

Special Education in the COVID-19 Era

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**Disability
Rights** OHIO

We have the
legal right of way.

What We'll Cover



- School District obligations in the era of COVID-19
- Evaluations in the COVID-19 era
- Compensatory Education, Recovery Services, and ESY
- What you can do

Ohio Reset and Restart



- The Ohio Department of Education has issued a re-opening guide to school districts called *Reset and Restart*.
- The Guidance primarily contains guidelines that are not mandatory and allow local school districts to set policies.
- You can find the document and other state policies regarding reopening here:
<http://education.ohio.gov/Topics/Reset-and-Restart>.

Multiple Approaches



- School districts are taking multiple approaches in serving students
 - All in-person instruction
 - In-person instruction with parental option for remote instruction
 - Hybrid (Partially in-person, partially remote instruction)
 - All remote instruction

FAPE During COVID



- School's core obligation to students with disabilities remains.
- The definition of free, appropriate public education (FAPE) has not changed in the COVID-19 era—it is rooted in federal law.
- IEP must be “reasonably calculated to enable a child to make progress appropriate in the light of the child’s circumstances.” *Endrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988 (2017).

State Guidance on FAPE



- Guidance from the Ohio Department of Education: “When working with students through alternative delivery models, the school or district should make a good faith effort within available capabilities to determine how a Free Appropriate Public Education (FAPE) will be provided.”
- Also states that if FAPE cannot be delivered considering all the limitations, then the Team should consider compensatory education once building restrictions have been lifted.

FAPE Considerations for Remote Learning



- Making sure special education students have access to remote instruction
- Equal access to remote materials
- Ability to differentiate instruction
- Ability to provide supports and related services
- Training for staff, students, and parents on the online program
- Communication protocol with parents and district staff
- Role of instructional aides and assistive technology

Related Services



- School districts offering only remote services are still required to provide related services in a student's IEP.
- These include speech, occupational therapy, physical therapy, nursing services, mental health supports, etc.
- The child's team should discuss ways to provide the service either in person or remotely.
- Services not provided will need to be provided through compensatory education.

Paraprofessionals and Remote Instruction



- Generally speaking, a school district should provide a child access to a paraprofessional if this service is in the IEP.
- It can depend on what the actual role of the paraprofessional is according to the IEP (i.e. what is this person supposed to be doing for and with the child?)
- If they are there to keep the child on task and assist, the district should make them available in a virtual setting if possible.
- If, however, they are only there because of behavioral issue not applicable in the home setting, there is no reason for the service to be provided (i.e. if the paraprofessional is there to escort the child from class to class).

Behavioral Supports and Remote Instruction



- If a child is receiving behavioral instruction through an IEP or a behavior intervention plan, those services should continue to be provided in a remote setting to the extent possible.
- The school can continue to provide instruction on behavior and coping skills, can model behavior, and can provide positive supports.
- There may be some behavioral interventions and supports that cannot be provided in a remote setting.
- Schools should work with parents on supporting the child in the home setting.

What we know



- If a school is offering in person instruction and the child attends school in person —> child is owed all IEP services.
- If a school is offering remote services only —> school is required to implement IEP as much as possible in remote setting and provide compensated for failures to provide services.
- In either situation, parents should work with school to determine the best way for services to be delivered.

Holes in the Guidance



- Guidance does not address what a school's obligations are in the following scenario:
 - School offers in-person services but also a parental choice for remote instruction
 - Parent of a student with IEP chooses remote instruction.
 - School district maintains that it is making FAPE available in the building and is not required to implement all services in a remote setting.

What we know



- If a school district offers multiple programs it must ensure that all programs can be made accessible to students with disabilities and provide a FAPE.
- But, what if a district only offers one kind of program and it doesn't work for the child?

What to do



- If the child has a medical condition that heightens his or her risk of severe complications from contracting COVID, there is a strong argument for arguing for full IEP services remotely because the need for remote instruction is connected to the child's disability.
- If the parent just has a general fear of COVID or if the concern is about another member of the household, it is less clear what the obligations are

Your Role



- Your role in this scenario will likely be helping to find support for the medical necessity of the remote instruction (if possible).
- It is important that any communication meant for the school is framed in terms of your child's needs and not just what is in his or her best interest (more on this later).

Evaluations During COVID



- IDEA's timelines for evaluations are still in effect.
- To the extent possible, school districts should comply with the 60-day timeline for initial evaluations.
- The only situation in which the District should extend this deadline is if the evaluation requires assessments that must be done in person and the building remains closed, in which case ODE has stated they can be completed once the closure has ended.
- State guidance makes clear that ETR meetings can be conducted virtually or telephonically.

Evaluations During COVID



- If a child's evaluation is being held up, parents should inform the Team that the timeline is still in effect and discuss how the evaluation can be completed.
- If the child's school-based evaluators are stating that evaluations cannot be done remotely, ask whether there are alternative assessments that could be completed safely.
- Teams should think about whether the assessment may be able to be completed from a safe distance (outdoors, masks) if no other option exists.

Evaluations During COVID



- Also remember that normed assessments are only one tool.
- Engage the Team to think about other ways they could identify educational needs.
 - The child's school work
 - Teacher observations
 - Data collected by the parent
 - Outside evaluations conducted by medical personnel

Re-Evaluations During COVID



- If the child is due for a triennial re-evaluation, consider what was just talked about.
- Also, Teams have the option to conduct record reviews if the child's needs have not significantly changed since the last evaluation.

Re-evaluations



- If a child's school is unable to complete an in-person assessment, the Team may be willing to adopt a medical or outside evaluation in-part or in-whole.
- But remember that clinical and educational standards are different. What a child requires for medical purpose may not be what the child requires for educational purposes.
- Educational standards are always rooted in what the child requires in order to make

Compensatory Education



- Compensatory education services are a remedy awarded to students when a school district fails to provide a free, appropriate public education (FAPE).
- Can be awarded when either (1) the district failed to provide services on the IEP OR (2) when the services provided fail to provide FAPE.
- Compensatory education services should “aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA.” *Reid v. Dist. of Columbia*, 43 IDELR 32 (D.C. Cir. 2005)

Recovery Services



- Newly created by Ohio Department of Education.
- “The term recovery services reflects the need of learners to recover from any educational gaps in learning caused by the unexpected school building closures.”
- “Should be provided to students who had an interruption of services during the ordered school-building closure period in the 2019-2020 school year.”

Extended School Year (ESY)



- ESY services are those provided when a child needs additional services beyond a typical school year to receive a FAPE.
- Most often awarded on a regression/recoupment analysis—when the child demonstrates significant regression of skills over long breaks (such as over the summer) and cannot recoup those skills in a reasonable amount of time.
- Can also be awarded when a child is working on emerging skills or is working on a breakthrough skill

Shorthand



- If the child regressed/failed to make progress primarily due to the switch to online instruction model, but the school continued to implement the IEP, think about **recovery services**.
- If the school failed to provide services at all during the shutdown, failed to provide IEP services, or if the IEP was generally inadequate, think about **compensatory education**.
- If the child historically regresses over breaks and struggles to recoup skills due to their disability or if they have historically gotten ESY, think about **ESY**.

Meet with your school



- You should request an IEP meeting ASAP to discuss the delivery of your child's services.
- The Team needs to consider the format of the services your child receives, how your child will be supported, how will your child be kept safe.
- This should be an individualized determination made according to your child's needs and the District's policies around social distancing.
- Be skeptical of one-size-fits all approaches.
- IEP meetings can be conducted virtually or by phone.
- You may want to request more frequent progress reporting.

Meet with your school



- Discuss with the IEP Team any difficulties you may see that are unique to your child.
- For instance, does your child struggle to wear a mask if required? What supports might be put in place to help them and protect others? May need to modify behavior plan.
- If your child struggles with emotional difficulties exacerbated by COVID, make sure the Team is aware and plan how this will be addressed.
- Will there be structural alterations to the classroom that may impact your child?

Changes in the IEP



- You should be careful not to agree to reductions or negative changes to services on the IEP.
- This could limit the amount of compensatory education to which you are entitled.
- If school districts make changes, make sure you document your disagreement in the prior written notice or a letter to the Team copied to the child's file.
- Note that you and the District can agree to amend the IEP without a meeting if you make a written agreement to amend

Ways you can help



- Seek letters that support your request of the school district, framed in the correct legal standards.
- Seek in-person evaluations that give the IEP Team solid information on your child.
- Participate fully in the IEP meeting process.
- Find experts who can help to educate the IEP team.
- Be proactive in moving the school district toward your goal.

Know the Basic Legal Standards



- Know the basic legal standards of special education.
- Special education request must be framed in terms of what the child **needs** in order to **make appropriate progress in the curriculum.**
- In other words, it is legally irrelevant what would “benefit” the child or what is “in the child’s best interest,” at least in special ed.

Outside Evaluations



- Some medical professionals are able to conduct evaluations that directly impact a student's education.
- This could be done through a private evaluation requested by and paid for by the parent, an Independent Educational Evaluation (IEE), or a district-initiated evaluation.
- The district is required to **consider** the results of the evaluation, but is not required to adopt them in part or in whole.

District will be more likely to consider the

Ask Experts to Attend IEP Meetings



- Having experts attend IEP meetings can be very helpful.
- This will enable the team to ask questions about evaluations and recommendations.
- It will also help build trust between the District and your expert. It's better for everyone if there is trust in this relationship.

Procedural Safeguards



- IEP meeting (the first step).
- Facilitated IEP meeting.
- Mediation (Both parent and school have to agree to mediate. Mediations will be virtual for now.)
- Superintendent review.
- State complaint to Ohio Department of Education (must file within 1 year)
- Federal complaint to U.S. Department of Education, Office for Civil Rights (OCR) (Used for Section 504 violations; must file within 180 days of violation)
- Due Process Hearing (must file within 2 years).
- Must exhaust dispute resolution processes before going to court under IDEA.

Advocacy Tips



- Document, document, document.
- Make any requests in writing.
- Be very clear about what you're asking for.
- Keep your focus on the present and what will resolve your problem.
- Provide expert support for your position.
(Could be your child's physician, therapist, social worker, OT, PT, behavior specialist, etc.)

Advocacy Tips



- Always frame requests in terms of your child's needs.
- Try to resolve disputes at a low level to avoid costly and disruptive litigation.
- The law does not guarantee what is best for your child—only what is necessary for him or her to benefit from the education.
- Reach out for help!

Key Takeaways



- Get an IEP meeting scheduled as soon as possible if things are not going well for your child.
- Make sure the IEP retains high expectations for your child and does not cut services because they are unavailable in their usual form.
- Monitor your child's progress closely.
- Stay informed about updates about school policies from the state and from the District.
- Above all, keep you and your family safe, and respect your school's reasonable attempts to protect their staff.

Sources of support



- Supplemental tutoring program for students with developmental disabilities
- www.learningohio.com
 - Must have an IEP
 - Must be full time remote instruction
 - Family must show financial hardship
 - Up to \$1500 available

Sources of support



- Ohio Coalition for the Education of Children with Disabilities (OCECD)
www.ocecd.org
- Ohio Center for Autism and Low Incidence (OCALI) www.ocali.org
- Ohio Department of Education (ODE)
website education.ohio.gov

DRO Contact Info



- If you know of a family that could use our assistance, have them open an intake:
 - Intake phone: 614-466-7264 or 800-282-9181, select option 2.
 - Web Intake:
<https://www.disabilityrightsohio.org/intake-form>.

Questions?

