

COVID-19 and Remote Learning

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During this unprecedented time of COVID-19 and remote learning, parents and kids have struggled. For some families who have been able to return to in person school, things have returned to some kind of new normal, for other families who have not been able to return to the school building, challenges continue. For kids with a 504 plan or an Individualized Education Plan (IEP), most lost important instruction, supports and services when schools first closed down in March 2020. For many kids, the services lost can never be recovered. But school districts are accountable for the supports and services missed. While it was hard on the school system, it was harder on these students and their families. More importantly, however, is the fact that there has never been a waiver issued excusing school districts of its obligation to provide appropriate special education services and supports during this time.

Unlike other requirements, such as testing and reporting, the obligation to provide students with a free appropriate public education also known as FAPE, continues. Children who have missed instruction, supports and services are entitled to receive compensatory education. Compensatory education is a remedy which places the student in the same position he/she would have been in had there been no violation. The harsh reality however is that most districts will not be held accountable. Either families do not have the time or energy to seek recovery of missed services or they do not have the knowledge that they are entitled to recovery and relief. Districts have not proactively reached out to families and offered any form of compensatory education and neither have the states. Thus, it falls to the families to pursue relief.

In the state of Florida families have several options. They can request mediation and hope the district will offer relief; file a state complaint and hope the state will award relief or file a request for due process and hope an administrative judge will award relief. I represent one family who filed a state complaint. The state investigated the claim and award compensatory relief to the student. The state ordered the district to provide relief to the student and training to the staff working with the student. The district ignored the state and the relief awarded. A second state complaint was filed by the family and again the state awarded more relief to the student. The district again ignored the mandate by the state. Instead, the District sued the family and the state of Florida. I must note that the amount of relief award by the state was minimal. It would have been cheaper for the district to have provided the relief awarded then file suit against this family. The district however filed two lawsuits. One before the division of administrative hearings and a second one before the 5th District Court of Appeals. This type of case is unprecedented and has no basis in law. This is the first one of its kind in the state of Florida. There were motions to dismiss filed in both cases. Recently, the 5th DCA dismissed the case. However, the case before the administrative court is ongoing. There is little hope that the district will ultimately be successful in its efforts to overturn or otherwise undo the relief awarded by the state, but what the district has managed to do is delay the relief awarded to the student and as a direct result the student is suffering.

The litigation is also acting like a stay, even though the district has never filed a motion to stay the relief awarded, they have not provided any relief to this student. In addition, this litigation has created a hostile school environment for the family and the student. This litigation hangs over every meeting, every conversation the family has with the district and every staff member who is working with the student. The situation is untenable, and the family has filed a 10 day notice and is likely to withdraw the student from public school this week. Time however is on the side of the district and the longer this litigation is allowed

to continue the longer the student will continue to suffer. What is even more concerning about this litigation is not just the devastating impact it is having on this one student, but also the chilling affect it is having on families who wish to seek relief for the services missed because of COVID-19 closures and distance learning failings. Families, advocate and attorneys alike are all waiting to see what happens with this litigation before making their requests for compensatory education. No other family wants to be sued if they are awarded relief by the state. Maybe this is the real purpose for the litigation? The effort to shut down other cases related to compensatory education has thus far been successful.

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<https://www.wftv.com/news/local/orange-county/family-special-needs-student-legal-battle-with-ocps-says-attorney-is-discriminating-against-them/GOXHWWST3NDETMFN3TZNFBFH4/>