

In Technical Assistance Bulletin #20-09: *Recovery Efforts: Addressing the Provision of FAPE through Alternative Service Delivery Models for Students with Disabilities during the Re-Opening of Schools*,¹ the MSDE informed LSSs:

During these exceptional times, a FAPE must be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing education services to these students. Therefore, [LSSs] were instructed to provide a FAPE to the maximum extent possible during the period of virtual and/or distance learning (and should continue to do so as schools re-open) to mitigate the need for compensatory education/recovery services. This is NOT a waiver of the FAPE requirement under IDEA.

While a student is not guaranteed a specific educational outcome, the law requires that the student receive an appropriate educational program. Therefore, LSSs will need to determine whether the educational services provided to the student during the period of school closure and re-opening, pursuant to the Individualized Education Program (IEP) were reasonable to allow the student to be involved in and make progress in the general education curriculum and on their IEP goals.

In situations where a FAPE (i.e., instruction, related services, and supplementary aids and supports) was not or could not be provided, and the student was negatively impacted (i.e., a regression of skills or lack of progress in the curriculum or on IEP goals), the student will require compensatory education/recovery services.

The decision about whether the student is owed compensatory education/recovery services is driven by information and data collected from a variety of sources.

The LSS ... must consider what compensatory education/recovery services can be provided to the student to help recoup the lack of progress due to a loss of a FAPE. They must be individualized to each student's needs and designed to remediate the loss of skills.

In addition to this guidance, the MSDE is currently working with LSSs to ensure they have a system in place to address compensatory education/recovery services for each eligible student, including students who may have exited the special education system during the 2019-2020 and 2020-2021 school years.

The aforementioned process ensures that students who did not receive FAPE are provided with remedial services that are tailored to the specific areas in which they experienced regression and/or a lack of expected progress.

SB 209 as written will expand the LSS's obligation to the student with a disability by providing the student with an additional year of school, regardless of whether that student experienced any regression and/or lack of progress.

¹ For TAB #20-09 and other special education technical assistance bulletins issued by the MSDE, please visit the MSDE website at <http://marylandpublicschools.org/programs/Pages/Special-Education/TAB.aspx>.

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Additionally, for the Division of Rehabilitation Services (DORS), which administers the Vocational Rehabilitation (VR) and the Pre-Employment Transition Services (Pre-ETS) federal programs, SB 209 will impact its ability to deliver the services specified in this legislation. DORS is primarily a federally-funded program that has a required State match and Maintenance of Effort. Both federal and State funds can only be expended on clients who meet the eligibility criteria for these two programs. For those individuals who do not meet the federal eligibility requirements, the State will be required to fund the delivery of all services.

We respectfully request that you consider this information as you deliberate **SB 209**. For further information, please contact Zachary Hands at 410-767-0504 or Zachary.hands1@maryland.gov.