

The landscape for Ohio schools dealing with coronavirus disease 2019 (COVID-19), commonly known as the “coronavirus,” is rapidly changing. Given the governor’s order to close schools, a few subjects merit special consideration.

Special Education

Public schools are required to provide special education services to qualifying students during any period when the school is providing educational services to regular education students. This means that if you are providing online or other remote learning options to students during any portion of the three-week closure, you need to provide special education and related services to your qualifying students for the same period of time.

Some special education services may be possible remotely, while others may require home visits – and some (particularly those focused on behavior at school or peer interactions) likely cannot be addressed during the closure. Work with your special education staff to identify what services can safely be provided remotely or in students’ homes, and coordinate with families to set those up.

Remember that the penalty for failing to provide services is compensatory time. While no district wants to get hit with a compensatory services requirement, if you believe your staff or students cannot safely participate in the necessary programming during this emergency, just be prepared to make up the services and time when school resumes.

Finally, be sure your special education staff reviews IEPs and ETRs and identifies any that will expire during the closure period. There is no exception to renewal timelines under IDEIA or Ohio’s analogous code. IEP teams may convene by phone to authorize a new plan, but there must be a meeting and an updated plan put in place prior to the current plan’s expiration. Similarly, if the child is due for a re-evaluation, that must be addressed before the prior ETR expires. Intervention specialists and supervisors should create a list of any students whose IEPs or ETRs will expire between now and the end of the scheduled school year, and work with families to plan for renewal in the event schools remain closed. As you renew IEPs and ETRs, consider whether the team wants to include a distance-learning plan that will go into effect if another school closure is triggered (or if schools remain closed beyond the governor’s initial three-week mandate).

Teacher and Administrator Evaluations

Deadlines for completing faculty and administration evaluations, and for giving notice of a district’s intent to non-renew teaching or administrative staff, are fast approaching. Those deadlines are statutory and, as of yet, have not been waived. Review any contracts in your district that are up for renewal this year and identify those for which there may be a recommendation of non-renewal. See if evaluation requirements have already been met and, if not, identify those steps still remaining. To the extent possible, comply with all existing deadlines; though, we are hopeful the state legislature will address this issue in light of the mandated school closures.

Public Meetings

Ohio law requires meetings of public bodies, including boards of education, to be open to the public. The state’s attorney general announced this week that public bodies can meet that requirement by live streaming their meetings on various platforms, even if they prohibit members of the public from attending the meeting in person. This would appear to be consistent with existing Ohio law.

The Ohio Attorney General has further indicated that in these extraordinary circumstances, members of the public body may participate in the meeting (i.e. be counted toward a quorum and vote) via videoconference or telephone. If a member of the public body is participating remotely and they get cut off, all discussion must cease until they are reconnected. While it is generally safe to follow the OAG’s guidance regarding the Open Meetings Act, please note his announcement indicated these practices would “likely” satisfy the requirements of the Act. There is some risk, given the Act’s requirement for “in-person” participation and the way that has consistently been interpreted in the past, that participation by phone or videoconference would be found to have violated the Act.

As always, if you have questions about these or other issues related to the COVID-19 crisis, reach out to your district’s counsel to discuss.

Contacts

Mike Hanna

Partner, Cleveland
T +1 216 479 8699
E mike.hanna@squirepb.com

Emily Spivack

Associate, Cleveland
T +1 216 479 8001
E emily.spivack@squirepb.com