

# Know Your Rights

## Making Up for Lost Education during COVID-19

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As the COVID-19 public health crisis continues to disrupt your child's education, it is impossible to predict when and how schools will reopen. Even when that becomes clear, we cannot know whether circumstances will change. It could be a long time before school looks anything like it did before the pandemic.

We also know that for many parents of a children with disabilities, distance learning has simply not worked. Zoom meetings, homework packets, and other bits of distance learning have not been enough to promote progress toward the academic or social skills for many children with disabilities. This has been especially true for children who need intensive behavioral instruction and supports.

## What We Do Know

[Disability Rights Oregon](#) and [FACT Oregon](#) have already produced good tips for parents of children who have been unable to learn important academic and social skills while isolated at home. We urge you to read those tips.

Before you read the suggestions and tips that follow, remember that they are only that: tips and suggestions.

### 1. Give yourself a break, then document everything.

- » Regardless of the many ways in which COVID-19 may have impacted your family, you are the parent of a child with disabilities who has not attended in person school since March. For many of you, that has meant that your ability to keep track of every past or future interaction with a school district may be pretty limited. If, for instance, you cannot remember everything that happened in April and May, just record what you can remember and do your best to keep track of what happens from now on. When it comes to keeping records, something is better than nothing.
- » With all of that in mind and to the best of your ability, [keep a log](#) of every activity that



the District has offered or actually provided to your child. Document how long your child was able to participate and whether it seemed to work or not. For instance, did your child stay attentive, wander off, become angry, or seem happy with what was going on? Did the computer link fail? Was your child or you unable to log in? If you cannot pin down specific dates, estimate when something happened and describe it as well as your memory allows.

- » Also log the time and date of any scheduled or Individualized Education Plan (IEP)-required activity, such as a speech, Occupational Therapy (OT), or Physical Therapy (PT) session that occurred (or did not occur) as required by the IEP. If the activity did occur, record the actual length of the session and again, whether (and how long) your child was able to stay connected to the activity.

## 2. Review your log and consider what, if anything, has worked for your child since March.

- » Consider whether any of the services or activities provided by the district triggered behavior or made things worse in some way. For example, if your 14-year old child became angry and walked away when asked to do a writing assignment, that's important information for you and your child's IEP team to consider when trying to create a useful plan for the new school year. Was the nature of the assignment the problem or did it have more to do with how or when the assignment was presented?
- » Consider whether any of the services or activities that have been provided have helped your child. For example, perhaps your child enjoyed and learned new skills during a game-centered activity with a teacher and a few other students via computer link.
- » Consider whether there are any other services or activities that might help your child make up for what has been lost. For example, would more frequent but shorter periods of math instruction presented via computer by a teacher work for your child? Would your child improve reading skills if able to listen to a teacher-read story while following along on a split screen that showed the text with a moving cursor? Is it impossible for your child to participate in planned activities because of too many demands on a single computer in your home?

## What to do in August and September

### 1. Request an IEP Meeting a week or two after your child's school opens or announces its plan for what will happen in September.

- » Make this request in writing and address it to the special education director of the district. In your request, explain that you want to discuss how your child will learn academic and social skills under the district's plan for reopening.

## 2. At the meeting, bring your log and share what you have learned about what worked and what did not during the time between March and the meeting.

- » Share your ideas for additional services and request those services. You should also request an assessment to capture your child's current level of academic and social progress. It's fine to be flexible about how this is done, but regardless of whether the team is considering in-person, online, or some other form of education, it will be critically important to understand what skills your child may have lost since March. Because we cannot know how and when schools will change the way they offer education, we recommend that you not demand or agree to changing the IEP if you can achieve the results you seek without doing so.

## Some Things to Watch For

- » Some districts may partially or fully open classrooms for students without disabilities, but suggest that continued distance learning for your child because your child's disability would make it difficult or impossible to comply with safety measures such as social distancing or mask wearing. If you are comfortable having your child back in the classroom, do not accept such a plan. Instead, request environmental or other changes that would allow your child to resume face-to-face education.
- » On the other hand, you may find yourself in a situation where the District insists on face-to-face learning even if your child's return to a classroom creates a safety risk that you cannot accept because of COVID-19. In that case, request continued distance learning while doing your best to ensure that it includes what is needed to provide academic and social progress toward IEP goals. Base your request on what you and the district have learned about your child's ability to learn while at home.
- » If your district offers a distance learning plan that calls on you to do things that are not possible because of your home environment or your own skills, request what is needed to make their plan more realistic. For instance, you might request a weekly troubleshooting appointment with your child's case manager to help you help your child attend to computer-based learning. If the district expects your child to learn via computer in a home with poor internet service or one device that is needed by multiple family members throughout the day, you might request access to better service and/or an additional device.
- » Some districts may request that you sign a waiver giving up your right to request Compensatory Education at a later time. **Do not sign such waivers or agreements without consulting with an attorney.** Be aware that some districts may reject using the term Compensatory Education and instead offer to provide services under some other name such as compensatory services. If the district agrees to provide what your child needs, this distinction is probably acceptable as long as you are not required to sign anything that waives your right to future complaints or claims.

- » If you decide that your child will be best served by learning at home, try to avoid agreeing to a formal change of placement that could become more permanent than you might like. If it becomes necessary to accept a change of placement to home instruction, insist on a time limit (perhaps one semester or until the crisis reaches a certain level of improvement.) Be aware that even though home instruction and home schooling may sound like the same thing, they mean very different things in the legal world. For that reason, [do not accept or suggest home schooling](#) unless you are comfortable with the idea of being almost entirely responsible for the education of your child.

## Pick Your Battles

- » Your child continues to be entitled to a Free and Appropriate Public Education (FAPE) before, during, and after the crisis. And, if your child is not receiving a FAPE, you have a right to file a complaint to formally demand Compensatory Education. (Compensatory Education is a legal term that describes the additional services that are necessary to bring children to where they would have been during a time when FAPE was not provided.) You also have the same rights to Compensatory Education for any and every missed service that was required by the IEP.
- » However, you might obtain better results by focusing on and requesting missed services that would significantly help your child maintain or improve important skills. For example, if bi-weekly OT sessions did not work well before or after schools closed in March, it may not make sense to make big issue about a few missed sessions. On the other hand, if your non-verbal child's behaviors are the result of frustration about being unable to communicate, making up missed or sessions with a Speech Language Pathologist or augmentative communication expert who is teaching your child to use a communication device could be extremely important.
- » If your child is at or near aging out of special education (at the end of the school year during which your child reaches the age of 21), it may make sense for you to be more assertive and demanding about getting Compensatory Education for missed services or failure to provide FAPE. Although, there are circumstances under which your child could receive Compensatory Education after aging out, the analysis of whether that can happen is complicated.

## Masks and Physical Distancing

The Governor of Oregon recently revised [current emergency rules](#) so that children aged five and older are now required to wear masks in public spaces. This may change, but for now, the ability of your child to comply with mask and physical distance requirements may become a problem if your school opens for face-to-face learning.

You may be told, for instance, that learning in a classroom will not be possible because your

child cannot wear a mask or maintain a safe physical distance. The Oregon Department of Education's [most recent guidance](#) (see pages 25 through 26) about reopening schools explains that districts should not adopt such rigid policies and offers suggestions about ways to flex rules so that children with disabilities are not needlessly excluded from school. It also reminds districts that their responsibility to provide FAPE through an individualized IEP continues during the crisis.

## More Resources

- » [DRO Know Your Rights: Education Rights during COVID-19 Distance Learning](#)

Contact us at: 503-243-2081 or 1-800-452-1694 or write us at Disability Rights Oregon, 511 SW 10th Avenue, Suite 200, Portland, Oregon 97205.

