



MID-OHIO EDUCATIONAL SERVICE CENTER
RELENTLESS ACCOUNTABILITY ADMINISTRATIVE CONFERENCE

Mansfield, Ohio
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“Special Education in a Post-Pandemic World”

Presented by
Taryn Weiss Derin, Esq.

I. Introduction

II. Free Appropriate Public Education

- A. “Free appropriate public education” or FAPE means special education and related services that:
1. Are provided at public expense, under public supervision and direction, and without charge;
 2. Meet the standards of the Ohio Department of Education, including the requirements of this rule;
 3. Include an appropriate preschool, elementary school, or secondary school education in the state involved; and
 4. Are provided in conformity with an Individualized Education Program (“IEP”) that meets the requirements of Rule 3301-51-07 of the Administrative Code for Individualized Education Programs. O.A.C. 3301-51-01(B)(25).

B. Ohio Department of Education. Students with Disabilities Reset and Restart of the 2020-2021 School Year: Meeting the Needs of Students Who Receive Special Education Services in K-12 (August 7, 2020).

1. When working with students through alternative delivery models, the school or district should make a good faith effort to determine how FAPE will be provided
2. While balancing the need to protect the health and safety of students who receive special education services, parents, staff, and educational agencies must provide FAPE. It is important for staff and parents to work collaboratively during the 2020-2021 school year to continue to support students who receive special education services.

C. Request for Home Instruction

1. Some students have had success learning in a remote environment and, as a response, parents have requested to continue home instruction this school year.
 - a. Districts are still bound by FAPE and must educate students in their least restrictive environment (“LRE”).
 - b. It is unlikely that a home placement is the student’s LRE.
 - c. Instead consider why the student was successful in the home environment and consider replicating this instruction in the school setting.
2. Some students with medical issues may need to be educated in the home setting. This should be considered on a case-by-case basis.

III. Preparing for the 2021-2022 School Year

A. IEPs

1. Amending IEPs
 - a. IEPs created during the 2020-2021 school year may contain services provided in settings that may not be available or appropriate for this school year.
 - b. As the school year begins, IEP teams should review students’ IEPs to ensure that they are being implemented as written.

- c. If necessary, IEP teams may need to meet to amend IEPs to reflect the student's services for the current school year.

2. Creating Contingency Plans

- a. With the future of COVID-19 still unknown, districts may consider creating contingency plans at annual IEP meetings.
- b. Contingency plans reflect the potential learning environments in which a student may receive instruction.
- c. The relevant contingency plan would be triggered should the District move to that corresponding learning environment.
- d. The student's IEP would remain in effect and continue to be implemented while the District maintains normal operations.
- e. If an IEP team creates a contingency plan for a student, the District should issue a thorough prior written notice ("PR-01") that explains the purpose of the contingency plan, what the contingency plan includes, and when the contingency plan will be implemented.
- f. Denver Public Schools District 1, 120 LRP 29273 (SEA CO 2020).

During the mandated school closure due to the COVID-19 pandemic a school district developed a contingency plan for a student to address the student's special education and related services. While the student's IEP provided for 100 minutes per week of direct instruction, the contingency plan provided for 90 minutes per week. As a result, the parents of the student filed a state complaint alleging that the district failed to appropriately implement the student's IEP during the mandated school closure.

The SEA found that while the district failed to implement the student's IEP during the mandated school closure, there was no denial of FAPE. In that regard, the SEA noted that the district's failure to provide services was only a short gap in services and did not impact the student's ability to benefit from the education program as demonstrated by the student's educational progress.

B. U.S. Department of Education, Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak (March 2020).

1. Question A-1: Is an LEA required to continue to provide a free appropriate public education (FAPE) to students with disabilities during a school closure caused by a COVID-19 outbreak?

a. “If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE.”

b. “SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP developed under IDEA, or a plan developed under Section 504.”

2. Question A-2: Must an LEA provide special education and related services to a child with a disability who is absent for an extended period of time because the child is infected with COVID-19, while the schools remain open?

“If a child with a disability is absent for an extended period of time because of a COVID-19 infection and the school remains open, then the IEP Team must determine whether the child is available for instruction and could benefit from homebound services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available.”

3. Question A-5: May an IEP team consider a distance learning plan in a child’s IEP as a contingency plan in the event of a COVID-19 outbreak that requires the school’s closure?

“Yes. IEP teams may, but are not required to, include distance learning plans in a child’s IEP that could be triggered and implemented during a selective closure due to a COVID-19 outbreak. Such contingent provisions may include the provision of online or virtual instruction, instructional telephone calls, and other curriculum-based instruction activities, and may identify which special education and related services, if any, could be provided at the child’s home.”

C. Evaluations

1. Due to changes during the 2020-2021 school year, it is possible that students may not be performing at their intended levels or may have developed new or increased behaviors.
2. IEP teams should consider re-evaluating students earlier, if necessary.

D. U.S. Department of Education Office for Civil Rights, Long COVID Under Section 504 and the IDEA: A Resource to Support Children, Students, Educators, Schools, Service Providers, and Families.

1. Some students are experiencing the long-term adverse health effects of COVID-19, commonly referred to as long COVID.
2. Children and students of all ages may experience long COVID, which can produce a combination of symptoms including tiredness or fatigue, difficulty thinking or concentrating, headache, changes in smell or taste, dizziness on standing, fast-beating or pounding heart, symptoms that get worse after physical or mental activities, chest or stomach pain, difficulty breathing or shortness of breath, cough, joint or muscle pain, mood changes, fever, pins-and-needles feeling, diarrhea, sleep problems, changes in period cycles, multiorgan effects or autoimmune conditions, or rash.
3. Long COVID can be a disability under the ADA and Section 504.
4. A child or student experiencing long COVID may be eligible for special education and related services under the IDEA or 504
 - a. To be eligible under the IDEA the child must be evaluated and determined to be a child who has a disability and who requires specialized services under the IDEA.
 - i. A child may be eligible for special education and related services based on having an “other health impairment” if the child has limited strength, vitality, or alertness due to a chronic or acute health problem that adversely effects the child’s educational performance.
 - b. To be eligible under Section 504, the student must have a physical or mental impairment that substantially limits a major life activity.

- c. The determination of whether a child is eligible for IDEA and/or Section 504 services must be made on an individual basis following existing procedures in those laws and their implementing regulations.

E. Masks in Schools

1. Ohio Department of Education COVID-19 Health and Prevention Guidance for Ohio K-12 Schools.
 - a. While mask wearing in school is recommended for people older than 2 years of age, exceptions should be made for the following:
 - i. People who cannot wear a mask, because of a developmental delay or disability.
 - ii. Discuss the possibility of reasonable accommodations with those who are unable to wear or have difficulty wearing certain types of masks.
 - b. For people who are only able to wear masks some of the time, prioritize mask wearing when it is difficult to separate students and/or teachers and staff (e.g., while standing in line or during drop-off and pickup.)
2. ADA permits individuals with disabilities to seek reasonable accommodations, but it does not provide a blanket exemption to individuals from wearing masks.
3. If a student cannot wear a mask due to a health or developmental reason, the District should provide the student with a reasonable accommodation.
 - a. Accommodations may include face shields, mask breaks, or different seating options.
 - b. Accommodations must be determined on an individual basis.
 - c. Districts may request the student and/or the parent(s)/guardian(s) provide medical documentation of the condition that requires a need for an accommodation to help determine the appropriate accommodation.
4. If masks are required, the District must provide or make masks available.

VI. Extended School Year, Compensatory Education, and Recovery Services

A. Extended school year services (“ESY”) must be provided only if a child's IEP Team determines, on an individual basis, in accordance with O.A.C. §3301-51-07, that the services are necessary for the provision of FAPE to the child. Additionally, the school district shall consider the following when determining if extended school year services should be provided:

1. Whether ESY is necessary to prevent significant regression of skills or knowledge retained by the child so as to seriously impede the child's progress toward the child's educational goals; and
2. Whether ESY is necessary to avoid something more than adequately recoupable regression.

B. ESY means special education and related services that:

1. Are provided to a child with a disability:
 - a. Beyond the normal school year of the school district;
 - b. In accordance with the child's IEP;
 - c. At no cost to the parents of the child; and
 - d. Meet the standards of the ODE.

O.A.C. §3301-51-02(G).

C. Ohio Department of Education, Students with Disabilities Reset and Restart of the 2020-2021 School Year: Meeting the Needs of Student Who Receive Special Education Services in K-12 (Aug. 2, 2020).

1. The purpose of ESY is to prevent, or slow, severe skill regression caused by an interruption of special education services during extended periods when school is not in session. It is not to enhance the present levels of educational performance exhibited by children with disabilities at the end of the regular school year.
2. The need for ESY is based on a construct of skill regression and a child's limited capacity for recoupment.
3. Within the categories marked by a severe disability, it is not appropriate to assume a significant regression or recoupment factor exists. Some children with severe disabilities may consistently demonstrate a limited array of skills but not demonstrate a significant regression/recoupment

factor in any of the skills. Therefore, these children would not be appropriate candidates for ESY.

4. The following are questions to consider when determining if ESY should be provided:
 - a. Will the student lose critical skills without continued support and teaching?
 - b. Will it take a long time for the student with disabilities to regain those skills – longer than it would take a child without a learning difference?
 - c. Does the student have difficulty retaining skills over shorter breaks?
 - d. Does the student have known issues with working memory?
 - e. Does the student need continual reinforcement to keep his or her skills during the regular school year?
 - f. Does the student have behavior issues that get in the way of learning during the school year? Will that be a problem next year without continued support over the summer?
 - g. Is the student making steady progress toward meeting his or her IEP goals? Will a break in services threaten that progress?
 - h. Are there goal areas of concern that need to be acquired or maintained without interruption for the student to meaningfully benefit from FAPE?
 - i. Has there been (or is there a potential for) significant regression during periods of interruptions that would require significant recoupment?
 - j. Are there rare and unusual circumstances that necessitate continuous instruction for service?
 - k. Are there other factors to be considered in determining the need for ESY?
 - l. Consider whether the learning that occurred during the regular school year will be significantly jeopardized if ESY is not provided.

- m. The primary criteria in determining a student’s need for ESY are the likelihood of significant regression of previously learned skills during a break in service and limited or delayed recoupment of these skills after services resume.

D. Compensatory Education.

1. Compensatory education is generally defined as educational services above and beyond what is provided to a student in their IEP.
2. State educational agencies may award a student compensatory services as a remedy to a school district’s failure to provide the student with appropriate services during the time that the student was entitled to FAPE and was denied appropriate services. Letter to Lipsitt, 72 IDELR 201 (OSEP 2018).
3. The purpose of compensatory education is to put the student in the same position they would have occupied but for the school district’s violation of the IDEA.
4. U.S. Department of Education, Office for Civil Rights, Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students (March 16, 2020).

“If a student does not receive services after an extended period of time, the student’s IEP Team, or appropriate personnel under Section 504, must make an individualized determination whether and to what extent compensatory services are needed consistent with the respective applicable requirements, including to make up for any skills that may have been lost.”

E. Recovery Services.

1. The term “recovery services,” rather than compensatory services, describes the provision of services for students showing less than expected skills acquisition upon re-entry to school. Recovery services are not about a school or district’s intentional failure to provide services as much as they are a systematic approach to help students recover from unavoidable coronavirus (COVID-19) related service delivery interruptions.
2. The determination to provide recovery services to students with disabilities must be done on a case-by-case basis.
3. These additional services should be based on individual student assessments, needs, and IEP progress documentation.

4. Once the determination is made to provide the student with recovery services, the IEP Team needs to determine what educational recovery services will be provided to the student. This determination should be made by each student's IEP Team.
5. Recovery services can be provided over an extended period of time – not just in the first weeks of returning to school.
6. Recovery services for services that were not provided during the ordered school-building closure period do not need to be replaced minute for minute.
7. It is important that school staff document with specificity the recovery services being provided to students with disabilities while monitoring and tracking individual student progress. This information will be necessary to inform the IEP Team in making a future determination as to what additional services may be necessary to ensure the provision of a FAPE.

V. Prior Written Notices Remain Important Communication Tools

1. Legally, PR-01 must include certain information. Under Ohio's model form, these sections must be filled out:

Section 2: "A description of the action proposed or refused by the district."

Section 3: "An explanation of why the district proposes or refuses to take the action."

Section 4: "A description of other options that the IEP team considered and the reasons why those options were rejected."

Section 5: "A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action."
2. Every PR-01 should include additional information even though it is not required by IDEA.
 - a. Include "meeting minutes" that recap what occurred during the meeting. Meeting minutes create a written record of issues and decisions that may be significant at a later date.

- b. Include statements reflecting parent participation, understanding, and agreement/disagreement. Sample language: The District asked the Parent if she understood the goal and if she had any questions. She said she understood and did not have questions. The District also asked the Parent if she agreed with the goal. The Parent said she agreed with the goal.
- c. Explain the *full rationale* behind why action was or was not taken, including data justifying the decision.
- d. If during the meeting, the team agrees to revise the draft IEP, the PR-01 should explain the change and the rationale for the change.
- e. Make sure the parent receives the PR-01.
- f. PR-01 drafting recommendations:
 - i. The drafter should be “fluent” in IDEA.
 - ii. The drafter may prepare the PR-01 during the meeting.
 - iii. Review a PR-01 before sending it to parents.

VI. Conclusion