

ESY and Compensatory Education During COVID-19

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Speakers:

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And

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Instructions

How will this “virtual” session work?



- Participant's video and microphones are muted during the presentation and Q&A.
- Please enter your questions via the chat box

Thank you!

Preparing for ESY and Compensatory Education Discussions Post-COVID-19



**Disability
Rights** OHIO

We have the
legal right of way.

John Price

What We'll Cover



- Legal Standards for Compensatory Education and Extended School Year (ESY)
- Impact of COVID-19 Guidance on Comp Ed and ESY
- Steps you can take to help make sure your child gets what they need
- Notes on what services might look like during the pandemic

Compensatory Education



- Compensatory education (“comp ed”) is a legal remedy that is used to make up for services that should have been provided to a student but were not or when services provided fail to deliver FAPE.
- Typically, this occurs when services that were on the IEP were not provided. It can also be awarded for services that should have been on the IEP and were not.
- The purpose of compensatory education services is **to put the child in the position would be in had the district provided the appropriate services in the first place.**

Compensatory Education



- Being awarded comp ed is dependent on some deficiency in the services provided by the school district, which can be for any reason (including factors out of their control like a pandemic).
- Note that the purpose of comp ed is NOT to punish the school district for a failure but rather to put the child where they should have been.

Compensatory Education



- Comp ed is not always awarded on a service-for-service, minute-for-minute basis.
- Thus, if your child misses 200 minutes of a service, this does not automatically mean that 200 minutes of comp ed will be awarded, but it is often used as a baseline.
- The amount of services is decided is driven by the legal standard of placing the child where they would have been had the services been delivered in the first place.

Extended School Year



- ESY refers to services that are provided when a child needs additional services to receive a FAPE.
- In Ohio, the team often looks at the regression-recoupment standard. Under this analysis, a student is eligible for ESY services when the child demonstrates significant regression of skills over long breaks (such as over the summer) and cannot recoup those skills in a reasonable amount of time.
- ESY can also be awarded for other reasons, including when your child is working on “emerging skills” or “breakthrough opportunities,” such as when your child is learning to read. The Team can also make a determination that your child requires ESY for FAPE generally.

ESY



- ESY eligibility is not dependent on a deficiency or interruptions in IEP services during the school year. A child can have a perfect IEP and service delivery and still qualify for ESY (major difference from comp ed).
- ESY will be tied specifically to goals on the IEP.
- Very possible that a child could require ESY for some goals and not others.

Delivery of Comp Ed and ESY



- Both compensatory education services and ESY services are required to be individualized to your child's needs.
- The school district cannot make one-size-fits-all determinations as to compensatory education and or ESY (i.e. "We're not doing ESY this summer.").
- Even though these services are most often delivered during the summer, this is not a requirement, and in many cases, there are good reasons to offer the services during the school year.

COVID-19 Guidance



- The legal standards for compensatory education and ESY remain in effect during the COVID crisis.
- The U.S. Department of Education has issued guidance to school districts to make individualized determinations as to whether students with disabilities are owed compensatory education because of changes or interruptions to services due to COVID-19.
- Similarly, the Ohio Department of Education has directed that ESY determinations be made on a case-by-case basis—based on established ESY standards.

The Takeaway



- This means that your child will not automatically be awarded compensatory education or ESY once school resumes, and the services provided may not be hour-for-hour based on what is missed.
- This places the onus on you the parent to document the need for either service once school resumes.

Preparing for the Conversation

Get a Distance Learning Plan in Place



- Meet with the team to create a **distance learning plan**. The plan should include the logistics of how instruction will be delivered during the pandemic and should account for your family's ability to access internet and other logistical barriers.
- Plan should be as specific as possible and include data tracking. Data tracking clearly define your role as well as those of other team members.

Distance Learning Plan



- Ask the school for frequent progress reporting so that you know if your child is benefitting from the services and if changes need to be made.
- Come up with a plan for regular communication that works for you. Phone calls and video conferencing are great, but do your best to maintain good documentation of these calls and conferences.
- Make sure the plan includes related services, specifying how and when related services will be delivered during the closure.

Distance Learning Plan and the IEP



- **Do NOT agree to changes to your child's IEP to reflect the school's COVID-19 limitations.**
- Your child's IEP should not be amended to reflect the reduced services your child may be receiving during the school closure. The IEP reflects your child's individual requirements for FAPE which did not change just because the school can no longer give in-person instruction.
- Agreeing to reductions in services **could limit the amount of compensatory services** your child receives.

Collect Your Own Data



- **Track performance on IEP goals and objectives**, if possible.
- IEP goals should be written objectively and in measurable terms. You should be able to set up trials of your child's IEP goals at home.
- If this is not possible, your child's goals may not be written properly.
- There are some goals that you may not be able to measure at home (such as goals that relate to social interactions with peers).

Example of Goal Tracking



Goals	Trial 1 – March 15	Trial 2 – March 31	Trial 3 – April 15	Goal met?
1. Reading comprehension – Student will correctly identify the main idea of a passage written at the 5 th grade level in four out of five trials by the end of the IEP.	Student correctly identified the main idea in 3 of 5 trials	Student correctly identified the main idea in 1 of 5 trials	Student correctly identified the main idea in 0 of 5 trials	No.

Collect Your Own Data



- **Take videos (on cell phone) of child.** This is a convenient way you can establish a record of your child's progress that can be used in discussions. Set up trials of IEP goals and record your child's performance. This can help establish whether your child has regressed on critical skills.

Use Simple Checklists



- Create simple checklists to track your child's progress on academics, behavior, and work completion:

School Work Log – May 19	
Johnny woke up on time for school work according to schedule.	X
Johnny successfully participated in general education video conference from 9:00-11:00.	X
Johnny successfully completed assigned worksheets, taking appropriate breaks.	

Collect Your Own Data



- **Keep track of what the school offers to the child.** In addition to tracking your child's progress, you also need to keep track of when the school actually provides services to your child.
- This will be very important when you are having a discussion about services your child missed because the school district's records may not reflect what actually occurred.

Example



Service	Provider	Date	Time	Minutes Provided
OT (via Zoom)	Ms. Smith (OT therapist)	May 1	10:00-10:30	30
Reading Intervention (goal 2 of IEP)	Mr. Brown (Intervention specialist)	May 2	11:00-12:00	60

Track Time On Task and Behavior



- **Track how much time your child is working.** You and the team need to have an idea of the time your child is spending on schoolwork.
- **Keep data on your child's behavior** if it impacts his or her education. This can include documenting the behavior itself, the intervention you use to address the behavior, and your child's response to that intervention. Your ability to track behavior related to peer interactions will naturally be limited, so keep the data the best you can.

Look at Your Child's History



- **Does your child have a history of receiving ESY?** This is typically the best evidence for your child receiving these services again.
- **Does your child lose skills over long breaks?** Whether or not your child has received ESY in the past, check to see if your child has a tendency to regress on skills over long breaks. This is likely to be exacerbated during the long COVID-19 closure and will strengthen your argument for ESY services.

Stay Organized



- **Keep an organized notebook of information and observations.** Come up with a system of keeping all your documentation together.
- Three-ring binders work well for physical copies. If you are digitally inclined, you could try a digital storage system.
- The data you collect is the best possible evidence for getting services down the road. This is good practice not only during the COVID-19 school closure, but all the time.

Reach Out to Your Providers



- Ask outside providers for feedback about your child's distance learning plan. Make sure the providers are making recommendations using the proper educational standards.
- For example, "The student requires this service in order to receive an appropriate education because..." is a much stronger recommendation than "The student would benefit from this service."

Getting Expert Support



- Once the need for compensatory education or ESY is established, ask providers for recommendations as to how the services should be delivered.
- If you get into a dispute over comp ed or ESY, you may need these providers to serve as expert support for the amount and nature of services you are requesting.
- Remember the legal standards for comp ed and ESY.

A Final Note About Services During the Pandemic...

Delivering Comp Ed and ESY During the Pandemic



- There is no specific guidance as to the form these services will take while COVID-19 is still causing disruptions.
- If schools are not able to open during the summer, you should work with the school to determine how and when owed services will be delivered.
- Schools can and should offer online services to those students who would benefit.

Delivering Comp Ed and ESY During the Pandemic



- This situation calls for creativity and flexibility on your part as well as the school's part. No one can predict the timeline of re-opening or what it will look like.
- Think about whether your child is more likely to benefit from online services delivered sooner or in-person services once they are possible. Every child is different.
- Safety should always been the most important factor.

Reach out for help



- You can access our online self-advocacy resources at www.disabilityrightsohio.org.
- If you are in Ohio and need DRO's help with your own child, open an intake by
 - Submitting an online intake on our website
 - Calling 614-466-7264 or 1-800-282-9181, press option 2, and leave a voicemail

Next Speaker...

Krushawna Harper,
Parent Leader and Support Parent for Ohio
Parent to Parent



A Parent's Guide to Ensuring Services during the Covid-19 Pandemic

A parent's perspective

Krushawna Harper

What are Your ASKS?

- **Inquire about your child's goals and the progress that had been made before COVID-19**
- **How is your child's progress being monitored**
- **Even if ESY cannot occur in its original setting, how will the needs of your child be addressed**
- **Communicate with your child's educational team(IS,OT,PT,GenEd Teacher etc.) to create a plan to achieve these goals in a home setting**


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You are not alone on this journey. Don't be afraid to ask for help to support your child during this time.”

**Being brave is easier when you're
not alone
~winnie the pooh**

- **Do not hesitate to reach out to your school team for help**
- **There are wonderful parent blogs of parents sharing their journey**
- **Stay connected to your local hospital. It can be a great source of information.**
- **Attending this Webinar is a start in the right direction**

TIPS on Steps to Take before Asking for Compensatory Services

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- **Be aware of the goals and services being provided by your child's educational team during this time**
 - **Monitor progress and regression**
 - **Be open to collaborating with your child's school to support your child and their needs now and when face to face instruction begins**

Resources

- **Disability Rights of Ohio**
- **Wrightslaw.com**
- **Your Local Hospital**
- **Ohio Department of Education**
- **Support Groups**
- **Organizations**
- **Developmental Disabilities Services**
- **Resource Fairs**
- **Network, Network, Network!!**

Questions



Thank you

