

November 5, 2020

Ohio School Psychologists Association  
Fall Conference 2020**Special Education in 2020:  
Telehealth Services, Remote  
Learning and More**

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**2020**Written by  
**Stephen King**Directed by  
**Quentin Tarantino**Soundtrack by  
**Yoko Ono****What We Will  
Discuss Today . . .**

- COVID-19 Challenges – there have been just a few of these!
- State and Federal Guidance on the Pandemic Response
- Telehealth, Telepsychology & Remote Learning 101
- Maintaining Confidentiality
- Accommodations for Telehealth
- Other Special Ed. Tips and Hot Topics
- BONUS - Update on Ohio Operating Standards (if we have spare time!)

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**COVID-19 Has Presented (Just a  
Few) Challenges**

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**ONE CERTAINTY: UNCERTAINTY**

In an email on May 26, 2020, ODE observed "Ohio school leaders know the 2020-2021 school year will be unlike any previous years. Guidance about when and how to reopen school buildings will evolve over the summer months, but there is no time to waste for leaders planning significant changes to the logistics of school — how schools use time, facilities and technology to maximize the positive impact educators have on students and their families while keeping everyone safe."

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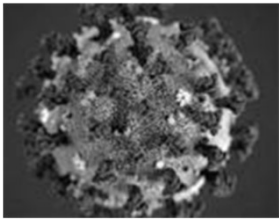
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**QUICK OVERVIEW (SO WHO'S TIRED OF TALKING ABOUT VIRUSES?!)**

- We know the virus is here to stay, at least for awhile.
- We know that it will significantly impact our operations during the 2020-2021 school year (and perhaps beyond), including our services to special education students.
- ODE has released a restart plan, and an ODE/ODH coalition has released a health guidance. You need to read them both.
- American Academy of Pediatrics even weighed in - "...the AAP strongly advocates that all policy considerations for the coming school year should start with a goal of having students physically present in school."

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## State and Federal Guidance for 2020-21

# PLAN

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### ODE “RESET AND RESTART” PLANNING GUIDE

- Plan released by ODE after working with various groups in the education industry.
- Heavy emphasis on “local control” and working with local health departments – only you know your community best!
- Plan emphasizes need for equity
  - **Every** child should have access – **including those with special education needs.**
  - COVID-19 did not create equity challenges in education – however, it is certainly revealing inequities that exist.

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### ODE “RESET AND RESTART” PLANNING GUIDE

*“The return-to-school considerations outlined later in this guide **are not mandatory** and were co-designed with educators, educator-related organizations, education advocacy organizations, parents and students.”*

*“It also is worth repeating that **if schools cannot meet the guidelines for reopening (see Ohio Department of Health guidelines), they should continue remote learning until they can meet the guidelines.**”*

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### JOINT ODE/ODH “GUIDELINES”

- <https://coronavirus.ohio.gov/static/responsible/schools/K-12-Schools-Guidance.pdf>
- Governor DeWine previewed document on July 2<sup>nd</sup>, released shortly after.
- Ohio Dept. of Health and ODE contributed – focused more on health-related challenges.

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### A FEW THOUGHTS FROM THE INTRO

*As schools start to reopen, the health and safety of students, staff, and volunteers is paramount. We are now at the highest level of community spread since the COVID-19 pandemic began. It transmits quickly and having students gather in classrooms again involves inherent risk for students and staff. While the science about COVID-19 is evolving, it will be important to remain vigilant and nimble to respond to new developments.*

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### US DEPT. OF ED. OFFICE OF SPECIAL EDUCATION POLICY Q&A (9/28/20)

<https://www2.ed.gov/policy/speced/guid/idea/memosdcrltrs/qa-provision-of-services-idea-part-b-09-28-2020.pdf>

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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### OSEP – RESPONSIBILITY FOR FAPE, CONSIDERATION OF HEALTH

However, OSEP reminds SEAs and LEAs that no matter what primary instructional delivery approach is chosen, SEAs, LEAs, and individualized education program (IEP) Teams remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities. If State and local decisions require schools to limit or not provide in-person instruction due to health and safety concerns, SEAs, LEAs, and IEP Teams are not relieved of their obligation to provide FAPE to each child with a disability under IDEA.

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### OSEP – DIFFERENT LEARNING MODES

We understand circumstances are always subject to change and recognize that ultimately the health and safety of children, families, and the school community is most important. SEAs and their public agencies must make every effort to continue to provide children with disabilities with the special education and related services appropriate to their needs.

For example, IEP Teams can discuss how a child's IEP will be implemented with traditional in-person instruction and how services also could be provided through remote/distance instruction if circumstances require a change to distance learning or a hybrid model. In making these determinations, IEP Teams should consider alternate available instructional methodologies or delivery, such as online instruction, teleconference, direct instruction via telephone or videoconferencing, or consultative services to the parent (if feasible).

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### COLLECTIVELY, WHAT DO THESE DOCUMENTS ALL MEAN?

- We must forge on despite the pandemic.
- We must still provide services required by state and federal laws, including the Individuals with Disabilities Education Act, Section 504, The Ohio Operating Standards for Students with Disabilities
- Sounds simple, right?!?

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### Telehealth, Telepsychology & Remote Learning 101

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### REMOTE LEARNING – GET READY, GET SET, GO!



- Rewind to Spring 2020 – things got wild quickly for schools.
- With little prep time, we were all about remote learning.
- Several temporary laws were passed to enable service providers such as school psychologists to provide remote learning for spring 2020 as well as the 2020-21 school year.

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### HB 164 TELEHEALTH LAW – EFFECTIVE THROUGH 2020-21 SCHOOL YEAR

- As used in this section, "license" includes any license, certificate, permit, or other authorization issued by a state licensing board that allows the holder to practice a job or profession.
- This section applies to all of the following during the period of the Director of Health's order under section 3701.13 of the Revised Code "In Re: Order the Closure of All K-12 Schools in the State of Ohio" issued on March 14, 2020, any local board of health order to close schools, or any extension of an order due to the implications of COVID-19, or until December 1, 2020, if the order or extension of the order has not been rescinded by that date and shall continue to so apply for the balance of the 2019-2020 school year and for the entirety of the 2020-2021 school year, even if the order or extension has been rescinded prior to July 1, 2021.

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### AGENCIES GOVERNED BY HB 164 LANGUAGE

(3) The State Board of Psychology appointed under section 4732.02 of the Revised Code

(5) The State Board of Education with respect to intervention specialists and school psychologists

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### HB 164 AUTHORIZATION OF TELEHEALTH SERVICES

*Notwithstanding anything to the contrary in the Revised Code or in an administrative rule adopted by a licensing board to which this section applies, a person who holds a valid license issued by such a board may provide services within the scope of practice authorized under the license by electronic delivery method of telehealth communication to any student participating in the Autism Scholarship Program established under section 3310.41 of the Revised Code or the Jon Peterson Special Needs Scholarship Program established under section 3310.52 of the Revised Code, or to any student who was enrolled in a public or private school and was receiving those services, regardless of the method of delivery, prior to the issuance of the Director of Health's order.*

*No licensing board to which this section applies shall take any disciplinary action against a license holder who provides services to a student in accordance with this section, including limiting, suspending, or revoking the person's license or refusing to issue a license to the person, solely because the license holder provided such services.*

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### APPLYING HB 164 TO OHIO SCHOOL PSYCHOLOGIST SCOPE OF PRACTICE

What can a licensed school psychologist do in Ohio?

- Evaluation, diagnosis, or test interpretation limited to assessment of intellectual ability, learning patterns, achievement, motivation, behavior, or personality factors directly related to learning problems;
- Intervention services, including counseling, for children or adults for amelioration or prevention of educationally related learning problems, including emotional and behavioral aspects of such problems;
- Psychological, educational, or vocational consultation or direct educational services. This does not include industrial consultation or counseling services to clients undergoing vocational rehabilitation.

**So does this law mean we can do all of these things remotely?**

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### TELEPSYCHOLOGY PRACTICE IN OHIO

- OAC 4732-17-01: Telepsychology means practice of psychology or school psychology by distance communication technology such as but not necessarily limited to telephone, email, Internet-based communications, and videoconferencing. Does not include routine billing, appointment scheduling, establishment of benefits or eligibility for services, welfare checks.
- Quick review of general requirements
  - ☐ Valid license
  - ☐ Compliance with rules of professional conduct, as well as state and federal laws
  - ☐ Maintain competence in telehealth, including technology
  - ☐ Use judgement in deciding who may and may not benefit from the practice (do you or an IEP team decide this?)
  - ☐ Use secure systems (some leeway has been granted with this – we will get to that shortly)
  - ☐ Obtain advance written consent (does this mean our school must provide one?)
  - ☐ Make sure records like recordings of meetings are maintained in a confidential way

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**TELEHEALTH EMERGENCY RULE**

- Ohio Dept. of Medicaid Guidelines During COVID-19 State of Emergency (Revised)
- Summarizes emergency rule OAC 5160-1-21, approved on March 20, 2020.
- Applies beginning March 9, 2020 through remainder of State of Emergency (which BTW has not ended yet!).
- Defines "telehealth" to include direct delivery of health care services to a patient via synchronous, interactive, real-time electronic communication comprising both audio and video elements or activities that are asynchronous and do not have both audio and video elements such as telephone calls, images transmitted via facsimile machine, and electronic mail.
- List of eligible providers includes psychologists covered under Chapter 4732.
- Authorizes providers to bill through Medicaid for services, including those provided through the Medicaid school program (MSP).

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**TELEHEALTH EMERGENCY RULE**

- Recognizes relaxed rules for HIPPA as adopted by Office for Civil Rights at the Dept. of Health and Human Services during the current health emergency.
  - Can use audio or video non-public facing remote communication product
  - Facebook Live, Twitch, TikTok, and other public facing sites should not be used
  - Should notify patients of risks (are we required to obtain consent?)
  - Should use all privacy features available (as well as sound technology practices)
  - Should "exercise professional judgement"

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**TELEHEALTH EMERGENCY RULE**

- Requires providers to access relevant records, document services
- Temporarily suspends rules requiring initial face-to-face visits for new patients

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**ODE TELEHEALTH SERVICE GUIDANCE**

[http://education.ohio.gov/Topics/Reset-and-Restart/  
Telehealth-Guidelines-for-Service-Providers](http://education.ohio.gov/Topics/Reset-and-Restart/Telehealth-Guidelines-for-Service-Providers)

- Last updated August 2020
  - One of Ohio's top priorities is to support the mental health and well-being of all Ohio's students.

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**ODE TELEHEALTH SERVICE GUIDANCE**

*Another priority is to ensure students with disabilities identified under the Individuals with Disabilities Education Improvement Act (IDEA) not only receive the educational services specified in their individualized education programs (IEPs), but also appropriate related services. Related services include, but are not necessarily limited to, those provided by a speech-language pathologist, occupational therapist, physical therapist, educational audiologist, **school psychologist**, school nurse or school social worker. These services may also be provided to students who are in a response to intervention (RTI) process or receiving interventions.*

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**ODE TELEHEALTH SERVICE GUIDANCE**

*As schools reopen, whether remote, in-person or using a hybrid approach, they **must consider how to continue providing related services** and mental and behavioral health services to meet students' needs, **virtually or otherwise**.*

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**ODE THOUGHTS ON CONSENT****3. Do telehealth services require additional parental consent?**

No. There are no federal or state requirements for additional consent to provide services via telehealth. However, some professional licensure boards require written parental consent to provide services via telehealth. For more information, providers may wish to check with the schools they work with along with their professional licensure boards.

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**ODE THOUGHTS ON AMENDING IEPS FOR TELEHEALTH****1. If the IEP team determines that service delivery by telehealth is appropriate, must the IEP be amended to reflect this?**

If the IEP does not already state that services will be provided via telehealth, the IEP should be amended to reflect this. This can be accomplished through the IEP amendment process or by convening the IEP team. If the district's overall plan is to provide education on a fully or partially remote plan, it is not necessary to amend the IEP to reflect that the services are being provided via telehealth.

2. If telehealth services are part of the district's overall plan to deliver services on a fully or partially remote plan, it is not necessary to amend each IEP, but the District should document that parents were informed that services will be provided via telehealth.

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**ODE THOUGHTS ON COUNTING SERVICE MINUTES****4. Do IEP related services delivered via telehealth count as IEP minutes delivered?**

Yes. Service providers must keep accurate records of attendance participation of students and continue to document and analyze data as they would do when services are delivered at school. This documentation should include the dates of services, the number of minutes of services delivered, and a brief description of the services delivered. Progress reporting will be required just as it is when services are delivered in person.

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### ODE THOUGHTS ON A MIX OF SERVICES

#### 5. Can a combination of in-person and telehealth IEP services be provided to the same student?

If the IEP does not already state that services will be provided via telehealth, the IEP should be amended to reflect this. If the combination of in-person and telehealth services are part of the district's overall plan to deliver services on a fully or partially remote plan, it is not necessary to amend each IEP, but the District should document that parents were informed that services will be provided via telehealth. This can be accomplished through a prior written notice, IEP amendment, or other written correspondence.

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### ODE'S THOUGHTS ON LICENSURE AND SCOPE OF PRACTICE FOR TELEHEALTH

#### 11. Can occupational therapy assistants, school psychologist interns, etc. provide services via telehealth?

Yes, subject to the allowances and requirements of the respective professional licensure boards. The Ohio Department of Education requires related service personnel and mental and behavioral health providers to follow the requirements of their respective professional licensure boards. The same requirements apply to services delivered via telehealth that would apply to services delivered in person. For specific questions regarding up-to-date telehealth rules, providers should reach out to their respective professional licensure boards directly.

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**Maintaining Confidentiality:  
Can You Keep a Secret?**



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### STATE AND FEDERAL CONFIDENTIALITY LAWS

- Stringent restrictions on how “student records” must be maintained and protected.
- Generally protects the confidentiality of personally identifiable student information.
- That means schools must not release personally identifiable information about students without the consent of the parents of students under 18 years of age, and of students themselves who are over 18 and a legal adult, UNLESS a recognized exception applies.
- Directory information may be released if the student/parent has not opted out of such disclosures.

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### OHIO PROTECTS PERSONALLY IDENTIFIABLE INFORMATION

- Ohio law limits the disclosure of personally identifiable information (PII) about public school students.
  - This is a broader protection than simply to education records.
- PII may not be disclosed to any person or group for use in a profit-making activity.
- Unless the PII is directory information, the PII may not be disclosed without prior written consent.

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### WHAT IS DIRECTORY INFORMATION?

- Generally includes:
  - Student's name
  - Address
  - Telephone listing
  - Date and place of birth
  - Major field of study
  - Participation in officially recognized activities and sports
  - Weight and height of members of athletic teams
  - Dates of attendance
  - Date of graduation
  - Awards received
- However, board of education has authority to further define this through policy!

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**WHO CAN HAVE ACCESS UNDER OHIO LAW?**

- Parents and students may have access to their PII (so long as the student is under 18). When the student turns 18, the student may have access and/or provide consent for their parents.
- For situations with unmarried or divorced parents:
  - Nonresidential parents are entitled to have access to records and PII pertaining to his/her child to the same extent that such access is provided to the residential parent, unless otherwise provided in a separation agreement, custody order, restraining order, etc.
  - The burden is on the residential parent to provide limitations to the school.

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**WHO CAN HAVE ACCESS UNDER OHIO LAW? (CONT'D)**

- Employees of the board of education **acting exclusively in their capacity as an employee of the board of education.**
- State, political subdivision, or any court provided the disclosure or use is required by statute, federal law, or subpoena.
- Law enforcement officers who are investigating missing child cases. This is **not** a general exception.

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**FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)**

- Applies to educational agencies and institutions that receive funds under **any** program administered by the U.S. Department of Education
- FERPA protects the confidentiality of students' **education records – those records that are:**
  - Directly related to a student
  - Maintained by an educational agency/institution or by a party acting on behalf of the educational agency/institution
- However, the following are not considered educational records and/or are exempt:
  - Personal logs
  - Treatment records
  - Directory information

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### FERPA PRIVACY

- A parent or eligible student must provide written consent **before** a school or school district discloses personally identifiable information from the student's education records, **unless one of the exceptions to FERPA's general consent rule applies.**
- FERPA requires that a consent form be signed and dated by the parent or eligible student and (1) specify the records that may be disclosed; (2) state the purpose of the disclosure; and (3) identify the party or class of parties to whom the disclosure may be made.

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### FERPA EDUCATION RECORDS RIGHTS

- Specifically grants **custodial and noncustodial** parents **or** students who are 18 years old the right to:
  - Inspect and review the pupil's educational records
  - Challenge the accuracy and information contained in the records
  - Prohibit the disclosure of records in some circumstances
  - Grant permission to disclose records
- Note: The rights of parents transfer to student when:
  - Student turns 18 years old
  - Student attends a post-secondary institution
    - ✦ This does not include a student who participates in post-secondary option!

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### FERPA NOTICE

- Boards of education are required to advise parents or students (if 18 or older) of their rights under federal law and to adopt regulations dealing with inspection of records.
- Must provide notice annually.
- This notice must include:
  - Notice that the parents have a right to inspect their child's records
  - Notice that the parents have a right to seek the correction of inaccurate or misleading records
  - Notice that PII about their child will not be released without their consent, subject to certain exceptions
  - Notice that their child's records may be viewed by teachers and other school personnel without their consent
  - Notice that they have a right to file a complaint with the U.S. Department of Education

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### FERPA EXCEPTIONS

Exceptions to FERPA – permitted release:

- Directory information
- Teachers and other school officials having legitimate educational interests
- Officials of other schools in which the student intends to enroll, so long as the parents are notified and given the opportunity to challenge the content of the record
- State and federal officials for purposes of audits and law enforcement investigations
- Persons requesting such records in connection with financial aid applications
- Military recruiters
- State and local officials having access to records pursuant to legislation

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### EXCEPTION FOR SCHOOL OFFICIALS

FERPA's model notice provides the following definition of "school official:"

- A person employed by the district as an administrator, supervisor, instructor, or support staff member (including health/medical staff and law enforcement)
- A person serving on the school board
- A person or company with whom the district has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist)
- A parent or student serving on an official committee or assisting another school official in performing his or her tasks
  - Take care with what information is disclosed to parents or students!
  - Additionally, it is recommended that confidentiality agreements are signed.

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### EXCEPTION FOR SCHOOL OFFICIALS

Suggested definition for "with legitimate educational interests:"

- ❖ For the purpose of serving the student
- ❖ For the purpose of protecting the health, safety, and learning of the student and others
- ❖ For the purpose of obtaining payment for educational programs and services
- ❖ For other purposes as specified by federal and state law

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### JUDICIAL ORDER/SUBPOENA EXCEPTION

- Another provision in FERPA that permits disclosure without consent is a disclosure that is necessary to comply with a lawfully issued subpoena or judicial order.
- A school generally must make a reasonable effort to **notify** the parent or eligible student of the subpoena or judicial order before complying with it in order to allow the parent or eligible student to seek protective action, unless certain exceptions apply.

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### WHEN IS IT NOT A FERPA ISSUE: SOLE POSSESSION

- Educational records **do not** include records that are:
  - Kept in the "sole possession" of the maker
  - Are used only as a personal memory aid
  - Are not accessible or revealed to any other person except a substitute for the maker of the record
- There is some debate about whether personal notes regarding communication with students and parents would be considered exempt from disclosure under the "sole possession" provision; therefore,
  - Your personal feelings – Be sure all personal notes are not accessible to others (e.g., not left on your desk, not put in a file that all counselors can access).
  - Use objective observations and comments in notes.
  - Avoid outing a student or parent!

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### DISCLOSURE FOR SAFETY PURPOSES

- FERPA does permit a school official to disclose education records to a student's family, law enforcement, or other relevant parties (such as a potential victim) when done in a "good faith" belief that:
  - Disclosure is **necessary and reasonably able to prevent an imminent threat of safety** to the student or others.
- An educational agency or institution is responsible to determine whether or not to disclose PII on a case-by-case basis, taking into account the totality of the circumstances pertaining to a threat to the health or safety of the student or others.
  - Within a reasonable period of time, the district must record in the student's educational records the articulable and significant threat that formed the basis for the disclosure and to whom information was disclosed.

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### DISCLOSURE FOR SAFETY PURPOSES

- This exception to FERPA's general consent requirement is temporally limited to the period of the emergency and generally does not allow for a blanket release of PII from the student's education records.
- But you see, we have a school resource officer....  
[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/SRO\\_FAQs\\_2-5-19\\_0.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/SRO_FAQs_2-5-19_0.pdf)

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### FERPA POLICE

- Enforcement of FERPA is dependent on the action of the aggrieved individual parties
  - Parents and eligible students must be given their notice of their rights under FERPA
  - Generally, they file a complaint with the Office of the Chief of Privacy Officer (USDOE, FPCO) or the Ohio Department of Education
- FCPA investigates and adjudicates FERPA complaints
  - Opinion letters disposing of complaints are persuasive authority in interpreting the Act
- Hint – as of now, they aren't going to do much moving forward, they are too far behind in complaints so they are looking to change how they investigate/resolve complaints  
[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/FERPA\\_Enforcement\\_Notice\\_2018.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA_Enforcement_Notice_2018.pdf)

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### WHEN IS A PHOTO/VIDEO OF A STUDENT AN EDUCATION RECORD UNDER FERPA?

- In April 2018, FCPO released an FAQ on how school districts may treat photos/videos of students under FERPA.  
<https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa>
- As with any other "education record," a photo or video of a student is an education record, subject to specific exclusions, when the photo or video is:
  - (1) directly related to a student; and
  - (2) maintained by an educational agency or institution or by a party acting for the agency or institution.

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### DIRECTLY RELATED TO A STUDENT

- FERPA regulations do not define what it means for a record to be “directly related” to a student.
  - Often context-specific. Among the factors that may help determine if a photo or video should be considered “directly related” to a student are the following:
    - Uses the photo or video for disciplinary action (or other official purposes) involving the student (including the victim of any such disciplinary incident);
    - The photo or video contains a depiction of an activity;
      - that resulted in use of the photo or video for disciplinary action (or other official purposes) involving a student (or, if disciplinary action is pending or has not yet been taken, that would reasonably result in use of the photo or video for disciplinary action involving a student);
      - that shows a student in violation of local, state, or federal law;
      - that shows a student getting injured, attacked, victimized, ill, or having a health emergency;
    - The person or entity taking the photo or video intends to make a specific student the focus of the photo or video (e.g., ID photos, or a recording of a student presentation); or
    - The audio or visual content of the photo or video otherwise contains personally identifiable information contained in a student’s education record.

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### DIRECTLY RELATED TO A STUDENT

- A photo or video should not be considered directly related to a student in the absence of these factors and if the student’s image is incidental or captured only as part of the background, or if a student is shown participating in school activities that are open to the public and without a specific focus on any individual.
- Examples of situations that may cause a video to be an education record:
  - A school surveillance video showing two students fighting in a hallway, used as part of a disciplinary action, is directly related to the students fighting.
  - A classroom video that shows a student having a seizure is directly related to that student because the depicted health emergency becomes the focus of the video.
  - If a school maintains a close-up photo of two or three students playing basketball with a general view of student spectators in the background, the photo is directly related to the basketball players because they are the focus of the photo, but it is not directly related to the students pictured in the background. Schools often designate photos or videos of students participating in public events (e.g., sporting events, concerts, theater performances, etc.) as directory information and/or obtain consent from the parents or eligible students to publicly disclose photos or videos from these events.
  - A video recording of a faculty meeting during which a specific student’s grades are being discussed is directly related to that student because the discussion contains PII from the student’s education record.

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### MAINTAINED BY AN EDUCATIONAL AGENCY OR INSTITUTION

- To be considered an education record under FERPA, an educational agency or institution, or a party acting for the agency or institution, also must maintain the record.
- Thus, a photo taken by a parent at a school football game would not be considered an education record, even if it is directly related to a particular student, because it is not being maintained by the school or on the school’s behalf.
- If, however, the parent’s photo shows two students fighting at the game, and the parent provides a copy of the photo to the school, which then maintains the photo in the students’ disciplinary records, then the copy of the photo being maintained by the school is an education record.

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**IS IT AN EDUCATION RECORD FOR MULTIPLE STUDENTS?**

- The same recorded image can be an education record for more than one student under FERPA.
- For example, a surveillance video that shows two students fighting on a school bus that the school uses and maintains to discipline the two students, would be "directly related to" and, therefore, the education record of both students.

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**IF A VIDEO IS AN EDUCATION RECORD FOR MULTIPLE STUDENTS, CAN A PARENT OF ONE OF THE STUDENTS OR THE ELIGIBLE STUDENT VIEW THE VIDEO?**

- When a video is an education record of multiple students, in general, **FERPA requires the educational agency or institution to allow, upon request, an individual parent of a student (or the student if the student is an eligible student) to whom the video directly relates to inspect and review the video.**
  - FERPA generally does not require the educational agency or institution to release copies of the video to the parent or eligible student.
- In providing access to the video, the educational agency or institution must provide the parent of the student (or the student if the student is an eligible student) with the opportunity to inspect and review the video.
- If the educational agency or institution can reasonably redact or segregate out the portions of the video directly related to other students, without destroying the meaning of the record, then the educational agency or institution would be required to do so prior to providing the parent or eligible student with access.
- On the other hand, if redaction or segregation of the video cannot reasonably be accomplished, or if doing so would destroy the meaning of the record, then the parents of each student to whom the video directly relates (or the students themselves if they are eligible students) would have a right under FERPA to access the entire record even though it also directly relates to other students.
- For a fuller legal analysis and explanation of this issue, please see the [2017 Letter to Wachter](#).

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**HOW DOES THIS APPLY TO TELEHEALTH SESSIONS?**

- Can you control who views a remote session at the student end?
- Are non-students permitted to view the lessons?
- If I record a therapy session, is this an education record?
- How can we meet our obligations to provide confidential services under the law?

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**ODE THOUGHTS ON PRIVACY AND CONFIDENTIALITY****2. How can a school ensure student and family privacy is protected when using telehealth?**

In considering telehealth options, it is essential to review important resources that explain the Health Insurance and Portability and Accountability Act (HIPAA) and Family Educational Rights and Privacy Act (FERPA) laws and how they may apply to telehealth services, as well as the coronavirus (COVID-19) compliance updates to ensure student and family privacy is protected.

HIPAA may apply to children who receive services from health care providers (including related service providers with professional board licenses). [See HIPAA and COVID-19](#).

FERPA protects the privacy of a student's education records and applies to all public and private educational institutions who receive federal funds for programs, including the IDEA. [See Protecting Student Privacy – FERPA and the Coronavirus 2019 \(COVID-19\)](#).

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**ODE THOUGHTS ON PRIVACY AND CONFIDENTIALITY (CONT.)****8. Must HIPAA compliant platforms be used to deliver telehealth related services?**

No. To help expand the use of telehealth during the national emergency, the Office of Civil Rights (OCR) will temporarily allow the use of applications that are not fully HIPAA compliant such as Apple FaceTime, Facebook Messenger video chat, Google Hangouts and Skype. [See HIPAA Telehealth](#).

Nevertheless, schools should make every effort to use platforms that are HIPAA compliant. In addition, service providers should check with their professional licensure boards for any requirements to use encrypted platforms.

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**ODE THOUGHTS ON PRIVACY AND CONFIDENTIALITY (CONT.)****9. Does providing IEP related services via telehealth to a group of students in the same session violate FERPA confidentiality requirements since the transmission is going into homes?**

No. FERPA protects the privacy of students' personally identifiable information in their education records and applies to all public and private educational institutions that receive federal funds for programs, including the Individuals with Disabilities Education Act (IDEA).

Because FERPA applies to educational records, service providers must take care not to discuss a student's educational records or allow such records to be visible in a way that other students, parents or other persons could view them. However, providing services to students in groups via telehealth would not be a violation of FERPA, unless a student's education records were discussed or viewed.

Service providers must take care to provide services from a secure location that will not be interrupted by others walking into the room and maintain confidentiality using secure remote access to electronic documentation and records. [See FERPA and Virtual Learning Related Resources March 2020](#).

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### Accommodations to Consider for Telehealth

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### DON'T FORGET ABOUT SECTION 504 & FAPE

- Section 504 requires that districts provide a free appropriate public education (FAPE). Section 504 defines FAPE as –
  - The provisions of general or special education services and related aids and services to a student with a disability that are as **effective** as those educational services made available to nondisabled peers
    - Includes both students receiving services under IDEA and students in general education who need Section 504 supports
- “Effective”
  - An aid or service must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs
  - Does **not** require the aid or service to produce the identical result or level of achievement for disabled and nondisabled persons

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### SECTION 504 STANDARD

- **Section 504 standard of FAPE**
  - **Compares** whether the general and special education and related aids and services are designed to meet the individual needs of students with disabilities as adequately as the needs of nondisabled students are met
- The Office for Civil Rights (OCR) generally does not require a “reasonable accommodation” standard or similar regulatory requirement for FAPE.
- Unlike OCR, some courts will consider whether a FAPE-related accommodation under Section 504 is reasonable.

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### ACCOMMODATING STUDENTS IN VARIOUS PLATFORMS

- Remember that Section 504 requires a school district to provide equal access to all programs and activities.
- Schools should carefully consider how accommodations will be provided to meet student needs in each of the possible educational platforms.
- Districts should also explore whether different accommodations are necessary based on the setting/platform.
- Example: a student with a severe peanut allergy will be eating in the classroom rather than the cafeteria to reduce COVID-19 spread. What things should the district consider as they make plans for this student?

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### MORE IS NOT NECESSARILY BETTER!

- Remember! Section 504 requires only that the district provide services that meet the student's needs "as adequately as the needs of non-handicapped persons" are met.
- It does not require maximizing the student's participation.
- So, 504 teams should analyze the effects of the disability on the student's performance to create appropriate options for accommodations.

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### AVOID OVER-ACCOMMODATING

- 504 plans are a **general education** responsibility.
- However, there's a tendency to over-accommodate because many educators are accustomed to explaining, qualifying, and quantifying SDI and related services for IEP students.
- Section 504 teams need to understand that plans, once created, obligate school staff to perform the required tasks and provide the listed services.
- As a result, only require the accommodations that the student consistently needs in order to benefit from the school's programs and activities.

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### AVOID OVER-ACCOMMODATING

- Avoid the desire to list every possible accommodation in the plan. You can always revisit and revise if certain accommodations don't work.
- Use Accommodations Checklists sparingly.
  - **Know your student** and **customize** the plan for each student.
  - Can use early in the plan implementation to assist in identifying what works and what doesn't.
  - Watch out for parents' use of checklist as evidence of noncompliance with plan.

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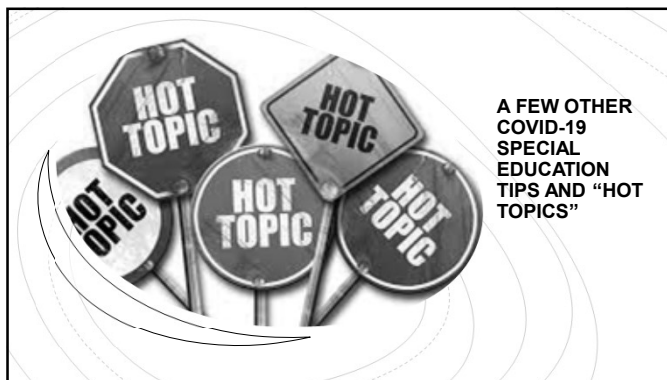
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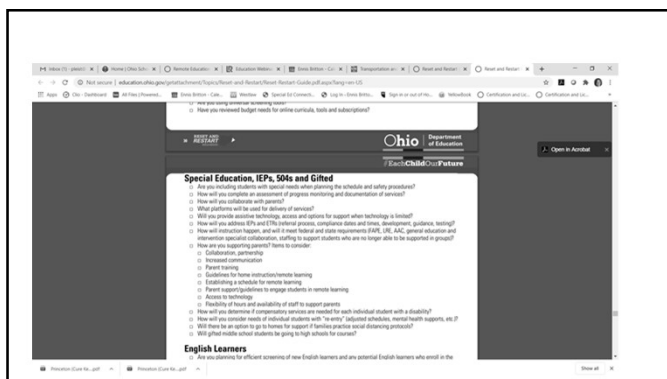
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[illegible]

### FACE COVERINGS FOR SPECIAL ED. STUDENTS (AND STAFF)

- *"Face coverings are critical to preventing the spread of the virus from person-to-person."*
  - Should be cloth and cover an individual's nose, mouth and chin.
  - School staff and volunteers **MUST** wear masks **UNLESS** it is unsafe to do so.
    - Schools must be able to provide written justification to local health departments for mask exceptions.
  - It is strongly recommended that students in 3<sup>rd</sup> grade and above wear a mask, **even if they have no respiratory issues, unless they are unable to do so for a health or developmental reason.**
    - **Update - we currently have an active order which makes masks mandatory.**
    - Schools expected to address any social stigmas.
  - Face shields are acceptable as an alternative to facemask learning.
    - For students with language, teachers of younger students, individuals with disabilities, etc.
- **Question – what exceptions may be made for special education students?**



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[illegible]

## COMPENSATORY EDUCATION

- It keeps coming up. Why?
- OEC's revision to its own guidance document on June 22, 2020 made life more complicated.
  - <http://education.ohio.gov/getattachment/Topics/Student-Supports/Coronavirus/Considerations-for-Students-with-Disabilities-School/Considerations-for-Students-with-Disabilities-During-Ohio%E2%80%99s-Ordered-School-Building-Season.pdf>
- "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 listed in the student's IEP 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."

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### COMPENSATORY EDUCATION

- Compensatory education is not mentioned in the IDEA statute and only alluded to in IDEA's regulations (34 CFR 300.513).
- Ohio's implementing regulations fail to define what "compensatory education" is, and only refers once to "compensatory services" as an option in a corrective action matter in front of ODE. (See OAC 3301-51-05(K)(4)(b)(i).)
  - There is no definition of recovery from a school closure found in IDEA or Ohio's implementing regulations.
- "Compensatory education" implies that schools have done something wrong in providing FAPE during the COVID-19 closure. If there was a deprivation . . .
  - Was it in the District's control?
  - What good faith measures and reasonable efforts to provide FAPE were made?
  - Are we considering how FAPE was providing in light of the circumstances brought on by COVID-19?

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### WHEN SHOULD DISTRICTS MAKE COMP ED DECISIONS?

- The determination to provide compensatory educational services as a result of the ordered school-building closure needs to be made on an individual or case-by-case basis **after the ordered school-building closure ends.**
- IEP teams **should review regular and special education student data** to determine if critical skills will be or have been lost during the period in which the district has been closed.

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### A RELATED NOTE ON ESY

- OAC 3301-51-02(G)
- Provided **only** if a child's IEP determines, **on an individual basis,** that ESY services are necessary for the provision of FAPE.
- Consider:
  - Whether ESY services are necessary to prevent significant regression of skills or knowledge retained by the child so as to seriously impede the child's progress toward the child's educational goals; and
  - Whether ESY services are necessary to avoid something more than adequately recoupable regression.
- Districts cannot:
  - Limit ESY services to particular categories of disability.
  - Unilaterally limit the type, amount or duration of ESY services.

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**ESY PRACTICAL TIPS**

- Almost every student would benefit from ESY – but FAPE does not require maximizing a child's potential.
  - ESY is about maintenance, not advancement.
- Some other jurisdictions have implemented a higher standard than Ohio's – ours is just about regression and recoupment.
  - Therefore, documentation of relevant data immediately before and following breaks (e.g., summer, winter, extended weekends) is key.
  - Some regression is expected – is it "significant" or not "adequately recoupable"?

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**CHILD FIND**

- State and federal health guidelines recognize high risk individuals to include those over 65 years of age, or have an underlying medical condition including serious heart conditions, severe obesity, diabetes, chronic kidney disease undergoing dialysis, liver disease or are immunocompromised.
- **Question – what special education obligations do districts have if we find out for the first time that a student who has not been previously identified suffers from one of these conditions?**

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**CHILD FIND REQUIREMENT**

- Each district has a duty to identify and locate every qualified student with a disability who resides within the district and who is not receiving a free appropriate public education.
  - It is the district's job to find each child, determine if that child is eligible, and start the process. *Isle of Wight County Public Schools, 56 IDELR 111 (OCR 2010).*
  - Districts cannot require a student to complete the RTI process prior to evaluating the student for Section 504 or IDEA eligibility services. *Polk County Public Schools, 56 IDELR 179 (OCR 2010).*

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### EVALUATION AND PERIODIC REEVALUATION

- An evaluation must be completed for any student who, because of a known or suspected disability, might need special education or related services.
- What are we looking for in an evaluation?
  - Physical or mental impairment
  - Evidence of such impairment substantially limiting a major life function
- The evaluation must be aimed at assessing specific and particular areas of educational need.
  - What if the need is only present during a situation like COVID-19?

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### CHILD FIND & EVALUATION REQUIREMENTS

- Medical problems and a high number of medically related absences are likely notice of a suspected disability requiring the district to evaluate for Section 504, even if general education interventions and accommodations are effective.
  - Districts should have a process in place to identify students with health needs who are not referred to intervention teams.
- Knowledge of mental health diagnosis, high number of medical absences, difficulty completing grade-level work should prompt an evaluation.
  - Even when you suspect that absences are primarily due to truancy, be sure to carefully document which absences are due to a medical condition. Use caution before stating that the district can't "rule out absences/lack of instruction" before evaluating a student for a disability.

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### BONUS - State IDEA Proposed Regulations

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**CHILD FIND & EVALUATION REQUIREMENTS**

- Failure to identify and evaluate students on Individual Health Care Plans (IHCPs) may violate Section 504.
  - Districts should train school nurses regarding signs of suspected disability and establish a referral procedure for identifying students on health plans that are suspected of having a disability under Section 504.
  - Districts must evaluate a student's eligibility for a Section 504 plan and related aids and services, rather than automatically writing a health care plan.

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**OHIO'S IDEA REGULATIONS**

- Ohio Administrative Code 3301-51
- IDEA is federal law, and generally imposes requirements on the states
  - States, in turn, adopt laws and regulations to implement IDEA in compliance with federal law
- No state law or regulation can conflict with federal law, though there is room in some instances to expand upon or clarify
  - The ODE version of the regulations ("Ohio Operating Standards for the Education of Children with Disabilities" includes a memo from the Director of the Office for Exceptional Children highlighting "State-imposed rules and regulations not required by IDEA 2004 or Federal Regulations"

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**WHY ARE WE REWRITING THE REGULATIONS?**

- Generally there is a goal (aspirational?) to review state regulations on a five year schedule
  - "Review date" for IDEA regulations was July 2019
- There have been instances in the past when the regulations were rewritten in response to changes in the federal requirements – that is generally not the case here
  - There are some wording changes related to revisions in the Elementary and Secondary Education Act (now "ESSA")
- Changes in this review cycle are most likely to either be minor or related to state imposed requirements

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### WHAT HAS THE REVIEW PROCESS ENTAILED?

- This review has been underway for a couple of years
- Various iterations of the rewrite have been floated – including essentially eliminating all portions of the state regulations that mirror federal regulations and simply referring to the federal regulations
- At this time a full rewrite is up for public comment
  - The format is the same as the current regulations (i.e. it includes federal language with the addition of some state language)
  - Public comment closes on July 31, 2020
  - Presumably there will be a new set of regulations in effect before the start of the 2021-2022 school year

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### 3301-51-01 Applicability of requirements and definitions.

#### (A) Applicability of requirements

The purpose of Chapter 3301-51 of the Administrative Code is to ensure that all children with disabilities residing in Ohio between the ages of three and twenty-one years, inclusive, including children with disabilities who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE), as provided by Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) at 20 U.S.C. 1400 (Public Law 108-446 of the 108th Congress (December 3, 2004)), related federal regulations at 34 C.F.R. Part 300 (October 13, 2006), Chapter 3323, of the Revised Code, the provisions of this chapter of the Administrative Code, and applicable state policies, procedures, and guidelines issued by the superintendent of public instruction.

#### (1) The provisions of this chapter shall provide that:

(a) Children with disabilities have available to them FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and

(b) The rights of children with disabilities and their parents are protected.

#### (2) School district of residence

(a) The child's school district of residence is responsible, in all instances, for ensuring that the requirements of paragraph (A) of this rule for making FAPE available are met for every eligible child in its jurisdiction, regardless of whether services are provided by another school district, other educational agency, juvenile justice facility, or other facility, agency, department, or entity unless Chapter 3323, of the Revised Code, or a rule adopted by the state board of education specifies that another school district, other educational agency, or other agency, department, or entity is responsible for ensuring compliance with Part B of the IDEA.

**Shields, Jessica**  
This section is regulated under O.A.C. 3303.02

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### OAC 3301-51-01(B)(10)(d)(xii)

(xii) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force or by other medical conditions, including but not limited to stroke, anoxia, infectious disease, aneurysm, brain tumors, and neurological insults resulting from medical or surgical treatments. The injury results in total or partial functional disability or psychosocial impairment or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries as well as to other medical conditions that result in acquired brain injuries. The injuries resulting in impairments in one or more areas such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. This definition replaces the definition of traumatic brain injury in 34 C.F.R. 300.8(c)(12) (October 13, 2006) and shall be used instead whenever the federal regulations at 34 C.F.R. Part 300 (October 13, 2006), state statutes at Chapter 3323, of the Revised Code, or the state rules in Chapter 3301-51 of the Administrative Code refer to traumatic brain injury.

**Commented [SJ10]:** This change is to align this definition to the IDEA/federal definition.

**Commented [WK11810]:** 34 C.F.R. 300.8(c)(12)

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**OAC 3301-51-01(B)(13)**

(13) "Coordinate Transition Services" means:

- (a) —Facilitate a planning process among multiple agencies, students and families to support a student's secondary transition process;
- (b) —Plan for the collection, sharing and utilization of student's transition data that is relevant to the student's post school outcomes, environment and support needs;
- (c) —Communicate a student's individual transition plan to students, families, educators and agencies;
- (d) —Coordinate the implementation of research-based practices that lead to effective postsecondary transition services and outcomes;
- (e) —Utilize methods to engage students and families in the secondary transition process;
- (f) —Assist in the coordination of referral process from school to adult services systems;
- (g) —Link appropriate course of study and instruction strategies to secondary transition related goals; and
- (h) —Create strategies that support the career development pathways of students with disabilities leading to career and college readiness.

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**OAC 3301-51-01(B)(18)**

(18) "Educational agency" means school districts, school districts of service, open enrollment school districts, community schools, the Ohio department of youth services, joint vocational school districts, juvenile justice facilities, educational service centers, county boards of developmental disabilities and any department, division, bureau, office, institution, board, commission, committee, authority, or other state or local agency, other than a school district or an agency administered by the Department of Developmental Disabilities, that provides or seeks to provide special education or related services to children with disabilities, unless Chapter 3323. of the Revised Code, or a rule adopted by the state board of education specifies that another school district, other educational agency, or other agency, department, or entity is responsible for ensuring compliance with Part B of the IDEA.

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**OAC 3301-51-01(B)(45) and (46)**

(45) "Other health impairment – major" means a child whose condition meets the definition of "other health impairment" and either of the following apply:

(a) The child is identified as having a medical condition that is among those listed by the superintendent of public instruction as conditions where a substantial majority of cases fall within the definition of "medically fragile child;" or

(b) The child is determined by the superintendent of public instruction to be a medically fragile child as defined in section 3317.02(f) of the Revised Code.

(46) "Other health impairment – minor" means a child whose condition meets the definition of "other health impairment" and whose condition does not meet either of the conditions specified in section 3317.02(f)(1)(a) or (b) of the Revised Code.

**Commented [WK39]:** New. Included based on stakeholder feedback that OHI major and minor have distinct definitions in O.R.C. at OAC 3317.02(f)(1), but were not included in Operating Standards definitions.

**Commented [WK40]:** New. Included based on stakeholder feedback that OHI major and minor have distinct definitions in O.R.C. at OAC 3317.02(f)(2), but were not included in Operating Standards definitions.

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**OAC 3301-51-01(B)(59)**

(59) "School district of service" means a school district that is responsible for serving a child with a disability who is living in its school district, even though the school district is not the child's school district of residence as required in section 3301-51-01(A)(3) of this rule.

**Commented [WK49]:** New definition. Added based on stakeholder input submitted for 51-02 [APE] rule.

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**OAC 3301-51-01(B)(63)**

(63) "Supervisory and coordinator services" includes providing information and explanation to all personnel who provide special education and related services to children with disabilities regarding state and federal laws, recommended practice, and other topics essential for the delivery of services to children with disabilities; helping school district personnel evaluate the effectiveness of special education and related services; and providing in-service education to parents and personnel involved in educating children with disabilities. Supervisory personnel as required by rule 3301-24-05(D)(2) of the Administrative Code and in compliance with each educational agency's approved board policies.

**Commented [WK55]:** New. Clarifies licensing requirements for supervisory personnel.

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**3301-51-03(C)**

- Significant new language regarding disproportionality
  - Identification
  - Placement
  - Discipline
- This is an area of significant focus at the state and federal level
- Much less substantial language on this is in current version of regulations

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**3301-51-05(C)(5) (former)**~~(5) Parental consent for a change of placement~~

(a) ~~A "change of placement" means a change from one option on the continuum of alternative placements to another.~~

(b) ~~Informed parental consent must be obtained before making a change of placement of a child with a disability.~~

(c) ~~Informed parental consent need not be obtained before:~~

(i) ~~A change of placement if the school district of residence can demonstrate that it has made reasonable efforts, as described in rule 3301-51-02 of the Administrative Code, to obtain consent, and the child's parent has failed to respond;~~

(ii) ~~A change of placement of a child with a disability that is the result of a disciplinary action taken in accordance with paragraph (K)(2) of this rule;~~

**Commented (S12):** This portion is inconsistent with IDEA/Federal Regulations and that is why it was removed. Placement is an IEP team decision. The IEP team includes the parent.

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**3301-51-05(E)**

- Significant elaboration on duties of surrogate parents at new (11)
- Reminder included that surrogates are only to be appointed when no "parent" can be identified

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**3301-51-05(K)(3)(b)(iv)**

(iv) The Ohio department of education shall select mediators on a random, rotational, or other impartial basis. ~~Both parties to the mediation must be involved in selecting the mediators and agree with the selection. When the parties cannot agree, the Ohio Department of Education will select the mediator and provide notice to the parties on the selection of the mediator.~~

(v) The Ohio department of education shall bear the cost of the mediation

**Commented (CP18):** Reflects federal language

**Commented (LR19):** This has been the practice of the OSC and is needed in the rules. We have authority under (1)(B) C. 3371.06(2) to develop mediation procedures.

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**3301-51-05(K)(11)(b)(i)**

(i) At least five business days prior to the first day of a hearing conducted pursuant to paragraph (K)(10)(a) of this rule, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

**Commented [1831]:** Stakeholder comment that some hearing officers were allowing disclosure for 5 days prior to any day of a multi-day hearing

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**3301-51-06(E)(3)(h)**

(h) Medical consultation shall be encouraged, as appropriate, for a preschool or school-age child on a continuing basis, especially when school authorities feel that there has been a change in the child's behavior or educational functioning or when new symptoms are detected; and

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**3301-51-07(E)(2)(d)**

(d) A transition progress report, including a description of progress toward the completion of transition services as defined in 34 C.F.R. 300.533 shall be provided to the parent at least as often as report cards are issued to all children. If the school district provides interim reports to all children, progress reports must be provided to all parents of a child with a disability concurrent with the issuance of progress reports for students without a disability.

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**3301-51-07(H)(2)****(1) General**

By ~~On or before~~ the child's third birthday and at the beginning of each subsequent school year, each educational agency ~~school district~~ must have in effect, for each child with a disability within its jurisdiction, an ~~IEP~~ individualized education program, as defined in paragraph (H)(E) of this rule. The ~~IEP~~ individualized education program shall be implemented as soon as possible following the ~~IEP~~ individualized education program meeting.

(2) The initial ~~IEP~~ individualized education program must be developed ~~and implemented~~ within whichever of the following time periods is the shortest:

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**3301-51-07(H)(7)****(7) Transmittal of records**

To facilitate the transition for a child described in paragraphs (H)(K)(5) and (H)(K)(6) of this rule:

(a) The new school district of residence in which the child enrolls must take reasonable steps to promptly ~~obtain the child's records; obtain the child's records within 30 days of enrollment including the~~ ~~IEP~~ individualized education program and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school district of residence in which the child was enrolled, pursuant to 34 C.F.R. 99.31(a)(2) (January 14, 2013); and

(b) The previous school district of residence in which the child was enrolled ~~must take reasonable steps to promptly respond to the request from; respond to the request from the new school district of residence within 30 days of the~~ notification of the child's enrollment at the new school district of residence.

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**3301-51-07(I)(1)(f)****(f) Amendments**

Changes to the ~~IEP~~ individualized education program may be made either by the entire ~~IEP~~ individualized education program team at an ~~IEP~~ individualized education program team meeting, or as provided in paragraph (I)(b)(1)(d) of this rule, by amending the ~~IEP~~ individualized education program rather than by redrafting the entire ~~IEP~~ individualized education program. When an ~~IEP~~ individualized education program is amended the school district shall send a copy of the amended ~~IEP~~ individualized education program to the parent within thirty (30) calendar days of the date the ~~IEP~~ individualized education program was amended, ~~the date of the amendment does not change the~~ annual individualized education program review date.

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**3301-51-08(B)(8)(a)**

**(8?) Determination of eligibility**

The school district where the nonpublic school is located shall conduct, either directly or through contract, a full and individual initial evaluation in accordance with rule 3301-51-06 of the Administrative Code for children suspected of having a disability.

**(a)** If the parents do not make clear their intention to keep their child enrolled in the nonpublic school, then the school district where the nonpublic school is located shall provide the parents of children who are determined eligible for services under rule 3301-51-06 of the Administrative Code written documentation stating that the child's school district of residence is responsible for making a free appropriate public education (FAPE) available to the child.

**Commented [57]:** Changed based on stakeholder feedback. Stakeholders indicated the district should be informing the parents of the right that the district of residence should make FAPE available regardless of intention to keep child enrolled at the nonpublic school or not.

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**Questions?**

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**Thank you!**

The information in this handout and presentation was prepared by Ennis Britton Co., LPA. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, please consult an attorney.

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