decisions for the child, including whether the child should attend an IEP team meeting.

If transition services will be discussed, then representatives of other agencies who are likely to be responsible for paying for or providing transition services must be invited. If the invited agency does not send a representative, public agencies are no longer required to take additional steps to obtain the participation of those agencies in the planning of transition.

> *Note:* MCPS must obtain parental consent or the consent of the student who has reached the age of majority before inviting a participating agency to attend a student's IEP team meeting to consider transition services. Use MCPS Form 336-32: *Authorization for Release of Confidential Information* to obtain annual consent.

When parental rights have been transferred to a student: If, under Maryland state law, parental rights have been transferred to a student who has become a legal adult, the parents are part of the IEP team if invited by the student or by MCPS.

When making a manifestation determination: Maryland special education regulations require that IEP teams make manifestation determinations.

When restraint or seclusion has been used for a student with a disability: In an emergency situation, if restraint or seclusion has been used for a student with a disability and the student's IEP or behavior intervention plan (BIP) does not include the use of that specific behavior intervention, the IEP team must meet within ten business days of the incident to consider—

- the need for a functional behavioral assessment (FBA)*e;*
- developing appropriate behavioral interventions; and
- implementing a BIP.

If the student's IEP or BIP already includes the use of restraint or seclusion, the IEP team must make sure that the student's IEP or BIP specifies how often the IEP team will meet to review or revise, as appropriate, the IEP or BIP.

When developing an interim IEP for a student in an adult prison: In MCPS, the sending school, in conjunction with the staff at the Model Learning Center located at Clarksburg Correctional Facility develop IEPs for students with disabilities who are convicted as adults under state law and incarcerated at Clarksburg.

General Education Teachers and IEP Team Meetings

To the extent appropriate, the general education teacher of a child with a disability must participate in the development, review, and revision of the student's IEP, including assisting in the determination of—

- appropriate positive behavioral interventions and supports and other strategies for the student; and
- supplementary aids and services, program modifications, or supports, based on peer-reviewed research to the extent practicable, for school personnel that will be provided for the student to—
  - advance appropriately toward attaining the annual goals;
  - be involved in and make progress in the general curriculum;
  - participate in extracurricular and other nonacademic activities; and
  - be educated and participate with other children with disabilities and nondisabled children.

If the student has more than one general education teacher, the principal/designee, taking into account the best interests of the student, may designate which teacher(s) will participate on the IEP team. The input of all of the student's general education teachers should be sought, regardless of whether they attend. Normally, this input is gathered through completion of a *Teacher Report* for IEP team meetings (MCPS Forms 272-7: *Elementary Teacher Report for IEP Team Meetings;* 272-8: *Secondary Teacher Report for IEP Team Meetings*[5]). Additionally, the student's IEP must be accessible to each teacher who is responsible for its implementation.

It should be noted that courts have held that IEP teams addressing the needs of preschool children who attend private day care or nursery school should seek direct input from the staff of these facilities. If the student is not attending a private pre-K program, MCPS will provide a special education pre-K teacher to participate in the meeting.

5. Available on the MCPS Forms website.

Note: In light of the strong accountability provisions of NCLB, the role of the general education teacher in IEP team decision making has become increasingly important. In particular, general educators who teach English, reading, and mathematics are crucial participants who can confirm that the goals and objectives being proposed for a student are aligned to the State Content Standards.

Graduation Requirements

Parents of children with disabilities must be informed of state graduation requirements and of their children's progress toward meeting the requirements.

Alternative Means of Participating in IEP Team Meetings

MCPS and the parent may agree to use alternative means of meeting participation such as video conferences and conference calls.

Facilitated IEP Team Meetings

Facilitated IEP team meetings[6] are meetings that include an impartial facilitator from the Conflict Resolution Center of Montgomery County who promotes effective communication and assists the IEP team to complete the IEP process. The facilitator takes no position about the contents of the IEP and does not participate in decision making.

Facilitated IEP team meetings can be of benefit when communication between the parent and school staff has broken down. Both school staff and parents must agree that a facilitator will be used.

Audio Recordings of IEP Team Meetings

Parents who wish to record an IEP team meeting must be permitted to do so. If a parent records an IEP team meeting, school personnel should also record the meeting. Under the Family Educational Rights and Privacy Act (FERPA) the school recording is considered an "education record" and must be confidentially maintained as part of the student's record.

Continuing an IEP Team Meeting

IEP team meetings should be scheduled so that all the purposes of the meeting can be addressed within the allotted time. When a team is unable to complete all of the decision making and the meeting must be continued, another meeting should be scheduled before the parents leave. The parent must be sent an invitation to the continued meeting. It is permissible to provide the parents with less than 10 days notice of the continued meeting if the date was mutually agreed to at the first meeting. If there has not been a mutually agreed to date, the parents must be provided with 10 days notice of the continued meeting.

6. For more information or to arrange for a facilitator, contact the MCPS Equity Assurance and Compliance Unit at 301-517-5864,

Circumstances When Changes Can Be Made to a Student's IEP Without Convening an IEP Team Meeting

An annual review IEP team meeting must be held for each student to develop an IEP for the following school year (or, in the case of an IEP that spans school years, prior to the duration of the existing IEP). In making changes to a student's IEP after the annual review IEP team meeting, the parent of a child with a disability and MCPS may agree not to convene an IEP team meeting and instead may develop a written document to amend or modify the child's current IEP.

Individualized Education Program Amendment is used to record such amendments or modifications. If a student's IEP is amended, upon request of the parent, the IEP team also must provide the parent with a revised copy of the student's IEP that incorporates the amendments.

When the IEP team anticipates that major changes may be made to the IEP such as a change in placement; eligibility category; dismissal from special education; change in least restrictive environment designation; Extended School Year; need for critical staffing; or participation in state assessments, an IEP team meeting must be scheduled.

Notifying Parents of Scheduled IEP Team Meetings

The parent must receive at least 10 calendar days' written notice of IEP team meetings, unless an expedited meeting is being held to do the following:

- Address disciplinary issues.
- Determine the placement of a student with a disability who is not currently receiving educational services.
- Meet other urgent needs of the student to ensure the provision of a free appropriate public education (FAPE).
- When an expedited meeting must be held, the parent may be initially contacted by telephone but must still be provided with written notice of the meeting, even if it can only be provided just prior to the meeting.

Notice must be provided in language that is understandable to the general public. For a parent who does not read English, notice should be provided in his/her native language, unless it is clearly not feasible to do so. The notification must include the purpose, time, date, location of the meeting, and the titles of who will be in attendance.

Documentation Needed for Most IEP Team Meetings

For most IEP team meetings, the IEP team will need the following documents:

- MCPS Form 272-8: *Secondary Teacher Report for IEP Team Meetings* or MCPS Form 272-7: *Elementary Teacher Report for IEP Team Meetings*
- The student's current IEP
- New IEP Forms
- MCPS Form 336-01: *Addendum to MCPS Forms* (Optional)

- Copy of the *Procedural Safeguards-Parental Rights* brochure

Additional documentation needed for specialized IEP team meetings, such as screening or evaluation IEP team meetings, is noted in the appropriate section of this handbook.

Medical Assistance and IEP Implementation

MCPS is permitted by law to seek federal reimbursement for case management and other special education services provided to students with disabilities who are eligible for Medical Assistance (MA). Parents of eligible students must specifically authorize reimbursement for case management. Parents should be informed that their authorization is voluntary and does not affect implementation of their child's IEP, since case management is routinely provided to special education students and does not require any additions to a student's IEP. The statewide IEP form contains a section to record the parent's authorization.[7]

The MCPS *Medical Assistance Project (MAP) Information Packet* contains more detailed information on MA and children with IEPs. Copies may be obtained from the Department of Special Education Operations (301-279-3445 or 301-279-3170) or the Special Education website.

Procedures When a Parent Submits a Report of a Non-MCPS Assessment

The IEP team must review and consider all information or documents provided by the parent. If the report is provided at the time of an IEP team meeting, the team should record a description of the report and the date it was received on page 6 of the IEP, under the section detailing Parental Input. Once the report is reviewed and considered by the IEP team, and if the report meets agency criteria the information should be used to update the Present Levels of Academic Achievement and Functional Performance section of the IEP. In addition, consideration of the report may be documented in MCPS Form 336-01: *Addendum to MCPS Forms*. Depending on the nature and length of the report and the expertise of the participants at the meeting, the report may have to be reviewed and analyzed by an appropriate MCPS professional after the meeting and considered at a future IEP team meeting. An IEP team meeting at which the report is considered should be scheduled as soon as possible but no later then 45 days from receipt of the private report.

MCPS Form 336-31: *Authorization for Assessment*[e] is generally used to obtain consent for the formal review. See the *Review of Non-MCPS Educational Assessment Report*[8] or the procedures for a review of a non-MCPS psychological assessment[9] for formats for the review.

IEP Team Meeting Decision Making

The IEP team meeting serves as a communication vehicle between the parent and school staff. The meeting enables the parent and staff as equal partners to make joint, informed decisions regarding—

- eligibility for services;
- the student's needs and appropriate goals;
- the extent to which the student will be involved in the general education environment and state and district wide assessments; and
- services needed to support that involvement and participation and to achieve agreed-upon goals.

The IEP team must consider the parent's concerns and the information he/she provides regarding the child in making eligibility decisions and developing, reviewing, and revising IEPs.[10] While the parent, as a member of the IEP team, participates in the placement (program) decision, the school where the program is located is a school system decision.

IEP teams should work toward consensus; however, the team must make a recommendation because MCPS has the ultimate responsibility to ensure that screening and evaluations are properly conducted and that the IEP includes the services the student needs in order to receive FAPE. It is not appropriate to make IEP decisions based on a majority "vote." When there is disagreement, MCPS must provide the parent with written notice of the IEP team's proposals or refusals regarding the student's educational program, prior to implementation of the IEP. The parent has the ultimate right to seek resolution of any disagreements by initiating mediation or a due process hearing or requesting an administrative review.

Holding an IEP Team Meeting if the Parent Is not in Attendance

IDEA 2004 places great emphasis on parent participation in the IEP process. If neither parent can attend an IEP team meeting, MCPS must use other methods to ensure parent participation, including individual or conference telephone calls. An IEP team meeting may be conducted without a parent in attendance if the school is unable to ensure the parent's attendance and has a record of staff attempts to arrange a mutually agreed-upon time and place. Normally, three documented attempts to hold the meeting with the parent in attendance should occur.

Within 10 calendar days of the meeting, the parent should receive written notification of the IEP team's decisions. A date should be set with the parent to discuss the new IEP. The staff member meeting with the parent should review each section of the IEP and clarify the decisions made and the rationale for the decisions. MCPS Form 270-1: *Parent Conference*[11] should be completed to document that the recommendations of the IEP team have been fully discussed with the parent. Attach the form to the original copy of the IEP that is kept in the student's confidential file.

If the parent does not/cannot come on the agreed-upon date, the school administrator should notify the parent in writing that, if the IEPis not the student's initial IEP, the IEP will be

7. On the statewide IEP, case management is referred to as "Service Coordination."
8. Available on the Special Education website.
9. *MCPS School Psychologists Operations Handbook.*
10. The *Parent Report form*[e] is one method of obtaining parent input to the child's IEP.
11. Available on the MCP Forms website.

implemented, unless the parent files for mediation or due process. Copies of letters sent and documentation of any telephone calls should be maintained in the student's confidential folder. In these instances, the IEP team chair or the MCPS representative approves the IEP on behalf of the IEP team.

If the IEP is the student's initial IEP and the parent refuses to provide written consent, the IEP cannot be implemented, and MCPS is not permitted to request mediation or a due process hearing to attempt to get permission to implement the IEP.

Confidentiality of Information

MCPS must ensure the confidentiality of all personally identifiable information maintained on students. The parent of a student with a disability must be given the opportunity to inspect and review all of the student's records relating to the identification, evaluation, and educational placement and the provision of FAPE.[12]

Prior Notice Requirements

IDEA 2004 requires that parents receive written notice a reasonable time before the IEP team—

- proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- declines to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

The prior notice must include the following information:

- A description of the action proposed or declined by the IEP team.
- An explanation of why the IEP team proposes or declines to take the action.
- A description of each evaluation procedure, assessment, record, or report the IEP team used as a basis for the proposed or declined action.
- A statement that the parents have protection under the IDEA 2004 procedural safeguards, and if the notice does not concern an initial referral for evaluation, the means by which the parent can obtain a copy of procedural safeguards.
- Sources for parents to contact to obtain assistance in understanding these provisions.
- A description of other options that the IEP team considered and the reasons why those options were rejected.
- A description of other factors that are relevant to the IEP team's proposal or declination.

Proper documentation of all areas of the state IEP, along with the *Prior Written Notice* pages of the MCPS IEP, constitutes appropriate prior written notice. The prior notice must be written in language understandable to the general public and provided in the native language of the parent, unless it is clearly not feasible to do so.

12. See MCPS Regulation KBA-RA, *Public Information,* regarding issues relating to photographing special education students.

Follow-up Responsibilities to IEP Team Meetings

The student's IEP must be implemented as soon as possible after the IEP team meeting. An exception may occur when the meeting occurs during the summer or a vacation period or when there are circumstances that require a short delay, such as working out transportation arrangements.

The parent must receive a copy of the IEP documents and written notice of the IEP team's recommendations in a timely manner.

Originals of all meeting documents must be included in the student's confidential file. See MCPS Regulation JOA-RA, *Student Records.*

Legal References

20 U.S.C. 1412(a) (19); 1414(d); 1415(c)

34 CFR §300.503

COMAR 13A.05.01.08 and 13A.08.04

INITIAL REFERRAL/SCREENING; INITIAL EVALUATION/ IDENTIFICATION; REEVALUATION PLANNING AND DETERMINATIONS

INITIAL REFERRAL/SCREENING

Early Intervention

IDEA 2004 promotes early intervening services to address children's learning and behavioral needs and reduce unnecessary labeling of children as having disabilities. Except for those children with obvious significant disabilities which require immediate intensive services, special education should normally be provided only to those students who do not respond to systematic, research-based general education instruction and interventions.

Note: Referral for special education screening should be considered only after systematic interventions have been implemented pursuant to the school-based problem solving team recommendations. Prior to referral, the school-based problem-solving team must document the following:

- The intervention strategies chosen were targeted for the problem identified.
- The interventions were implemented with fidelity.
- Student progress within the interventions was monitored.
- Data analysis reflected that the student continued not to meet expectations.

With the strategic goal of achieving "Success for Every Student," MCPS accepts responsibility for providing the highest level of support possible for quality teaching and learning for all students. It promotes, for example, the use of scientifically based early reading programs; positive behavioral interventions and supports; diversity training; enhanced instructional program opportunities, including prekindergarten in the elementary schools and extended summer program opportunities at the middle school level; and other instructional strategies to improve the academic success of students from prekindergarten through high school. MCPS has developed Collaborative Problem-Solving Guidelines and EMT Guidelines to assist schools in identifying student concerns and providing a Tiered-service Delivery Model to ensure student success. Consistent with Baldrige principles, both the Collaborative Problem-Solving Guidelines and EMT Guidelines rely on the Plan/Do/Study/Act framework to address student's academic and behavioral challenges by accurately identifying the problem, proposing an appropriate intervention, implementing the intervention with fidelity for a defined timeframe, analyzing the intervention data, and finally, implementing a comprehensive intervention plan.

Initiating a Referral for Special Education Services

Note: IDEA 2004 requires that parents must be provided with a procedural safeguards notice upon initial referral or parental request for evaluation.

Prekindergarteners Not Yet Attending an MCPS School: Prekindergarteners not yet attending an MCPS school are referred through the Child Find process outlined in chapter II of this handbook.

Students Attending an MCPS School, Including MCPS Prekindergarten Students: Following implementation of appropriate interventions pursuant to the recommendations of the school-based problem solving team, an MCPS student who is not progressing as expected may be referred in writing to the school's IEP team. Referrals may be made by the parent or staff, following the school-based problem solving process.

The problem solving team may refer a student to an IEP screening meeting when, despite a series of documented systematic interventions, analysis of the data shows that the student has not made appropriate progress and staff has reason to believe the student may have an educational disability that requires special education, and possibly, related services.

The school-based problem solving team identifies a case manager and assigns the tasks on the forms listed below. These forms should be completed prior to the screening IEP team meeting and forwarded to the case manager who summarizes the findings on MCPS Form 336-23: *Student Screening Profile Worksheet:*

- MCPS Form 272-9: *Teacher Referral*
- MCPS Form 336-20: *Educational History*[1]
- MCPS Form 336-22: Eligibility Screening *Parent Interview/Questionnaire*
- MCPS Form 336-21: *Classroom Observation*[2]

Documentation from the Collaborative Problem Solving and EMT processes must be submitted as part of the referral process.

If the parents initiate the referral, the principal/designee enters the referral information directly onto the online IEP system, and the forms listed above are completed.

1. The *Parent Interview/Questionnaire* is available in English, Chinese (simplified), Chinese (traditional), Japanese, Korean, Russian, Spanish, and Vietnamese. Available on the MCPS Forms website.
2. All five of the screening forms are available on the MCPS Forms website.

Students Enrolled in a Private or Religious School or Who are Being Home-schooled: Parents may refer children who are currently enrolled in a private or religiously affiliated school located in Montgomery County, or who are being home-schooled, by contacting the MCPS Private/Religious Referral line at 301-279-3726.

Students Who Have Been Hospitalized in a Psychiatric Treatment Facility: Students may be hospitalized for short- or long-term periods in psychiatric treatment facilities for a variety of reasons including problems exhibited in the home, community, or school. The majority of students hospitalized in a psychiatric treatment facility are general education students who do not require special education services. When discharged from a hospital, general education students usually can return to their schools and classes of enrollment.

At parent request, or if the parent provides information to the school, a school-based problem solving team meeting should be held, preferably prior to the student's return to school, to review the information and develop a plan for the student's return. On a case-by-case basis, the problem solving team may determine that a student should be referred for a screening IEP team meeting.

If a student who has been hospitalized is referred by a school-based problem solving team for consideration of eligibility, a screening IEP meeting should be held. The focus of the meeting is to determine whether the clinical issues that resulted in the hospitalization have had an educational impact that requires special education services in order for the student to access education. The IEP team should collect information that reflects the student's school performance prior to hospitalization including such things as teacher reports, curriculum-based data, school interventions, as well as relevant clinical information from the hospitalization.

Scheduling the Screening IEP Team Meeting

The screening IEP team meeting should be scheduled expeditiously since IDEA 2004 provides that an initial evaluation must be completed within 60 days of receiving parental consent for the evaluation or, if the state establishes a timeframe within which the evaluation must be conducted, within that timeframe. The MSDE has directed that the 60-day federal timeframe is to be used "in conjunction with the COMAR 13A.05.01.06A that states that an 'IEP team shall complete the evaluation of a student within 90 days of receiving a written referral.' Thus, the date of a student's initial evaluation may not exceed 60 days from the date of parental consent for initial evaluation, or the 90-day timeline from the date of receiving a written referral,"[3] whichever is sooner. If the evaluation IEP team meeting is held beyond the 60- or 90-day timeframe, the IEP team must document the reason for noncompliance.

Note: In the case of a student suspected of having a specific learning disability (SLD), the timelines may be extended by mutual written agreement of the child's parent and the IEP team, if the team determines that additional data are needed and that these data cannot be obtained within the 60- or 90-day timeframe. The relevant data are—

- data that demonstrate that prior to, or as part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- data-based documentation, which was provided to the child's parents, of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction.

The parent must be given 10 calendar days' written notice of the screening IEP team meeting.

Documentation Needed at the Screening IEP Team Meeting

The IEP team first reviews existing data. At a minimum, the following reports are reviewed:

- MCPS Form 272-9: *Teacher Referral or* MCPS Form 272-1: *Prekindergarten Teacher Questionnaire* (completed by Pre-K/daycare teacher)[4]
- MCPS Form 336-20: *Educational History*
- MCPS Form 336-22: *Parent Interview/Questionnaire or Prekindergarten Child Find Questionnaire* (completed by parent) (no MCPS form number available)[5]
- MCPS Form 336-21: *Classroom Observation*
- MCPS Form 336-23: *Student Screening Profile Worksheet or Developmental Screening Instrument (for prekindergarteners)* (no MCPS form number available)
- Any other information provided by the parent or staff

The following documents may need to be completed at the meeting:

- MCPS Form 336-31: *Authorization for Assessment*[6]
- CPS Form 336-26: *Bilingual Assessment Team Referral Checklist*[7]
- MCPS Form 336-32: *Authorization for Release of Confidential Information*[8]
- MCPS Form 336-01: *Addendum to MCPS Forms* (optional)
- Screening IEP Team Meeting Agenda

3. MSDE Info Update 5. Available on the MCPS Special Education and MSDE websites.
4. The nine forms in this listing are available on the MCPS Forms website.
5. This form is available in Spanish, Chinese (simplified), Chinese (traditional), Japanese, Korean, Russian, and Vietnamese.
6. This form is available in Spanish.
7. Available on the MCPS Forms website.
8. Available on the MCPS Forms website.

After welcoming the parent and anyone accompanying him/her, introducing the members of the IEP team, and assigning someone to complete the screening meeting forms, the chair explains the purpose of the meeting, summarizes the reasons for referral, and explains the meeting process, including the parents' role as equal partners.

The IEP team reviews information from the school-based problem-solving team—

- reviews existing data;
- determines whether an educational disability is suspected;
- if a disability is suspected, determines the need for further assessment (in making this determination, the IEP team should be aware that the evaluation process should be sufficiently comprehensive to inform the development of an IEP, if one is ultimately needed); and

Note: IDEA 2004 prohibits MCPS personnel from requiring a child to obtain a prescription for a controlled substance as a condition of receiving an evaluation for a disability.

Note: If the student is an English language learner, assessments may need to be referred to the Bilingual Assessment Team (BAT). The BAT is a multilingual, multicultural, interdisciplinary unit designed to collaborate with IEP teams when gathering and interpreting data about English language learners who are suspected of having an educational disability. Requests for Language Dominance testing should be made at the same time the referral is entered into the online IEP system. Schools must obtain parental consent using MCPS Form 336-31: A*uthorization for Assessment,* and forward the Authorization and referral to the BAT as expeditiously as possible.

- Assign follow up activities, including continuation or changes to interventions in the general education setting, referral to the school-based problem-solving team, obtaining parental consent to conduct assessments to determine eligibility for special education services, and scheduling an evaluation IEP team meeting within required timelines.

Note: "consent" means that a parent—

- 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;
- understands and agrees in writing to the carrying out of the activity and lists the records, if any, that will be released and to whom; and
- understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

COMAR provides that a public agency shall promptly request parental consent to assess a student to determine if the student needs special education and related services—

- when, prior to the referral, the student has not made adequate progress after an appropriate period of time when provided appropriate instruction; and
- whenever a student is referred for an evaluation.

Informed Consent Requirements

Parental Consent: Before an IEP team conducts an initial evaluation to determine if the student qualifies as a "child with a disability," the team must make reasonable efforts to obtain written informed consent from the parent. As part of obtaining written informed consent, the IEP team must provide a description of any evaluation procedures the team proposes to conduct.

The case manager should maintain written documentation of efforts to meet IDEA 2004 obligations with regard to obtaining parental consent by fully informing parents of the activities the IEP team plans to undertake for an initial evaluation such as telephone records, copies of correspondence sent to the parents and any responses received, or records of visits to the parents' home.

If a parent does not provide consent for an initial evaluation or fails to respond to a request to provide consent, the IEP team may pursue the initial evaluation by requesting mediation and/or a due process hearing.[9] The principal or his/her designee should contact the school's special education supervisor[10] before filing a dispute resolution application. If MCPS declines to pursue mediation or due process regarding conducting an initial evaluation, there is no violation of its Child Find or evaluation obligations.

Consent for Wards of the State: For an initial evaluation only, if a child is a ward of the state (which does not include a child who has a foster parent) and does not reside with his/her parent(s), the school district must make "reasonable efforts" to obtain the informed consent from the parent for an initial evaluation. The school district is not required to obtain consent from the parent if—

9. IDEA 2004 prohibits MCPS from pursuing mediation or a due process hearing if the parent of a private school child or a child who is being home schooled refuses to consent to an initial evaluation.
10. See "Frequently Requested Telephone Numbers" on the Special Education website for names of and contact information for MCPS special education supervisors.

- despite reasonable documented efforts to do so, the district cannot discover the whereabouts of the parent;
- the parent's rights have been terminated; or
- parental rights to make educational decisions have been subrogated by a judge and given to an individual appointed by the judge to represent the child.[11] (In this instance, MCPS must obtain consent from the appointee.)

Surrogate Parents:[12] A surrogate parent is defined in the *Annotated Code of Maryland* as: "a person who is appointed by the local school superintendent (or designee) to act in place of a parent of a child in the educational decision making process." A surrogate parent may not be an employee of MCPS or any other agency that is involved in the education or care of the child. The surrogate cannot have interests that conflict with the interests of the child and must have knowledge and skills that ensure adequate representation of the child.

IDEA 2004 provides that—

- in the case of a child who is a ward of the state, a surrogate parent may alternatively be appointed by the judge overseeing the child's care, provided the individual meets the state requirements, or, in Maryland, by the superintendent;
- in the case of a child who is an unaccompanied homeless youth, as defined in Section 725(6) of the *McKinney-Vento Homeless Assistance Act,* the school system shall appoint a surrogate; and
- reasonable efforts should be made by the state to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

Parental Appeal Rights

Parents may file for mediation and/or a due process hearing, if the IEP team determines that—

- no additional data is needed to conduct the evaluation; or
- the student does not appear to be a student with a disability or a student with a developmental delay.

Follow-up Responsibilities

The parent must be provided with prior notice of the IEP team's decisions. If a confidential student file does not already exist, one must be established. The parent must be provided written notice of the existence of the confidential file and of his/her right to inspect and review the file. (*See* MCPS Regulation JOA-RA: *Student Records* for more information on confidential files.)

11. In Maryland, the state (social worker, most group homes, or any individual acting on behalf of the state) may not make educational decisions.
12. See the *Pupil Personnel Worker Operational Handbook* for more information. Available from the MCPS Department of Student Services. Contact the Equity Assurance and Compliance Unit (301-517-5864) for more information and assistance is obtaining a surrogate parent.

Legal References

20 U.S.C. 1402(36); 1412(A)(1); 1413(F);1414(a)(1)(D)(i)(I); 1414(a)(25), 1412(c), 1415(b)(2)

34 CFR §§300.30 and 300.300-300.301

Md. Ann. Code ED § 8-412

COMAR 13A.05.01.04 and .06

INITIAL EVALUATION/IDENTIFICATION

Prior to referral to a screening IEP team, the student must have been provided systematic interventions pursuant to the recommendations from the school-based problem solving team. Implementation data from the interventions must be reviewed as part of the referral process. In cases where student performance has improved following the implementation of systematic interventions, referral to screening may not be appropriate. For students who have failed to respond as expected to appropriate interventions, implemented with fidelity for a sufficient period of time, referral to screening may be necessary.

Once a screening IEP team determines that a student may have an educational disability, an evaluation IEP team meeting must confirm the existence of the disability and, if so, determine whether the student requires special education and, possibly, related services. The evaluation IEP team should include professionals qualified to make eligibility decisions regarding the suspected disability. If the screening IEP team determines that additional assessments or other activities are required to assist the team in conducting the evaluation, these must be conducted prior to the evaluation IEP team meeting.

What Is/Is not an Eligibility Evaluation?

Procedures That Are Considered Eligibility Evaluations: IDEA 2004 provides that an eligibility evaluation consists of full and individual procedures designed to determine whether a student is a "child with a disability" and to determine the educational needs of the student. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student may be classified.

Procedures That Are not Eligibility Evaluations: IDEA 2004 clarifies that "the screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not to be considered an evaluation for eligibility for special education and related services." Any informal assessments or screening procedures conducted for instructional purposes that are not "sole possession" records[13] may, however, be considered as part of the eligibility evaluation process and/or in the development of the student's IEP.

13. Under the Family Educational Rights and Privacy Act, "sole possession" records means "records of instructional, supervisory, and administrative personnel and educational personnel that are in the sole possession of the maker thereof and which are not accessible or revealed to any other substitute." (20 U.S.C. §1232g (a)(4)(B))

Scheduling the Eligibility Evaluation IEP Team Meeting

The eligibility evaluation IEP team meeting must be held no later than 60 calendar days from the screening IEP team's receipt of the parent's authorization for assessments or no later than 90 calendar days from the date of receipt of the initial referral from the parent or the school-based problem solving team, whichever is sooner. The screening and evaluation IEP team meetings can be combined if the screening IEP team determines it has sufficient data on which to base the eligibility decisions and the parent agrees to proceed. If, however, the screening IEP team recommends additional assessments or other activities, the evaluation IEP team meeting is scheduled within the required timeframe. If the evaluation IEP team meeting is held beyond the 60- or 90-day timeframe, the IEP team must document the reason for noncompliance.

The parent must receive 10 calendar days written notice of the evaluation IEP team meeting.

The 60- or 90-day timeframe will not apply if—

- the student enrolls in an MCPS school after the relevant timeframe has begun and prior to a determination by the student's previous local school system as to whether the student is a child with a disability, as long as MCPS is making sufficient progress to ensure a prompt completion of the evaluation and the parent and MCPS agree to a specific time when the evaluation will be completed;[14] or
- the parent of the child repeatedly fails to, or repeatedly refuses to, produce the child for evaluation.

In these instances, the case manager must keep an accurate written record of the parent's and school's agreement and/or of the parent's failure or refusal to produce the child for the evaluation.

> *Note*: COMAR provides that a public agency shall adhere to the timeframes for evaluation "unless the student's parent and the IEP team extend the timeframe by mutual written agreement."

Staff Responsibilities Prior to the Eligibility Evaluation IEP Team Meeting

If authorization was not obtained for any recommended assessments at the screening IEP team meeting, the case manager or designated assessor should obtain written informed consent from the parent without delay.

Following the screening IEP team meeting, all staff designated to conduct assessments must—

- conduct an assessment that meets the assessment criteria listed below; and
- write, date, and sign an assessment report which—
  - describes the student's performance in each area of suspected disability;
  - addresses the student's educational needs;
  - describes the instructional implications of the assessment results to enable the student to participate and make progress in the general education curriculum (or for a prekindergarten child to participate in appropriate activities);
  - provides any other information useful to the team's decision making; and
  - describes the extent to which assessment procedures were not conducted under standard conditions.

MCPS evaluators must attach their completed report to the online IEP.

Assessment Criteria

In conducting the evaluation, the IEP team and individual assessors must use a variety of assessment tools[15] and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, which may assist in determining—

- whether the student is a child with a disability;
- the student's educational needs; and
- the content of the student's IEP, including information related to enabling the student to be involved in and make progress in the general education curriculum or, for prekindergarten children, to participate in appropriate activities.

The IEP team and individual assessors must ensure that—

- the child is assessed in all areas of suspected disability;
- no single measure or assessment is used as the sole criterion for determining whether the student is a child with a disability or for determining an appropriate educational program;
- only technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;
- assessments and other evaluation materials—
  - are selected and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically,

14. IDEA 2004 provides that assessments of students who transfer from one public agency to another in the same academic year should be coordinated with the prior and subsequent schools as necessary and as expeditiously as possible to ensure prompt completion of full evaluations. See the Special Education website for a model letter to parents regarding assessments of students who transfer to MCPS who were recommended by the previous school system.

15. IDEA 2004 changed the term "test(s)" to "assessment(s)," thus indicating that as part of the evaluation process data collection on a student should include functional academic and behavioral assessment measures, such as curriculum-based assessments and measures.

developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

- are used for the purposes for which the assessments or measures are valid and reliable;
- are administered by trained and knowledgeable personnel;
- are administered in accordance with any instructions provided by the producer of such assessments;
- provide relevant information that directly assists persons in determining the educational needs of the child;
- include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient; and
- are selected and administered so as to best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level, or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills, unless those skills are the factors that the test purports to measure.

Special Rule for Eligibility Determinations

A student may not be determined to be a child with a disability if **the determinant factor** is—

- lack of appropriate instruction in reading, including the "essential components of reading instruction"[16] which means explicit and systematic instruction in—
  - phonemic awareness;
  - phonics;
  - vocabulary development;
  - reading fluency, including oral reading skills; and
  - reading comprehension strategies;
  - lack of appropriate instruction in mathematics; or
  - limited English proficiency; and

  the student does not otherwise meet the criteria as a student with a disability.

If one of these factors is the determinant factor, the IEP team may determine that the student is not eligible as a student with a disability.

16. As defined in §1208(3) of the Elementary and Secondary Education Act of 1965.

Documentation Needed During the Eligibility Evaluation IEP Team Meeting

The IEP team must ensure that the information obtained from all sources is documented and carefully considered at the evaluation meeting. At a minimum, the IEP team will need the following:

- Page 1 of the IEP (to record IEP team participants)
- Page 2 of the IEP (to record eligibility determination)
- The written report of each assessor
- MCPS Form 336-01: *Addendum to MCPS Forms*

Note: The written report of each assessor must be attached electronically using the online IEP system by the time of the IEP team meeting to determine eligibility.

If the team suspects the student may have a specific learning disability, *Specific Learning Disability Evaluation Form* will be needed. If the team suspects the student may have an emotional disturbance or intellectual disability, the appropriate MCPS procedures will be followed.

Eligibility Evaluation IEP Team Meeting Agenda

After welcoming the parent and anyone accompanying him/her, introducing the members of the IEP team,[17] and assigning someone to complete the IEP forms, the chair explains the purpose of the meeting, summarizes the recommendations of the screening IEP team, and explains the meeting process, including the parents' role as equal partners. The IEP team uses page 2 of the IEP, *Initial Eligibility Determination* section, to guide the discussion. Following the meeting, the parent must be provided with a copy of the evaluation documents, including the determination of eligibility.

Note: The IEP team identifies a child's primary disability; however, services will meet an eligible child's needs and are not determined solely by the child's eligibility category.

Review of Assessment Results: The IEP team reviews curriculum-based assessment data, intervention data, state assessment information, teacher reports, any evaluation reports recommended as a part of the screening process, medical information, social or cultural background, adaptive behavior information, information provided by the parent, and documents the consideration of all relevant information on the IEP. The IEP team may choose to document the discussion on MCPS Form 336-01: *Addendum to MCPS Forms.*

Application of IDEA Disability Criteria: The team next determines whether the student has one or more of the following educational disabilities and whether the rule for eligibility determination applies. The team documents the

17. All staff members who assessed the student should make every attempt to arrange their schedules to attend the evaluation IEP team meeting.

primary disability on page 2 of the IEP, *Initial Evaluation Eligibility Data*.

Autism: a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3 that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A child who manifests the characteristics of autism after age 3 could be identified as having autism if the criteria described above are satisfied.

Deaf-blindness: concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that the student cannot be accommodated in special education programs solely as a student with deafness or a student with blindness.

Deafness: a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a student's educational performance.

Developmental delay: this categorical option is used in Montgomery County with children with disabilities ages 3 through 5 or entry to Grade 1, whichever comes first, who are experiencing at least a 25 percent or greater delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who by reason thereof, needs special education and related services.[18]

Emotional disturbance: 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: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. Includes schizophrenia; does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

Hearing impairment: an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance, but that is not included under the definition of deafness.

Intellectual disability: significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a student's educational performance.

Multiple disabilities: concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

Orthopedic impairment: a severe orthopedic impairment that adversely affects a student's educational performance, including impairments caused by congenital anomaly; impairments caused by disease (e.g., poliomyelitis, bone tuberculosis); and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

Other health impairment: having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and adversely affects a student's educational performance.

Specific learning disability: a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; mental retardation; emotional disturbance; or environmental, cultural, or economic disadvantage.

Speech or language impairment: a communication disorder, such as stuttering, impaired articulation, language impairment, or a voice impairment that adversely affects a student's educational performance.[19]

Traumatic brain injury: an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; and physical functions, information processing, abstract

18. This is the only IDEA-eligibility category that does not require evidence of educational impact.

19. The determination of eligibility for a speech or language impairment does not require cognitive referencing.

thinking, problem solving, perceptual and motor abilities, physical functions, and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

Visual impairment: impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

Consideration of educational impact: If the IEP team determines that the student meets one or more of the IDEA disability criteria, the team must then determine whether the disability has educational impact. To be eligible under IDEA as a "child with a disability" the student must require specialized instruction such as the adaptation of the content, methodology, or delivery of instruction. If the team determines that the disability has educational impact, they also determine whether the student requires related services.

If the IEP team determines that, although the student meets one or more of the IDEA disability criteria, he/she does not require special education, the student may be referred to the school-based 504 team for a Section 504 evaluation.

IDEA 2004 Provisions Regarding Specific Learning Disability

In determining whether a student has a specific disability (SLD), a public agency—

- may use a process that determines whether a student responds to scientific research-based interventions as part of its assessment procedures;

> *Note*: Response to intervention (RtI) has been defined as the "practice of (1) providing high-quality instruction/intervention matched to student needs and (2) using learning rate over time and level of performance to (3) make important educational decisions."[20]

- may use alternative research-based procedures for determining whether a student has an SLD; and
- may not be required to use a severe discrepancy model between intellectual ability and achievement.

The IEP team shall determine that a student has an SLD if—

- The student does not achieve adequately for the student's age or meet state-approved grade-level standards when provided with learning experiences appropriate for the student's age and ability levels in one or more of the following areas—
  - oral expression,
  - listening comprehension,
  - basic reading skills,
  - reading fluency skills,
  - reading comprehension,
  - written expression,
  - math calculation,
  - math reasoning,
  - math problem solving, and
- The student's lack of achievement is not primarily the result of—
  - a visual, hearing, or motor impairment;
  - mental retardation;
  - emotional disturbance;
  - cultural factors;
  - environmental, or economic disadvantage; or
  - limited English proficiency.

The IEP team may consider evaluative data and appropriate assessments if the team determines that data to be relevant to the identification of an SLD if the student—

- does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified above, when using a process based on the student's response to scientific research-based intervention; or
- exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved, grade-level standards, or intellectual development.

To ensure that underachievement in a student suspected of having an SLD is not due to lack of appropriate instruction in reading or math, the IEP team shall consider, as part of the evaluation—

- data that demonstrates that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular educational settings, delivered by qualified personnel; and
- data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction that was provided to the student's parent.

Observation: If a student is suspected of being a student with an SLD, or is a student with an SLD, at least one member of the IEP team, other than the student's regular education teacher, shall observe the student in the student's learning environment in which the concerns raised may be observed, including the regular classroom setting, to document academic performance and behavior in the areas of difficulty. The information obtained from the observation shall be used by the IEP team in determining whether the student has an SLD.

Written Report: When a student is suspected of having an SLD, the IEP team shall prepare a written report that includes—

- a statement of whether the student has an SLD;
- the basis for making the determination;
- the relevant behaviors, if any, noted during observation of the student;
- the relationship of the behaviors to the student's academic functioning;
- the educationally relevant medical findings, if any;
- the determination of the IEP team concerning the effects of visual, hearing, or motor impairment, intellectual

20. *Response to Intervention: Policy Considerations and Implementation,* National Association of State Directors of Special Education, Inc. (2005), page 5.

disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level.

Pursuant to the MCPS Collaborative Problem Solving and EMT Guidelines, MCPS requires that a student participate in a process to assess the student's response to systematic intervention prior to referral to an IEP team for consideration of eligibility for special education services.

When determining the existence of a Specific Learning Disabilities Evaluation (SLD), the form must be used and the accompanying procedures followed. The SLD form serves as the written certification of each IEP team member as to whether the written report reflects the member's conclusion.

If the written report does not reflect an IEP team member's conclusion, the team member shall submit a separate statement presenting the team member's conclusions.

Maryland State Department of Education Guidance Regarding Multiple Disabilities

- In identifying a student as having multiple disabilities, the MSDE *IEP and Process Guide* requires IEP teams to identify two or more disabling conditions that manifest themselves with such severe educational problems that the student's educational needs must be addressed through specialized instruction and supplementary services that address the multiple identified disabilities.

Assessment data must show that the criteria for each of the concomitant impairments are met.

Eligibility Issues Concerning Attention Deficit Disorder/Attention Deficit Disorder with Hyperactivity

Eligibility Criteria under IDEA: Children with attention deficit disorder/attention deficit disorder with hyperactivity (ADD/ADHD) may be eligible under the IDEA category of other health impairment (OHI). IDEA defines OHI as "having limited strength, vitality or alertness,[21] including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that—

- is due to chronic or acute health problems such as asthma, ADD/ADHD, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and
- adversely affects a student's educational performance.

Eligibility Criteria under Section 504 of the *Rehabilitation Act of 1973*. Section 504 of the *Rehabilitation Act of 1973* (Section 504) prohibits discrimination against individuals with disabilities. A student with ADD/ADHD may be eligible under Section 504 if the ADD/ADHD significantly limits the student's educational performance.[22]

In MCPS, Section 504 eligibility is determined by the school's 504 team. To be eligible under Section 504, the student must have a mental or physical impairment that substantially limits a major life activity. Recent changes to federal regulations have extended the definition of a major life activity. A diagnosis of the mental impairment of ADD/ADHD may be made by a physician or psychologist. Absent a clinical diagnosis of ADD/ADHD, an MCPS school psychologist may make a determination that a student with significant attentional problems should be evaluated by the school-based 504 team for Section 504 eligibility. The school psychologist follows the procedures detailed in MCPS Form 270-2A: *Authorization for School Psychologists Section 504 Attentional Disorders Assessment*. The assessment of whether the ADD/ADHD (or the significant attentional problem) substantially limits the student's performance is made in MCPS by the school's 504 team.

Determining Whether to Refer a Student with ADD/ADHD to a Screening IEP Team Meeting or to a Section 504 Team Meeting: If, after a reasonable period of monitored interventions including a BIP, the school suspects that the student needs special education and related services, the student must be referred to a screening IEP team meeting. If the student is already eligible under IDEA, but his/her IEP does not sufficiently address attentional problems, a reevaluation planning IEP team meeting should be held.

If the student is a general education student who appears only to need accommodations to address his/her significant attentional problems, the student should be referred to a Section 504 team for an evaluation. General education students whose attentional problems are not suspected of rising to the level of a Section 504 disability should be referred to a school-based problem solving team for classroom supports.

> *Note*: In no case should a student have both an IEP and a Section 504 plan. In no case should a student who is not currently identified as a Section 504 student be given a Section 504 plan as an interim accommodation while awaiting the results of an IDEA screening/evaluation.

21. The Part B IDEA regulations do not provide a definition of "limited alertness." The Office of Special Education Programs in the U.S. Department of Special Education suggests that the applicable context is that of educational performance. The "limited alertness" criterion would be met in a situation where the student's heightened alertness to environmental stimuli results in limited alertness with regard to educational performance. *Letter to Sawyer,* 30 IDELR 540 (OSEP 1998).

22. See the MCPS *Handbook for Implementing Section 504 of the Rehabilitation Act of 1973,* available from the Department of Student Services.

Independent Educational Evaluations

An independent educational evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. An IEE may be an educational, psychological, speech, or other type of assessment used in the diagnosis or assessment of strengths and weaknesses of children with disabilities. Parents may obtain an IEE at their own expense at any time. IDEA 2004 provides that parents may seek an IEE at public expense only when they are in disagreement with an existing MCPS assessment. Any IEE provided by the parent that meets the public agency's criteria must be considered by an IEP team in making any decision regarding the provision of a free appropriate public education to the student and be placed in the student's confidential file.

A parent is entitled to only one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees.

Responding to a Written Request for an IEE: MCPS must respond to parents' written requests for an IEE without unnecessary delay.[23] If parents make an oral request, they should be advised to put the request in writing. If parents disagree with an MCPS assessment and/or request an IEE at public expense, the principal or his/her designee should contact the supervisor of EACU immediately to discuss the options listed below. In addition, the principal or his/her designee should forward a copy of the parent's letter and a copy of the MCPS assessment report in question to the supervisor of EACU for review.

When parents request an IEE at public expense, MCPS has two following options:

1. File for a due process hearing to show that the MCPS evaluation is appropriate.
2. Ensure that an IEE is provided at MCPS' expense.

If a decision is made by MCPS to defend its assessment, MCPS will make every attempt to proceed to hearing within

MCPS Criteria for Qualifications of Independent Evaluators:

Type of Assessment	Qualifications
Academic Achievement	Certified Special Education Teacher, Licensed Psychologist
Adaptive Behavior*	Licensed Psychologist
Assistive Technology	Certified or Licensed Speech/Language Pathologist or Certified Special Education Teacher
Auditory Acuity	Certified or Licensed Audiologist
Auditory Perception	Certified or Licensed Audiologist
Cognitive*	Licensed Psychologist
Health (including Neurological)	Licensed Physician
Motor	Licensed Physical Therapist or Registered Occupational Therapist
Speech and Language	Certified or Licensed Speech/Language Pathologist
Social/Emotional/Behavioral*	Certified Special Education Teacher, Social Worker (MSW), Licensed Psychiatrist, or Licensed Psychologist
Vision	Licensed Ophthalmologist or Optometrist
Functional Vision	Certified Teacher of the Visually Impaired
Vision Perception	Certified Special Education Teacher or Licensed Psychologist

**Note*: Cognitive, adaptive behavior, and social/emotional/behavioral evaluations can be accepted only from psychologists who are licensed to practice psychology. Therefore, MCPS cannot accept evaluations from school psychologists who are practicing psychology outside the scope of their public school employment and are not licensed. Similarly, evaluations offered by certified special education teachers and social workers must not exceed their legally defined scope of practice or otherwise constitute the practice of psychology.

23. Parents of children who have been placed at parent expense in a private elementary or secondary school who disagree with an evaluation conducted by MCPS may file a request for an IEE with MCPS.

30 days of the decision. The decision whether to fund or to defend MCPS assessments is made by a multidisciplinary team at the central level, after receiving input from the director or supervisor of the MCPS assessor.

MCPS Criteria for Location Limitations for Independent Evaluators: Independent evaluators must be located within the Washington, D.C., Metropolitan Area, including Washington, D.C., Maryland, and Virginia. Evaluators outside of this area will be approved only on an exception basis, provided the parents can demonstrate the necessity of using personnel outside the specified area. MCPS may elect to limit the IEE to specific evaluators who meet the stated criteria.

MCPS Criteria for Test Instruments: MCPS's criteria for IEE test instruments are those found in IDEA 2004. These criteria are listed in this Chapter and in the model letter to parent concerning requests for IEEs on the MCPS Special Education website.

Consent Requirements for the Implementation of Initial IEP Services

IDEA 2004 recognizes that parents have the ultimate choice in deciding whether their child should receive special education and related services. Therefore, informed parental consent for the initiation of special education and related services is required by the law.[24] The school must make reasonable attempts to obtain consent for initial IEP services. The case manager should maintain written documentation such as telephone records, copies of correspondence sent to the parents and any responses received, or records of visits to the parents' home, of his/her efforts to obtain consent.

School systems are specifically denied the ability to request dispute resolution to override a parent's refusal to grant consent to initiate special education services. In such instances, MCPS cannot be found to have denied the student a free appropriate public education (FAPE) and the parent may not assert any of the protections under the discipline procedures of IDEA 2004. (See the MCPSSpecial Education website for a model letter to parents who refuse consent to the initiation of special education services for their child.)

Revoking Parental Consent

Amendments to IDEA 2004 permit parents to revoke consent for special education services at any time. The parent must make the request to revoke services in writing. The student's educational records are not required to be amended to remove any references to the student's eligibility and receipt of special education services in cases where the parent revokes consent. When parents wish to revoke consent, the school is required to inform the parents in writing of the date on which the student will no longer receive services.

In cases where the parent has revoked consent for the provision of special education services, the school is no longer required to provide the student with FAPE; is not required to convene an IEP team meeting; and the student is no longer entitled to any disciplinary or other protections afforded students pursuant to the IDEA. Further, the school system is not permitted to request mediation or a due process hearing to override the parent's revocation of consent.[25]

Follow-up Responsibilities

If a student is found eligible for special education services and the parent is willing to accept special education services, the IEP team either develops an IEP at the evaluation IEP team meeting or schedules another IEP team meeting within 30 calendar days to develop the IEP. If the IEP will be developed at a later IEP team meeting, the parent should be provided a copy of MCPS Form 336-39: *Parent Report* on which to record his/her input.

If the parent refuses to give informed consent for the initial services or if the student is found not eligible for services, the student should be referred to the school's problem-solving team to consider whether the student needs specific strategies and supports through general education.

The parent must be sent prior notice[e] of the IEP team's decision prior to implementation of those decisions.

Legal References

20 U.S.C. 1402(3) and (30); 1414(a)(1) and (b);1412(a)(6)(B); 1414(a)(1)(D)(i)(II)

34 CFR §§300.301-300.311

COMAR 13A.05.01.04-06

REEVALUATION PLANNING AND DETERMINATIONS

Reevaluating a Student's Eligibility and Need for Special Education

A reevaluation of a student's eligibility and need for special education must be conducted if the IEP team determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation, or if the child's parents request a reevaluation. When a reevaluation is warranted, the IEP team conducts a two-step process involving reevaluation planning and reevaluation determinations. The determinations step includes making any necessary revisions to the student's IEP.

Limitation on Conducting Reevaluations

Under IDEA 2004, a reevaluation shall occur—

- not more frequently than once a year, unless the parent and the IEP team agree otherwise; and

24. Informed parental consent is not required for subsequent IEPs; however, parents retain the right to request dispute resolution if they disagree with the decisions of IEP teams concerning any subsequent IEPs. Filing for mediation or a due process hearing gives the parents and the child "stay-put" protection until the matter is resolved.

25. OSEP has clarified that if parents refuse to consent to all services except for a related service, the school district is not required to provide just the related service. (*Letter to Yudien,* OSEP (2003)).

Note: Multiple evaluations in one year may be needed, e.g., for a child with a degenerative condition that affects the special education and related services needed or for very young children (ages 3 through 4) who are experiencing rapid development that may affect the need for services. 71 FR 46746

- at least once every three years, unless the parent and the IEP team agree that a reevaluation is unnecessary.

When the parent and the IEP team agree that a triennial reevaluation is not necessary, the rationale for the agreement should be documented and placed in the student's confidential file.

Determining that a Student Is no Longer a Student with a Disability

IDEA 2004 requires that an IEP team must "conduct assessment procedures" before determining that a student is no longer a student with a disability. Assessment procedures are initiated with reevaluation planning, as described below. A reevaluation is not required, however, before the termination of a student's eligibility due to graduation from secondary school with a regular diploma[26] or due to exceeding the age eligibility for FAPE under state law.

Some students who are determined to no longer be eligible as a student with a disability may meet the eligibility criteria of Section 504 of the Rehabilitation Act of 1973. Such students should be referred to the school's Section 504 team for a Section 504 evaluation.[27]

STEP I. REEVALUATION PLANNING

Scheduling the Reevaluation Planning IEP Team Meeting

Triennial Planning: Where the parent and IEP team determine that a triennial reevaluation is warranted, a reevaluation planning IEP team meeting should be held no later than 90 days prior to three years from the date of the previous reevaluation (or initial evaluation) IEP team meeting.

The parent must receive 10 calendar days' notice of the IEP team meeting.

Upon School or Parent Request: Upon receipt of a written parent request or staff request for reconsideration of a student's need for special education and/or related service needs, the school should schedule a reevaluation planning IEP team meeting. In scheduling the reevaluation planning meeting, school staff should keep in mind that the reevaluation IEP team meeting must be held no later than 90 calendar days from the date of receipt of the written referral from the parent or the school. The parent must receive 10 calendar days' written notice of the reevaluation planning and reevaluation IEP team meetings.

The 90-day timeframe will not apply if—

- the student enrolls in an MCPS school after the relevant timeframe for reevaluation has begun and prior to a determination by the student's previous local school system as to whether the student continues to be a child with a disability, as long as MCPS is making sufficient progress to ensure a prompt completion of the reevaluation and the parent and MCPS agree to a specific time when the reevaluation will be completed; or
- the parent of the child repeatedly fails to, or repeatedly refuses to, produce the child for reevaluation.

In these instances, the case manager must keep an accurate written record of the agreement or the parent's failure or refusal to produce the child for the reevaluation.

Staff Responsibilities Prior to the Reevaluation Planning IEP Team Meeting

Prior to the reevaluation planning IEP team meeting, the student's current case manager should—

- review the student's folders to see that all current data, reports, and current IEP are included; and
- distribute copies of MCPS Form 272-7: *Elementary Teacher Report Form* or 272-8: *Secondary Teacher Report Form*[28] to the student's teachers.

Documentation Needed During the Reevaluation Planning IEP Team Meeting

At a minimum, the IEP team will need—

- page 1 of the IEP (to record IEP team participants);
- *Reevaluation Planning Form;*
- copies of the most recent reports of all assessments of the student;
- a copy of the student's most recent IEP;
- MCPS Form 336-01: *Addendum to MCPS Forms* (optional);
- any new information provided by the parent; and
- a copy of the *Procedural Safeguards—Parental Rights* brochure (in the event the parent requests a copy).

Reevaluation Planning IEP Team Meeting Agenda

After welcoming the parent and anyone accompanying him/her, introducing the members of the IEP team, and assigning someone to complete the reevaluation forms, the chair explains the purpose of the meeting and the meeting process, including parents' role as equal partners.

Using MCPS *Reevaluation Planning Form,* the team—

- reviews existing assessment data, including curriculum-based assessments, state and districtwide assessments, report card data, observation data, parent report, functional behavioral assessments, and reports of formal assessments;
- determines whether additional assessment data are needed to determine—

26. IDEA 2004 provides that a "regular high school diploma" does not include an alternative degree that is not fully aligned with the state's academic standards, such as certificate or a general educational development credential (GED).
27. See the *MCPS Handbook for Implementing Section 504 of the Rehabilitation Act of 1973.* Available from the MCPS Department of Student Services.
28. Available on the MCPS Forms website

  - whether the student continues to have a disability or has an additional disability;
  - the educational needs of the student;
  - present levels of academic achievement and related developmental needs of the student;
  - whether additions or modifications to special education and/or related services are needed to enable the student to meet his/her measurable annual IEP goals and to participate in the general curriculum; and
  - whether the student continues to need special education and related services;
- identifies the diagnostic questions to be answered if additional data is necessary and, if so, identifies the assessments required to answer the diagnostic questions;

> *Note*: If the IEP team determines that existing "relevant functional and developmental information" adequately documents both the student's response to interventions and the need for special education, then no additional testing (e.g., individualized standardized testing) need be conducted.

- obtains informed parental consent for any recommended assessments; and
- schedules the reevaluation IEP team meeting for no later than 90 calendar days from the reevaluation planning IEP team meeting.[29]

Requirements if Additional Data Are not Needed to Conduct the Reevaluation Determinations

If the IEP team decides that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the IEP team must provide written notification[30] to the parents of that determination and the reasons for the determination. The notification must also indicate that parents have the right to request MCPS to conduct assessment procedures to determine whether their child continues to be a student with a disability and to determine the student's educational needs.

> *Note*: IDEA 2004 provides that if the parents ultimately request an assessment, appropriate staff must conduct the assessment prior to the reevaluation determinations IEP team meeting, which must be held within 60 days of receiving notice of the parent's request/authorization for the assessment.

29. Any needed revisions to the students IEP must also be completed within the 90-day timeframe.
30. See "Notice to Parent That No Additional Data is Needed to Complete Evaluation Process" on the MCPS Special Education website.

Consent Requirements for Conducting Additional Assessments for Reevaluation Purposes

The school must make reasonable attempts to obtain consent for reevaluations. The case manager should maintain written documentation such as telephone records, copies of correspondence sent to the parents and any responses received, or records of visits to the parents' home, of his/her efforts to obtain consent. If a parent fails to respond to reasonable efforts to obtain consent, the public agency may conduct the reevaluation. The school should consult the special education supervisor before proceeding.

If a parent refuses consent to a reevaluation, the public agency may, but is not required to, pursue the reevaluation by filing for mediation or a due process hearing.

Follow-up Responsibilities

The parent must be provided with prior notice of the IEP team's decisions. Proper completion of the reevaluation form will ensure that parents receive prior notice of the IEP team decisions.

Prior to the reevaluation determinations IEP team meeting, all staff designated to conduct assessments must—

- obtain written parental authorization on MCPS Form 336-31: *Authorization for Assessment*[e], to conduct the assessment if this was not obtained at the reevaluation planning IEP team meeting;
- conduct the assessment, which must meet the criteria listed in the *Initial Evaluation/Identification* section of this handbook; and
- write, date, and sign an assessment report which—
  - address the areas of concern identified in the planning process at the reevaluation planning IEP team meeting by answering the diagnostic questions;
  - explain any deviations from behavioral, cognitive, developmental, educational, or physical milestones;
  - provide instructional implications of the assessment results to enable the student to participate and progress in the general curriculum, or for a preschool child to participate in appropriate activities; and
  - provide any other information useful to the IEP team's decision-making process.
  - attach report to event in the online IEP.

STEP 2. REEVALUATION DETERMINATIONS

Scheduling the Reevaluation Determinations IEP Team Meeting

Triennial: The student's first triennial reevaluation determinations IEP team meeting must be held no later than three years from the initial evaluation IEP team meeting. Subsequent reevaluation determinations IEP team meetings must be held no later than three years from the previous reevaluation determinations IEP team meeting.

All reevaluation determinations IEP team meetings must be held no later than 90 calendar days from the reevaluation

planning IEP team meeting, which must precede the determinations meeting. Any needed revisions to the student's IEP must be made within this timeframe.

Upon School or Parent Request: The reevaluation IEP team meeting must be held no later than 90 calendar days from the date of receipt of the written referral from the parent or the school.

The parent must receive ten calendar days' written notice of the reevaluation determinations IEP team meeting.

Documentation Needed During the Reevaluation Determinations IEP Team Meeting

At a minimum, the IEP team will need—

- page 1 of the IEP (to record IEP team participants);
- page 2 of the IEP (Continued Eligibility Data)
- the written report of each assessor;
- MCPS Form 336-01: *Addendum to MCPS Forms* (optional);
- a copy of the *Procedural Safeguards—Parental Rights* brochure (in the event the parent requests a copy).

If the team suspects the student may have a specific learning disability, *Specific Learning Disability Evaluation Form* is completed and the accompanying procedures followed. If the team suspects the student may have an emotional disturbance or intellectual disability, appropriate forms must be used and accompanying procedures should be followed.

Reevaluation Determinations IEP Team Meeting Agenda

All staff members who assessed the student should make every attempt to arrange their schedules to attend the reevaluation determinations IEP team meeting.

After welcoming the parent and anyone accompanying him/her, introducing the members of the IEP team, and assigning someone to complete the reevaluation determinations and IEP forms, the chair explains the purpose of the meeting, summarizes the recommendations of the reevaluation planning IEP team, and explains the meeting process, including the parents' role as equal partners.

Using page 2 of the IEP (*Continued Eligibility Data*) as a guide, the team—

- reviews any new assessment results;
- determines whether the student continues to have or has one or more of the educational disabilities listed in the section on *Initial Evaluation/Identification* in this chapter[31]; and
- if so, determines whether the student continues to be eligible for special education by determining whether, because of his/her disability, the student continues to require specialized instruction and, possibly, related services.

If a student is found to continue to be eligible for special education services, the IEP team makes any necessary revisions to the student's IEP. Another IEP team meeting may be scheduled to develop the IEP provided the IEP can be completed before the 90 calendar day timeframe elapses. If the IEP is to be developed at a later IEP team meeting, the parent should be provided with a copy of MCPS Form 336-39: *Parent Report*[e].

Follow-up Responsibilities

A copy of the relevant IEP pages and copies of any assessment reports must be given to the parent with the prior written notice. Originals of all documents must be included in the student's confidential file.

If the student is no longer eligible for services, he/she may be referred to the school's problem solving team to consider whether the student requires strategies and supports through general education.

Legal References

20 U.S.C. 1414(a)(2)

34 CFR §§300.8 and .301-.311

COMAR 13A.05.01.02(21) and 13A.05.01.06

31. Definitions taken from IDEA 2004 regulations at 34 CFR §300.8: *Child With a Disability* and COMAR 13A.05.01.03

DETERMINING PLACEMENT; REFERRALS FOR MORE INTENSIVE SERVICES; HOME AND HOSPITAL TEACHING

DETERMINING PLACEMENT

Once the Individualized Education Program (IEP) team has decided what kind of specialized instruction the student requires, including the goals and objectives for instruction, the team decides the type of services that will address the goals and objectives. This decision is referred to as a "placement" decision. A student's placement must be determined at least annually, and parents must be a part of that decision making.

The primary principle governing placement decisions is that they must be made in conformity with the law's "least restrictive environment" (LRE) requirements. The LRE principle is intended to ensure that a child with a disability is educated in the least restrictive setting where he/she can be successful and reflects the law's strong presumption that children with disabilities be educated in general education classes with appropriate aids and services. The overriding rule for determining placement is that placement decisions for all children with disabilities, including preschool children, must be made on an individual basis and may not be based on the child's disability classification or on the need for accommodations or modifications required in the general education setting.

> *Note*: Essentially, LRE means that, unless the IEP of the student requires some other arrangement, the student is educated in the school or typical early childhood setting that the student would attend if not disabled.

With the exception of children for whom a self-contained class or special school represents the appropriate LRE, students receiving special education services should be considered general education students who receive a set of additional important services that focus on improved student performance and results.

What Is/Is Not a Placement?

The U.S. Department of Education and courts have consistently held that placement refers to the provision of special education services rather than to a specific place such as a specific classroom or school. Placement, therefore, does not mean the location of the services. The location where services will be provided is an administrative matter.

Who Makes Placement Decisions?

Placement decisions must be made by a group, including the parents and other persons knowledgeable about the child, the meaning of evaluation data, and placement options. Placement decisions are made by the IEP team. School-based IEP teams make decisions about placements for all school-based services, including special class services (See *Referrals to Elementary and Secondary Special Education*.)

The central IEP (CIEP) team is used if school-based options have been ruled out and the school IEP team is considering a separate public or private special education day school. (See *Referring a Student to the Central IEP Team*.)

The role of the student's general education teacher on the IEP team is especially important in making LRE determinations. The general educator's knowledge of his/her classroom and curriculum area can help determine appropriate positive behavioral interventions, supplementary aids and services, program modifications, and supports for school personnel that will enable the student to be successful in the general education classroom.

Least Restrictive Environment

IDEA 2004 requires that—

- children with disabilities, including preschool children and children in public or private institutions or other care facilities, must be[1] educated with children who are not disabled to the maximum extent appropriate; and
- special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

An ongoing objective of the MCPS *Our Call to Action: Pursuit of Excellence* is increasing the number of students with disabilities who are educated in general education settings. The Departments of Special Education Services and Operations support inclusive practices and differentiated instruction and are committed to increasing the knowledge and skills of general and special educators so that most students with disabilities can learn in general education settings.

In selecting the LRE in which the student will receive services—

- consideration must be given to any potential harmful effect on the child or the quality of services that he/she needs;
- the child is educated in the school or typical early childhood setting that he/she would attend if nondisabled, unless his/her IEP requires some other arrangement;
- the placement is as close as possible to the child's home; and
- the child is not removed from education in age-appropriate general education classrooms solely because of needed modifications in the general education curriculum.

1. Students with disabilities who are in adult prisons represent an exception to these requirements.

Considerations in the LRE Placement of Children Whose Behavior Interferes with the Education of Others

The determination of the appropriate placement for a student whose behavior interferes with the education of other students requires careful consideration by the IEP team as to whether the student can appropriately function in the general education classroom if provided appropriate behavioral supports, strategies, and interventions. A functional behavioral assessment (FBA) and a behavioral intervention plan (BIP) and data about the implementation of the BIP are useful tools in making this determination.[2]

If the student can function in the general education classroom with appropriate behavioral supports, strategies or interventions, placement in a more restrictive environment would be inconsistent with LRE. If, even with appropriate supports, the child's behavior would significantly impair the learning of others, that placement would not meet his/her needs and would not be appropriate for the child.

Functional Behavioral Assessment: An FBA is a process of gathering information that reliably predicts the conditions and/or circumstances surrounding a student's behavior that is considered inappropriate and, therefore, interferes with his/her learning or that of other students. The purpose of an FBA is to improve the effectiveness and the efficiency of behavioral interventions. The process involves—

- observing the student when and where the behavior is thought to occur;
- analyzing antecedents, environmental conditions, and consequences of the behavior;
- proposing a hypothesis that explains the relationship between the behavior and the specific conditions that appear to predict and maintain the behavior;
- collecting information to confirm the hypothesis and gathering baseline data; and
- assessing the validity of the hypothesis by collecting additional information.

Behavioral Intervention Plan: A BIP is a proactive plan designed to address problem behavior through the use of positive behavior interventions, strategies, and supports. The process for developing and implementing the BIP includes—

- reviewing the data and findings of the FBA;
- developing positive interventions to be employed to address the behavior across school settings;
- teaching the student a replacement behavior or skill that serves the same functional intent as the problem behavior;
- reaching consensus that the interventions can be implemented as designed;
- establishing criteria for success and an attainable timeline to measure success;
- teaching staff how to implement the interventions, as necessary;
- monitoring and evaluation activities and responsibilities; and
- analyzing the data and adjusting the plan as needed.

2. See *Addressing Student Problem Behavior: an IEP Team's Introduction to Functional Behavioral Assessment and Behavior Intervention Plans,* prepared by the Center for Effective Collaboration and Practice. Available on the MCPS Special Education website.

Continuum of Alternative Placements

MCPS is required to ensure that the following continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services—

- instruction in general education classes;
- special classes;
- special schools;
- home instruction; and
- instruction in hospitals and institutions.

MCPS also must have available supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with general education class placement.

Nonacademic Settings

A student with disabilities must participate with nondisabled students in nonacademic and extracurricular services and activities, including meals and recess periods, to the maximum extent appropriate to the needs of the child. Any aids, services, and other supports a student with a disability requires to participate must be provided.

Nonacademic and extracurricular services and activities may include—

- counseling services;
- athletics;
- transportation;
- health services;
- graduation activities;
- recreational and social activities;
- special interest groups or clubs sponsored by MCPS;
- referrals to agencies that provide assistance to individuals with disabilities; and
- employment by MCPS and assistance in making outside employment available.

Program Options

Students with disabilities must have available the same variety of educational programs and services available to nondisabled MCPS students, including art, music, and career and technology education programs.

Physical Education

Each student with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled students, unless the student is enrolled full time in a separate facility or needs specially designed physical education, as prescribed in his/her IEP.

MCPS Special Education Services

MCPS special education services for children ages birth to kindergarten-entry age, services for school-aged students with disabilities, MCPS special schools, and related services are described in detail in a document titled *Montgomery County Public Schools Description of Special Education Services,* which can be accessed on the MCPS Special Education website.

Referrals to Elementary and Secondary Special Education Classes

If a school IEP team anticipates that a student with a disability may require special education services that are not available in their school (i.e., services in the Autism or Emotional Disabilities classes), the principal (or his/her designee) must contact appropriate staff in the Department of Special Education Services (DSES)[3] to discuss the student, the interventions the school has provided to the student, and the basis for the proposed placement. The purpose of this consultation is to ensure that all placements conform to LRE requirements. The outcome of the consultation may be the identification of resources that can support the student in his/her current placement or the continuation of the referral process. In the latter case, the DSES contact will arrange for a DSES representative(s) to attend the school IEP team meeting. It is important, however, to ensure that the IEP team carefully considers all information provided at the meeting by the parent and other IEP team members before making the final placement decision.

Consideration of Transportation Needs

When developing an IEP for a student with disabilities, the IEP team must determine whether the student requires specialized transportation to and from the recommended program location. This decision can only be finalized when the IEP team has recommended an educational placement for the student and a program location[4] for the implementation of the student's IEP has been determined. The need for specialized transportation is an individualized decision and requires the consideration of any potentially harmful effects on the child, due to the length of time and distance of transportation.[5]

A student requires specialized transportation if—

- the IEP team recommends a program location other than the student's home school; or
- the student requires transportation due to the nature of his or her disability, regardless of how close the school is to the student's home.

If the IEP team recommends placement in a program that is not available in the student's home school, an appropriate program location is usually based on MCPS cluster boundaries, although some placements may need to be made outside of the boundaries. In these cases, the special education supervisor assigned to the cluster must be involved. The IEP team must consider the effect transportation may have on the student in relation to—

- the student's age and disability;
- any specialized equipment needs of the student;
- any personnel needed to assist the student during transportation;
- the amount of time involved in transporting the student; and
- the distance the student will be transported.

REFERRALS FOR MORE INTENSIVE SERVICES

In most instances, consultation with the special education supervisor will prevent the need for a referral to the central IEP team (CIEP). When the need for even more intensive special education services is anticipated, the school IEP team, with the assistance of a representative from DSES, refers the placement decision to the CIEP team.[6]

Note: When a referral is made to the CIEP, the school IEP team must revise the student's current IEP to include additional supports that can be provided at the local school level, pending completion of the CIEP team process. To the extent possible, the additional supports should reflect the supports recommended in the IEP being sent to the CIEP team. The revised IEP should have a three-month timeframe.

In those instances where the CIEP team refers the student to a nonpublic placement and the time required to complete the process will extend beyond three months, the local IEP team may either use the IEP Amendment process to revise the dates of the current IEP or meet to recommend more extensive changes to the IEP.

Functions of the Central IEP Team

The functions of the CIEP team in the Placement and Assessment Services Unit (PASU) are as follows:

- reviews referrals from MCPS school-based IEP teams to consider more restrictive special education services for students with disabilities;
- conducts annual and periodic review IEP team meetings, reevaluation planning and reevaluation IEP team meetings, and manifestation IEP team meetings for students enrolled in approved nonpublic special education schools;

3. See "Frequently Requested Telephone Numbers" on the Special Education website for names of and contact information for MCPS special education supervisors.
4. Program location is an administrative decision.
5. Staff from the MCPS Department of Transportation are available to provide guidance on time and distance.
6. In MCPS, the CIEP team also handles some preschool placements.

- considers whether a student enrolled in a nonpublic school is able to participate in home school extracurricular activities; and
- at parent or student request, conducts IEP team meetings for students with a disability that are being released from the Clarksburg Correctional Facility and returning to MCPS.

PASU instructional specialists serve as case managers for those students placed by MCPS in nonpublic schools, monitor each student's progress, and ensure that they participate in the Maryland Assessment Program. When appropriate, case managers refer such students to the CIEP team to consider lesser-restrictive environments.

Referring a Student to the Central IEP Team

IDEA 2004 requires that a student's IEP must be implemented as soon as possible following an evaluation or reevaluation IEP team meeting or a meeting to review and revise the student's IEP. To ensure that undue delays in placement and IEP implementation do not occur when students are referred to CIEP, the following procedures and timelines listed below must be followed.

Procedures	Person(s) Responsible	Timeline
All reports of assessments must be completed and available to the evaluation/reevaluation/review IEP team.	Principal/Designee; Assessors; Program Supervisors	Within five business days prior to the school-based IEP team meeting date
School IEP teams, in prior consultation with appropriate staff in DSES, may place students in Emotional Disabilities (ED) Cluster programs, Gifted and Talented/Learning Disabilities (GT/LD), Autism, Bridge, and other school-based services.	Principal; Special Education Supervisor; Instructional Specialist; Program Supervisor; Program Instructional Specialist	
Referrals for other more intensive programs, such as special schools, must be provided to PASU. School staff reviews the students' cumulative, confidential, and health files for accuracy and completeness before forwarding the files to PASU. MCPS Form 336-71: *Student Record Transmittal Form*[e] must be completed and placed in the student's original confidential file. A school staff member who has worked with the student must be designated to attend the CIEP.	Principal/Designee; Special Education Case Manager	Within five business days of the school-based IEP team meeting date
PASU confirms with the school the receipt of the student's records.	Placement Support Staff	On the date of receipt or first work day following receipt of records
The PASU schedules a CIEP team meeting to be held no later than three weeks from date student's records are received in PASU.	Placement Specialist; Placement Support Staff	Invitation letter for a CIEP meeting sent to parents within ten calendar days from the date of receipt of the referral
PASU staff reviews the student's records and notifies the school of any missing required documentation.	Placement Specialist	Within five business days from receipt of the files
The school locates and submits any missing documentation to the PASU.	Principal/Designee; Special Ed. Case Manager; Assessor(s)	No later than 72 hours from notification
CIEP team reviews the files in preparation for the CIEP team meeting.	CIEP team	Within five business days from receipt of the completed files
The CIEP team meeting is held.	CIEP team	No later than three weeks from date student's records are received in PASU
Note: Absent extenuating circumstances, CIEP team meeting will be held and team will consider documentation provided. If additional documentation is needed after the CIEP team meeting, case will be sent back to school IEP team.		

Central IEP Team Meeting Procedures

Prior to the Meeting: Upon receipt by PASU of a referral to the CIEP team, a case manager will be assigned. Within 10 days of receipt of the referral, the case manager will—

- notify the school that the records have been received;
- review the records for completeness;
- notify the principal of any missing or incomplete records and request that the records be submitted to the case manager within three business days;
- schedule the CIEP team meeting for a day within three weeks of receipt of the referral;
- notify the principal and school staff of the date and time of the CIEP team meeting; and
- notify the parents, in writing, of the date and time of the scheduled CIEP team meeting.

After the Meeting: If the CIEP team determines that the student's special education needs can be met in MCPS, the team makes the appropriate placement. If the team determines that the student's special education needs cannot be met through MCPS special education services, nonpublic special education services and/or the Regional Institute for Children and Adolescents (RICA) will be explored.

The case manager will—

- obtain parental authorization to send a referral to RICA or specified nonpublic schools;
- forward a referral packet and parental authorization to specified nonpublic schools for their consideration;
- send the prior notice letter to the parents; and
- keep parents informed of the status of the referrals.

Upon notification from a nonpublic school to PASU and the parents that the student's IEP can be implemented at that site, PASU determines the appropriate location based on LRE factors including consideration of the length and distance of the transportation. The location of the recommended placement is entered on the student's IEP. The case is assigned to PASU instructional specialist who works with RICA or the identified nonpublic school, monitors the student's progress, and ensures that an IEP team meeting is held at least annually. PASU provides the parent with prior notice of the outcomes.

Students Placed in Private Schools by MCPS

Students with disabilities who are placed in nonpublic special education schools by MCPS are provided special education and related services in accordance with their IEPs at no cost to their parents. The students and their parents have the same rights under IDEA 2004 as do students with disabilities placed by MCPS in public schools.

Residential Placements

If the CIEP team determines that the student requires a residential placement, the case manager refers the case to the Local Coordinating Council (LCC) for interagency consideration. The chair of the LCC schedules a meeting. The MCPS case manager; the student's parents; if appropriate, the student; and any person who has knowledge of the student can participate in the LCC meeting by request of the parent or the public agency. After the meeting, the LCC chair provides written notice of the council's decisions and the appeal process.

> *Note*: A student's home may not be used as an instructional setting for a student with a disability waiting for placement in a nonpublic school.

Nonpublic Tuition Assistance

PASU forwards an application for nonpublic tuition assistance to MSDE or the State Coordinating Council, as appropriate.

Legal References

20 U.S.C. 1412(a)(5) and (a)(10)(B); 1414(e)

34 CFR §§300.114-.118

34 CFR §300.342

COMAR 13A.05.01.04D

HOME AND HOSPITAL TEACHING

Placing a Special Education Student on Home and Hospital Teaching

Placing a special education student on home and hospital teaching (HHT) is considered a "change in placement" and can only be effected through the recommendations of an IEP team. Special education students may not be administratively placed on HHT for disciplinary reasons.

General procedures for placing students on HHT are found in MCPS Regulation IOE-RB, *Home and Hospital Teaching*. The regulation describes eligible students as those who are unable to participate in their school of enrollment due to a physical condition that has been verified by a licensed physician or an emotional condition that has been verified by a certified school, or licensed psychologist or licensed psychiatrist. Parents complete MCPS Form 311-15E, *Application for Home and Hospital Teaching (Form A* for students with a physical condition or *Form B* for students with an emotional condition) and submit it to the HHT office.

Scheduling the HHT IEP Team Meeting

Maryland regulations require that HHT begin no later than 10 school days from receipt of verification of the student's condition. Therefore, HHT must immediately notify the school once they receive verification of the student's condition, and the school must schedule an IEP team meeting no later than nine school days from the date MCPS received the verification. Parents must receive written notice of the IEP team meeting; however, a full 10 days' notice will not be possible.

Documentation Needed During the HHT IEP Team Meeting

At a minimum, the IEP team will need the following:

- The completed *Application for Home and Hospital Teaching*
- The student's current IEP
- *Home and Hospital Teaching: Individualized Education Program*[e]
- MCPS Form 336-01: *Addendum to MCPS Forms*[e] (optional)
- *Procedural Safeguards—Parental Rights* brochure (should the parent request a copy).

HHT IEP Team Meeting Agenda

After welcoming the parent and anyone accompanying him/her, introducing the members of the IEP team, and assigning someone to complete the IEP forms, the chair explains the purpose of the meeting and the meeting process, including the role of parents as equal partners.

Using MCPS Form 336-54: *Home and Hospital Teaching: Individualized Education Program*[e], the team does the following:

- Reviews the student's progress on IEP goals and objectives.
- Identifies appropriate goals and objectives that can be addressed during the 60 (or less) calendar days that the student will be on HHT.
- Identifies any supplementary aids and services to be provided while on HHT.
- Recommends the instructional services to be provided. At a minimum, the IEP team must recommend six hours per week of HHT services for students enrolled in full-day programs and three hours per week of HHT services for students enrolled in half-day programs.
- Identifies the location of services.
- Identifies a start date for services and an end date of no later than 60 calendar days from the start of services.
- Schedules a review IEP team meeting about 45 calendar days from the start of HHT when the need for HHT will be reviewed.
- Develops a plan for returning the student to a school-based program.
- Advises the parent that, prior to the 60-day review, if the student's physician believes that continuation of HHT is necessary, he/she must provide written re-verification of the need for the IEP team's review.

> *Note*: State special education regulations provide that "…[e]ducational placement in the home for a student with an emotional condition may not exceed 60 consecutive school days."

Follow-up Responsibilities

Documentation must be forwarded to HHT. An IEP team meeting must be held within approximately 45 calendar days of the meeting which placed the student on HHT to review the student's continuing need for HHT.

The parent must be provided with prior notice. Originals of all documents must be included in the student's confidential file.

Legal References

20 U.S.C. 1402(26) and 1412(a)(5)

34 CFR §§300.34, .113, .115 and .504

COMAR 13A.05.01.10C(5)

COMAR 13A.03.05.01 - .04

DEVELOPING, REVIEWING, AND REVISING INDIVIDUALIZED EDUCATION PROGRAMS

Individualized Education Program (IEP) teams must develop an IEP for every student between the ages of 3 and 21 found eligible for special education and related services. An IEP is a written statement that is developed through a collaborative process by a team that includes parents, teachers, and school administrators and conforms to the content requirements of IDEA. The IEP must provide the child with a free appropriate public education (FAPE) that is of high quality and is designed to achieve the high standards reflected in the *No Child Left Behind Act of 2001* (NCLB).[1] FAPE means "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Board of Educ. v. Rowley,* 458 U.S. 179, 203 (l982).

An IEP must be in effect thirty days after the initial eligibility determination and at the beginning of each school year. Thereafter, at least annually, and sometimes more frequently, a student's IEP must be reviewed and, if necessary, revised, and implemented as soon as possible.

Implementation of a Statewide IEP

At the request of the Maryland Legislature, the Maryland State Department of Education (MSDE) has created a uniform IEP form which follows students with disabilities who move from one Maryland jurisdiction to another. In MCPS, the statewide document includes an online data collection system. By July 1, 2007, all children and youth in Maryland were required to have IEPs developed and printed using the MSDE format. MCPS utilizes an online IEP system that includes essential forms, provides timelines reminders, and collects data used for a variety of purposes.

Hard copies of all special education forms, letters, and other documents must be placed in the students' confidential files.

Required Content of an IEP

IDEA 2004 requires each IEP to include—

- a statement of the student's present levels of academic achievement and functional performance including how the student's disability affects his/her involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled students);[2] or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;[3]

Note: Present levels of performance must include more than just the data from eligibility assessments such as psychological or educational assessments. The term includes "current classroom-based assessments, district and/or state assessments, and classroom-based observations as well as parent, student, and general education teacher input in all relevant areas."[4] The term also includes identification of the evaluator/observer, date, data source, scores/levels of performance, indicated strengths, and indicated areas of need.[5]

- a statement of measurable academic and functional annual goals, including benchmarks or short-term instructional objectives related to meeting the student's needs that result from his/her disability to enable the child to be involved in and make progress in the general education curriculum, and meeting each of the student's other educational needs that result from his/her disability; or for a preschool student, as appropriate, to participate in appropriate activities;

Note: A measurable goal includes the following:

- Targeted change in performance (increase or decrease)
- Area being addressed (academic or behavioral)
- Present level of performance (instructional level or behavior)
- Measurable change by the end of this IEP year (progress measure)
- Measurement used to determine if the goal is achieved (standardized assessment, behavioral checklist, etc.)[6]

The goals must be aligned with State Content Standards.

Note: Informational Update 7 from MSDE: *Individualized Educational Program (IEP)* Process[7] provides the following directive on the inclusion of short-term objectives in Maryland IEPs: "While IDEA 2004 states that short-term objectives are not required for students who do not take alternate assessments, in Maryland, local education agencies must continue to include long-term goals and short-term objectives for all students with disabilities under IDEA."

1. FAPE includes extended-school year services (ESY) if the IEP team determines, on an individual basis, that the services are necessary. See the MCPS *Extended School Year Services Resource Manual,* which is posted annually on the MCPS Special Education website.
2. The requirement applies to the general curriculum used in preschool through secondary education.
3. These provisions apply regardless of the setting in which special education services are provided.
4. *Statewide Individualized Education Program (IEP) Process Guide,* MSDE, Division of Special Education/Early Intervention Services, available on the Encore Resource CD
5. MSDE feedback from Mod-MSA appeal reviewers.
6. MSDE feedback from Mod-MSA appeal reviewers.
7. Available on the MSDE website.

- a description of how the student's progress toward meeting the annual goals described above will be measured and when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

Note: MCPS Quarterly Report forms should be completed and submitted to the student's case manager each quarter. These forms assist the case manager by providing data used to support the determination of student progress.

Note: Staff must make good faith efforts to assist each student to achieve his/her IEP goals and objectives and to address insufficient progress; however, IDEA 2004 does not require that staff be held personally accountable if the child does not achieve the growth projected in the IEP.

- a statement of the special education and related services and supplementary aids and services, to be provided to the student, including staffing support;

Note: "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. The term does not include a medical device that is surgically implanted, the optimization of device functioning, maintenance of the device or the replacement of that device.

A related service is required only when the IEP team determines the student requires the service in order to benefit from special education and has included the service on the student's IEP.[8]

Note: "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

- a statement of the program modifications or supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and to be educated
- and participate with other students with and without disabilities in these activities;[9]

Note: "Modifications" means practices that change, lower, or alter the learning expectations for a student, in accordance with the Maryland Accommodations Manual."[10]

- an explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in the activities described above;
- a statement of any individual[11] appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district wide assessments; and if the IEP team determines that the student shall take an alternate or modified assessment on a particular state or district wide assessment of student achievement, a statement of why the student cannot participate in the regular assessment; and why the particular alternate or modified assessment selected is appropriate for the student;

Note: "Accommodation" means practices and procedures, in accordance with the M*aryland Accommodations Manual,* that provide students with disabilities equitable access during instruction and assessments in the following areas: presentation, response, setting, and scheduling. COMAR 13A.05.01.03B

- the projected date for the beginning of the services and modifications described above and the anticipated frequency, location, and duration of those services and modifications.

Beginning not later than the first IEP to be in effect when the student is 14 year old,[12] and updated annually thereafter, the IEP must include a statement of the transition service needs of the student that focuses on the student's course of study.

8. U.S. Department of Education, Office of Special Education Programs has clarified that if parents refuse to consent to all services, except for a related service, the school district is not required to provide just the related service. (*Letter to Yudien,* OSEP (2003)).
9. Services may include "consultation," which is defined as "services provided to a teacher, parent, or other service provider, regarding a specific student, designed to support and enhance the implementation of the student's IEP." COMAR 13A.05.01.03B(13)
10. *Statewide Individualized Education Program (IEP) Process Guide,* MSDE, Division of Special Education/Early Intervention Services (July 2006), available on the Encore Resource CD.
11. Accommodations must be selected on the basis of the individual student's needs and must be used consistently for instruction and assessment. Under NCLB, "appropriate accommodations" in the context of assessments are accommodations that are needed by the individual child and that maintain test validity.
12. Informational Update 7 from the MSDE: *Individualized Educational Program (IEP) Process* (May 6, 2004) provides the following directive on transition planning: "Transition Planning will continue to begin at age 14 for a student with a disability, in compliance with COMAR 13A.05.01.09A (3)," available on the MSDE website.

For a student who is age 16 or younger, if appropriate, the IEP shall include the following:

- A statement of needed transition services including, if appropriate, a statement of MCPS' responsibilities or linkages, or both, before the student leaves the secondary school setting

Note: IDEA 2004 requires a school district to obtain parental consent before releasing information about a parentally placed private school child to agencies that provide or pay for services that will assist the child in making the transition from school to either postsecondary school or independent living. MCPS Form 336-32: *Authorization for Release of Confidential Information* is used for this purpose.

- Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills
- The transition services (including courses of study) needed to assist the student in reaching those goals
- Beginning not later than one year before the student reaches the age of majority under state law, a statement that the student has been informed of the IDEA 2004 rights, if any, that will transfer to the student on reaching the age of majority.[13]

Required Considerations of the IEP Team

In developing, reviewing, or revising an IEP, the IEP team must consider—

- the student's strengths;
- the parents' concerns for enhancing the education of their child;
- the results of the initial or most recent evaluation of the student;
- the results of the student's performance on statewide, districtwide, or alternative assessment programs, as appropriate; and
- the student's academic, developmental, and functional needs.

Consideration of Special Factors

The following provisions are designed to foster the increased participation of children with disabilities in regular education environments or other less restrictive environments, not to serve as a basis for placing children with disabilities in more restrictive settings.

In developing, reviewing, or revising an IEP, depending on the need of the student, the IEP team must consider—

- in the case of a student whose behavior impedes his/her learning or that of others, the use of positive behavioral interventions and supports, and other strategies, to address that behavior;[14]
- in the case of a student with limited English proficiency,[15] the student's language needs relating to his/her IEP;
- in the case of a student who is blind or visually impaired, instruction in Braille and the use of Braille, unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille),[16] is not appropriate for the student; and
- in the case of a student who is deaf or hard of hearing, the student's language and communication needs, opportunities for direct communications with peers and professional personnel in his/her language and communication mode, academic level, and full range of needs.

The following considerations are required for all students:

- Whether the student has communication needs;
- Whether the student needs assistive technology and services. (See the *MCPS Assistive Technology Information Packet* on the MCPS Special Education website for definitions, resources, and sample assessment questions.)

Assessment and Accountability

NCLB and IDEA 2004 require that all students, including students with disabilities are held to challenging content and achievement standards; that their progress is measured annually by high-quality assessments aligned with those high standards; and those schools and school districts are held accountable for achieving results. Thus, all students with disabilities must be included in state and districtwide assessments, including students placed in interim alternative education settings or who have been suspended.[17] The

13. In Maryland, 18 years of age is the "age of majority."
14. See *Addressing Student Problem Behavior: an IEP Team's Introduction to Functional Behavioral Assessment and Behavior Intervention Plans* prepared by the Center for Effective Collaboration and Practice, available on the MCPS Special Education website. See also MCPS Form 336-60: *Checklist for Functional Behavioral Assessment and Behavior Intervention Plans,* available on the MCPS Forms website.
15. 'Limited English Proficient" means "an individual who does not speak English as their primary language and who has a limited ability to read, speak, write, or understand English." COMAR 13A.01.05.03B(36)
16. Use MCPS Form 336-82: *Determination of Appropriate Reading, Writing, and Media for Students with Visual Impairments.*
17. The only public school students with disabilities enrolled in public settings who are exempted from participation in state and district wide assessment programs under the Act are children with disabilities convicted as adults under state law and incarcerated in adult prisons (71 FR 46718). Students, who transfer from out-of-state or from private schools into MCPS at any time during the school year, through the end of the testing window in which MSA/HSA is administered, may be required to be tested. See *Maryland Accommodations Manual,* available on the Special Education website.

results of such testing must be disseminated publicly and reported to MSDE. Each school system is required to show that its students make adequate yearly progress (AYP) on such assessments. Schools that do not make AYP may be subject to school improvement requirements, corrective action, or restructuring.

In Maryland, students with disabilities may participate (with or without accommodations, as appropriate and as determined by the IEP team) in the following assessments:

- The Maryland School Assessment (MSA) in reading, English/language arts, science, and mathematics;
- The Alternate Maryland School Assessment (Alt-MSA);
- The Modified Maryland School Assessment (Mod-MSA);
- The Maryland High School Assessment (HSA) in English 10, algebra/data analysis, government, and biology;
- The Modified High School Assessment (Mod-HSA).

In general, no student is exempt from participation in the Maryland Assessment Programs; however, rare exceptions may be made by MSDE for significant medical emergencies. MSDE provides Maryland school systems with written guidance for selecting, administering, and evaluating the use of accommodations for instructing and assessing students with disabilities.[18]

Alternate and Modified Assessments

Students with Significant Cognitive Disabilities: Students with disabilities with the most significant cognitive disabilities who are not pursuing the regular Maryland Content Standards leading to a Maryland High School diploma[19] may take alternate assessments aligned to alternate achievement standards. In Maryland, this assessment is known as Alternate Maryland School Assessment (Alt-MSA).[20] The proficient and advanced scores of students taking the Alt-MSA may be included in calculating AYP, provided that the number of those scores does not exceed 1.0 percent of all students in the grades assessed.

A student who participates in Alt-MSA in Grades 3 through 8 and Grade 10 must meet all of the required criteria. The criteria for a student to participate in the Alt-MSA is available on the MSDE website.

Students not meeting the required criteria will participate in MSA, with or without accommodations, as appropriate, based on their IEPs, unless a modified assessment is determined to be appropriate by the IEP team.

Students with Academic Disabilities: In April 2007, NCLB and IDEA 2004 federal regulations were amended to permit states to conduct assessments with modified academic achievement standards for a small group of students with disabilities who are not eligible to take the alternate assessments.

MSDE is responsible for developing the Modified Maryland School Assessment (Mod-MSA) and the Modified High School Assessment (Mod-HSA), which will assess and report student attainment of indicators and objectives from the reading and/or mathematics content standard and the algebra/data analysis, biology, government, and English content standards.[21] The test will be administered concurrently with the MSA, and students will participate in the Mod-MSA in Grades 3 through 8 and in the Mod-HSA in high school. The proficient and advanced scores of students taking the Mod-MSA/HSA may be included in calculating AYP, provided that the number of those scores does not exceed 2.0 percent of all students in the grades assessed at each grade and content.

Eligible students may be from any of the disability categories listed in IDEA. A student who participates in a Mod-MSA/HSA must meet **all** of the required criteria.

IEP teams must use the IEP Decision-Making Process Eligibility Tool to determine the eligibility of students with a disability for the Mod-MSAs and Mod-HSAs.

IEP Team Decision Making Regarding Modified Assessments: The decision to assess a student based on modified academic achievement standards must be reviewed annually by the IEP team to ensure that those standards remain appropriate. In addition, the IEP under discussion must be concurrent with the testing window.

The IEP recommended for a student taking a modified assessment must include—

- full documentation of the student's present levels of academic achievement and functional performance;
- a clear statement of the educational impact of the student's disability on his/her involvement in the general education curriculum;
- any accommodations needed to measure the academic achievement and functional performance of the student;
- those supplementary aids that are necessary for the student to advance towards attaining his/her annual goals, to be involved in and make progress in the general curriculum, and to be educated alongside his/her nondisabled peers;
- adequate measurable annual goals, including short-term objectives; and
- a statement as to why the student cannot participate in the regular assessment and why the particular modified assessment selected is appropriate for the child.

In making its decision concerning modified assessments, the IEP team must—

- follow the most current MSDE decision making criteria;
- provide adequate documentation on page 3 of the IEP,

18. *Maryland Accommodations Manual.*
19. State regulations provide that the decision to award a student with disabilities a Maryland High School Certificate of Program Completion "will not be made until after the beginning of the student's last year in high school, unless the student is participating in the alternative Maryland School Assessment Program (Alt-MSA)." COMAR 13A.03.02.09D (3).
20. See the MSDE *Alt-MSA Handbook* for detailed procedures and instruction.
21. Students determined to be eligible to take the modified assessments must continue to be identified at each annual review.

or if necessary on the *Addendum to Forms,* for the team's conclusion about each MSDE criterion;

- complete and sign the MSDE *Decision-Making Model* forms at the meeting.

If the IEP team determines that a student with a disability shall take a modified assessment, the student's parents must be informed that their child's achievement will be measured on modified academic achievement standards.

Bridge Plan for Academic Validation

IEP teams, in compliance with guidance from MSDE, must ensure students with disabilities are eligible to participate in the Bridge Plan for Academic Validation. Students who fail to pass the HSA assessment after participating in interventions are eligible to participate in the Bridge Plan. The student must be on track for fulfilling all graduation requirements. Information regarding the Bridge Program can be found on the MSDE website at *http://hsaexam.org/about/options/bridge_plan.html*

HSA Waiver Eligibility Process

IEP teams, in compliance with guidance from MSDE, on an annual basis must discuss and determine a student's eligibility for consideration for a diploma based on the HSA waiver criteria. IEP teams must document student access to appropriate instructional support, services and interventions to assist in the obtainment of a high school diploma. The parent must be fully informed regarding the HSA Waiver eligibility. Information regarding the High School Waiver can be found on the MCPS website at *www.montgomeryschoolsmd.org/boe/meetings/agenda/2008-09/20090512/3%200%20Update%20on%20High%20School%20Assessments%20Graduation%205%204.pdf*

Implementing Transition Planning and Services

Distribution of Transition Information: IEP teams should distribute the following information at IEP team meetings where transition is discussed. Documents are available in the MCPS warehouse and on the MCPS Special Education website: *Answers to Frequently Asked Questions about Transition Services and Graduation for Students with Disabilities* and *The Transition Connection.*

Transition Support Teachers: All staff members share the goal of preparing students for employment, postsecondary education and training, and life after high school. Special responsibility for this goal in MCPS is assigned to the transition support teacher (TST). Support provided by TSTs includes—

- counseling students on career planning;
- teaching career-related classes;
- developing and supporting work experiences; and
- linking students to appropriate services in the community.

Linkages to Anticipated Adult-service Providers: In Maryland, a student with a disability who is receiving special education services is entitled to educational services until the end of the school year in which he/she reaches age 21 or has met the requirements for a high school diploma or obtained a General Education Development (GED). Beginning at age 16, or younger if determined appropriate, a student's IEP must include a statement of interagency responsibilities and any needed linkages. Provision of adult services is dependent upon whether the student is found eligible and the availability of funding. Eligibility is not determined by MCPS personnel. Each adult service agency or educational institution has unique eligibility criteria.

> *Note*: If a participating agency fails to provide agreed-upon transition services contained in a student's IEP, MCPS must, as soon as possible, hold an IEP team meeting to identify alternative strategies to meet the transition objectives; and, if necessary, revise the student's IEP. It is important to note, however, that IDEA does not relieve a participating agency of the responsibility to provide or pay for transition services that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of the agency.

The TST or other MCPS personnel may make the initial referral to an adult service agency or educational institution; however, it is the responsibility of the parent/student to complete the application process for that agency/educational institution. A listing of agencies can be found in *The Transition Connection.*[22] For further information on postsecondary adult service agencies, high school staff should consult their TST. Middle school staff may contact the Transition Services Middle School Liaison in the Transition Services Office.

Summary of Performance: IDEA 2004 requires that all students with disabilities whose eligibility for FAPE will terminate due to graduation from secondary school with a regular diploma or to exceeding the age eligibility under state law must be provided with a summary of his/her academic and functional performance. The summary, which is not part of the student's IEP, includes recommendations on how to assist the student in meeting his/her postsecondary goals. In addition, Maryland special education regulations provide that, beginning with students who entered Grade 9 in the 2005–2006 school year, a student who receives the Maryland High School *Certificate of Program Completion* must be provided with an Exit Document that describes the student's skills. Both requirements are met by the *Maryland Exit Document,*[23] a Web-based online database which—

- describes the student's course of study;
- describes the student's accomplishments;
- provides information on the student's performance in basic functional skills; and
- provides useful information regarding the student's

22. Available on the MCPS Special Education website.
23. Available on the MCPS Special Education website. See also the MSDE brochure titled *Maryland Exit Document,* which is available on the MSDE website

skills, strengths, and any supports the student needs to be successful in post-school settings.

Application for Transfer of Special Education Rights: IDEA 2004 permits states to transfer educational decision making under the Act to a student with a disability when the student reaches the age of majority (age 18) in the state of Maryland so long as the student has not been judged to be incompetent under state law.[24] The transfer of special education rights potentially applies to all special education students, including youth who are incarcerated in an adult or juvenile state or local correctional institution. Maryland law, however, provides very specific and limited circumstances when the rights previously afforded parents of students with disabilities under IDEA may transfer to their son or daughter.[25] In effect, the law applies to only a limited number of students.

Beginning not later than one year before a student reaches the age of majority, his/her IEP must include a statement that the student has been informed of the rights, if any, that will transfer from the parents when the student reaches age 18. The school's TST can provide guidance regarding these procedures and should be involved in the decision making. All decisions about the transfer of IDEA 2004 rights are made on an individual basis. Whenever the parental rights are transferred, both the student and the parent must be so notified and have appeal rights concerning the decision.

> *Note*: Other age of majority rights, such as writing absentee notes, are not affected by IDEA 2004. See, for example, MCPS Regulation JEA-RA, *Student Attendance.*

Transition and Students with Disabilities in Adult Prisons: Transition planning and transition services do not apply with respect to students with disabilities in adult prisons whose eligibility under IDEA 2004 will end because they will exceed the age of eligibility before they will be released from prison, based on their sentences and eligibility for early release.

School Counseling as a Related Service

Special education students, like their nondisabled peers, are eligible to participate in the school counseling services mandated for all students by state regulation. These services include schoolwide developmental programs of time-limited classroom guidance and time-limited, responsive individual or small-group counseling. In addition, school counselors routinely consult with educators and parents regarding social and emotional factors that affect student performance. Such services may be considered related services for purpose of IDEA if defined as such by the student's IEP.

Related services are defined in IDEA regulations as "developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education." Among the identified related services are "counseling services," which are defined as "services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel."

All recommendations for related services are made by IEP teams. If it is anticipated that the student may require school counseling services, the school counselor must be a member of the IEP team. Using current valid assessment data, the IEP team identifies the student's educational needs and develops goals and objectives to address those needs. If the assessment information indicates that a student with a disability requires school counseling services to address any identified goals, then school counseling services can be recommended as a related service.

The following factors should be considered by the IEP team in deciding whether a student requires school counseling services as a related service to address identified goals:

- The student needs frequent, intense, and regular support.
- The student requires school counseling services to benefit from special education.

The nature, frequency, and duration of the recommended services must be clearly documented on the IEP so that the school counselor and parents understand what will be provided and how often. Specialized consultation, classroom guidance, and responsive individual or small-group counseling services may be counted in the related service hours provided per week.

The school counselor providing the related service will maintain a log of the services provided. Each marking period the school counselor, with the other staff members who provide service to the student, will report on the student's progress on the IEP goals and objectives.

Psychological Services as a Related Service

Like school counseling, "psychological services" also are identified as a related service under IDEA. IDEA defines psychological services as—

- administering psychological and educational tests and other assessment procedures;
- interpreting assessment results;
- obtaining, integrating, and interpreting information about child behavior and conditions related to learning;
- consulting with other staff members in planning school programs to meet the special educational needs of children, as indicated by psychological tests, interviews, direct observations, and behavioral evaluations;
- planning and managing a program of psychological services, including psychological counseling for children and parents; and

24. IDEA 2004 established a "special rule" regarding the transfer of parental rights at age of majority: A state must establish procedures that apply to a student with a disability who, although not adjudged to be incompetent, can be determined not to have the ability to provide informed consent with respect to his/her educational program. The procedures must include appointing the parent of the student or, if the parent is not available, another appropriate individual, to represent the student's educational interests throughout the period of his/her eligibility under Part B of the Act. Once state procedures are in place, further information will be disseminated.
25. Education Article § 8-412.1, Annotated Code of Maryland. See also Part XIII of the *Procedural Safeguards-Parental Rights* brochure.

- assisting in developing positive behavioral intervention strategies.

IEP team members, including school psychologists, are familiar with and rely heavily on the assessment features of the definition of psychological services listed above (bullets 1, 2, 3, and 6). Such activities include observations, screening, assessment, evaluation, and reevaluation, review of private psychological reports provided by parents, curriculum-based assessments, functional behavioral assessments, and clinical interviews. Consultation (bullet 4) and psychological counseling (bullet 5) activities, however, also are available in appropriate situations.

Consultation includes activities that—

- help staff and parents understand child development and how it affects learning and behavior;
- suggest healthy and effective alternatives for teachers, parents, and administrators to address student's academic and behavioral problems; and
- strengthen positive relationships among educators, parents, and community agencies.

Psychological counseling involves counseling services provided during the school day by a school psychologist that help—

- solve conflicts (e.g., issues related to anger management, stress reduction and management, aggression replacement, improved school attendance, etc.);
- address learning problems (e.g., counseling activities that result in study skills development, organizational skills development, improved note-taking or test-taking skills, self-management, etc.);
- resolve adjustment issues (e.g., individual or group counseling aimed at social skills development, behavior management or issues concerning sexuality, anxiety, depression, and suicidal gestures or ideation, etc.);
- help students and their families deal with crises such as separation and loss; and
- develop schoolwide initiatives to make schools safer and more effective (e.g., bully-proofing or drug and alcohol education).

The school psychologist must be a member of any IEP team that considers the need for psychological services. Using current valid information, the IEP team identifies the student's educational needs and develops goals and objectives to address those needs. If the information indicates that the student requires psychological services to address any identified goals, the IEP team recommends psychological services.

School psychologists can help teams make informed decisions about a recommendation for psychological services by considering the following factors:

- Does current psychological, learning, or behavioral assessment data suggest that the student requires psychological services to benefit from his/her IEP goals?
- Does the student's IEP include behavioral goals on which the student is making insufficient, little, or no progress?
- Are there learning, motivational, social, or behavioral recommendations that have been identified in the psychological assessment or on the IEP that require a school psychologist to implement?
- Has the student been recommended for more intensive IEP service because his/her behavior plans have failed?
- Is contact by a school psychologist with the student (observation or counseling) or with the teacher (consultation) needed to successfully implement a positive behavior strategy, study skill, or social skill lesson?

Once the IEP team decides that psychological services are needed, the kind of services (consultation, counseling, assessment activity, program evaluation, etc.) must be noted on the IEP. The recommended service must specifically relate to and be in support of an IEP goal.

The school psychologist providing the related service will maintain a log of the services provided. Each marking period the school psychologist, along with the other staff members who provide service to the student, will report on the student's progress toward meeting the IEP goals and objectives using the MCPS quarterly reporting forms to document the data used in assessing student progress.

Extended-school Year Services

Extended school year (ESY) services are the individualized extension of specific special education and related services that are provided to a student with a disability beyond the normal school year, in accordance with the student's IEP. In the state of Maryland, the formal standard for determining when ESY services are appropriate under IDEA is that determined by the United States Fourth Circuit Court of Appeals.[26] (See the MCPS Special Education website for detailed information on ESY.)

When determining whether a student requires ESY services, the IEP team must consider the following factors:

- Whether the student's IEP includes annual goals related to critical life skills
- 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
- The student's degree of progress toward mastery of IEP goals related to critical life skills
- The presence of emerging skills or breakthrough opportunities
- Interfering behaviors
- The nature and severity of the disability
- Special circumstances

Following the consideration of the above-listed factors, the IEP team must determine whether the benefits the student

26. *JH v. Henrico County School Board (Va),* 326 F.3d 560, 103 LRP 16750 (4th Cir. 2003); *DiBuo v. Board of Education of Worcester Co. (Md),* 309 F.3d 184, 37 IDELR 271 (4th Cir. 2002), and *MM v. School District of Greenville Co. (S.C.),* 303 F.3d 523, 37 IDELR 13 (4th Cir. 2002).

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.

IEPs for Students Who Transfer School Districts

Schools should make every attempt to assist newcomers to integrate into their new school community and promote their academic achievement. MCPS Regulation JEA-RB, *Enrollment of Students,* provides that all "qualified students whose parents/guardians have bona fide residency within a school area must be accepted for enrollment, unless excused from school attendance according to the provisions of Section 7-301 (Compulsory Attendance Law) of the *Annotated Code of Maryland* or Section 7-305(d) (5) (denial of enrollment to a student who is currently expelled or suspended from another school system)." "All qualified students will enroll in the school of their attendance area, known as the home school." For all students new to or reentering MCPS, a *New Student Information* form (Form 560-24)[27] must be completed. Under "Other Information" the parent is asked to notify MCPS if the student has an IEP.

> *Note*: The parent/guardian is required to sign MCPS Form 560-24. By signing it, the parent acknowledges the following: "If my child has an IEP, I understand that an IEP team must determine his/her placement."

Intake Conference: Because MCPS is under a legal obligation to implement IEP services for transfer students, each school should develop internal procedures to bring the information about the student's having an IEP immediately to the attention of the special education staff member responsible for scheduling IEP team meetings. This individual (or designee) must conduct an intake conference with the parent as soon as possible. The intake results are documented on MCPS Form 336-32: *Intake Conferencee.* The primary purposes of the intake conference is to determine whether it appears that the home school can provide a FAPE to the student; determine what services can be immediately provided to the student; and schedule an IEP team meeting.

Scheduling the IEP Team Meeting: If it appears that the student's IEP services can be implemented at the home school, the IEP team meeting must be scheduled within ten days of the student's enrollment. If it appears that the services the student requires are more intensive than those available at the home school, the cluster special education supervisor must be contacted immediately. If the student requires services that are not available in the home school, an IEP team meeting must be scheduled within five days to determine appropriate services and placement for the student. In cases where it is determined that the student requires services that cannot be provided in a comprehensive school setting, a CIEP team meeting must be expedited.

IEPs for Students Who Transfer to MCPS from a Maryland School District: In the case of a student with a disability who transfers to MCPS from another Maryland school district during the school year, MCPS may—

- adopt the previous IEP; or
- develop, adopt, and implement a new IEP.

Until MCPS either adopts the previous IEP or develops and implements a new IEP, in consultation with the parents, MCPS must provide the student with comparable services to those described in the previous IEP.

IEPs for Students Who Transfer to MCPS from another State: In the case of a student with a disability who transfers to MCPS during the school year from a school district out of the state, MCPS must—

- conduct reevaluation planning and a reevaluation; and
- develop a new IEP, if appropriate.

Until MCPS determines the student's eligibility and needs, in consultation with the parents, MCPS must provide the student with services comparable with those described in the previous IEP.

Transmittal of Student Records: To facilitate the transition of a student with a disability who moves into MCPS from another Maryland school district or from a school district outside of Maryland, MCPS must take "reasonable steps to promptly obtain" the student's records from the previous school in which the child was enrolled, including the IEP and supporting documents, and other records relating to the provision of special education and related services to the student from the previous school. If necessary, student records may be sent or received via facsimile to ensure prompt transmission.

The previous school is required by IDEA 2004 to take "reasonable steps to promptly respond" to such a request by MCPS. When an MCPS student with a disability transfers to another non-MCPS school, MCPS is likewise required to take "reasonable steps to promptly respond" to a request for student records.

IEPs for Students in Maryland State-Supervised Care

Effective July 1, 2005, the Maryland law, *Children in State-Supervised Care—Transfer of Education Records,* requires prompt enrollment, placement, provision of appropriate services, and transfer of education records from the previous school to the new school for children in state-supervised care. A child in state care is any child or youth who is in the custody of, committed to, or otherwise placed by a placement agency. This includes foster care, group homes, or other agency placement. The placement agencies are the county Department of Social Services, the Department of Juvenile Services, the Department of Health and Mental Hygiene, or a private agency that engages in placement of children in homes or with individuals and is licensed by the Social Service Administration, pursuant to the applicable governing code.

27. Available on the MCPS Forms website.

Within two school days after receiving notice[28] of a student's enrollment or imminent enrollment, the receiving school must make a written request to the sending school or agency for the student's educational records. Upon receiving notice from the receiving school, the sending school or agency must immediately provide certain information to the receiving school, including whether the student has an IEP. Within three school days, the sending school or agency must forward the student's records, including an IEP and the most recent assessments, to the receiving school. Because MCPS is under a legal obligation to implement IEP services for these students, each school should develop internal procedures to bring the information about the student's having an IEP immediately to the attention of the special education staff member responsible for scheduling IEP team meetings.

IEPs of Children Previously Served Under Part C of IDEA

IDEA 2004 requires that, in developing an initial IEP for a child previously receiving Infant and Toddler Services, the IEP team must consider the child's Individualized Family Services Plan (IFSP). In addition, the IFSP may serve as the IEP of the child if using that plan as the IEP is consistent with state policy, and is agreed to by the local school system and the child's parents. All students transitioning from Part C to Part B must have an IEP developed and ready to be implemented by their third birthday, unless parents elect to continue receiving services through the extended Part C option until their fifth birthday.

> *Note*: If the parent of a child who has turned the age of 3 and is transitioning from Part C to Part B of IDEA files for due process, MCPS is not required to provide the Part C services that the child had been receiving, pending the outcome of the dispute resolution proceedings. Any Part B IEP special education and related services that are not in dispute must, however, be implemented during this period

IEPs of Students in Adult Prison

If a student with a disability is convicted as an adult under state law and incarcerated in an adult prison, the IEP team may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. IDEA provides that students with disabilities in adult prisons are not required to participate in general state and district wide assessments and their IEPs do not have to include testing accommodations.

IEPS of Non-attending Students

If a student who is 16 years old[29] or older is not attending school, the school should schedule a periodic IEP team meeting to discuss the student's lack of attendance and determine whether changes can be made to the student's IEP that will address the student's needs, especially in the area of transition. The pupil personnel worker (PPW) and transition support teacher (TST) should participate as IEP team members.

If, ultimately, the student refuses to attend school, the student may be withdrawn. MCPS Form 565-4: *Educational Interview for Student Permanent Withdrawal*[30] must be completed and signed by the person interviewing or attempting to interview the student, the PPW, and the principal. In addition, the letter providing prior notice to the parent and student should indicate that the student is welcome to return to school through the school year in which he/she turns the age of 21.

Effective Dates for IEP Implementation

In cases where the parents are requesting Part B services, IEPs for children transitioning from Infants and Toddlers to Part B must be in effect by the child's third birthday. IEPs for newly identified students ages 3–21 must be developed no later than 30 days from the determination that the student is eligible special education and related services. The IEP must go into effect as soon as possible once the parent receives prior written notice of the IEP team's decisions. When the IEP is developed at the end of the school year or during the summer and has a beginning date of the opening of school next fall, direct services are to be provided as soon as possible once school opens. An IEP must be in effect for each previously identified student at the beginning of the school year.

When school opens in the fall, scheduling, observations, and other preliminary activities must be completed within the first few days of school so that direct services from all resource teachers and related service providers begin without delay.

Resource teachers and related service providers should discuss this schedule for the provision of direct services with parents at the students' annual review.

Staff Responsibilities Prior to the IEP Team Meeting

Following a screening IEP team meeting or a reevaluation planning IEP team meeting at which assessments were recommended, all staff designated to conduct assessments draft, or assist appropriate staff to draft, measurable goals and objectives[31] based on the results of the assessments. The goals and objectives should enable the student to participate and make progress in the general curriculum (or for a preschool child, to participate in appropriate activities). The draft goals and objectives should be recorded on the IEP goals page.

The draft goals and objectives should be shared with the parent prior to the IEP team meeting. The parent also should be sent MCPS Form 336-39: *Parent Report* which is designed to obtain parental suggestions for IEP goals and must receive 10 days' written notice of the IEP team meeting.

28. See MCPS Form 560-35: *Enrollment of Child in Maryland State-Supervised Care and Transfer of Records,* available on the MCPS Forms website
29. If the student is under the age of 16, state compulsory attendance laws apply.
30. Available on the MCPS Forms website.
31. In Maryland benchmarks or short-term objectives must be included in all IEPs for students with disabilities.

Documentation Needed During the IEP Team Meeting

At a minimum, the IEP team will need the following:

- Teacher Report Numbers: 272-8: *Secondary Teacher Report for IEP Team Meeting* or 272-7: *Elementary Teacher Report for IEP Team Meeting*
- The student's current IEP
- New IEP document
- MCPS Forms 336-01: *Addendum to MCPS Forms* (optional)
- Copies of the *Procedural Safeguards-Parental Rights* brochure

IEP Team Meeting Agenda

After welcoming the parent and anyone accompanying him/her, introducing the members of the IEP team, and assigning someone to complete the IEP forms, the chair explains the purpose of the meeting and the meeting process, including the role of the parents as equal partners. Using the statewide IEP forms[e], the chair/designee goes section by section through the process. Depending on the age of the student, the transition pages of the IEP may not need to be completed. See *Transition Planning and Services* in this handbook. Depending on the time of year that the IEP team meeting is held, the extended-school year (ESY) decision making may be deferred to a later meeting. See the MCPS Special Education website for detailed ESY information.

The IEP team members do the following:

- Discuss any draft IEP goals and objectives that have been developed and relate them to the assessment data, including information provided by the parent. The chair should make clear to the IEP team that these are only recommendations for review and discussion.
- Make appropriate changes, additions, or deletions to the draft goals and objectives.
- Approve the goals and objectives—provided the parent has had ample time to review them—and complete the IEP decision-making process. A parent who disagrees with any of the recommendations has the right to appeal through mediation and/or due process.
- If decision making cannot be completed because the parent needs additional time to consider the goals and objectives, make arrangements for working on the goals and objectives and set a date for reconvening the IEP team meeting.

Consent for Initial IEP Services

A school district must make reasonable efforts to "seek to obtain" informed parental consent before providing initial special education and related services to a student with a disability.[32]

If the parent refuses to consent to the provision of special education and related services, the school district—

- shall not provide the services; and
- shall not be considered in violation of the requirement to provide FAPE to the student for not providing special education and related services

Note: IDEA 2004 provides that a public agency is not required to convene an IEP team meeting to develop an IEP for the student if the parent refuses to consent to the provision of services.

Follow-up Responsibilities

If an IEP was not finalized, appropriate staff members should continue working with the parents on the draft IEP so that it can be finalized at the next IEP team meeting.

The case manager should notify all staff members who will implement the IEP of their responsibilities.

The parent must be provided with prior notice. Originals of all documents must be included in the student's confidential file.

Legal References

20 U.S.C. 1402(34); 1412(a) (4) and (16); 1414(d), 1415(m)

34 CFR §§ 300.102, .107, .160, .324, .520

COMAR 13A.05.01

32. OSEP has clarified that if a parent refuses to consent to all services except for a related service, the school district is not required to provide just the related service. *Letter to Yudien* (OSEP (2003)).

ANNUAL AND PERIODIC REVIEW IEP TEAM MEETINGS

ANNUAL REVIEW IEP TEAM MEETINGS

What Is an Annual Review IEP Team Meeting?

An annual review IEP team meeting is a meeting in which the team—

- reviews the student's IEP to determine whether the annual goals are being achieved;
- revises the IEP as appropriate to address—
  - any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;
  - the results of any reevaluation conducted since the last IEP team meeting;
  - information provided to, or by, the parents;
  - the student's anticipated needs; and
  - other matters related to the student's IEP such as scheduling reevaluation planning or making decisions regarding district or state assessments to be held during the course of the new IEP.

Typically, extended school year (ESY) decisions also are made at the annual review IEP team meeting; however, depending on the time of year of the annual review, ESY decision making may be deferred to a later meeting. The team also discusses transition planning for students who will turn the age of 14 during the course of the IEP and/or develops or reviews a transition plan for any student who will turn the age of 16 or older in the upcoming school year.

Scheduling the Annual Review IEP Team Meeting

Annual reviews may be held at any time during the school year. IDEA requires only that each student's IEP be reviewed periodically, but not less than annually. It is possible to develop a "split IEP" for students who are articulating to a higher educational level (e.g. middle to high school), or for students for who the IEP team recommends a different set of special education services from one year to the next. Depending on the time of year that the annual review is held, the IEP team may elect to conduct an annual review for the current year only and conduct a second annual review meeting to make recommendation for the following school year, or the team may elect to develop a "split IEP," recommending services for the remainder of the current school year and the following school year until the next annual review during one meeting.

Staff Responsibilities Prior to the Annual Review IEP Team Meeting

Planning for annual reviews should be held by the principal/designee with the special education teacher(s). The school's special education supervisor should be consulted regarding potential reevaluations, changes in placement, articulations, and dates of meetings, at which his/her presence is needed. Class coverage should be arranged for required IEP team members, and all staff members who provide services to special education students should receive ample notice of the date, time, and place of each annual review. It is required that at least one of the student's general education teachers attends the annual review IEP team meeting.

Prior to the meeting, all staff members who provide services to the student must—

- review the student's progress; and
- be prepared to make recommendations for IEP goals and services based on that progress and on the results of any assessments that have been conducted.

If transition services will be discussed at the annual review and it is anticipated that the student will not be present, a designated staff member must interview the student concerning his/her postsecondary interests and preferences and report on the interview to the annual review IEP team. Typically, the Transition Support Teacher (TST) conducts the interview but another staff member may do so if the TST is unavailable.

Documentation Needed During the Annual Review IEP Team Meeting

In addition to the documentation listed in chapter III, the IEP team will need the following:

- The student's current IEP
- ESY pages (unless ESY decision making will be deferred because of the timing of the annual review meeting)
- A draft transition plan for students who will turn the age of 16 or older during the IEP cycle
- Draft goals and objectives
- *Information for the Graduate* (if transition is to be considered)[1]
- *Answers to Frequently Asked Questions About Transition* (if transition is to be considered)
- *Transition Planning and Anticipated Services in the IEP Process* (if transition is to be considered)
- MCPS Form 336-32: *Authorization for the Release of Confidential Information* (if transition is to be considered)[2]
- New IEP forms
- MCPS Form 336-1: *Addendum to MCPS Forms* (optional)

1. Transition documents are available on the Special Education website.
2. Available on the MCPS Forms website.

- A copy of the *Procedural Safeguards—Parental Rights* brochure. (*Note*: IDEA 2004 requires that parents be given a copy of this brochure once a year. In MCPS this will be done at the annual review IEP team meeting)[3]

Annual Review IEP Team Meeting Agenda

After welcoming the parent and anyone accompanying him/her, introducing the members of the IEP team, and assigning someone to complete the IEP forms, the chair explains the purpose of the meeting and the meeting process, including the role of the parents as equal partners, and ensures that the *IEP Team Participants* section of the IEP is completed accurately.

The chair/designee leads and facilitates the comprehensive decision making documented by the IEP forms.[4] The student's need for ESY is discussed and documented. (See discussion of ESY on the MCPS Special Education website.)

- If the student will turn 14 or 15 years of age during implementation of the IEP, appropriate staff discusses transition planning. If the student will turn 16 years of age or older during implementation of the IEP, appropriate staff discuss the draft transition plan and its relationship to assessment data, information provided by the parent, and anticipated postsecondary services. The team clarifies that the student must meet the outside agency's eligibility requirements to receive postsecondary services. Authorization for sharing information with potential postsecondary service providers may be obtained.
- Appropriate staff discusses any draft IEP goals and objectives that have been developed and relate them to the assessment data including information provided by the parent. Appropriate changes, additions, or deletions are made by the IEP team to the draft goals and objectives.
- Provided the parent has had ample time (at least two to three days) to review the goals and objectives, the IEP team may approve the goals and objectives and complete the IEP decision-making process. A parent who disagrees with any of the recommendations has the right to appeal through mediation and/or due process or request an administrative review. If decision making cannot be completed because the parent has not previously seen the proposed goals and objectives and needs additional time to consider them, arrangements should be made for working on the goals and objectives and a date set for reconvening the IEP team meeting. It should be noted that MCPS is required by law to have an IEP in place for each student at the beginning of the school year.
- At the conclusion of the meeting, the parent is provided with a copy of the *Procedural Safeguards—Parental Rights* brochure. If ESY was discussed, the ESY brochure should be given to the parents as well.

Year-round or Rolling IEPs

IDEA 2004 requires that IEPs be implemented as soon as possible after development. As school systems throughout the nation, including MCPS, move to more inclusion of special education students in their home schools, the previous need for administrative delays in implementing IEPs such as delays necessitated by staffing, facilities, transportation, etc., have lessened. Students' IEPs can be implemented more efficiently, and student's needs can be addressed in a more timely manner through the year-round or rolling IEP process.

Note: Development of an IEP that must span two levels, e.g., an IEP for a student who will transition from middle to high school over the course of the IEP, requires the IEP team to bifurcate decision making. A representative from the next level school should attend the IEP team meeting, if at all possible. The IEP team—

- develops an IEP for those months the student will be in the current school; and
- discusses any changes to the IEP that will be needed from the time the student enters the next level school until the next annual review and develops an IEP that will be implemented in the next level school.

If the student's educational needs change prior to his/her transition to the next level or once he/she has made the transition, an IEP team meeting should be held to address the student's needs. See the online IEP documentation for detailed directions on managing the IEP forms in these situations.

Follow-up Responsibilities

If the IEP is not finalized, appropriate staff members should continue working with the parent on the draft goals and objectives so the IEP can be finalized at the next IEP team meeting.

If needed, the parent's written authorization for releasing confidential information should be forwarded to the appropriate agency.

If ESY decision making was deferred, a periodic IEP team meeting should be scheduled later in the year.

The parent must be provided with prior written notice. Originals of all documents must be included in the student's confidential file.

Making Changes to a Student's IEP After the Annual Review IEP Team Meeting

IDEA provides that changes may be made to a student's IEP after the annual review meeting, either by convening another IEP team meeting or by amending the IEP without holding an IEP team meeting. Both the parent and MCPS must agree not to convene an IEP team meeting for purposes of making such changes. If no agreement is reached, a meeting must be held.

3. A copy of the procedural safeguards brochure must also be given to parents upon initial referral or parental request for evaluation, upon the first occurrence of a parental filing for a due process hearing, and upon parental request, and at suspensions or negotiations.
4. IDEA 2004 requires that any special factors the IEP team considered during the initial development of the child's IEP must be considered when reviewing a child's IEP. See chapter VI in this handbook.

Note: When the IEP team anticipates that major changes may be made to the IEP, such as a change in placement, eligibility category; dismissal from special education, change in least restrictive environment designation; ESY, need for critical staffing; or participation in state assessments, and IEP team meeting must be convened.

For changes not requiring an IEP team meeting, an IEP ammendment form is used. The form lists the current IEP requirement to be changed, the agreed-upon change and rationale, and the proposed date of the change. Before implementation, the form must be signed by the parent, the MCPS staff member responsible for implementing the change, and the school administrator. A prior notice letter must be sent to the parent confirming the agreed-upon amendment.

All staff who must implement the amendment must be notified and a copy of the amendment and the prior notice letter must be included in the student's confidential file.

Note: In Maryland, when a student's IEP is amended, the parent must be provided with a revised copy of the student's IEP that incorporates the amendment. COMAR 13A.05.01.08B(6)

Legal References

20 U.S.C. 1414

34 CFR §§300.320-.328

COMAR 13A.05.01.07-.08

PERIODIC REVIEW IEP TEAM MEETINGS

When Should a Periodic Review IEP Team Meeting be Held?

Periodic review IEP team meetings may be held as needed, such as when placing a special education student on Home and Hospital Teaching (HHT), or when Extended School Year (ESY) decision making was deferred at the student's annual review. A periodic review meeting may also be held to consider new assessment information when a full evaluation is not required, when making significant changes to the student's IEP, or at parent or staff request.

Staff Responsibilities Prior to a Periodic Review IEP Team Meeting

The parent must be sent a letter giving at least 10 calendar days written notice of the meeting. MCPS' practice is to send any draft IEP goals to the parent prior to the IEP team meeting in order to facilitate discussion at the meeting.

Documentation Needed During a Periodic Review IEP Team Meeting

At a minimum, the IEP team will need the following:

- Completed MCPS Form 272-8: *Secondary Teacher Report for IEP Team Meeting* or MCPS Form 272-7: *Elementary Teacher Report for IEP Team Meeting*
- The student's current IEP
- New IEP forms
- MCPS Form 336-01: *Addendum to MCPS Forms* (optional)
- Copies of the *Procedurals Safeguards-Parental Rights* brochure

Periodic Review IEP Team Meeting Agenda

After welcoming the parent and anyone accompanying him/her, introducing the members of the IEP team, and assigning someone to complete the IEP forms—

- the chair explains the purpose of the meeting and the meeting process, including the role of the parents as equal partners;
- using the student's current IEP, the chair/designee leads the review of the section(s) of the IEP being considered for change;
- if a change in IEP goals is proposed, appropriate staff members discuss the draft IEP goals and objectives that have been developed and relate them to the assessment data including any information provided by the parent. The chair should make clear to the IEP team that these are only recommendations for review and discussion. Appropriate changes, additions, or deletions are made by the IEP team;
- provided the parent has had ample time to review them (at least two to three days) , the IEP team may approve the goals and objectives, recommend any needed change in services, and complete the IEP decision-making process. A parent who disagrees with any of the recommendations has the right to appeal through mediation and/or due process. If decision making cannot be completed because the parent has not previously seen the proposed goals and objectives and needs additional time to consider them, arrangements should be made for working on the goals and objectives and a date set for reconvening the IEP team meeting. It should be noted that MCPS is required by law to have an IEP in place for each student at the beginning of the school year.

Follow-up Responsibilities

If an IEP was not finalized, appropriate staff should continue working with the parent on the draft IEP, so that it can be finalized at the next IEP team meeting.

The parent must be provided with prior written notice. Originals of all documents must be included in the student's confidential file.

Legal References

20 U.S.C. 1414)(d)

34 CFR §00.324

COMAR 13A.05.01.08

PROCEDURES FOR STUDENTS IN PRIVATE/RELIGIOUS SCHOOLS OR ON HOME SCHOOLING

Consultation Responsibilities

IDEA 2004 requires MCPS to solicit timely and meaningful consultation from private school representatives and representatives of parents of parentally placed private school children with disabilities[1] regarding Child Find, the proportionate share of federal funds and the provision of services to private/religious school students located in the county, as well as about the consultation process. In MCPS this process is coordinated by the Placement and Assessment Services Unit (PASU).

> *Note*: MCPS decisions regarding these matters, made after the consultation process, are memorialized in a document titled *Services for Students Parentally Enrolled in Private and Religious Schools.* This document is available on the MCPS Special Education website.

Referrals for Consideration of Special Education Services

Parents of students who attend private/religious schools located in Montgomery County or whose children are being home schooled[2] should write to the PASU and request consideration of special education services. Receipt of the written request starts the legal timeline for the procedures. A parent who calls the PASU will be asked to put his/her request in writing.

Once the PASU receives a written request, a referral packet that explains the procedures is mailed to the parent. The referral packet contains the forms used by MCPS staff to conduct screenings of MCPS students. The parent is asked to complete the parent questionnaire. If the child attends a private/religious school, parents are asked to have the school staff complete teacher referral, classroom observation, and educational history forms. When completed, these forms are sent by PASU to the student's MCPS home school, if the parent is a Montgomery County resident or to the MCPS school closest to the private/religious school, if the parent is a nonresident.[3] Procedures for children who are being home-schooled are conducted at the child's home public school. The IEP team at the appropriate school conducts the screening and any follow-up activities.

Conducting the Screening and Evaluation IEP Team Meetings

Following receipt of a written referral to the IEP team, a screening IEP team meeting must be scheduled in a timely manner, keeping in mind that receipt by MCPS of the written referral from the parent starts a 90-day timeline for completion of any subsequently required evaluation. (See Chapter IV for screening procedures.)

An evaluation IEP team meeting must be held no later than 60 calendar days from the screening IEP team's receipt of the parent's authorization for assessments or no later than 90 calendar days from the date of receipt of the initial referral from the parent, whichever is sooner. Authorization should be obtained for all recommended assessments at the screening IEP team meeting. If the parent does not attend the screening IEP team meeting, the case manager and/or assessors should obtain written authorization for all assessments without delay. (See Chapter IV for evaluation procedures.)

The 60- or 90-day timeframe will not apply if the parent of the child repeatedly fails to, or repeatedly refuses to, produce the child for evaluation. In these instances, the case manager should notify PASU and keep an accurate written record of the parent's failure or refusal to produce the child for the evaluation.

IEP Team Responsibilities

The appropriate IEP team conducts the screening. If the team suspects that the student may have an educational disability and may require specialized instruction, the team recommends any needed assessments. Appropriate staff members conduct the assessments, and an evaluation IEP team reviews the assessment data and makes an eligibility recommendation. If the student attends a private/religious school, a representative from the student's school must be invited to all IEP team meetings. If a representative of the private school cannot attend, the IEP team must use other methods to ensure participation by the private/religious school, such as conference calls.

Resident Preschool Student Who Attends a Private/Religious School in Montgomery County: If a resident preschool child who attends a private/religious school located in Montgomery County is found eligible for special education,

1. "Parentally placed private school children with disabilities" means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary or secondary school in IDEA 2004 and in the Annotated Code of Maryland. Education Article §1-101(g) defines elementary and secondary education as "education and programs of education from and including preschool through the end of high school and their equivalent. Private elementary schools include all state-approved or church-exempt educational programs for students, including preschool students."
2. The legal term for home schooling in Maryland is "home instruction program," which is a program in which a child is receiving regular, thorough instruction during the school year in the studies usually taught in the public schools to children of the same age. COMAR 13A.10.01.01.
3. If an MCPS school is located close to several private/religious schools and is overly burdened by processing private/religious school referrals, PASU may make alternative arrangements.

MCPS may develop an initial IEP for the student if the parent is interested in seeing what services MCPS would offer should the student enroll in MCPS. Although not required by IDEA 2004, the development of an IEP provides MCPS with the opportunity to inform the parents of the special education services and supports available for their child and of the benefits of early comprehensive intervention. If the parents ultimately decline to enroll their child in MCPS, a *Services Plan* for speech-only services is developed by the IEP team, unless the parents decline all services. If the parents decline services, this should be documented on the *Services Plan* form. A copy of the form should be forwarded to the coordinator of private/religious school services in the PASU, , Carver Educational Services Center (CESC), Room 216.

Resident School-Aged Student Who Attends a Private/Religious School or is Home-schooled in Montgomery County: If a resident school-aged student who attends a private/religious school located in Montgomery County or is home schooled is found eligible for special education, and the parents are interested in seeing what IEP services would be available for the student should he/she enroll in MCPS, the team develops a complete initial IEP. The IEP team informs the parents that, should they choose to enroll the student in MCPS, the recommended IEP will be implemented.

If, the parents make clear their intention to continue to enroll the student in a private school or remain on home schooling and are not interested in a public program or placement for the student, MCPS need not develop an IEP for the student.[4] The IEP team must, however, develop a *Services Plan*^{e} for the student, unless the parents decline all services. If the parents decline services, this should be documented on the *Services Plan* form. A copy of the form should be forwarded to the coordinator of private/religious school services in the PASU, room, Carver Educational Services Center (CESC), Room 216.

Resident Student Who Attends a Private/Religious School in Another Jurisdiction: A student who resides in Montgomery County but attends a private/religious school in another jurisdiction is not eligible under IDEA to be evaluated by MCPS, unless they are seeking a FAPE from MCPS. If the parent is seeking private religious services, the student must be evaluated by the public school system where his/her private/religious school is located. If the student is found eligible, the jurisdiction develops a *Services Plan* for the student.

If the parent requests MCPS to develop an IEP for his/her child, the student's home MCPS School would conduct reevaluation planning. The IEP team reviews the existing documentation, determines whether any additional assessment is needed, and ultimately develops an IEP for an eligible student. The student does not have to withdraw from the private/religious school or enroll in MCPS for this service. The parent then would have the option of enrolling the student in MCPS and receiving the IEP services or remaining at the private/religious school and receiving *Services Plan* services from the jurisdiction in which the private/religious school is located.

> *Note:* IDEA 2004 requires a school district to obtain parental consent before releasing information about a parentally placed private school child to the school district where the child's parents reside.

Nonresident Student Who Attends School in Montgomery County: If a nonresident student who attends an MSDE-approved school[5] in Montgomery County is found eligible for special education, the IEP team does not develop an IEP for the student but does develop a *Services Plan*^{e}, unless the parents decline all services. If the parents decline services, this should be documented on the *Services Plan* form. A copy of the form should be forwarded to the coordinator of private/religious school services in the PASU, Carver Educational Services Center (CESC), Room 216.

Development of a Services Plan

If a resident elects to have the child continue to attend the private or religious school or remain on home schooling but wishes to have the child receive services from MCPS, the IEP team develops a *Services Plan* for the student by completing MCPS Form 336-53: *Services Plan*^{e}. The plan includes only those services that MCPS, after consultation with representatives of private and religious schools and with representatives of parents of parentally placed private school children with disabilities and in accordance with IDEA 2004, has determined it will provide to private/religious students, and for which the student has been found eligible by the evaluation IEP team. Services provided must be secular, neutral, and nonideological.

> *Note*: Historically, MCPS has provided special education resource and/or speech/language therapy for eligible private/religious school aged students and speech/language services for eligible pre-K students. See the MCPS Special Education website for a copy of the current decisions.

Written informed parental consent must be obtained before the provision of services under an initial *Services Plan*.

Services will be provided at the student's MCPS home school, if the parent is a Montgomery County resident, or at the MCPS School located as close as possible to the student's private/religious school, if the parent is a nonresident.[6] A parent who wants services delivered at a different site must submit a written request to PASU. PASU forwards requests for alternative sites for speech and language services to the MCPS supervisor of Speech and Language Services. Requests for alternate sites for resource services will be forwarded to the appropriate special education supervisor. Principals of the affected schools will be consulted about the feasibility of providing services.

4. *Parentally Placed Private School Students with Disabilities,* MSDE Technical Assistance Bulletin 4 (available on the MSDE website) and OSEP Memo 00-14, May 4, 2000, Question 8.
5. Private child care programs including home child care programs, family day care, and home instruction, **are not** included in the definition of private schools.
6. MCPS may provide speech/language services at the private/religious school site when circumstances warrant.

Follow-up Responsibilities

Local School Responsibilities: The MCPS school site that provides services to a student under a *Services Plan* is responsible for conducting an annual review of the plan. The parent must be provided with written notice of the IEP team meeting***e***. Copies of all documents must be placed in the student's confidential file. The school must send a prior notice***e*** of the IEP team's decisions to the parent.[7]

At least once every three years, the school site IEP team conducts reevaluation planning and reevaluation determinations for the student. At that time, the IEP team proposes a new IEP and/or *Services Plan*.

Responsibilities of the Placement and Assessment Unit: PASU must maintain in its records and provide the MSDE the number of parentally placed children evaluated, the number of children determined to be children with disabilities, and the number of children who receive special education services. In addition, PASU must maintain documentation concerning private/religious school students who are found eligible but whose parents decline any services.

Parental Right to Due Process

A parent of a student who is enrolled in a private or religious school or is being home schooled may request mediation or a due process hearing regarding MCPS' **Child Find** responsibilities (i.e., screening, evaluation, and eligibility determination) **only**. The request for mediation or hearing must be filed with MCPS, and a copy must be forwarded to the Office of Administrative Hearings. Parents of such students are not entitled to mediation or due process concerning the **services** that MCPS has determined it will provide to eligible students who do not enroll in MCPS; however, they may file a complaint with MSDE.

Legal References

20 U.S.C. 1412(a)(10)

34 CFR §§300.130-.144

COMAR 13A.05.01.16B

7. See the Special Education website for sample letter.

DISCIPLINARY PROCEDURES FOR STUDENTS WITH DISABILITIES

Among the "procedural safeguards" provided to students and their parents by IDEA 2004 are provisions relating to suspension and expulsion and to temporary placement of special education students in interim alternative educational settings. Board of Education Policy JGA, *Student Discipline*, Montgomery County Public Schools (MCPS) Regulation JGA-RB, *Suspension and Expulsion of an MCPS Student,* and the discipline section of *A Student's Guide to Rights and Responsibilities in the Montgomery County Public Schools* recognize that schools must be safe and orderly environments in order for students to learn. These documents also recognize that suspension or expulsion may be an appropriate disciplinary tool for use with students with disabilities in cases where the student's behavior is both disruptive and detrimental to the operation of the school, provided the proper procedures are followed. The Office of Special Education and Student Services (OSESS) developed a checklist to assist schools in ensuring that procedural requirements are implemented when suspending special education students. Use of the checklist, *Suspension or Expulsion of Students with Disabilities Checklist,* is mandatory and must be used for all suspensions of students with disabilities (Attachment A).

AUTHORITY OF MCPS ADMINISTRATORS

Removals of not More than 10 Consecutive Days

First removal during a school year: A student with a disability who violates a code of student conduct may be removed from his/her current placement to an "appropriate interim alternative educational setting, another setting, or suspended" by the local school administrator for up to ten school days, to the extent such alternatives are applied to students without disabilities. The procedures set forth in MCPS Regulation JGA-RB are followed. Services need to be provided to the student during these 10 school days only if students without disabilities who are similarly removed are provided services.

Subsequent removals during a school year: A student with a disability who violates a code of student conduct and who has already been suspended for 10 school days may be removed from his/her current placement for additional removals of not more than ten consecutive school days in the same school year for separate incidents of misconduct, as long as these removals do not constitute a change of placement. During these subsequent removals, the student must receive educational services, so as to enable him/her to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his/her Individualized Education Program (IEP); and receive, as appropriate, a functional behavioral assessment (FBA) and behavioral intervention (BIP) services and modifications that are designed to address the behavior violation so that it does not recur.

Pursuant to Maryland regulations, the IEP team determines appropriate services when the student has been removed from the educational setting for more than 10 school days. In cases where the IEP team meeting cannot be scheduled before the 11th day of removal, the principal, in consultation with the student's teachers determine appropriate services until an IEP team can convene.

Note: Under state regulations, the instructional setting for the provision of educational services to the student as a result of a disciplinary removal may not be the student's home. As such, students with disabilities may not be placed on Home and Hospital Instruction as part of the disciplinary process.

Removals of More Than 10 School Days

Following the procedures set forth in MCPS Regulation JGA-RB, with appropriate authorization, a student with a disability who violates a code of student conduct may be removed from his/her current placement to an "appropriate interim alternative educational setting, another setting, or suspended" by the local school administrator for more than 10 school days to the extent such alternatives are applied to students without disabilities. Any removal of more than ten school days constitutes a "change of placement" and requires a manifestation determination within 10 school days of the decision to change the student's placement.

Special Circumstances

For certain infractions involving weapons, illegal drugs, and serious bodily injury inflicted upon another person, IDEA 2004 permits a local school administrator to remove a student with a disability to an "interim alternative educational setting" (IAES) for up to 45 school days. This action may be taken without regard to whether the behavior is determined to be a manifestation of the student's disability. The IAES must be determined by an IEP team and permit the student to continue to receive educational services so as to enable him/her to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his/her IEP; and receive, as appropriate, an FBA and BIP services and modifications that are designed to address the school code violation so that it does not recur. A previously conducted FBA and BIP that is valid and relevant should be included in the information reviewed during the manifestation determination.

Note: The U.S. Department of Education indicates that it does not interpret "participate" to mean that a school or district must replicate every aspect of the services that a student would receive if in his/her normal classroom(s). The Department indicates, for example, that it may not be "feasible" for a suspended student to receive every aspect of the services he/she would have received in a chemistry or auto mechanics classroom or other class that requires "a hands-on component or specialized equipment or facilities." Further, the Department believes that IDEA 2004 "modifies the concept of FAPE" in the disciplinary context. The student does not have to receive exactly the same services in exactly the same settings as he/she was receiving prior to the imposition of discipline, provided the special education and related services the student receives enables him/her to continue to participate in the general curriculum and make progress on his/her IEP goals (71 FR 46716).

Weapons violations: If a student with a disability "carries a weapon to or possesses a weapon at school, on school premises, or at a school function…" he/she may be removed to an IAES for up to 45 school days, as determined by the IEP team.

"Weapon" means "a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length." 18 U.S.C. 930(g)(2)

Illegal drug violations: If a student with a disability "knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function…" he/she may be removed to an IAES for up to 45 school days, as determined by the IEP team.

"Illegal drug" means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under [the Controlled Substance Act] or under any other provision of federal law. "Controlled substance" means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

Infliction of serious bodily injury: If a student with a disability inflicts "serious bodily injury upon another person while at school, on school premises, or at a school function…" he/she may be removed to an IAES for up to 45 school days, as determined by the IEP team.

"Serious bodily injury" means "bodily injury that involves (a) a substantial risk of death; (b) extreme physical pain; (c) protracted and obvious disfigurement; or (d) protracted loss or impairment of the function of a bodily member, organ, or mental faculty." (18 U.S.C.1365.)

Procedures for the 45 Day IAES

For suspensions involving weapons, illegal drugs, or serious bodily injury, the principal must immediately contact the supervisor of the Equity Assurance and Compliance Unit (EACU) via e-mail, with information about the incident. The supervisor of EACU will provide a set of questions designed to determine whether the incident meets the statutory requirements for the student to be removed for up to 45 school days. If the incident meets the requirements, the IEP team has the option to place the student in the 45 Day IAES. The IEP team may decide not to access the 45-Day IAES, or they may decide to place the student in the 45-Day IAES for less than 45 days.

In cases involving weapons, drugs, or injury to others that do not meet the requirements for the 45 Day IAES, the disciplinary process may proceed provided that the incident was not a manifestation of the student's behavior.

Removals That Constitute a Change of Placement

A change of placement occurs if the removal is for more than 10 consecutive school days; or the student has been subjected to a series of removals that constitute a pattern. The determination of whether a series of removals constitutes a pattern is a decision made by the IEP team. When there is a series of removals totaling more than ten school days in a school year; the IEP team must consider the following factors in determining whether there is a change of placement:

- The student's behavior is substantially similar to his/her behavior in previous incidents that resulted in the series of removals.
- The length of each removal.
- The total amount of time the student has been removed.
- The proximity of the removals to one another.

If the IEP team determines that the series of removals constitute a pattern, and therefore, a change of placement, the IEP team then moves forward with a manifestation determination. If the IEP team determines that the series of removals was not a change of placement, the disciplinary removal may continue, however, the IEP team must determine appropriate services beginning on the 11th day through the end of the removal.

In-school and Bus Suspensions

In-school suspensions: COMAR defines an in-school suspension as the "exclusion within the school building of a student from the student's regular education program for up to, but not more than, 10 school days for disciplinary reasons by the school principal."

Note: Recent changes to Maryland regulation indicate that "an in school removal is not considered a day of suspension as long as the student is afforded the opportunity to continue to progress on the curriculum; receive the special education and related services specified on the student's IEP; receive instruction commensurate with the program afforded him in the regular classroom; and participate with peers they would in the program afforded in the regular classroom." 13A.05.03.

The key elements of an in-school suspension are as follows:

- Only the principal (or designee) may determine that a student is to be placed on an in-school suspension.
- The action is taken for disciplinary reasons.
- The student is removed from his/her regular education program/FAPE services.

The following removals are not in-school suspensions:

- A therapeutic removal
- A therapeutic intervention that includes removal that is part of the student's IEP
- A removal that is part of the student's BIP
- A removal consistent with Maryland regulation as outlined above

Therapeutic removals are considered "exclusions" under state regulations, rather than "suspensions," and are defined as "the removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction, including special education, related services or support." COMAR 13A.08.04.

Portions of a school day that a student had been suspended may be considered as a removal in regard to determining whether there is a pattern of removals (71 FR 46715).

Bus suspensions: If bus transportation is a part of the student's IEP, a bus suspension would be treated as a suspension imposed under the authority of school personnel to suspend a student with a disability, unless MCPS provides the bus service in some other way. If bus transportation is not part of the student's IEP, the bus suspension would not constitute a suspension under IDEA 2004. The parent would have the same obligation to get the child to and from school as the parent of a nondisabled child. If it appears that the bus behavior is similar to the student's behavior in school, an IEP team meeting should be held to address the student's bus behavior and consider whether an FBA and/or BIP is needed (71 FR 46715).

Notification to Parents of Decision to Take Disciplinary Action

Not later than the date on which the decision to take the action is made, the local school administrator must notify the parents of a decision to take disciplinary actions against a student with a disability and of all their procedural safeguards. The parent must be provided with a copy of the *Procedural Safeguards—Parental Rights* brochure with notice of each disciplinary removal.

Referral to Law Enforcement

IDEA 2004 requires the agency that reports a crime committed by a student with a disability to ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities. Such a transfer must be carried out in conformity with the Family Educational Rights and Privacy Act (FERPA) and would require written parental authorization or, if the student has reached the age of majority, the student's permission.

MANIFESTATION DETERMINATIONS

If, as a result of a disciplinary action, a student with a disability is removed or is recommended for removal from his/her current placement for more than 10 school days at any time during the school year, including removal to an IAES, such a removal will constitute a "change of placement." A series of removals that constitutes a "pattern" also results in a change of placement. In these instances, COMAR requires that an IEP team meeting be held to make a manifestation determination.

Scheduling the Manifestation IEP Team Meeting

The IEP team meeting must be held within 10 school days of the decision to remove for more than 10 consecutive school days or of the conclusion by the IEP team that the student has been subjected to a pattern of removals.

The parent must be sent an invitation to the manifestation meeting. Because in most cases, the manifestation determination must be made quickly, the parents may not receive 10 days notice prior to the meeting. The appropriate invitation letter to a manifestation IEP team meeting is found on the online IEP system.

Documentation Needed for a Manifestation IEP Team Meeting

The IEP team must ensure that the information obtained from all relevant sources is documented and carefully considered at the manifestation meeting. At a minimum, the team will need the following:

- MCPS Form 336-63: *Change of Placement-Manifestation Determinations.*
- The student's IEP.
- Relevant information from the student's file, including any relevant evaluations, existing FBA or BIP.
- Any teacher observations.
- Any relevant information provided by the parent.

Manifestation IEP Team Meeting Agenda

After welcoming the parent and anyone accompanying him/her, introducing the members of the manifestation meeting team, and assigning someone to complete MCPS Form 336-33: *Manifestation Determination,* the chair explains the purpose of the meeting and the meeting process including the role of the parents as equal partners.

Participants of the IEP team must include the school system representative; at least one general education teacher of the student; at least one special education teacher of the student; the parents; the student (if appropriate); and if possible; the MCPS psychologist and pupil personnel worker assigned to the school. The special education supervisor assigned to the cluster should also attend.

Review of relevant information in the student's files: The IEP team reviews the discipline information; the student's IEP; relevant evaluative information in the student's file,

including any FBA or BIP; and relevant information provided by the parent. Each item discussed is identified on the *Change of Placement/Manifestation Determination* form.

Manifestation determination: The IEP team answers the following questions and documents the team's rationale for their conclusions:

- Was the conduct in question caused by or did the conduct have a direct and substantial relationship to the student's disability?
- Was the conduct in question a direct result of MCPS' failure to implement the IEP?

In answering question one, the team should analyze the child's behavior as demonstrated across settings and across time (71 FR 46720).

In answering question two, if the team concludes that the student's conduct was a direct result of MCPS' failure to implement the student's IEP, MCPS must take immediate steps to ensure that all services set forth in the student's IEP are provided.

If the IEP team answers "Yes" to either question one or two, the group must conclude that the student's conduct is a manifestation of his/her disability, and the student must be immediately returned to their educational program as delineated by their IEP.

Requirements regarding the FBA/BIP if the behavior is found to be a manifestation of the student's disability: If the group answers either question one or two in the affirmative, the IEP team—

- reviews and modifies an existing FBA and BIP to address the behavior, or
- conducts an FBA and implements a BIP, and
- returns the student to his/her placement, unless the parent and MCPS agree to a change of placement as part of the modification of the existing BIP or as a recommendation of a new BIP or as a result of recommended 45-day IAES for "special circumstances" violations (weapons, illegal drugs or infliction of serious bodily injury).

Requirements when the behavior is determined not to be a manifestation of the student's disability: If the IEP team answers neither question one nor two in the affirmative, the conduct shall be determined not to be a manifestation of the student's disability. The student may be disciplined in the same manner and for the same duration as apply to general education students who commit the same offense; however, the student with a disability must—

- continue to receive special education and related services so as to enable him/her to participate in the general education curriculum, although in another setting, and to make progress toward meeting the goals set out in his/her IEP; and
- consider conducting an FBA and BIP, if one does not exist, or, if there is a BIP, modify the existing BIP to address the behavior so that it does not recur.

Follow-up Responsibilities

The parent must be sent a *Manifestation IEP Team Meeting Follow-up* letter. If the student was placed in an IAES, an IEP team meeting to plan to return the student from the IAES must be scheduled prior to the end of the IAES timeframe.

APPEALING DISCIPLINARY DECISIONS

Parent appeals: A parent of a student with a disability who disagrees with any decision regarding placement or the manifestation determination may request an expedited due process hearing.

A parent of a student with a disability who disagrees with the decision to suspend or expel the student may appeal the decision through the review/appeal process described in MCPS Regulation JGA-RB*, Suspension or Expulsion of an MCPS Student*.

School system appeals: In the case of a student whose behavior does not meet the "special circumstances" criteria (weapons, illegal drugs, or the infliction of serious bodily injury) but was such that school administrators believe that maintaining the student in his/her current placement is "substantially likely to result in injury to the child or to others," the school system may request a due process hearing. The principal or designee should contact the Legal Services Unit in the Department of Special Education Operations.

Placement during an appeal: A hearing concerning disciplinary matters is scheduled within 20 school days of the date the hearing is requested and is heard by an administrative law judge (ALJ) from the Maryland Office of Administrative Hearings. A decision is rendered by the ALJ within 10 school days after conclusion of the hearing. Prior to the hearing either a resolution meeting or mediation may occur (see Resolving Special Education Disputes in this chapter).

Pending receipt of the ALJ's decision or the expiration of the 45 school days, the student will remain in the IAES, unless the parent and the school system agree otherwise. *Note*: When a hearing is requested by the parent or MCPS, it is the parties involved in the hearing, not the IEP team, who may agree to change the time period of the removal or the interim setting for the student (71 FR 46726).

Authority of the administrative law judge: In regard to issues of placement, the ALJ may—

- return the student to the placement from which the student was removed; or
- order a change of placement to an appropriate IAES for not more than 45 school days if he/she determines that maintaining the current placement is "substantially likely to result in injury to the student or to others."

In regard to the manifestation determination, the ALJ may confirm or reverse the manifestation determination and order appropriate relief.

PROTECTIONS FOR STUDENTS NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

A student who has not been determined as eligible for special education and related services by an IEP team and who has engaged in behavior that violates a code of student conduct may assert any of the disciplinary protections of IDEA 2004, if the school system "had knowledge" that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

Basis of knowledge: A school system will be deemed to have "had knowledge" that a student was a student with a disability before the behavior that precipitated the disciplinary action occurred if, before that event—

- the parent expressed concern in writing to supervisory or administrative personnel;
- a teacher of the student, felt that the student is in need of special education;
- the parent requested an evaluation of the child; or
- the child's teacher or other school system personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education services or to other supervisory personnel of the school system.

Exception: A school system will not be deemed to have "had knowledge" that the student was a student with a disability if, before the event—

- the parent has not permitted the student to be evaluated;
- the parent refused services for the student after an evaluation;
- the parent has revoked consent for special education services; or
- the student was evaluated and it was determined by the IEP team that he/she was not a student with a disability.

Outcome if the school system had no knowledge that the student was a student with a disability: If the school system had no knowledge that the student was a student with a disability prior to the disciplinary infraction, then the student may be treated as a general education student who engaged in comparable behavior.

Parental request for evaluation for general education student who has received disciplinary consequences for his/her behavior: If a parent of a general education student makes a request for an evaluation during the time period in which the student is subject to disciplinary measures, an expedited evaluation must be conducted. Pending the results of the evaluation, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services, if those measures are comparable with disciplinary measures applied to students without disabilities who engage in comparable behavior.

If the student is ultimately determined by an IEP team to be a student with a disability, the student must be provided with special education and related services. In addition, the student is entitled to all of the applicable discipline procedures for students with disabilities discussed above.

MAINTAINING DISCIPLINE RECORDS

Maryland requirements: IDEA 2004 requires school systems follow state requirements for maintaining and transmitting student discipline records. The *Maryland Student Records System Manual* defines "discipline records" as "information which supports or verifies the out-of-school suspension (for one or more days) or expulsion of a student; at a minimum, this information must include a description of the student's behavior that resulted in disciplinary action, and a copy of the correspondence sent to the parents informing them of the student's suspension or expulsion." "Reportable offenses" are specifically excluded from being part of the student record. MCPS Form 560-6: *Worksheet for Suspension or Health-Related Exclusion* is used as a worksheet for online entry of required data.

Discipline records must be:

- maintained until the student graduates or completes his/her education program or becomes 21 years of age; and
- sent to other schools or school systems when a student transfers.

Documentation of in-school suspensions: IDEA 2004 requires states to collect and report the number of students with disabilities subjected to in-school suspension. COMAR defines in-school suspension as the "exclusion within the school building of a student from the student's regular education program for up to, but not more than, 10 school days for disciplinary reasons by the school principal." IDEA requires states to report an unduplicated count of the number of children ages 3 through 21 with in-school suspensions summing to—

- 10 days or more during the school year for any offense or combination of offenses; and
- 10 days or less during the school year for any offense or combination of offenses.

All in-school suspensions of over 30 minutes in length or longer must be included in calculating cumulative days of in-school suspension. In-school suspensions of less than half a school day will not be counted. The data must be disaggregated by race/ethnicity, limited English proficiency (LEP) status, gender, and disability.

PHYSICAL INTERVENTIONS OR SECLUSION

MCPS regulation JGA-RA: *Classroom Management and Student Behavior Interventions,* provides detailed procedures concerning the continuum of behavior interventions designed to maintain a positive environment conducive to learning. When students exhibit behaviors that are dangerous to self or others, that severely disrupt the learning

environment or that cause significant property destruction, they may require physical intervention or seclusion. The parent notification, reporting, and follow-up requirements are documented on MCPS Form 337-2: *Documentation of Physical Interventions or Seclusion.*[1]

If a student with a disability has been subjected to either physical restraint or seclusion, an IEP team meeting must be held within 10 days of the incident to consider appropriate behavioral interventions.

Legal References

20 U.S.C. 1413(i); 1415(k), 1418(d)(1)(C)

34 CFR §§300.530 – 300.536

COMAR 13A.05.01; 13A.08.01.11

RESOLVING SPECIAL EDUCATION DISPUTES

Procedural Safeguards

Under IDEA 2004 and Maryland special education statutes and regulations, students with disabilities and their parents are guaranteed procedural safeguards with respect to the provision by MCPS of a free appropriate public education (FAPE). In Maryland, these safeguards are described in a brochure titled *Procedural Safeguards—Parental Rights*. IDEA 2004 requires that parents be provided with a copy of their procedural safeguards only one time a year, except that a copy must be given to them—

- upon initial referral or parental request for evaluation;
- upon the first occurrence of the filing of a complaint under Section 1415(b)(6);
- in accordance with 300.530 upon notice of removal; and
- upon request by a parent.

A public agency may place a current copy of the procedural safeguards notice on its website. A copy of the brochure is available on the MCPS website at *www.montgomeryschools.org/departments/specialed/safegrds.shtm*.

Options for Resolving Disputes Between Parents and MCPS

IDEA 2004 requires that school systems have both formal and informal methods of optional dispute resolution to address special education complaints and disagreements. If a parent does not agree with a decision that has been made by an IEP team concerning the identification, evaluation, placement, or the provision of FAPE[2] for a student with disabilities, four types of dispute resolution procedures[3] are available:

TYPE OF PROCEDURE	WHO MAY FILE?
Administrative Review	Parents
Mediation	Parents/MCPS
Mediation and Due Process Hearing	Parents/MCPS
Due Process Hearing Only (a preliminary resolution meeting must be available)	Parents/MCPS
State Complaint	Parents/Other parties

In addition, a parent who alleges that MCPS has discriminated against his/her child on the basis of disability may file a complaint under Section 504 of the Rehabilitation Act of 1973 (Section 504) with the Office for Civil Rights (OCR) in the U.S. Department of Education.

Coordination of Special Education Dispute Resolution

The MCPS Equity Assurance and Compliance Unit (EACU) coordinates administrative reviews, mediations, due process hearings, resolution meetings and state special education complaints as well as OCR complaints alleging discrimination against a student with a disability. An EACU compliance specialist is assigned to each case/complaint to work with school staff throughout the process. At the conclusion of the process, EACU notifies school staff in writing of the outcomes and of any follow-up activities they may have to carry out.

Local Schools' Responsibilities

When a local school is notified by EACU that an application has been filed for dispute resolution, the school must—

- forward the student's school cumulative, health, and confidential files, as well as any other information that may be relevant to the case including any records kept separately, to EACU within 48 hours;
- assist the compliance specialist in understanding the background and current issues of the case by meeting with him/her or providing information by phone, electronically, or facsimile;
- update the compliance specialist concerning any information that is generated at the school after the files are copied;
- assist the compliance specialist in identifying other staff members who can provide key information;
- suggest possible resolutions to issues;
- participate, as needed, in the dispute resolution proceedings; and

1. Available on the MCPS Forms website.
2. IDEA 2004 specifically does not create a right of action on behalf of an individual student or class of students for the failure of a teacher to be highly qualified; however, a parent, an organization or an individual may file a complaint about staff qualifications with MSDE.
3. See Board of Education Policy BLC, *Review and Resolution of Special Education Disputes.* Contrast MCPS Regulation KLA-RA, *Responding to Inquiries and Complaints from the Public.* This regulation makes clear that the process described therein is not designed to address special education disputes.

- carry out any follow-up activities or corrective actions required pursuant to the outcome of the complaint.

Administrative Review

An Administrative Review (AR) is an informal voluntary MCPS procedure to consider the issues raised by the parent. The AR is conducted by a committee of at least two professional staff members, one of whom is a special educator and none of whom have had direct involvement in the decision at issue. The procedure includes a review by the committee of the student's records; interviews with the parent, student, MCPS staff and/or other individuals, as appropriate; and consideration of any new information provided. At the conclusion of the AR, a letter is written by the director of Special Education Operations to the parent, with copies to appropriate staff, that summarizes the complaint and the current status of the student's special education program and proposes a resolution to the complaint.

There is a 20-day timeline from receipt by EACU of the application for AR to the written notification to the parent and staff of the director's decision. MCPS Form 336-43A: *Request for Administrative Review*[4] is used to file for an AR.

Mediation

Mediation is an informal dispute resolution process required by IDEA 2004 whereby the parent and MCPS staff attempt to resolve their differences with the assistance of a facilitator who has been trained in the process of mediation. The state Office of Administrative Hearings (OAH)staff schedule mediations and assigns administrative law judges (ALJs) or trained mediators to conduct mediations for the Maryland school systems. Mediation is voluntary on the part of both parties; mediation sessions are closed proceedings. Discussion that occurs during mediation may not be used in any subsequent due process hearing or civil proceeding. The mediation process has a short legal time frame. Mediation sessions must be held within 20 days of the date that a request is received by MCPS, unless the party filing the request agrees to a longer time period. The parties normally file OAH form: OAH-CO-E69: *Request for Mediation/Due Process Hearing (Due Process Complaint Notice);* however, parents, public agencies, or other parties may use another form or document so long as the form or document meets the requirements for filing a request for mediation.

Mediation offers many benefits in that it empowers the parties to design the specific terms of each particular resolution; helps preserve ongoing relationships between schools and families; has a high rate of compliance; and produces immediately implementable resolutions.

Requests for mediation are usually made by the parent; however, an MCPS principal or other appropriate MCPS staff, after consultation with the school's special education supervisor, may request mediation. Situations giving rise to an MCPS request for mediation may include the failure of the parent to authorize initial assessments or the parent's refusal to send a child with a disability to school. MCPS may not request mediation if the parent refuses to authorize implementation of an initial IEP. The EACU compliance specialist works with the school to complete and submit the appropriate application. Since mediation is a voluntary procedure, if the parent declines to mediate, no mediation session can be held. The school may then file for a due process hearing.

The compliance specialist contacts the school to identify appropriate MCPS participants in mediation, works with them to understand the mediation process, and generates proposed resolutions to be discussed with the parent and the ALJ or the mediator at the mediation session. If the parties reach a complete or partial agreement at the mediation session, the mediator commits the agreement to writing. A signed mediation agreement is binding on both parties and is legally enforceable in any state court of competent jurisdiction or in a district court of the United States. Following the mediation, EACU notifies the schools of any activities that must be undertaken to carry out the mediated agreement.

Due Process Hearings

A due process hearing is a quasi-judicial, legally binding administrative proceeding in which a final decision is rendered by an ALJ. Procedures are governed by the Rules of Procedures of the OAH and special education law. Parties request a due process hearing by filing OAH Form: OAH-CO-E69: *Request for Mediation/Due Process Hearing (Due Process Complaint Notice)*; however, parents, public agencies or other parties may use another form or document as long as it meets the requirements for filing a due process complaint. The OAH staff schedule all due process hearings. ALJs preside over due process hearings. MCPS is represented by counsel at all due process hearings. Parents may be represented by counsel or represent themselves.

The EACU compliance specialist reviews the student's record, consults with MCPS staff to clarify and supplement information provided, and develops a potential witness list. The MCPS attorney conducts a briefing(s) with the MCPS witnesses.

Requests for due process hearings are usually made by parents; however, an MCPS principal or other appropriate individual, after consultation with the school's special education supervisor, may request a due process hearing. Situations giving rise to an MCPS request for a due process hearing usually are made after the parent has declined to attend an MCPS-requested mediation. MCPS may not request a due process hearing concerning a parent's refusal to provide consent for the initial provision of special education services. The EACU compliance specialist works with the school to complete and file the appropriate application.

The decision of the ALJ is the final decision for the purpose of judicial review. Copies of the decision are sent directly to the parent and to EACU. EACU staff provide written notification to the school of the decision and any follow-up compliance responsibilities that the school may have. The parties have the right to bring a civil action within 180 days of the ALJ's decision.

4. Available on the Special Education website. A Spanish version of this form is available: MCPS Form 336-43ASP.

Resolution Meetings: MCPS is required under IDEA 2004 to convene a "resolution meeting" when a party requests only a due process hearing; however, the resolution meeting may be waived if both the parents and MCPS agree in writing to waive such meeting or agree to use the mediation process described above.

At the resolution session the parents discuss their complaint and the facts that form the basis for the complaint, and MCPS is provided an opportunity to resolve the complaint. If the case is resolved, a written settlement agreement is signed by both parties; however, both parties have three days to rescind the settlement agreement. If the case is not resolved within 30 days of EACU's receipt of the parent's request for a due process hearing, a due process hearing is scheduled.

Resolution meetings must be held within 15 days of EACU's receipt of notice of the parent's request for a due process hearing. Participants in the meeting are the parents and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in the complaint. The parents and MCPS determine who are the relevant IEP team members. An MCPS representative with decision-making authority on behalf of MCPS must attend the meeting. An MCPS attorney may not attend the resolution meeting unless the parent is represented by counsel.

If MCPS is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, MCPS may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

A due process hearing may occur by the end of the resolution period, if the parties have not resolved the dispute that formed the basis for the due process complaint.

State Complaints

Parents and others, including an organization or individual from another state, have the right to file a signed written complaint with the MSDE regarding the identification, evaluation, placement or the provision of FAPE to the student. The complaint must allege that a state or federal law or regulation regarding students with disabilities has been violated and include factual information on which to base an investigation and a proposed resolution of the problem. The complaint must allege a violation that occurred not more than one year prior to MSDE's receipt of the complaint. A copy of the complaint must be sent to MCPS at the time it is filed with MSDE.

MSDE has 60 days to complete an investigation and provide a written response to allegations. MSDE investigators may conduct on-site interviews with MCPS staff involved in the complaint. With the consent of the complainant, MSDE may permit MCPS to engage in mediation or other dispute resolution process to attempt to resolve the complaint.

Upon notification from MSDE that a complaint has been filed, EACU notifies the school of the complaint and assigns a staff member to assist the school and MSDE in the investigation. The EACU staff sets up a preliminary meeting with appropriate MCPS staff and coordinates any site visits of MSDE investigators to the school(s). Prior to the MSDE site visit or completion of the MSDE investigation, MCPS staff prepare a response to the allegations with documentation to support the response or proposes a resolution to the case.

MSDE issues a Letter of Findings (LOF) to the complainant and to MCPS regarding the allegations contained in the complaint. EACU staff forward this decision to the school. The letter includes a statement of the issues investigated, including any additional issues determined during the course of the investigation, and MSDE's conclusions in regard to each issue. If MSDE determines that violations of state or federal law occurred, the LOF prescribes corrective actions that must be taken by MCPS in regard to the student, the school, other similarly situated students, and/or the school system. The LOF sets timelines for carrying out the corrective actions and reporting back to MSDE. The school will receive a memorandum from EACU outlining any follow-up responsibilities.

Office for Civil Rights Complaints

Upon notification by OCR that a complaint has been filed against MCPS under Section 504 of the Rehabilitation Act of 1973 (Section 504),[5] alleging discrimination against a student on the basis of disability, EACU notifies the school of the complaint and assigns a staff member to assist the school and OCR staff investigators in the investigation.

OCR staff give MCPS 15 days to respond to the complaint and supply OCR with the required information or documents. The EACU staff member will contact the school in order to collect the necessary documentation and, in most instances, meets with appropriate staff members to discuss the allegations. Since the OCR regional office for Maryland is in Philadelphia, OCR staff do not normally conduct a site visit; however, the investigator may interview school staff by telephone. MCPS prepares a response to the allegations with documentation to support the response.

OCR staff utilize a variety of approaches to achieve the goal of complaint resolution, including Resolution Between the Parties (mediation), Commitment to Resolve (recipient-initiated corrective action), Expedited Resolution (informal fact finding), and Formal Findings.

If OCR determines that violations of Section 504 (and the ADA) occurred, they prescribe corrective actions that must be taken by MCPS in regard to the student and/or the school system as a whole. Timelines are set for carrying out the corrective actions and for reporting back to OCR. The school will receive a memorandum from EACU outlining any follow-up responsibilities.

Compensatory Services

Compensatory services are special education services provided to students who had a significant lapse in the educational services specified on their IEPs and, as a result, did not make the anticipated progress on the IEP goals and objectives. A student's need for compensatory services may be considered by an IEP team at any time during the school year or at the student's annual review.

5. The *Americans with Disabilities Act of 1990 (ADA)* contains applicable provisions and is also cited by OCR in their documents.

Compensatory services are most commonly required for missed related services. In order to monitor the provision of related services, therapists maintain verifiable records of individual student's services in service logs.

Loss of services may occur because a therapist becomes sick and a substitute is not immediately available or if services were not initiated at the beginning of the school year. If it is anticipated that a therapist, or a special educator, will be on extended leave, the administrator should notify the appropriate special education supervisor so that coverage with substitute personnel, a contract provider, or redistribution of existing staff, as appropriate, can be arranged. Parents must be notified by letter if such a vacancy causes a gap in the delivery of services.

If missed services cannot be made up, the IEP team must consider whether compensatory services are required for individual students, based on the student's progress on relevant IEP goals and objectives.[6] The prior notice letter to the parents should explain the IEP team's decision in regard to compensatory services. The school's special education supervisor should be involved in the IEP team meeting.

Observing Special Education Students

Observations of students and visits to classrooms and programs are governed by Board of Education policy COA: *Visitors to School During the School Day* and MCPS regulation COA-RA: *School Visitors*. Principals may authorize observations of special education students by parents and other individuals at parent request.[7] If individuals other than parents request permission to visit, principals should contact the special education supervisor to determine whether central office staff should be present. If the request to observe is made in the context of a pending special education hearing or mediation, staff from EACU and/or an attorney who is representing MCPS in the case should be contacted by the principal concerning the upcoming visit. In such cases, the observer should be accompanied by an MCPS employee who will take notes on the classroom activities and the interaction of the observer during the visit.

Reasonable limitations on the observations in terms of the time, length, and frequency of any visits, as well as on the number of observers, may be set to ensure that there is no disruption or disturbance to the normal operation of the school. Requests by visitors to speak with staff members should be arranged prior to the visit. Any such requests should be scheduled for a time when class or related services sessions are not in session. Staff members should not leave the instructional program or related services session to speak with visitors. If the conduct of any visitor disrupts or disturbs the normal operation of the school, the principal may require the visitor to leave.

If the visit is for the purpose of observing an individual student, the student's parent must give written permission for other individuals to observe. If the visit is for the purpose of observing a proposed program, the visit should be arranged so that the most important aspects of the program can be observed. Steps must be taken to safeguard the privacy of the students, their parents, and staff.

Compliance Training

Staff in the EACU (301-517-5864) and in the Special Education Legal Services office (301-279-3549) are available to train school staff on compliance with federal and state special education statutes and regulations.

Legal References

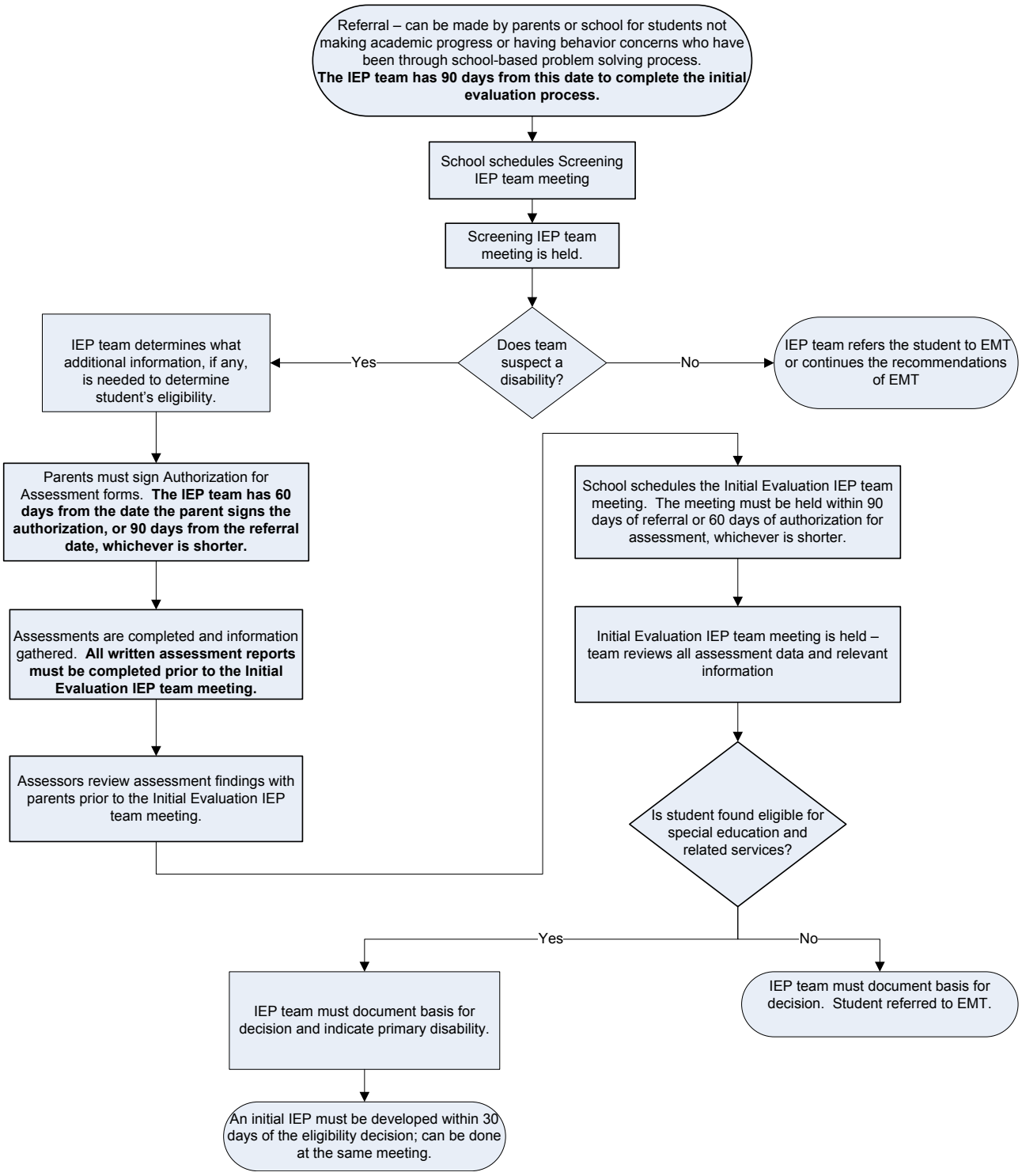
20 U.S.C. 1412(a)(6); 1415(a) and (b); and 1221e-3

34 CFR §§300.151- .153 and .506 - .518

COMAR 13A.05.01.15

6. *MCPS Special Education Staffing Plan,* which is available on the MCPS Special Education website.
7. Requests by parents/guardians to have a tutor in their employ visit the school to work with a student cannot be approved. (MCPS Regulation COA-RA, *School Visitors*)

Special Education Initial Evaluation Process Map



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