



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

SPECIAL EDUCATION NON-REGULATORY GUIDANCE

COMPENSATORY SERVICES RELATED TO COVID-19

July 2022

The Office of the State Superintendent of Education (OSSE) provides this guidance on local education agency (LEA) responsibilities under the Individuals with Disabilities Education Act (IDEA) related to the provision of compensatory services related to the coronavirus (COVID-19) public health emergency. This document generally constitutes non-regulatory guidance and does not impose any additional requirements beyond those included in applicable federal and local law and regulations.

BACKGROUND

IDEA does not specifically address compensatory services; rather, compensatory education services is a notion developed by courts as an equitable remedy for the failure to provide a free appropriate public education (FAPE). Compensatory education services are intended to put the child in the position they would have been in had the LEA provided the services in the first place (*Reid v. Dist. of Columbia*, 43 IDELR 32 (D.C. Cir. 2005)). Within the context of COVID-19, compensatory services may be appropriate when the failure to provide services due to periods of school closure or distance instruction resulted in a denial of FAPE for a student with a disability.

On Sept. 30, 2021, the US Department of Education (USED), Office of Special Education and Rehabilitative Services (OSERS) released the [Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the Individuals with Disabilities Education Act](#) guidance which addresses a variety of topics related to individualized education program (IEP) implementation, including the individualized determination and provision of compensatory services. In its guidance, the USED states, “It will be critically important for IEP teams to make individualized decisions about each child’s present levels of academic achievement and functional performance and determine whether, and to what extent, compensatory services may be necessary to mitigate the impact of the COVID-19 pandemic on the child’s receipt of appropriate services.”

LEAs have broad flexibility through the IEP team process to discuss and make an individualized determination of whether and what compensatory services are needed and how they should be provided. In the absence of specific IDEA or District of Columbia standards or criteria required to determine compensatory services, OSSE offers this non-regulatory guidance to provide IEP teams with suggested considerations to determine the necessity and scope of compensatory services. OSSE encourages LEAs to utilize creative solutions to meet the needs of students with disabilities while ensuring IDEA obligations are met.

LEA OBLIGATIONS TO DETERMINE ELIGIBILITY FOR COMPENSATORY SERVICES

According to USED guidance, IEP teams must make individualized determinations as to whether

compensatory services are needed to address lapses in services ([OSEP Guidance Question A-1](#); [USED Supplemental Fact Sheet at p.2](#)). IEP teams may also consider the necessity of compensatory services for students subject to extended periods of distance learning due to COVID-19 quarantine or related school closures, if appropriate to meet the student's needs. IEP teams may determine compensatory services are appropriate for any lapse in the receipt of FAPE, for any reason (including if the student did not receive services due to student absence, unavailability, or refusal to attend). In its guidance, the USED provided a non-exhaustive list of examples for when it may be appropriate to consider the need for compensatory services:

- (1) if the initial evaluation, eligibility determination, and identification, development, and implementation of the IEP for an eligible child were delayed;
- (2) if the special education and related services that were provided during the pandemic through virtual, hybrid, or in-person instruction were not appropriate to meet the child's needs;
- (3) if some or all of the child's IEP could not be implemented using the methods of service delivery available during the pandemic; and
- (4) if meaningful services to facilitate the transition from secondary school to activities such as postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation were not provided due to the pandemic." ([USED Return to School Roadmap](#), p. 27-28)

IEP teams should make compensatory services determinations during the annual review of the student's IEP, unless the LEA or parent determines it is necessary to convene a meeting earlier. If a parent expresses concern about a student's regression or need for compensatory services, the LEA should convene an IEP team meeting to discuss those concerns and consider whether the student has new or different needs that may necessitate an IEP amendment or designation of compensatory services.

For students who have transferred LEAs, the previous LEA is responsible for the determination and delivery of compensatory services, as appropriate, to compensate for periods of lapsed service delivery while the student was attending that LEA. LEAs are encouraged to consult and collaborate to share student data, make appropriate determinations and ensure service provision.

IEP TEAM CONSIDERATIONS FOR COMPENSATORY SERVICES

Whether and to what extent each student receives compensatory services is an individualized determination made by the student's IEP team. IEP teams may consider and use as the basis for its determination a variety of student data or information. Generally, the IEP team should review student progress data to determine skill regression or lack of progress due to missed services or services provided in a different manner than is contemplated by the IEP.

Compensatory services should be determined by considering the totality of the circumstances for each student and determining whether compensatory services are needed to remedy losses or deficits resulting from the LEA's failure or inability to provide services. The IEP team may consider the following factors in determining whether a student with a disability requires compensatory services:

- **The frequency and duration of missed specialized instruction and related services.** The IEP team should compare the student's proscribed and delivered services, including considering the frequency and duration of services provided to the student. The IEP team may consider the LEA's efforts to make FAPE available by attempting to provide services and the impacts of student non-attendance.

- **Whether the special education and related services that were provided were appropriate to meet the student's needs.** If the student did receive special education and related services during periods of closure or distance learning, the IEP team should consider if the services provided met the student's needs. The IEP team should also consider whether and how services were delivered in accordance with the IEP, including services that were delivered virtually and the impacts of any deviations in service delivery modality, frequency, duration, or environment.
- **The student's present levels of performance.** IEP teams should consider the student's present levels of academic achievement and functional performance as compared to anticipated or expected levels of performance if services had been provided in full accordance with the student's IEP. This can include consideration of concerns raised by parents, the student, medical professionals, community-based organizations, other caregivers, or other persons knowledgeable about the child.
- **The student's previous rates of progress or demonstrated regression.** IEP teams should compare the student's previous rates of progress with progress made during periods of missed services or distance learning to ascertain if student performance or progress toward IEP goals has slowed. The IEP team should also consider if the student is exhibiting regression in previously attained skills. As part of these considerations, IEP teams may examine assessment data, progress reports, progress monitoring data and other sources of data or information regarding the student's progress toward IEP goals.
- **Other relevant factors.** LEAs and IEP teams may consider any other relevant student data or conditions to support a determination of need for compensatory services. The IEP team should discuss with the parent and student, if appropriate, their concerns regarding service delivery during periods of closure or distance learning. The IEP team should also consider behavioral changes, social and emotional needs and trauma experienced because of the COVID-19 public health emergency.

DETERMINING APPROPRIATE COMPENSATORY SERVICES

As part of the determination regarding the necessity of compensatory services, IEP teams must also decide the type, amount, frequency, duration, and location of compensatory services. Compensatory services can come in many forms and must be individualized to the student's unique circumstances. In *Reid*, the court adopted a qualitative method for determining the amount of compensatory services, meaning that such services are not required to be a minute-by-minute match of the originally prescribed service. The court also held that compensatory services must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district [LEA] should have supplied in the first place."

Compensatory services must be specially designed to meet the student's needs. Compensatory services must be provided in addition to the student's IEP services and cannot supplant or interfere with receipt of the services prescribed in the IEP, including extended school year (ESY) services. Compensatory services must be provided by qualified personnel, including school staff or private providers, as appropriate, and may be provided before or after school, on the weekend, during school breaks or during the summer.

Because compensatory services are provided in addition to the student's IEP services, the IEP team should not update the student's IEP by adding hours or services to account for compensatory services. Otherwise,

LEAs and IEP teams may determine how to best document decisions related to compensatory education, including using informal meeting notes, LEA-developed worksheets, or formal written agreements with parents for compensatory services. The documentation of compensatory services by IEP teams should include eligibility determinations, service decisions and service provision in separate documentation that is uploaded into the student's Special Education Data System (SEDS) file.

PARENTAL PARTICIPATION

Consistent with IDEA requirements related to parental participation in the IEP process, parents are an integral part of the IEP team's decision-making process regarding compensatory services. LEAs should ensure parents meaningfully participate in compensatory services decisions, including proactively seeking parent input regarding student progress and needs.

IEP teams must provide notice to parents regarding decisions of eligibility for compensatory services and should issue prior written notices (PWNs) as appropriate. Parents who disagree with an IEP team determination related to compensatory services, including a student's eligibility for compensatory services or the compensatory services prescribed, may exercise their procedural safeguards, and seek dispute resolution. Parents must file a due process complaint within two years of when they knew or should have known about the alleged violation (20 U.S.C. §1415(f)(3)(C)). For more information on parental due process rights and procedural safeguards, please see [OSSE's Procedural Safeguards homepage](#).

RESOURCES

US Department of Education, Office of Special Education and Rehabilitative Services (OSERS), [Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the Individuals with Disabilities Education Act](#) (Sept. 30, 2021)

US Department of Education, Office of Special Education and Rehabilitative Services (OSERS) and Office for Civil Rights, [Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#) (March 21, 2020)

US Department of Education, [Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak](#) (March 2020)

Please direct any questions regarding the content of this document to OSSE's Division of Systems and Supports, K-12 Office of Special Education at OSSE.DSEPolicy@dc.gov.