



BACK TO SCHOOL:

AN UPDATE ON SPECIAL EDUCATION DURING THE PANDEMIC



SUMMER 2020: PART 3 OF 3

AGINS & GILMAN, LLC



General Information:

- Are schools *required* to offer in-person options?
- Are schools *required* to offer virtual options?
- If a virtual option is available to all students, can a district exclude Students with Disabilities?
- Are there exceptions to the requirement for schools to provide FAPE? Timelines?
- What is the latest concerning masks? Face shields?
- Has the Ohio Department of Education issued any guidance concerning the provision of compensatory (or “recovery” services) to students with disabilities?
<http://education.ohio.gov/Topics/Reset-and-Restart/Students-with-Disabilities>



LINKS TO RESOURCES:

OH DEPT. of EDUC: <http://education.ohio.gov/Topics/Reset-and-Restart>

OH DEPT. of HEALTH: <https://coronavirus.ohio.gov/static/responsible/schools/K-12-Schools-Guidance.pdf>

Updated Governor/ODE/ODH Guidance for IN SCHOOL SERVICES

- NOT MUCH SINCE SESSION 2 (Review information on Session 2, available on Akron Autism Society website)
- SOCIAL DISTANCING
 - RECOMMENDATION SHIFTED FROM 3' TO 6' SOCIAL DISTANCING
 - USE OF DIVIDERS IF 6' CANNOT BE ACHIEVED
 - WHAT ABOUT YOUNG KIDS (<http://education.ohio.gov/Topics/Reset-and-Restart/Early-Learning-and-School-Readiness>) OR THOSE WITH DEVELOPMENTAL NEEDS?
 - WHAT IF 1:1 OR HAND-OVER-HAND INSTRUCTION IS NEEDED?
- MASKS – SEE NEXT SLIDE
- DELIVERY OF INSTRUCTIONAL SERVICES SHOULD BE PROVIDED AS WRITTEN IN IEP
- CONSIDERATIONS NEED TO BE MADE FOR COMPENSATORY (OR “RECOVERY”) SERVICES
- TRANSPORTATION
- PRESCHOOL STUDENTS – PLANS? GUIDANCE? ARE ITINERANT SERVICES AVAILABLE?
- WHAT ABOUT “HYBRID” MODELS?
 - Ensure that plans are made for supports, if needed, during “at home” days
 - Plan to maximize “in person” days and needs

“Every student can learn, just not on the same day, or the same way.”

–George Evans

Updated masks rules: all students, teachers, and staff when inside school building or on transportation. Required outside if less than 6' apart.

EXCEPTIONS:

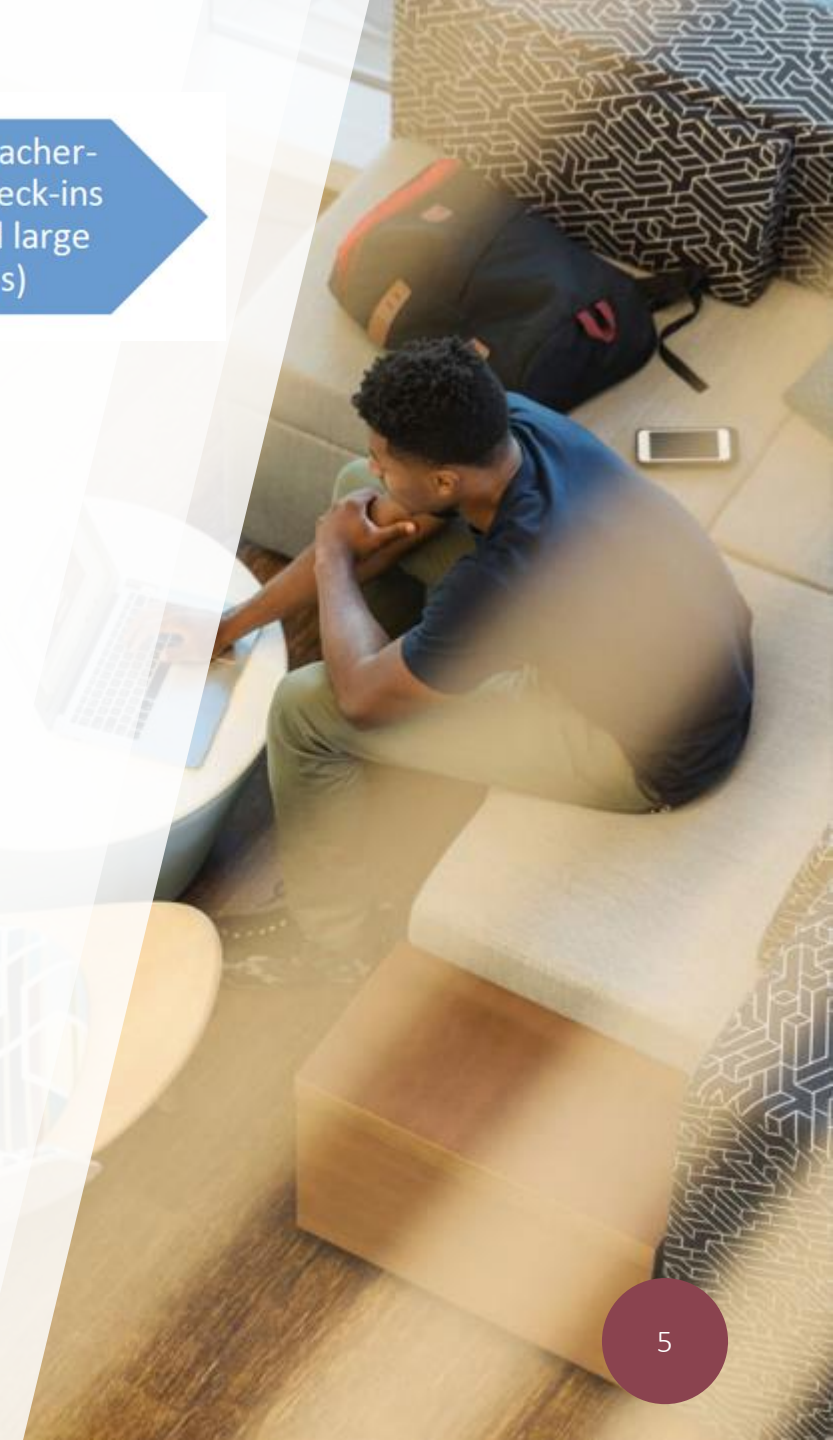
- An individual has a medical condition, such as a respiratory condition that restricts breathing, mental health condition or a disability that would be worsened by wearing a mask;
 - Earlier Ohio Children's Hosp. Assoc. exempted (a) children under age 2; (b) any child unable to remove the covering without assistance; (c) any child with significant behavioral/psychological issue undergoing treatment exacerbated by the use of a facial covering (e.g., severe anxiety or a tactile aversion); (d) a child living with severe autism or with extreme developmental delay who may become agitated or anxious wearing a mask; or (e) a child with a facial deformity that causes airway obstruction.
- An individual is communicating with someone who is hearing impaired or has a disability where an accommodation is necessary;
- An individual is actively participating in outdoor recess or physical activity where they are required to remain 6 feet apart or in an athletic practice, scrimmage or competition allowed under a different order;
- An individual is sitting and eating or drinking;
- During lessons where students and staff are 6 feet apart and wearing a face mask would prevent instruction or participation during a lesson, such as foreign language classes or while playing a musical instrument;
- Students are 6 feet apart and a teacher deems a mask break is necessary;
- An individual is alone in an enclosed space, such as on office;
- When an established religious requirement exists that does not allow wearing a mask.
- WHAT ABOUT FACE SHIELD? Not complaint with order
- CAN A CHILD BE FORCED TO GO TO ONLINE or CAN A PARENT BE FORCED TO TRANSPORT if a kid cannot or won't wear it?





ONLINE or “REMOTE LEARNING” PLANS

- Again, general information is available in Session 2 of 3
- IEP SERVICE DELIVERY CONSIDERATIONS:
 - DELIVERY ‘ AS WRITTEN’
 - RECOVERY SERVICES
 - RELATED SERVICES
- WILL STUDENTS BE ENTITLED TO TECH DEVICES? INTERNET? TECH SUPPORT?
- WHAT TO DO IF VENDOR FOR VIRTUAL LEARNING DOES NOT INCLUDE SERVICES FOR STUDENTS WITH DISABILITIES?
 - IEP SERVICES TO BE PROVIDED BY DISTRICT VIA ONLINE CONF OR IN PERSON SERVICES
 - IEP ACCOMMODATIONS AND MODIFICATIONS TO BE PROVIDED BY DISTRICT
 - NOTE ON “HOME” INSTRUCTION
- WHAT SHOULD DATA COLLECTION PRACTICES LOOK LIKE?
- WHAT ABOUT DELIVERY OF SPECIAL EDUCATION AND RELATED SERVICES?
 - IEP SHOULD REFLECT SERVICE DELIVERY AND LEAST RESTRICTIVE ENVIRONMENT ACROSS ALL POTENTIAL SERVICE OPTIONS



Advocating for “in person” services during remote learning

ODE GUIDANCE: “FLEXIBILITY”

- ALTERNATIVE DELIVERY MODELS MAY BE CONSIDERED TO SAFELY MEET THE NEEDS OF STUDENTS WHO RECEIVED SPECIAL ED SERVICES
- DISTRICTS NEED TO “MAKE A GOOD FAITH EFFORT” TO DETERMINE HOW FAPE WILL BE PROVIDED:
 - WHAT IS A “GOOD FAITH EFFORT”? DOES THAT COMPLY WITH FEDERAL LAW?
 - DO STUDENTS WITH DISABILITIES HAVE ACCESS TO DEVICES AND CONNECTIVITY?
 - WHAT ASSISTANCE, RESOURCES AND SUPPORTS ARE NEEDED TO PARTICIPATE?
 - CAN REMOTE MODEL SUPPORT F.A.P.E. AND DELIVERY OF SPECIALLY DESIGNED INSTRUCTION?
 - THIS MAY REQUIRE ANALYSIS OF ACTUAL GOALS AND OBJECTIVES AND INSTRUCTIONAL TARGETS
 - “REGARDLESS OF WHERE THE LEARNING IS HAPPENING, SUPPORTS AND SERVICES MUST BE IN PLACE TO THE EXTENT PRACTICABLE WITHOUT PUTTING THE HEALTH AND SAFETY OF STUDENTS AND STAFF AT RISK”
 - CUYAHOGA AND FRANKLIN COUNTY BOARDS OF HEALTH – 1:9 RATIO SMALL GROUPS ARE APPROPRIATE WHEN A STUDENT'S EDUCATIONAL NEEDS NECESSITATE THAT SERVICES ARE DELIVERED IN PERSON
 - IS TRAINING NEEDED FOR PROPER USE OF ONLINE PLATFORM?
- THE LEAST RESTRICTIVE ENVIRONMENT IS DETERMINED BY THE STUDENT’S IEP TEAM AND BASED ON THE STUDENT’S UNIQUE NEEDS RATHER THAN A CHANGE IN PLACEMENT DUE TO A DISTRICT-WIDE PLAN
 - HOW ARE CHILD’S INDIVIDUAL NEEDS MET IN ORDER TO SUPPORT LEAST RESTRICTIVE ENVIRONMENT THROUGH REMOTE LEARNING PLAN?
 - IF FAMILY ELECTS OPTION CONTRARY TO THAT PROPOSED BY TEAM, WERE ALTERNATIVE OPTIONS DISCUSSED?
- ALL SPECIAL EDUCATION SERVICES MUST BE PROVIDED DURING REMOTE OR BLENDED LEARNING AND MUST BE INDIVIDUALIZED
 - DATA MUST BE COLLECTED BY SCHOOL STAFF AND TEACHERS
 - LOOK AT HOW CO-TAUGHT AND RESOURCE ROOM SERVICES WILL BE STAFFED/PROVIDED
 - HOW WILL SOCIAL EMOTIONAL AND BEHAVIORAL SUPPORTS BE DONE? AIDE OR PARAPROFESSIONAL SERVICES?
 - HOW WILL RELATED SERVICES BE PROVIDED? (NOTE – THERAPY CENTERS ARE OPEN FOR IN-PERSON SERVICES)

A person with a beard is shown in profile, looking at a tablet computer. The background is blurred, suggesting an indoor setting. The text is overlaid on a dark red background.

What about COMPENSATORY and RECOVERY SERVICES?

COMPENSATORY EDUCATION VERSUS RECOVERY SERVICES:

- COMPENSATORY EDUCATION SERVICES – Student with disability did not receive special education services or instruction while other students were receiving services during building closures.
- RECOVERY SERVICES – Students with disabilities did not make as much progress as expected or otherwise display gaps in learning that require additional services and supports to resume learning based on their current levels of performance.
- May not be needed by every student.

Compensatory or Recovery Services:

- CONSIDERATIONS IN DETERMINING IF RECOVERY SERVICES ARE NEEDED:
 - WHAT WAS STUDENT PERFORMANCE LEVEL AT THE TIME OF CLOSURE?
 - REVIEW IEP GOALS, OBJECTIVES/BENCHMARKS AND PROGRESS DATA
 - LOOK AT ALL ASSESSMENTS IN STUDENT RECORDS
 - WHAT SERVICES WERE PROVIDED DURING CLOSURE?
 - WHAT DATA/DOCUMENTATION OF PROGRESS WAS TAKEN DURING CLOSURE?
 - DID STUDENT MAKE PROGRESS DURING CLOSURE? REGRESS?
 - WAS FAPE PROVIDED?
- IF SERVICES ARE NEEDED, HOW TO DETERMINE WHAT RECOVERY SERVICES SHOULD BE PROVIDED?
 - HOW TO ASSESS FOR PRESENT LEVELS?
 - IS A FULL EVALUATION NEEDED? BASELINE ASSESSMENTS? NEW GOAL DATA?
 - PROCEDURES TO COLLECT SHOULD BE DETERMINED BY TEAM – TIMELINE AND REPORTING CONSIDERATIONS (2-4 WEEKS?)
 - IDENTIFY TYPE, SERVICE DELIVERY AND QUANTITY OF RECOVERY SERVICES:
 - WILL RECOVERY SERVICES BE INCLUDED AS NEW GOAL? (RECOMMEND: ESTABLISH ADDITIONAL GOAL – DO NOT REMOVE OR REPLACE ORIGINAL GOAL, WHICH SHOULD STILL BE ACHIEVED)
 - WILL SERVICES BE ADDED TO IEP SERVICES OR OUTLINED SEPARATELY? WHAT IS DURATION OF TIME FOR RECOVERY? HOW WILL TEAM KNOW WHEN RECOVERY HAS BEEN ACHIEVED?
 - WILL THIS BE PROVIDED DURING THE SCHOOL DAY OR OUTSIDE OF THE TYPICAL DAY? NOTE – STUDENT SHOULD NOT MISS OTHER INSTRUCTION FOR RECOVERY
- RECOVERY SERVICES MAY OCCUR OVER TIME

FINAL QUESTIONS??

- Should we request an IEP to review services now?
 - Yes
- I have no daycare and my employer will not work with me – what do I do?
- Where do I look for more information?
 - <http://education.ohio.gov/Topics/Reset-and-Restart>
- Parents are being asked to sign waivers in order to participate in online learning... should they sign them?
 - That is a highly individual decision and one that I cannot answer. Generally, if the waiver includes a waiver of educational rights (like FAPE), then you should seek advice of legal counsel.



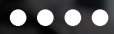


I HAVE TRIED TO BE COLLABORATIVE AND WORK WITH MY IEP TEAM BUT FAPE ISN'T BEING DONE ... WHAT SHOULD I DO?



- Reach out to your special education coordinator or District Pupil Services Director via phone AND email and request to schedule a phone call to review IEP team decisions if not a part of the meeting.
- Consider seeking the advice or support of an advocate or attorney. There are private providers, and resources available through OCECD, Akron Autism Society, parent support groups, etc.
- Consider seeking mediation or filing Complaint/Due Process request through Ohio Department of Education

THANK YOU



Kerry M. Agins, Esq.

Agins & Gilman, LLC



216-291-IDEA



kagins@idealaw.org



aginsandgilman.com