

Summer Zoom Conference 2020

Questions & Answers

Questions and Answers from the July 16, 2020 Summer Zoom Conference with Jim Keith and KaShonda Day, attorneys with Adams and Reese Law Firm and Rosemont Consulting Services. Thank you again for participating and we look forward to the next zoom meeting. Please feel free to call or text Dianne Enis at 601-214-3535 or email at dianne.enis@rosemontconsulting.org.

Compensatory Services (Recovery Losses)

Q: How will the district handle compensatory services when schools may be offering hybrid services and limited time at school?

A: It is recommended that districts and schools not use the term compensatory services to describe losses that were not due to the district's actions. Rather than 'Compensatory Services' – consider it a 'Recovery of Losses'. Compensatory services indicates that the district did something to cause the possible losses. That is not the case. The pandemic, and following shutdown by the governor, are the reason for possible losses.

Discuss the plan for recovery of losses with the parent. The plan for recovery of losses must be individualized for the student, it cannot be a generic plan for all students with disabilities. Related services, as well as instruction, could be provided at the school 1:1 or virtually. The recovery plan must detail how much services and what kind of services the student will need to progress.

An IEP decision will need to be made to determine whether the service on the IEP can be replicated virtually alone or at school and virtually. If not, the IEP will need to be amended to reflect the decision to delay a service until school is back in session.

Q: What must the IEP committee consider when determining whether compensatory services are needed by a student?

A: Again, the student suffered a loss brought on by the pandemic not by any actions of the district; therefore, a Recovery of Losses plan may be needed to address where the student is on his goals and curriculum and where he/she needs to be. In order to determine what the student needs, the teacher must have progress monitoring data on the student's progress in meeting IEP goals and on curriculum standards. The progress monitoring data should be

curriculum based, pre and post assessments on goals, etc. District wide measures may not be reflective of the student's progress or lack of progress. If any district wide assessments are used, such as STAR, the student's performance must be compared to the performance of his/her peer group at the time of assessment, not grade level expectations.

Q: Should every student's IEP committee address compensatory services in August to cover themselves?

A: Every student's IEP committee must address where the student is currently and determine what the student needs to progress on his/her goals and curriculum standards. This may or may not include a recovery of losses depending on the student's progress monitoring data gathered during the shutdown.

Child Find

Q: If permission to evaluate was signed prior to shut down but the student could not be evaluated during that time, should the district obtain a new permission to evaluate or just talk with parents and conduct the evaluation?

A: As a general rule, there's no need for a new informed parental consent to be signed. Communication with the parent is key. Districts should be documenting all communication with parents on the PWN to show what was discussed in the meeting. The district can elect to obtain a new parental consent signature if that is district procedure.

Q: Should districts have a Child Find policy even if school is virtual?

A: Yes. There are no postponements of requests just because school is not in classrooms. The district must actively publicize that any child suspected of a disability should be referred to the district contact person. In schools, teachers and administrators must continue to refer students suspected of having a disability. The Multidisciplinary Evaluation Team (MET) must meet to consider all information gathered.

Q: Should Child Find announcements be posted where the majority of people can see it or just on the district's Sped page?

A: Districts want to be sure that all parents, and other interested parties know about Child Find and what to do if they suspect a child has a disability. This may mean doing more than what has been done in the past. It never hurts to do more.

Q: How would districts handle referral data gathered prior to shut down but is no longer current (ex. ABC data, behavior observations for emotional disabilities, STAR and other district academic assessments)?

A: This data should not be used to deny testing but instead a procedure should be put in place to gather any information needed that is not provided.

Q: Is stating/documenting in the MET meeting that the MET wants to gather more data, after giving the student time to recoup their skills based on district academic assessments, grades, and/or teacher observations, sufficient to make the determination that the student will not receive a comprehensive evaluation until that data is gathered and reviewed?

A: The MET may always gather information needed to make a determination regarding the student's need to be tested. However, the MET must not use the need to gather additional data as a means of delaying an evaluation of a student suspected of having a disability.

Q: How should districts handle a lack of TST data for Child Find with newly referred students?

A: The MET must consider all of the information gathered at the time of the meeting. MTSS interventions will be presented virtually as needed according to the MTSS Guidance Manual recently revised by MDE. All data must be reviewed to make a determination. The MET should review any district or statewide assessments conducted since the student entered school, previous grades and patterns, disciplinary history, and attendance history, etc.

Evaluation

Q: How should districts handle parents who give consent for an evaluation but do not want the student tested at school? What parameters can the district set up?

A: A discussion about where the student will be tested and the safety measures in place should be held during the MET/IEP meeting so parents have a good understanding of the procedures used for disinfecting the room and test materials.

The evaluation team, including the psychometrist/school psychologist, should determine the assessment instruments that are appropriate for the individual

student's evaluation. Based on this evaluation, the psychometrist/ school psychologist may administer instruments such as rating scales, questionnaires, etc virtually as specified by the publishing company of that instrument.

If the testing procedures are still not agreeable to the parent, the parent may withdraw consent for testing. If the testing session cannot be adapted for individualized, one on one testing, the parent should be informed that all required information needed to support an eligibility may not be able to be available for review by the Eligibility Team.

Q: In some cases, students were ruled eligible (OHI, AU) during the shutdown using rating scales, medical data, etc. but IQ and achievement were not given due to one-on-one contact required. Some of these students are possibly SCD. Should the district go back now and get permission to conduct an IQ, adaptive and/or achievement assessments in order to determine SCD status?

A: Yes. The IEP committee should talk with parents and remind them that additional testing is needed to program correctly for their child. (Remind the parent that the team mutually agreed to the eligibility ruling at the time of the Eligibility Meeting with the understanding that the IQ test was not needed for eligibility but is needed for programming decisions.) Request that the parent provide consent for additional testing- for an IQ, achievement and/or adaptive measure. The IEP committee will reconvene once the new data is obtained and make a determination whether to revise the IEP or continue with the current IEP.

It is the IEP committee's responsibility to obtain the additional information needed in order to provide a FAPE.

Q: Some students were ruled VI/HI/OHI (medical issues) based on the best data the district could gather at the time; however, a report (ROPO) from a specialist or physician needed to support the eligibility could not be obtained because of the shutdown (no one was doing visits then). Should the IEP team meet to gather the required data, and get parental permission and a records release, to support the ruling?

A: Yes. Talk to the parents about the decision made at the Eligibility Meeting to obtain the required medical/specialist information to support the eligibility. If the existing signed release is within a year old, it is still valid. If not, a new one will need to be signed by the parent. Document all efforts to get the required information. Once the medical/specialist information has been obtained, the IEP committee will reconvene and review the information to determine whether the

eligibility is supported. The IEP may need revision based on the medical/specialist information received.

Q: IEP committees decided to continue the current eligibility of some students whose three-year reevaluation was due, although the IEP committee suspected another eligibility category. A comprehensive evaluation would have been conducted if face-to-face evaluations could have been administered at that time. How should the IEP committees handle these situations when hybrid educational settings are being held and observations/data collection may be affected by the new environments?

A: Yes. If another disability is suspected, a comprehensive evaluation should be completed to be sure the child is receiving FAPE. Testing can be done 1:1 at the school or district offices. All attempts to get the required behavioral data should be documented. It is the IEP committee's responsibility to ensure the comprehensive reevaluation – with additional testing, possibly – is conducted and an appropriate eligibility is obtained or supported.

Q: What procedures are in place for Rosemont consultants to avoid the spread of Covid-19?

A: Our testing is done 1:1 with little to no contact. In addition, we have plexiglass dividers and face masks/shields, and disinfect materials/tables between students. (See attached Acknowledgement and Response to COVID-19)

Q: Can districts have a "safe" room, designed specifically for 1:1 use with specialized procedures in place?

A: Districts could have a room/space designated for assessments, related services and/or tutorial services. This would be a great use of the CARES money.

Eligibility

Q: How do we rule out lack of instruction in reading and math since kids were out of school over 9 weeks? Standardized measures like STAR are not going to be valid indicators until students have had time to recuperate the skills.

A: The Eligibility Team should consider previous performance on district and statewide assessments, review grades, attendance, discipline, previous Tier Interventions documentation, etc. The Eligibility Team should consider whether patterns of performance (such as if the student has either barely passed

reading since entering school or has failed reading), iReady and/or STAR, State assessments, etc., support the student's struggles in reading. If the Eligibility Team is able to find support over time for the student's delays in reading, this could be a way to rule out the lack of instruction during the Covid-19 shutdown.

Q: Due to virtual learning, some required components of the MDE eligibility criteria (ABC data, SLD classroom observations, documentation of behavior for EMD) may not be obtainable. Do we say we cannot obtain the required data due to pandemic and rule the student eligible?

A: No, Assessment personnel should make every effort to collect the required data. Consider ways to obtain as much of the required support data as can be gathered during the 60 days for the evaluation. For example, even in a virtual setting a teacher may be able to document that the student is off task or easily distracted during the lessons being taught. Some of the ABC data should be able to be collected by each teacher. An SLD observation can be conducted by a counselor or special education teacher during the virtual reading or math lesson. Documentation of the observation may look differently than when in school, but an observation can be documented. The same behavioral data can be gathered if Emotional disability is suspected. Document all attempts.

Q: Can MET use old tier data for eligibility determination vs formalized testing?

A: Not normally. The tier data is support data in most cases and the progress monitoring from Tier III does not usually elicit information to support an eligibility ruling of ID or SLD. The Tier III data may be used to support standardized scores from a normed achievement test.

If face to face testing cannot be conducted in the area of achievement, the Tier III progress monitoring may provide support for how far behind the student was performing. This data would need to be viewed in the context of all of the data gathered for the comprehensive evaluation. For example, if the Tier III data indicated the student was performing below his/her grade level expectations and the district/statewide assessments support this, along with grades and other information from the teachers and parent, this information may be able to be used to support an eligibility category where IQ and/or achievement are not required.

Behavior/Discipline

Q: How do districts handle students with IEPs who would have finished up their suspensions during shut down? Do they come back to the school and start this year over? Do they have to serve that time at Alternative School?

A: Most districts are returning the student to his/her home school and providing services whether virtual or at school or traditional school settings.

Q: Can the school set up separate classes to address these student needs such as coming into a separate classroom for classes and not going into larger settings?

A: Yes, if the IEP committee determines that is the LRE for services. The separate classes or classroom may be temporary and the IEP committee should designate a specific timeframe to review the placement decision. If the parents agree to the separate classes or classroom then that will help. Be sure to have a plan to address the student's behavioral characteristics that cause the need for the separate settings. Include a plan to return to more inclusive settings based on progress monitoring of the student's behavioral objectives.

Q: When would a TST or MET consider a student who is not adjusting to return to school for an evaluation?

A: Most students adjust to adverse situations and stress after about six months. If the student has not responded to reasonable accommodations and modifications, or to a behavior plan to address the student's needs, the TST or MET should consider a referral. Remember to take into account that frequent changes in the student's educational services, on campus, then virtual, then hybrid, will delay the adjustment for many students but 6 months is a good rule of thumb.

Q: For students with current FBAs and BIPs, should the IEP committees review the BIPs and ensure appropriateness?

A: Yes, IEP committees will need to review current BIPs, and as needed FBAs, to determine whether the current behaviors are addressed in the current FBA/BIP or whether another FBA should be conducted due to changes in the student's behavior. In most cases, the BIP will need revision even if the FBA is still ok.

IEP

Q: Based on the IEPs written in the Spring 2020, after a gap analysis, should we revise to meet them where they are currently and change that goal?

A: Yes. Once it has been determined where the student currently performs, the IEP committee will need to consider how to address the student's losses

and his current needs. The revised IEP should be designed to provide the student the support he/she needs to catch up and continue to progress on the curriculum standards.

Q: Do we need to revise IEPs to indicate they will be learning virtually from home (location)?

A: Not if the services the students receive did not change. If it is just a change from on campus services to virtual, then that is a change of location. However, if some of the in-school services cannot be provided virtually, then that may require an IEP meeting to discuss the student's services and revise the IEP.

Q: With respect to a contingency plan, can districts go ahead and develop a plan for if/when virtual learning takes place? Would this info be included in the PLAAF?

A: Teachers should write the IEPs as though students will be taught face to face with traditional methods. In the event of nontraditional service provision, teachers should develop contingency plans to meet the needs of the students. The contingency plan should address how the student's goals will be taught and progress monitored in the nontraditional setting. It should address how accommodations and modifications will be presented and whether additional accommodations or modifications will be needed during nontraditional learning times. The contingency plan must be for the individual student and address that student's needs.

When students are at school in a traditional setting, the IEP is in place. When students are learning in a nontraditional manner, the contingency plan is in place. There is no need to include this information in the PLAAF.

Other

Q: What is the best platform for Sped students, whether virtual learning or meetings?

A: The platform with the best cyber security will be the one that is embedded in the software used by the district/school.

Q: How should we respond to the letter received from Disability Rights requesting how we used our elementary and secondary school Emergency Relief Funds? Is this to be considered a public records request? (We haven't received those funds yet.)

A: A response should be done within 10 days, just like any public records request. Since funds have not been distributed yet, the response could simply say that the decision has not been made yet (since funds have not been received) and this information will be provided to them as soon as a decision has been made.

Q: If the district only provides traditional school (no virtual option at this time) but the parent wants to do distance learning for their child with a disability, who has no medical issues that would limit their attendance at school, does the school have to provide that even though the general education students do not have that option?

A: No. As a general rule, if the option is not available for general education students, it would not be an option for special education students unless of course there are medical concerns.

Q: If schools are forced to do virtual only learning (or if the parent chooses it where it's an option), should the district provide home internet access to students with disabilities?

A: Districts are not obligated to pay for internet access/hot spots for students, but you can choose to do so, especially if schools are required to shut down again.

Q: If a cancer student who was getting homebound services prior to Covid, due to a compromised immune system, would the district have to serve the siblings at home as well when a doctor indicates the need (primarily to keep the sped student from getting ill)?

A: No. If the sibling does not have a disability, districts are under no obligation to serve them homebound.

Q: If the school is having teachers move from classroom to classroom instead of the students, how would tutorial/related services be handled? Would that be co-mingling students and expose them more? Could that be done virtually?

A: Students will likely need to be able to go into Sped/related service classrooms to give them more 1:1 or small group instruction. Those areas where students will need to come and go will need to be sanitized between groups and all safety precautions of the district, school and CDC should be followed.