



COUNCIL OF ADMINISTRATORS
OF SPECIAL EDUCATION,
INCORPORATED
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Special Education
Administrators of
Arizona

Memorandum

TO: AZCASE
FROM: The Education Law Attorneys at Udall Shumway
DATE: May 1, 2018
RE: FAQ on Special Education and Related Services in Response to the Teacher Walk Out

FREQUENTLY ASKED QUESTIONS: Special Education and Related Services in Response to the Teacher Walk Out

**By
The Education Attorneys from Udall Shumway PLC**

Is the District required to make-up special education and related services that are missed when the District is closed due to the walk-out?

If the delivery of services is disrupted for all or nearly all of the students due to a short-term teacher's strike (or in Arizona's case, a teacher walk -out), the LEA is not required to provide services to the affected children with disabilities during that same period of time. *See Letter to Pergament, 62 IDELR 212 (OSEP December 20, 2013)*. There may, however, be a requirement to provide compensatory education or make up those services if a student's IEP team determines that the disruption in services denied the student educational benefit.

What if the District adds instructional days to the school calendar to make up for the closure days?

In the event the District adds the missed days to the end of the school year, the District can "make-up" any missed special education and related services during the "make-up" days.

What if the District does NOT add instructional days to the school calendar to make up for the closure days?

If the District does not add additional days to the school year because it determines that it had already acquired sufficient instructional hours, the IEP team will need to determine if a student with a disability has been denied an educational benefit, and if so, develop a plan to provide compensatory services. The plan could include providing services during extended school year, after school, before school, etc.

Is the District required to make-up special education and related services if the District is open, but a special education teacher and/or a related service provider is unavailable?

Most likely, yes. If special education and related services are missed due to provider absence, the

District is obligated to make up those services. There may be instances in which related service providers are able to make up this time by adding some minutes to the current service times. It is important to keep in mind, however, that the District cannot change a student's least restrictive environment in an effort to make-up special education and related service minutes. Much like the situation above, the team should develop a plan to make-up the services that were missed during the providers' absence.

What factors should be considered when determining the amount of compensatory services owed?

The 9th Circuit has held that a student with a disability is entitled to only so much compensatory education time as is required to provide him with an appropriate education. *See e.g.* Parents of Student W. v. Puyallup Sch. Dist., 21 IDELR 723 (9th Cir. 1994). The IEP team should look at the type, duration, and nature of the service minutes listed on the IEP, how much of those services were missed, and make a determination about what will restore the educational benefit lost during the denial of services, if needed at all. Remember, minute-for-minute compensatory services are not always required. It is up to the team to determine what compensatory services are appropriate.

What do we do about upcoming MET and IEP meeting dates?

Notify the parents with meetings scheduled through May 11, 2018, that the meetings will remain on the calendar. If the District is open, the meeting will proceed as planned. If the District is still closed on the date of the meeting, the District will notify the parent that the meeting has been cancelled and will reschedule the meeting when schools re-open.

What do we need to do if we're going to miss the annual review date?

Missing an annual review date is a procedural violation of the IDEA and will most likely result in a finding of non-compliance in a State audit or if a parent files a State Complaint. Nonetheless, issue a Prior Written Notice that the District intends to continue to implement the current IEP until a time that the IEP team can convene to review the IEP. In order to provide FAPE, it is important to keep parents informed and to continue to provide services under the current IEP until a meeting can be convened and a new IEP drafted. When the IEP team is able to meet, the IEP team could also make a determination as to whether or not the procedural error resulted in a denial of an educational benefit, and if so, the IEP team can devise a plan for compensatory services.

What do we need to do if we are going to miss an evaluation deadline?

Pursuant to Arizona Administrative Code R7-2-401(E)(5), the "evaluation period may be extended for an additional 30 days, provided it is in the best interest of the child, and the parent and PEA agree in writing to such an extension." Contact the parent and request that he/she agree to extend the evaluation timeline. If the parent(s) agrees to an extension of 30 days, you must document it in a Prior Written Notice. Keep in mind that if the extension causes the District to exceed the timelines for the requirement that the re-evaluation be completed within 3 years of the previous evaluation, the District will be found to be out of compliance for purposes of monitoring or a State Complaint. If the parent does not agree, and you are not able to meet the evaluation timeline, then the MET team should meet as soon as possible.

When the MET/IEP team is able to meet, the IEP team could also make a determination as to whether or not the procedural error resulted in a denial of an educational benefit, and if so, the IEP team can

devise a plan for compensatory services.

Does the District need to provide ESY to all Students who were impacted by the Walk Out?

No. Not every student will require ESY services as the result of the walk-out; however, school personnel will want to monitor and review each students progress and data. If a student shows evidence that they are having difficulty recouping skills that were present prior to the walk-out, then the IEP team may want to convene and determine whether the student qualifies for ESY, and/or, whether or not any previously agreed upon ESY services should be revised.

Does the District have to hold an IEP meeting for EVERY student as the result of the Walk Out?

No. Review each student's IEP and services page. There will be some students who were not impacted at all by the walk-out. For other students, the District and Parent may agree to amend the IEP, including determining an appropriate compensatory services plan, if needed, without convening an IEP Team meeting. These agreements must be in writing and documented in a PWN.

Please do not hesitate to contact us or the attorney(s) that regularly represent your schools if you need legal assistance.

We thank Udall Shumway for sharing this information with us. To download these memos to share with others, please click on the links below:

[FAQ Memo On Special Education and Related Services During the Teacher Walk Out](#)

[Memo re: Updated Information Re: Providing Special Education Services During Teacher Walkout](#)

[Letter to Pergament OSEP Dec 20, 2013](#)

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