

Special Education COVID-19 Fall 2020

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Please keep in mind that new guidance is being provided nearly daily by ODE, the US Dept. of Education, the CDC, State of Ohio Health Department, local health departments and other entities. This handout and webinar are based on the information known as of July 26, 2020. There are many different interpretations related to students with disabilities and services in fall 2020. New interpretations may impact the information provided in this document. This general information is not intended to provide legal advice. Please contact your district's legal counsel for legal advice and questions specific to your school district.

A. Multiple pieces of guidance related to serving students with disabilities have been issued since Governor DeWine announced, on March 12, 2020, the closure of Ohio's school buildings including:

1. Federal guidance

On March 12, 2020, U.S. Department of Education issued a related to the delivery of special education during the coronavirus outbreak.

On March 16, 2020, the U.S. Department of Education Office for Civil Rights issued a on Addressing the Risk of COVID-19 in Schools While Protecting Civil Rights of Students.

On March 21, 2020, the U.S. Department of Education, Office for Civil Rights, and Office of Special Education and Rehabilitative Services issued a .

CDC Guidance

2. Ohio guidance

On March 17, 2020, the Ohio Department of Education released "Considerations for Students with Disabilities during Ohio's Ordered School Closure." Most recent update June 22, 2020

On April 23, 2020, ODE released Telehealth Guidelines for Service Providers

Coronavirus School Building Closure COVID-19 FAQs. Most recent update July 9, 2020

On April 3, 2020, ODE released Graduation Requirements in Light of Coronavirus and Related school Building Closure. Most recent update May 21, 2020

Graduation Requirements FAQ – Most recent update April 24, 2020

Career Technical Education guidance- Most recent update June 18, 2020

Career Technical Education FAQ-Most recent update May 21, 2020

Grading, Promotion, and Retention- Most recent update April 22, 2020

Students Experiencing Homelessness-Most recent update May 21, 2020

3. Ohio Reset and Restart Information

ODE-Planning Guide for Ohio's Schools and Districts

-Students with Disabilities "Coming Soon"

-Reset and Restart for Career-Technical Education- July 2, 2020

Ohio Dept. of Health-COVID-19 Health and Prevention Guidance for Ohio K-12 Schools

Local Health Depts.

*****Remember that a Career Tech/JVS is not the District of Residence for a student.**

B. Provision of special education and related services during school building closures/remote learning

Districts must ensure instruction is provided in a way that does not discriminate against students with disabilities. Students with disabilities on IEPs and 504 plans should have equal access to alternative learning.

On March 16, 2020, the U.S. Department of Education issued to remind educators that schools moving to online learning must comply with civil rights laws, making sure such tools are available to students with disabilities.

Do as much as you can, as close as you can to the IEP

C. What does virtual/remote special education look like?

Like every other decision in special education, there is not a one-size-fits-all approach and must be individualized based on the identified needs of the student. Services might be deliverable in a small group online format; via a one-to-one on-line video session; or an instructional conference call. Some modifications and accommodations, such as extended time for assignments, can be offered remotely. However, it may not be possible to virtually/remotely deliver some services like "hand-over-hand" assistance and physical prompts.

D. What related services on IEPs can be virtually/remotely delivered and under what conditions?

ODE, within the “Considerations for Students with Disabilities” issued on March 17, 2020, suggested that districts should make a “good faith effort to provide SLP, OT and PT services to students in an online format to the extent practicable.” Each related service provider should make an individualized determination regarding each student’s candidacy for remote services. Options might include online and virtual instruction, virtual videos, instructional telephone calls, electronic messages and information, and activities.

Also, see ODE’s Telehealth Guidelines for Service Providers released on April 23, 2020. For purposes of this document, ODE refers to virtual related services and mental and behavioral health services collectively as telehealth services.

E. What if a district cannot provide the IEP services for a student with a disability?

It is important to remember that this situation is, unfortunately, not business as usual. That means some students with disabilities will not be able to receive the services provided on their IEPs or 504 plans.

Compensatory education v. “something else” such as “COVID-19 Recovery Services” during the school building closure. Hopefully, there will be additional Federal or State (ODE) guidance regarding what is required. A proactive approach now to provide as many services as close to the IEP requirements as possible is likely to be very helpful to districts.

ESY

F. Information and documentation to be collecting to address future claims of compensatory/COVID recovery education

Document Document Document

Progress monitoring of IEP goals during remote instruction

The totality of a student’s circumstances will be important in any “compensatory”/”recovery” education calculations to come. Like always in special education, progress monitoring data is going to be critical to have when educators begin to examine the need for compensatory/recovery education.

- Know where the individual student was on March 17, 2020
- Document, from spring 2020, what the district was able to offer and did offer to provide as well as what it actually provides to individual students. Document, for the 2020-21 school year, what the district was able to offer and did offer to provide as well as what it actually provides to individual students
- Complete progress reports
- Document any services rejected by the family or for which the student was not “present” to take advantage of learning opportunities

- Know where the student was at the end of the 2019-20 school year
- Monitor what is/was provided to assess whether individual student skills have been gained, lost (regression) or maintained
- Where is the student at the beginning of the 2020-21 school year and then at the end of the 2020-21 school year

G. District offers services, but the student/family chooses not to participate- impact on any “recovery”/“compensatory” services

There is no definitive answer. If a district offers virtual services, remote services, distance learning or other alternative learning options, and the offer is rejected by the parents, the offer and refusal should be carefully documented in a PR01.

H. Do all student IEPs have to be amended to reflect a different delivery of services?

The Director of the Office of Special Education Programs (OSEP) stated in a webinar on March 13, 2020, that “if the move to online or virtual [learning] is part of the school closure recommendation, we are not requiring you to go back into the IEP to address it. This is going to be considered an alternative mode of instructional delivery.” This seems to be addressing if the changes to distance learning are solely due to the school building closure. In spring 2020, ODE appeared to have also followed this guidance because all students were receiving education through remote learning which is considered an alternate mode of learning, not a change of placement.

I. Virtual IEP and ETR meetings

IEP and ETR teams are not required to meet face-to-face. Therefore, school districts should evaluate their ability to use teleconferencing and videoconferencing in their efforts to timely complete IEPs and evaluations. If video conferencing is not available, a telephone conference can be held. In either case, it is important to consider in advance how to do this effectively while providing for parental participation. Consider (1) test driving the technology, (2) having a back-up plan to connect in the event technology fails, (3) circulating drafts of documents under discussion in advance and (4) knowing how you are going to ask to collect signatures.

J. IEP and ETR deadlines

When school districts faced the H1N1 pandemic in 2009, the US DOE issued guidance in which it stated it would not waive requirements for school districts to evaluate and assess students during school closures. As of yet, the U.S. Department of Education has not waived these requirements for this pandemic either.

K. ETRs – Initial and Reevaluations

Initial- OCR's March 16, 2020, Fact Sheet does provide some ETR guidance when it states that “[i]f an evaluation of a student with a disability requires a face-to-face assessment or observation, the evaluation would need to be delayed until school reopens.

Reevaluation-Record reviews can be used for a reevaluation.

ETR options mentioned in ODE Considerations document

- Complete evaluation if sufficient information; a records review can be used
- If face to face assessment required and can't be completed, delay the evaluation until it can be completed
- School district and parent agree that a reevaluation is not needed for the 3-year reevaluation

L. IEPs

So far, there are no extensions of time provided for (1) the development of an initial IEP following an eligibility determination or (2) the annual review of a student's IEP.

General Considerations

School personnel should consider, for every part of the IEP, how the IEP and instruction can be rapidly adapted and implemented to move from in-person to remote instruction and vice versa. The IEP wording should be clear and allow for both in-person and remote learning to occur under the wording of each IEP section.

FAPE must always be provided.

There is usually more than one way to implement an element of the IEP and provide FAPE. Consider how to provide flexibility to pivot between in-person instruction and remote learning, while still providing FAPE and meeting IEP requirements.

If a student will receive some instruction in-person in school buildings but will not attend school buildings full-time (some remote learning), special education and related services may be able to be provided when the student is in the school building and that should be considered when scheduling.

The district should gather information from parents and staff regarding what did and did not work during remote learning in the spring. If possible, this should be done before the IEP meeting to assist in creating a draft IEP as well as to prepare for the IEP meeting.

Cover Page – “Other Information”

A place to note if a student will not be required to wear a mask when other students in the same grade are required to wear a mask due to medical or disability-related reasons

IEP Section #5-Transition

-Transition Service/Activity

-Frequency

-Evidence the Transition Activity Has Been Completed – Allow for accurate remote collection of evidence.

IEP Section #6-Measurable Annual Goals

-Present Level of Performance - Be as accurate as possible using data collected during the 2020-21 school year and assess students’ progress and present levels upon returning to school in fall 2020

-Annual Goal – Be sure the growth target is reasonable and likely to be achieved within one year based on the data. Instruction may be needed regarding wearing masks, hand washing and social distancing.

-Objectives or Benchmarks –

-Methods for Measuring Progress Towards the Annual Goal – Be sure this can be done remotely and accurately.

IEP Section #7-Specially Designed Services

-Amount of Time

-Frequency

-Assistive Technology – Any needed assistive technology or any instruction in how to use any technology needed for equitable access to remote learning.

-Accommodations – Any needed for equitable access for remote learning.

-Support for School Personnel

-Services to Support Medical Needs

Additional Considerations

Behavior Plans – Positive Behavioral Supports – may need to address mask wearing and social distancing as well as engaging in remote learning.

M. Prior Written Notice – PR-01s

The method of conducting an evaluation or reevaluation should be included

The method of holding an ETR or IEP meeting should be included

The method of obtaining required signatures should be included

Detailed descriptions of services that must be delivered differently or can't be delivered when remote instruction occurs

Documentation when parents voluntarily opt for on-line instruction when in-person, in-school options are available

N. Communication with Families

O. Masks/Face Coverings

P. Social Distancing

Q. Hand Washing

R. Student Code of Conduct

S. Plan ahead for various possibilities for fall 2021 and the entire 2020-21 school year

T. Special Education Operating Standards

The draft Operating Standards revisions are posted for comment with comments due to ODE/OEC July 31, 2020.

U. New Title IX Regulations, including for K-12