

# Four Quick Tips for Keeping Your Special Education Programs on Track Before School Year 2019-2020 Becomes a Distant Memory

By Erin Burris and Taylor Richman, Ph.D.

April 29, 2020

By now, your school teams are well into the process of reviewing each student's IEP to determine whether the student's specially designed instruction (SDI) and related services can be delivered as written in the IEP (i.e., determining whether all service minutes can be delivered and progress can be made toward the IEP goals). And for a student for whom the school team has determined that this is not possible, the IEP team is amending the student's IEP either through the traditional midyear amendment and PWN process or ODE's Special Education Emergency Contingency Plan, or by holding a virtual or telephonic IEP meeting when necessary. (For a refresher on ODE's expectations for amending IEPs and delivering special education during distance learning, check out the [SDI Toolkit](#).)

Don't let all your hard work go unaccounted for. Follow the four tips below to use what's left of 2019-2020 to be prepared for what's coming in 2020-2021.

- 1. Count your SDI.** This is surely not the first time you've heard a school lawyer remind you to document! But it's now as critical as ever. Because SDI is being delivered in new and varied ways, and you're relying on new means to communicate with staff, you will benefit from having a system for tracking who is getting what. How many minutes of teacher-led SDI are being offered? How many minutes of SDI are offered through supplemental activities? Create a simple process for teachers to accurately track SDI (e.g., in a spreadsheet) so that building and special education administrators can help identify students and programs that need additional distance learning support through the end of this year, help inform your district's ESY determinations (more on that below), and help inform your strategy for the (hopefully not forthcoming, but—let's be real—almost inevitable) surplus of compensatory education requests. Although it adds another task for teachers, don't leave these to guesswork—count your distance learning SDI.
- 2. Maximize teleservice opportunities.** You have undoubtedly already been working with your related service providers to evaluate what can be administered long-distance, and ODE has, too. (Check out ODE's guidance about [speech-language](#), [occupational therapy](#), and [physical therapy](#) services.) Start by reevaluating each student's need for related services in the context of distance learning—if SDI changed, then related services might, too. Work with families to offer telepractice according to the IEP's service minutes, but obtain parental consent (in writing is best!), remind practitioners to conform to professional standards, and track progress as usual. To protect student privacy, direct providers to use private video calls only, and not to use public-facing video communication services. Since technology makes remote services possible, don't let these services fall by the wayside because it could increase compensatory education requests come fall 2020.

---

*Disclaimer: This article is not legal advice. It is provided solely for informational and educational purposes and does not fully address the complexity of the issues or steps business must take under applicable laws.*

**3. Be flexible about ESY.** When it comes to ESY services, you may have more questions than answers. Will school districts have to provide this highly individualized service via distance learning, or will school reopen in time for July ESY? Do we have to evaluate eligibility differently? While we all await additional guidance from ODE, we can offer a few tips in the meantime. Since regression and recoupment over breaks dictate ESY eligibility and the pandemic caused a lengthy “spring break” this year, anticipate regression and be prepared to grant eligibility liberally to the extent possible (which also means expecting that your ESY program may service more students than is typical). Make a plan for ESY in a distance learning model and an in-person model (but remember that even in-person could look different if certain social distancing measures are in place).

**4. Look ahead to fall 2020.** Use spring 2020 to plan ahead for fall 2020. You may experience a rush of parents requesting IEPs to consider their students’ needs after summertime, so start scheduling annual IEPs due in September or October to get them on the calendar. Also, get ahead on planning assessments for triennials and any initial evaluations for students identified in the last few weeks of this year. Fall will be here before we know it.

For now, we can only speculate what school will look like in 2020-2021. Don’t let that deter you from taking steps this spring to keep your special education programs on track for next year.

---

*Disclaimer: This article is not legal advice. It is provided solely for informational and educational purposes and does not fully address the complexity of the issues or steps business must take under applicable laws.*



**Erin Burris** is an associate in the firm’s education practice group, which represents educational entities including public school districts, private schools, and higher education institution. Before joining Miller Nash Graham & Dunn, she worked as a staff attorney at Learning Rights Law Center where she practiced education law, with a focus on special education matters and disability discrimination cases under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act.

**Direct:** 503.205.2466 | **Email:** erin.burris@millernash.com



**Taylor Richman, Ph.D.**, focuses his practice on advising and representing public and private educational institutions from preschool through higher education. Taylor has represented school districts and institutions of higher education in special education matters, in state and federal court, and before state and federal agencies. He regularly advises educational institutions on matters concerning special and general education processes and obligations.

**Direct:** 503.205.2375 | **Email:** taylor.richman@millernash.com