

Updated information appears in Red.

Produced 3/17/20; 6/22/20-updated

Considerations for Students with Disabilities During Ohio's Ordered School-Building Closure

One of Ohio's top priorities during the ordered school-building closure period, which seeks to diminish the spread of the coronavirus (COVID-19), is to ensure each student with a disability receives educational services closest to the manner prescribed within his or her Individual Education Program (IEP). We recognize this might pose some challenges, but we are heartened by how the education community has stepped up to provide educational services and recognize the particular and important needs of students with disabilities during this unexpected and unprecedented time.

First and foremost, schools should prioritize taking all necessary steps to protect the health and safety of their students and discourage activity that might contribute to the spread of the coronavirus. The governor has asked that schools work to provide education through alternative means.

The U.S. Department of Education and Ohio Department of Education understand that schools may not be able to provide all services in the same manner they typically are provided. Schools should continue to try to provide a Free Appropriate Public Education (FAPE) while balancing the need to protect the health and safety of students with disabilities during this national health emergency. **It is important for school personnel and parents to work together collaboratively during this time to find ways to continue to serve and educate students with disabilities.**

This document is designed to help school districts provide special education services to students with disabilities (ages 3-21). The document addresses specific requirements of the Individuals with Disabilities Education Act and speaks to the most frequently asked questions that have emerged during the state's ordered school-building closure.

The document encourages school district leaders to consider the following three questions as they think through how best to provide special education services to students with disabilities:

1. Is the activity essential?
2. Can the activity be done virtually?
3. If there is no other choice, then can the activity be done safely? This means individuals are separated by distance, not congregating in close proximity and the health of participants (students, educators and others) is protected. Consulting the local health department is advisable and encouraged.

Flexibility in Meeting Needs of Students with Disabilities

Consistent with [U.S. Department of Education guidance](#), Ohio recognizes federal and state disability laws allow for flexibility in determining how to meet the individual needs of students with disabilities. We encourage school districts to make a good faith effort to provide education to all students through alternative means including distance instruction provided online, by telephone or through other means. Communication and collaboration with parents is of paramount importance in identifying the most appropriate course of action.

Specifically, it is important to note that recently released [U.S. Department of Education guidance](#) addresses a common misunderstanding "that federal disability law presents insurmountable barriers to remote education." The federal guidance goes on to stress that schools should not opt to close or decline to provide remote instruction, at the expense of students, to address matters pertaining to services for students with disabilities. The Ohio Department of Education wants to encourage school districts to provide education to all their students, including students with disabilities, in the format each district finds best serves the local community.

Services to Students When Schools or Districts Provide Alternative Means 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 and should ask the following questions:

- Do your special education students have access to the appropriate resources required to engage in your alternative delivery model, such as cell phones, computers and internet or other acceptable connectivity?
- Will all students in the school or district have equal access to the learning and required materials, which might include technology?
- Can the alternative delivery model effectively support the district's deployment of FAPE, including the ability to provide differentiated instruction and one-on-one support for students who need it? Regardless of where the learning is happening, supports and services identified within a student's IEP must be provided to the extent practicable and without putting the health and safety of students or educators at risk as long as the school district is operating. This might consist of phone calls or virtual conferences for direct one-on-one interaction with a student.
- If using a virtual platform, can your district or building provide training to staff, students, parents and guardians enabling them to use the online system and understand the district's expectations for use of the system? All training can be accomplished virtually.
- If using phone time to connect with students or email, can your district or building communicate and connect with families to discuss a structure and communication routine for working with their student via phone or email?
- Does your district or building have a process in place to track and document communications with parents and services provided pursuant to the IEP?
- Can the district or building work with related services providers to understand to what extent possible any particular service, such as occupational therapy, physical therapy and speech language therapy, can be provided in an alternative delivery format?
- How can your instructional aides or assistive technology support services to students during Ohio's ordered school-building closure?

If, after considering the above, the district is unable to fully meet the needs of students with disabilities, the district must determine how compensatory services will be provided after the ordered school-building closure period has ended.

Ohio's Ordered School-Building Closure

During the ordered school-building closure, school buildings are closed to students, but many schools are making a good-faith effort to provide educational services to students. Therefore, efforts must be made to provide specialized services to students with disabilities during this time as well. Schools will need to consider the exact nature and duration of the services provided during this period on a case-by-case basis depending on the needs of individual students.

Evaluation Team Report (ETR) Considerations

To the extent practicable, initial evaluation team reports must be completed within the 60-day mandated timeline as prescribed in the Individuals with Disabilities Education Act (IDEA)¹ and Ohio Administrative Code 3301-51-06 and using the flexibility discussed below.

Reviews of the evaluation team report can be completed using a **virtual format or via telephone**. Participation and required signatures can be documented **via email attachment, standard mail, scanned signature, photograph of the signature or any other electronic means**.

If an evaluation of a student with a disability requires a face-to-face assessment or observation, the evaluation will need to be delayed until the ordered school-building closure ends. Evaluations and re-evaluations that *do not* require face-to-face assessments or observations may take place during the ordered school-building closure, so long as a student's parent or legal guardian consents. These same principles apply to similar activities conducted by appropriate personnel for a student with a disability who has a plan developed under Section 504 or who is being evaluated under Section 504.

¹ 34 C.F.R. 300.301 [Initial evaluations]

As is the case with a typical re-evaluation, a district may choose to conduct a *records review*. This allows the district to update the evaluation without needing to conduct face-to-face assessments and observations. The method of conducting an evaluation team report review and signature collection should be documented in a *prior written notice* (PR01) consistent with the requirements listed in Ohio Administrative Code 3301-51-05(H).

If the school was scheduled to conduct a re-evaluation team report review prior to the ordered school-building closure period but was unable to complete it, then continue to provide services in accordance with this document.

Individualized Education Program (IEP)

While balancing the need to protect the health and safety of students with disabilities during this national health emergency, schools should continue to try to provide a Free Appropriate Public Education (FAPE). **It is important to communicate and collaborate with parents, working together to find ways to continue to best serve and educate students with disabilities while protecting the health and safety of students, educators and the community.**

Districts offering instruction to all students, including via alternative delivery models like online learning, blizzard bags or mail are required to make a good faith effort to provide special education services for students with disabilities during the ordered school-building closure. If a student with a disability cannot access the alternative delivery models being offered to general education students, the district should consult with the student's parents and/or caregivers to determine the needs of the student and identify the most appropriate means for meeting those needs during the ordered school-building closure period.

If an IEP team meeting is necessary, or requested by the parent, to determine adjustments to specialized services, it should be conducted virtually or by phone. School personnel should attempt to determine the specific services that can be provided during the ordered school-building closure period. Consistent with [guidance](#) released by the U.S. Department of Education, if a school or district is shifting instruction to an alternative mode for all students due to school-building closure, it is not required to convene the IEP team or amend the IEP for the sole purpose of the school-building closure.

IEP teams can use data collected prior to or after the ordered school-building closure period to determine if compensatory time or extended school-year services (see below) will be required due to an interruption of services.

IEP *annual reviews* can be completed using a **virtual format or via telephone**. Participation and required signatures can be documented via **email attachment, standard mail, scanned document, photograph of the signature or any other electronic means**, and the method of IEP team review and signature collection should be documented in a prior written notice form (PR01).

Determining Compensatory Services Required After the Ordered School-Building Closure Ends

Compensatory Education Services are educational services provided to a student because the district was unable to provide the special education services listed in the student's IEP during the ordered school-building closure. School districts and parents can mutually agree to the compensatory education services after the ordered school-building closure ends or contact the Office for Exceptional Children for dispute resolution options. Compensatory education can be issued through a corrective action plan triggered by the formal complaint or due process and are addressed on an individual basis. The timelines for these dispute resolution options are established by the Individuals with Disabilities Education Act.

Determining the Need for Extended School-Year Services

The need for extended school-year services should be made on an individual or case-by-case basis. **This should be evaluated on an individual student basis, as soon as possible, to determine extended school-year services.**

School Buildings Completely Closed to Students; Education Services Not Provided

During this ordered school-building closure period, some schools may be completely closed and **not** providing educational services; for instance, during the school's planned spring break or during a voluntary complete shutdown based on a local decision. When a district or school is **not** in session **and** educational services are **not** provided to **any** student, specially designed instruction and related services are **not** required to be provided to students with disabilities.

On-site Monitoring During Ordered School-Building Closure:

All previously planned or in-process Ohio Department of Education on-site monitoring has been changed to a **desk review process for the remainder of this school year**, including virtual participation (if necessary). The Office for Exceptional Children at the Ohio Department of Education will assess the situation at the conclusion of Ohio's ordered school-building closure to determine how the Ohio Department of Education's reviews will continue beyond the ordered school building-closure period. If the office is unable to continue with the monitoring process, the monitoring of the school district will be postponed until the 2020-2021 school year, and the team lead from the office will work with your district to reschedule.

Dispute Resolution Processes

If a complaint is in the process of being investigated during the ordered school-building closure period, the complaint investigator will determine if the investigation can continue based on the information the district or parent provided prior to the mandatory closure. If an extension to the 60-day timeline is needed, parties will be notified by the dispute resolution investigator.

If a district is involved in a facilitation, mediation or due process hearing and the facilitation, mediation or hearing is scheduled during the period of school or district closure, contact the Ohio Department of Education's Dispute Resolution staff for information as to the scheduled date and time of the meeting at 1-877-644-6338. Please see the [U.S. Department of Education's Supplemental factsheet](#), released March 21, 2020.

Special Education Profiles

Special Education Profiles were scheduled to be released on March 25. The Ohio Department of Education will delay release until further notice. The Ohio Department of Education will provide updates on a new timeline when available.

Allocation of Special Education Funding

The Ohio Department of Education does not anticipate any process delays with budget amendments for the current school year nor do we anticipate any delays in the allocation funding for next school year.

The Ohio Department of Education will continue to monitor guidance released by the U.S. Department of Education and will update guidance as necessary.

Office for Exceptional Children supports

The Office for Exceptional Children is here to help. The Office for Exceptional Children is open and available to provide support to districts and parents. If districts or parents have questions or concerns, please call (877) 644-6338 or email exceptionalchildren@education.ohio.gov.

Additional Resources

- [U.S. Department of Education](#) March 21, 2020 [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Pre-school, Elementary and Secondary Schools While Serving Children with Disabilities.](#)
- U.S. Department of Education's [Information for Schools and School Personnel.](#)
- Office for Civil Rights (OCR) [fact sheet regarding coronavirus.](#)
- The Council for Administrators of Special Education (CASE) has compiled [a list of questions for districts to consider regarding COVID-19.](#)