



DISABILITY RIGHTS OHIO

Q&A/Fact Sheet: Special Education & COVID-19 Outbreak

In light of the on-going COVID-19 pandemic and school closure, you probably have many questions about important educational services for your child. We created this document to answer some of the most common and pressing questions parents have about their child's services. DRO encourages parents to put the health and safety of their families first. Also, please understand that this situation remains in flux, so this guidance could change. As always, if you have specific questions about your child, please call our Intake at 614-466-7264 or 1-800-282-9181, press option 2, and leave a voicemail. We will return your call.

1. How long will my child's school be closed?

A. Governor DeWine has ordered that all public and private schools remain closed for in-person instruction for the remainder of the 2019-2020 school year. As of now, there has been no announcement regarding schools being open for in-person services during the summer or for the beginning of the 2020-2021 school year. Please continue to consult state and local news and announcements from state officials for further updates.

2. My child's school district is not providing educational services to any student during this shut down. Does my child's school have to provide my child services during the closure?

A. If your child's school is not providing services to any students, there is disagreement among different groups as to whether they must continue to serve students with disabilities, though the federal Office for Special Education Programs has taken the position that school districts would not be required to provide services. If you are in this situation and your child is not receiving services, we encourage you to call our Intake Department. You should contact your local school district or community/charter school to determine what services they are providing to students. In any case, your child may be entitled to compensatory services after typical schooling resumes, so please see the question addressing compensatory education services below.

3. My child's school district is providing educational services to students. Does the school have to provide my child services during the closure?

A. Yes. If your child's school is providing any education services whatsoever (online, teleconferencing, sending work home, etc.) to its general education students, the law is clear that they must provide services to students with disabilities, including the provision of a free, appropriate public education (FAPE).



4. If my child is entitled to receive services, is the school required to provide all the services my child receives at school listed in the IEP?

- A. According to the law, the school district is required to provide your child's special education and related services to the greatest extent possible so that your child is able to access the curriculum being provided to all students. Districts have been directed by ODE to review each IEP to determine what adjustments should be made to account for the closure of the building. If adjustments are to be made, the IEP Team should meet virtually or telephonically to make the adjustment. In reality, it is likely your child's services may look different, given that your child will not be at school with access to the staff that typically provide those services. It is also possible that you, your child, or the school's employees may fall ill during this period. Work with your school district to determine how these services will be implemented during the closure in a way that prioritizes safety for both your family and the school staff.

5. My school has proposed a new IEP that contains reduced services for my child? during the shutdown. Should I agree to the new IEP?

- A. We advise that you do not sign any IEP that reduces or negatively alters services provide to your child. Your child's IEP contains all the services your child requires in order to receive a FAPE, regardless of shutdown circumstances. Remember that your child's services are driven by the educational needs identified in the ETR and are not changed by the circumstances of the pandemic. If you sign an IEP agreeing to a reduction in services, this could impact the amount of compensatory education your child could receive once school resumes. It could also be used by the school to demonstrate that you agreed to a change in placement. Your school can implement changes in your child's IEP without your signature, as long as the changes were discussed at an IEP meeting. However, if you have not signed the IEP, you retain all rights to argue that the change was not appropriate or to seek compensatory services at a later time (among other remedies, you can file a state complaint within 1 year of a violation, and a due process hearing request within 2 years of a violation).

6. How will my child receive related services, including behavioral and mental health services?

- A. This will take creative solutions on the Team's part. School districts should be investigating options to provide some related services remotely. If your child receives speech services, occupational therapy, mental health services, or other talk-based therapies, ask your school about remote delivery options if you have internet and/or telephone capabilities. If you do not have these capabilities, make sure you let the school know this and try to implement a plan that works around these limitations. If your child is on a behavioral intervention plan, ask the school to provide you a copy of the plan to follow at home to the extent practical. The school should also provide a staff person to check in on your child's behavior. The reality is that your child may miss some of these services during this crisis, in which case your child may be eligible for compensatory education services.



7. Do the educational services provided by schools during the closure have to be accessible to students with disabilities?

- A. Yes. The U.S. Department of Education Office for Civil Rights has made it clear that any educational services provided to students during this closure must be accessible to students with disabilities. For instance, if your child has visual impairments, any online work should have screen reader access. If your child has an intellectual disability, the school district needs to provide accessible programming for your child as well.

8. What can I do as a parent during the closure to make sure my child gets the services he or she needs?

- A. The most important thing you can do as a parent during this time is to stay in contact with your child's school district and keep detailed documentation. Whether your school is providing services or not, your child may be entitled to significant compensatory education. This documentation will be your best evidence when the discussion about compensatory education occurs. For instance, if your child's IEP calls for 30 minutes of speech services per week, you should document every time your child receives this service and every time he or she does not.

Even though compensatory education is not necessarily awarded hour-for-hour, this is often the starting point for discussion. You may also want to consider taking baseline data as to where your child is performing on his or her IEP goals. To the extent you can, try to replicate the trials in the IEP and document your child's performance. Once the discussion about compensatory education or Extended School Year services occurs, this will help you demonstrate whether or not your child has regressed.

9. What is the difference between compensatory education services and Extended School Year (ESY) services? How does it make a difference given the current emergency?

- A. Compensatory education is a legal remedy that your child is entitled to when the school district fails, for whatever reason, to provide appropriate educational services. This can occur if the school fails to provide the services listed on your child's IEP or even if the services provided fail to provide your child with a free, appropriate public education (FAPE). ESY services are a separate concept under the law. There are specific guidelines governing when your child is entitled to ESY, primarily revolving around how much your child tends to regress over long periods of no services and how long it takes your child to recoup those services. (For more information on ESY generally, see the section on our page <https://www.disabilityrightsohio.org/faq-special-education-esy-services>). ESY is not dependent on the appropriateness of services provided. Your child may be entitled to one or both of these after this emergency. If your child's school district fails to provide appropriate services, you should ask for compensatory education. If your child tends to regress after long periods of break, you should start an ESY discussion. In practice and delivery, these two can often look very similar. Both tend to be provided during the summer or over breaks, but this is not always the case. As mentioned above, taking documentation is key if you plan to request either service for your child after the emergency.



10. Will my child be automatically entitled to compensatory education services once school resumes?

- A. No, your child will not be automatically entitled to compensatory education by virtue of the closure alone. But, if your child misses out on needed services, it is very likely your district will need to provide some sort of compensatory services. That is why it is critical for you to keep track of what services your child receives and does not receive during the closure so that you can make your best arguments for compensatory services later.

11. Must the school district complete the initial evaluations for special education eligibility during the closure? How does it impact the timeline?

- A. Generally speaking, school districts are required to comply with the 60-day timeline to complete initial evaluations to the extent possible. Districts are permitted to complete the evaluation team meeting process virtually or electronically during the closure. If the evaluation can be done remotely, the districts are permitted to do the evaluation in that manner if you as a parent consent. If the evaluation requires face-to-face assessment or observation, the evaluation will need to be delayed until schools reopen.

12. How should I prepare my child for the transition back to normal schooling when school resumes normal operations?

- A. The detailed answer to this question depends on your child's individual circumstances. The important thing is that your child's IEP Team needs to plan for this transition. If your child has a disability that makes them particularly sensitive to changes in routine, it will be important for the Team to plan for what your child's reintroduction to school will look like. A creative option may be to use the compensatory time to which your child is entitled to create a supported re-entry plan to the school building. Depending on your situation, there may be things you can do at home to make the transition more successful, such as keeping your child's day as routine as possible and having it resemble a normal school day. We recognize that this is not a possibility for many families, so use your own judgment about what is practical given your child's needs and your family's situation.

13. How can I resolve disputes with the school district during this period of closure? Are my procedural safeguards still available?

- A. As in any other situations, we advise parents to try to resolve their disputes with the school district informally and at the lowest possible level through the IEP process. This is even more applicable in this very unique situation. As of right now, the Ohio Department of Education remains open and is continuing to conduct investigations, though site visits are not possible during this closure. If you are in the midst of a due process hearing currently, consult with your legal counsel for information as to how it will be impacted by the closure. The Ohio Department of Education has not yet announced how new due process requests will be handled in the near term. Mediation and facilitation may be available virtually moving forward, but we do not currently have this information. For more information on negotiating with the school, see our "Negotiation Skills for Parents" publication at <https://www.disabilityrightsohio.org/negotiation-skills-for-parents>. Ultimately, it is prudent to expect disruptions in the more formal dispute resolution procedures, so we advise using more informal measures in the near term to resolve disputes. In any case, keeping good documentation now will be key to successfully resolving disputes later, should that become necessary.

