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**Individualized Remote Learning Plans and the Rights of Students with Disabilities.**

*Updated 09.02.2020*

Last week, the Maine Department of Education (MDOE) released guidance regarding the creation of Individualized Remote Learning Plans (IRLP). That guidance is available here: <https://www.maine.gov/doe/sites/maine.gov.doe/files/inline-files/IRLP%20Guidance%208-28-2020.pdf>

Since families across Maine may be hearing this new term soon, and in light of the recent MDOE guidance, we wanted to provide some information about IRLPs and the rights of students with disabilities and their families.

For recent general guidance from DRM, please see: [Protecting the Rights of Students with Disabilities During and After the COVID-19 Educational Disruption (Word)](https://drme.org/resources/protecting-the-rights-of-students-with-disabilities-during-after-coronavirus-outbreak-updated-august-2020-word) (August 2020)

**How does MDOE define the Individualized Remote Learning Plan (IRLP)?**

MDOE defines the Individualized Remote Learning Plan as “a temporary plan describing changes to a student’s IEP that are necessary to protect health and safety during the pandemic and provide a FAPE”.

MDOE recognizes that IRLPs are not contemplated by the IDEA, but “recommends that IEP teams consider such a plan to navigate the uncertainties related to COVID-19”.

MDOE says that the IRLP “should be added to an Individualized Education Plan (IEP) as an accommodation”. And MDOE says that this can happen either: a) during an IEP meeting; or b) as an amendment to the IEP without a meeting.

MDOE continues: “For an amendment without a meeting, you must document parent input into the plan”.

MDOE outlines two areas where plans can be used. First, MDOE indicates that the IRLP is a contingency plan to be implemented during disruptions to in-person instruction, MDOE cites to the March 2020 OSEP Guidance (<https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf>) in support of this. The OSEP Guidance outlined that contingency plans are “triggered and implemented during a selective closure due to a COVID-19 outbreak.” Second, MDOE says that an IRLP can also be used when a parent or guardian is offered in-person services, but declines to access them due to health and safety concerns.

**It is appropriate for IEP teams to engage in contingency planning?**

As indicated in [DRM’s August 17, 2020 guidance](https://drme.org/resources/protecting-the-rights-of-students-with-disabilities-during-after-coronavirus-outbreak-updated-august-2020-word), it is very likely that some school districts will experience disruptions after a local outbreak during this school year. Planning for this eventuality is appropriate. DRM believes that it would be appropriate to include this contingency planning within the IEP document itself. For example, the IEP team could develop a plan that would go into effect in the event that the county is categorized as red and the school moves to an all remote model. The IEP team would determine how, in the event of such a change, to continue to provide a free and appropriate public education to the student. This type of planning could have prevented some of the difficulties and learning loss that occurred this spring when schools were closed abruptly.

If IEP teams take this approach, DRM recommends that families insist that the plan is clearly delineated in the IEP. It could be included in the accommodations section. Families should not agree to any plan that is unclear or to a proposal to develop a plan later, outside the IEP team process. Families should insist on a clear plan because otherwise it is impossible to provide informed consent or participate meaningfully in the process. Phrases such as “as needed” or “as available” or “to be provided at a frequency to be determined later” should be avoided in these contingency plans. Families should also ensure that the contingency plan is clearly identified as temporary. And finally, there should be a trigger to bring the IEP team back together in the event the plan is in place for longer than an agreed upon amount of time, perhaps 30 calendar days, to address the continued provision of a FAPE.

Keep in mind that the Individuals with Disabilities Act has not changed in any way. And the IRLP is not contemplated by the IDEA.

**What can I do if I do not agree with the proposed IRLP?**

Based on the guidance from MDOE, schools may believe that all they need to do is call a parent and get their input before changing a student’s Individualized Education Plan by issuing an IRLP. But simply calling a parent to get their input and then amending an IEP is not sufficient. Parents must agree to allow an amendment of an IEP without a meeting. See: 34 C.F.R. 300.324(a)(4)(I)(“In making changes to a child's IEP after the annual IEP Team meeting for a school year, **the parent of a child with a disability and the public agency may agree** not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.”)(emphasis added).

If you disagree with a proposed IRLP, do not believe that it would provide your child with a free and appropriate public education, and/or simply need more information to understand the plan, you should write to the school and state that you do not agree to any change in the IEP outside of an IEP meeting. You can, but do not need to, detail your objections to the proposed IRLP. And in this same email or letter, you could provide your availability for a meeting over the next several weeks.

We understand that many schools are hesitant to schedule IEP meetings at this time, and are indicating that they need time to gather present levels of performance and additional information to be able to plan. This is likely true. But if schools need more information before they can plan, they should not be asking families to agree to changes outside the IEP process. If you don’t have enough information to hold an IEP meeting, then you don’t have enough information to change an IEP without a meeting.

If an IEP meeting is held, the IRLP is discussed, and the IEP Team cannot reach a consensus, then the school will outline its proposal in a Written Notice following the meeting. This Written Notice must be provided at least 7 days before the proposed change(s) to the IEP will go into effect. At this point, if you cannot agree with the proposed changes, you can utilize one of the dispute resolution procedures available under the IDEA. Information about these processes and the forms you can use to access them, can be found here: <https://www.maine.gov/doe/learning/specialed/dueprocess>

**Our school district said that if we choose an all-remote learning plan, they will not be offering a free appropriate public education (FAPE) and instead will issue an IRLP. Is this OK?**

No. The school district must provide a FAPE for students with disabilities whether instruction is remote, hybrid, or in person. The IEP team should meet to design a plan that provides a FAPE. The methods used to deliver a FAPE may differ, but the rights of students with disabilities must not be diminished as a result of selecting an option generally available to all students.

Again, if your school is issuing an individual remote learning plan or otherwise seeking to change the IEP without a meeting, you should object and request an IEP team meeting. At this meeting, you should explain the reasons why you elected the remote or hybrid option presented to all families and request that the IEP team develop a plan to provide a FAPE using the selected model. There may be circumstances where the school does not believe that it can provide a FAPE to a student through remote means and, as a result, proposes a placement that includes in person instruction. But these decisions must be individualized and based on the needs of the student. And they should be made through the IEP Team process.

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