

**SPECIAL
POINTS OF
INTEREST:**

- Last school year's COVID-19 closures may mean that response services are necessary to account for services that may not have been able to be provided during closures.
- In preparing for the start of the 2020-2021 school year, school districts should examine how to improve remote instruction for students with disabilities.
- Each school district should continue to be mindful of their Child Find obligations.

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Compensatory Education as a Result of COVID-19 Closures

At the beginning of the coronavirus (COVID-19) pandemic, the U.S. Department of Education emphasized that if a student with a disability misses school as a result of an extended school closure, districts “must make an individualized determination whether and to what extent compensatory services may be needed . . . To make up for any skills that may have been lost.”

Additionally, while PDE recognized the significant efforts that District’s made during the COVID closures, the also acknowledged that students with disabilities may not have received FAPE and/or lost skills or behaviors or failed to make progress even with the continuity of services that were able to be provided.

PDE however, has made clear that whether

a student is entitled to compensatory services is an individualized determination that is made by the IEP Team, which includes the parents. Guidance was issued to assist District in determining whether compensatory services are needed for a child.

As we will discuss, PDE advises Districts to analyze data and information similar to ESY determinations.

[Read More about Compensatory Services as a Result of COVID-19 closures on page2.](#)

Improving Remote Instruction for Students with Disabilities

In March, schools districts were scrambling to find alternative ways to provide education amid the Coronavirus (COVID-19) pandemic. Many school districts have planned to use hybrid learning or remote instruction for the 2020-2021 school year, and school districts are asking how to improve from last school year and adjust to a “new normal.”

Additional supports and ideas for collaboration with parents is important in ensuring that students with communication, behavioral, and motor needs make progress. School districts should consider different ideas for meaningful learning.

[Read more about Improving Remote Instruction for Students with Disabilities on Page 3.](#)

COMPENSATORY SERVICES AS A RESULT OF COVID-19 CLOSURES

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What Are COVID-19 Compensatory Services (CCS)? PDE defines these services as those needed to remedy a student's skill and/or behavior loss and or lack of progress to resulted from the District's inability to provide FAPE during the closure. CCs should only be considered after determining whether the child has recouped their skills. Again, this is similar to the regression/recoupment analysis used for ESY.

What Is The Process For Determining CCS? Upon return to in-person instruction (this guidance may change as more and more districts are beginning the year with remote instruction), the District should establish baselines for the child. This should be done within the first few weeks of school. Baselines should be compared to prior progress monitoring data to determine if regression or lack of progress occurred. If so, recoupment services should be implemented and progress should be tracked. No later than the end of the 3rd month of school, the IEP Team should review progress since the start of the school year to determine whether and to what extent the student recouped the lost skill or behavior or has made meaningful progress. If a student is continuing to evidence a loss of skills and/or behaviors and/or failing to make progress, then the IEP team should determine whether and to what extent the student needs CCS.

How Much CCS Should A Student Get? The IEP team should calculate CCS on an individualized basis. The amount of CCS will vary depending on how much the student was able to recoup skills lost after returning to school. Remember that CCS should be in addition to the services that the child is already receiving for FAPE and should not change the child's LRE.

How Should The Team Document What and How Much CCS Is Offered? Districts should document the offering of CCS on a Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN).

Are Students Who Have Aged Out Entitled to CCS? Yes. The IEP team should meet within a reasonable time period to determine whether and to what extent the student needs CCS and how those services should be delivered.

Is CCS Available If The District Delayed an Initial Evaluation Due To The Closure? Yes. If an evaluation was delayed due to the need for in person assessments and the student is found to be eligible for special education, the IEP Team should determine whether the delay resulted in the student's inability to make progress. If so, the IEP Team should consider whether the student needs CCS to address the lack of progress.

If Regression/Recoupment Data Is Being Used To Determine CCS, How Is This Different From ESY? ESY is designed for a student to maintain skills and behaviors during interruptions in educational programming and prevent regression that cannot be recouped once the educational programming resumes. CCS is designed to remedy the loss of skills and/or behaviors and/or lack of progress due to an LEA's inability to provide FAPE during the extended school closure.

Is Funding Available To Help Schools Pay For CCS? Yes, on August 20, Governor Wolf announced that he is dedicating approximately \$20 million to help schools provide compensatory services to students with special needs who were negatively impacted by the COVID closures and continuing changes in education. The funding includes \$15 million from the Governor's Emergency Education Relief Fund and \$5 million from PDE federal funding through the IDEA. The money can also be used to provide enhanced synchronous instruction to bolster remote services and supports for students with complex needs.

BACK TO SCHOOL: CONSIDER ADDITIONAL DISABILITIES

The COVID-19 pandemic has imposed new and unique responsibilities upon school districts. Among these new challenges, school districts must be sure to keep up with traditional responsibilities, including evaluating whether a student that already receives IDEA services has a new disability or needs.

This responsibility requires a balance of understanding a student's struggles in school, as well as recognizing that the student may be struggling in the home environment. It also involves a consideration of the student's history. The school district must be mindful that students have been displaced from their normal environment, a new way of doing things, and are experiencing an enormous amount of changes in a short period of time. Just because the student is struggling in new areas does not necessarily mean that the student has a disability.

Keep the following considerations in mind in considering whether a student has any one of the following disabilities:

- **Emotional disturbance.** A parent may report that the child is showing signs of anxiety, depression, or other behaviors that may look like an emotional disturbance. However, consider the IDEA's definition of emotional disturbance: "a condition exhibiting one or more of the following characteristics *over a long period of time* and to a marked degree that adversely affects a child's educational performance." 34 CFR 300.8 (c)(4)(i) [emphasis added].

A "long period of time," according to the Office of Special Education Programs, ranges from two to nine months, assuming preliminary interventions have been implemented and proven ineffective. It is also important to consider whether it is an emotional disturbance that is impacting the child's educational performance, rather than remote learning itself. The school district should collect data, if possible.

It may be reasonable for a district to hold off an evaluating a student, but districts can and should implement interventions they can provide remote-

ly and promptly begin providing them as soon as in-person instruction resumes.

- **Specific learning disability, intellectual disability.** A referral for screening for a specific intellectual disability may not be appropriate at the time, even if the student shows signs of regression or academic difficulty. A disconnect and academic difficulty is to be expected with the change in instruction.

If this is the first time the district perceives regression or academic difficulties with the child, the district may decide to wait to see how the child progresses once school resumes. The school district should monitor the situation and document any regression or academic difficulties, so that the district can adequately address them when school resumes.

- **Other health impairment.** Regardless of whether the student currently receives special education services, school districts should consider screening for other health impairment eligibility, if safely possible, if the student shows symptoms of COVID-19. Even if the condition is temporary, the long-term effects might meet the criteria for OHI eligibility, which include a requirement that the conditions results in "limited alertness with respect to the educational environment." 34 CFR 300.8(c)(9).

Even though a child may be exhibiting behaviors that are typically red flags, the behavior may not be indicative a disability given the extremity of these times. It is very important to monitor whether children have disabilities, and school districts may need to wait until school has reopened or students have had a chance to get reacclimated. Document parent communications and consider referring parents to outside resources. When school reopens, monitor the student, and if the signs of disability continue, attempt prereferral interventions before evaluating the student for special education.

WHAT DO YOU THINK?

Ethan is a seven year old, second grade student. He is diagnosed with significant social emotional and behavioral challenges. Ethan's behaviors included screaming or exhibiting physical aggression to people nearby. He had a behavior intervention plan that was intended to address these behaviors, which included staff assistance to clear the classroom, if necessary; sending the child to the office to clam down, and other strategies to prevent behavioral outbursts.

Despite implementing these strategies, Ethan's behaviors escalated to the point where he was "destroying the classroom." Even though his IEP called for him to be in the general education classroom for 80 percent of the day, he was sent to a multipurpose room at least daily, typically between 30 minutes to 2 hours at a time. His removal from the classroom was so common that his teacher created a separate lesson place for when he was in the multipurpose room, and a paraprofessional kept materials there so that he could continue to receive instruction while out of his regular class.



Did the district deny the child FAPE by removing him from class everyday?

Students should only be removed from the general education setting "if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR 300.114(a)(2)(ii).

The daily removals from the regular education classroom impede the child's right to FAPE because he did not receive instruction in the least restrictive environment as called for in his IEP. Any significant change in placement must be made by the child's IEP team, including the child's parents, and in consideration of a reevaluation. The child's disruptive and violent behavior may have required his removal; however, the district should examine the IEP and note that the IEP and behavior plan are not meeting the child's needs. In this case, the district should have sought consent to reevaluate him to determine whether his needs changed and how to best meet his needs. Repeated removals without a reevaluation denied the child FAPE.

In these circumstances the importance of reevaluations and functional behavioral assessments cannot be stressed enough. Start the process immediately rather than relying on removals from the class.

Improving Remote Instruction for Students with Disabilities

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Given the unprecedented and uncertain times, cooperation and open communication with parents and families is important. Additionally, educators will need to think outside of the box to meet needs of students whose behaviors interfere with their learning. Some students may refuse to log in to participate in virtual lessons or complete work packets sent home. Parents will have a larger role in providing certain supports in the IEP or behavior plan. Close collaboration between the school district and the parent will be key. The following are ideas and items to consider to ensure students with disabilities can meaningfully learn remotely, whether full-time or as part of a hybrid model.

- **Consider what worked in the 2019-2020 school year.** What worked and what didn't during the school year of 2019-20? Did the student have success working with a particular teacher?
- **Discuss the learning environment at home.** Bring teachers, related service providers, and parents on a videoconference to discuss what the parents need to create a supportive environment for the student to learn at home and how the parent can access the items. Encourage parents to designate a section in the house for learning and to keep the learning area consistent to develop a routine for the student. Students with complex needs may benefit from:
 - ◇ Adaptive seating to learn comfortably at a desk or table
 - ◇ A visual distraction-free room, including nontherapeutic pets, so that the student can more easily focus
 - ◇ A visual activity schedule with pictures and words posted on a white board or other large space that provides step-by-step information about what the student.
 - ◇ A sensory corner in which the student can take a break. The corner can include different fidget items and objects with textures that appeal to the student.

- **Offer concrete supports.** Send home graphic organizers and social stories to help the student navigate lessons. Choice boards online or in print assist in promoting student engagement. If your school adopts hybrid model, make sure what you send home is identical to what you are using in school with the student to maintain continuity.
- **Assess assistive technology use.** It is important to gauge the student's knowledge first before flooding the student with picture symbols on the tablet or laptop. Assessing the vocabulary that the student knows will prevent the student from becoming overwhelmed with icons and symbols, and this will encourage student initiated learning, rather than adult-manipulated learning.

Another idea is to send home a device pre-programmed with questions and a few choices for answers, if the student typically points or presses a button to respond to questions.

- **Incorporate multimedia techniques.** Incorporate creative multimedia elements, such as colorful pictures, videos, animation, music, and interactive games.
- **Let the student learn from mistakes.** Don't be afraid to correct the student remotely. If you have given the student directions and the student is going beyond or not following directions, direct the student in the right direction. Be sure not to over-prompt and give the student time to think.



TIPS FOR PROVIDING SECTION 504 SERVICES VIRTUALLY

In recent years, technology has been increasingly used in education, which has provided numerous benefits. Perhaps now more than ever, technology is important in providing education. At the beginning of the global pandemic, many school districts were scrambling to use online learning and the use continued through the end of the 2019-2020 school year. Many school districts will continue the format for the upcoming 2020-2021 school year. Regardless of whether your school district is returning to in-person instruction or remote instruction, the circumstances of the pandemic are fluid and everchanging, and being prepared to use and improve technology for virtual instruction is necessary.

Virtual instruction has presented challenges in providing accommodations to students with Section 504 plans., and such accommodations need to be appropriately planned for in order to ensure provision with fidelity—whether in person or remotely. Here are some tips for each group involved in providing services to students.

Group Involved	Tips
Parents	<p>Training parents on how to use virtual platforms used by the school district is crucial in assisting students access and utilize technology. Parents need training on how to access assignments through virtual platforms, including parents that choose in-person instruction for their child because technology will likely still be used. Don't assume that parents understand how to use an iPad or use the different applications involved.</p> <p>This is especially important for Section 504 students because many students' accommodations are technology accommodations.</p>
Teachers	<p>Teachers are key players in ensuring students receive accommodations, whether in-person or virtually.</p> <p>It may be helpful to put together a document for teachers providing virtual instruction about accommodations in the virtual setting. For example, if chunking information is a student's accommodation, then the teacher may need to remind the student via email to do a certain number of problems, take a break, and come back and do the next chunk. If a student receives oral administration of tests or quizzes, the teacher may need to provide any tests or quizzes via multimedia software so the student can listen to them. This may require the teacher to put together a direction sheet for the student and parents on how to access oral administration.</p>
Section 504 Coordinators	<p>First, ensure the current accommodations work online. Revisit students' 504 plans and review accommodations to make sure they can be met in the virtual setting. Because Section 504 is an accessibility law, it is imperative to consider accessibility on virtual platforms. Virtual learning involves a more comprehensive approach, and collaboration with parents is key for developing supports at home.</p> <p>Additionally, videoconferencing tips and providing guidance on how to host virtual 504 team meetings are beneficial for effective meetings. Most of these meetings, once held in person, will need to be facilitated online. Provide videoconferencing tips and guidance to staff about how to host virtual 504 team meetings for more effective meetings. Consider using more than one platform as an option for conducting the meeting. Include practical guidelines and remind team members about the required members. While videoconferencing seems less formal, all necessary parties must be there and everyone must be able to participate. Districts need to be sure that meetings are carried out with fidelity, despite being virtual. This includes sending prior written notice and showing the working IEP as you discuss.</p>



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If you have a special education issue you would like to see addressed in subsequent issues of this newsletter, please write to or e-mail Trish Andrews at the above address.

Andrews & Price, LLP is the pre-eminent law firm in Western Pennsylvania in the practice of Public Sector Law. Our attorneys have more than 60 years of combined experience servicing School Districts. We provide a full range of legal services to our clients, including serving as Solicitor for various school districts, serving as special counsel for special education due process hearings, presenting seminars relating to the Reauthorization of IDEA and representing our clients in all types of litigation, including defense of numerous civil rights suits in federal and state Court.



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Consult Your Solicitor!

The legal issues discussed herein are for the purpose of providing general knowledge and guidance in the area of special education. This newsletter should not be construed as legal advice and does not replace the need for legal counsel with respect to particular problems which arise in each district. As each child is unique, each legal problem is unique. Accordingly, when districts are faced with a particular legal problem, they should consult their solicitor or with special education counsel to work through the issues on a case by case basis.