



Guidance Regarding Determination of Compensatory Services for Students with Disabilities as a Result of COVID-19

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This is a working document, which may be updated frequently due to the rapidly changing response to this pandemic emergency and ongoing Federal guidance updates.

The following recommendations acknowledge that IDEA-eligible students are entitled to FAPE and that students, families, and schools are having to adapt to novel circumstances due to the COVID-19 pandemic. There are no waivers provided for IDEA and timelines have not been extended.

Remember that all decisions made regarding a student in special education or on a 504 plan are individualized and child specific.

The purpose of this guidance is to provide information to schools, students, parents/guardians of students with disabilities, advocacy groups, and other key stakeholders regarding compensatory services for students with disabilities. The changes in school schedules during the past year due to COVID-19 may have significantly impacted the services included in students' Individualized Education Programs (IEPs).¹ Students with disabilities who did not receive the services included in their IEPs may be entitled to compensatory services if it is determined that the failure to provide those services caused a denial of the student's right to a free and appropriate public education (FAPE).

Compensatory Services

Compensatory services, sometimes referred to as compensatory education, for specially designed instruction and related services missed during the pandemic should be provided when the failure to provide those services has denied the student his or her right to a FAPE.² Although it is not defined in the federal Individuals with Disabilities Education Act (IDEA), the goal of compensatory services is to remedy the knowledge and skill deficits that result when missed services are determined to have caused a denial of a FAPE. Determining the need for compensatory services must be made on an individual basis by the student's Individualized Education Program (IEP) team. The IEP team consists of the student, the student's parent(s)/guardian(s), the student's teachers, related service providers and other representatives from the student's SAU. Neither the IDEA nor the State's special education regulations require an hour for hour correspondence when calculating the amount of compensatory services to be awarded to a student with a disability. It is the role of the IEP team to determine the need, type,

¹ The information contained in this guidance is not intended to provide legal advice to SAUs or to make determinations about the educational programs for students with disabilities. It is the role of the student's IEP team, which includes SAU officials, the student, and the student's parents/guardians, to develop, review and revise the student's IEP annually or more often if necessary.

² Compensatory services are a remedy that is sometimes awarded by a due process hearing officer or as the result of a state complaint investigation. That does not mean that an IEP Team cannot make a determination that compensatory services are necessary in order to ensure the provision of FAPE without an administrative proceeding.

amount, frequency, duration, and location of compensatory services necessary to address lack of progress toward IEP goals and objectives resulting from missed services.

Compensatory services and ESY services are not interchangeable, and a particular student may be entitled to one, both, or neither depending on individual circumstances.

IEP Team Meetings

IEP teams should utilize the upcoming IEP meetings, or a meeting requested by a parent or SAU, to discuss services that have not been provided during remote or hybrid instruction, consider the impact of missed services on student progress towards meeting IEP goals and objectives, and determine the need for compensatory services. These discussions have been ongoing since the resumption of some in person services in the fall and an additional meeting may not be required in those instances. If it is determined that compensatory services are warranted, the IEP team may agree to amend or modify the student's IEP. Whether or not the IEP team meets in-person or virtually, SAUs must ensure proper written notice is provided to the student's parent(s)/guardian(s) if the IEP team proposes or refuses changes to the student's IEP, including the type, frequency, and location of compensatory services to be provided to the student. Proper written notice also includes the right of parents/guardians to seek compensatory services by requesting a special education mediation conference or due process hearing.

Determining the Need for Compensatory Services

The first step for the IEP team in determining if compensatory services are required is to understand the present level of educational and functional performance. The IEP team may review formative and summative, formal and informal assessment data to determine progress toward each student's IEP goals and objectives during the period of remote and/or hybrid instruction. Following the review of achievement and progress data, the IEP team should determine what goals and objectives the student was expected to achieve but did not achieve due to the disruptions in services. The IEP team should then determine if compensatory services are required to ensure that the student can achieve those goals and objectives. If compensatory services are required, the IEP team must determine the nature, frequency, and duration of those services and document them in the student's IEP. A student's placement in general education environments should not be changed due to the need for compensatory services. It is important to note that some compensatory services may not be feasible to provide until the resumption of full-time in person school instruction.

Providing Inclusive Learning Loss and Recovery Services

In addition to compensatory services, IEP teams are encouraged to consider additional learning loss and recovery services, such as accelerated learning programs, tutoring programs outside normal school hours, summer enrichment programs, and other opportunities designed to address learning loss that are available to all students. Strategies and ideas for accelerated learning programs can be found in the Department of Education's updated [Ed Covid-19 Handbook Volume 2- 2021](#) under the heading: Addressing Lost Instructional Time, a. Accelerating learning through instructional approaches, tutoring, and expanded learning time (pg. 18). These programs may provide additional opportunities for compensatory services and support students in equitable access to general curriculum learning opportunities.

It is imperative that special education teams are included in planning for the acceleration of learning within the SAU to ensure that students with disabilities have access to such opportunities and that IEPs continue to align with the curriculum and content standards being addressed. While the acceleration



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program supports may be sufficient to address the needs of many children, IEP teams may need to make individualized determinations as to what special education and related services are needed to support recovery for these students.

School officials are reminded that funding for compensatory services is not limited to the SAU's IDEA grant. SAUs may use funds awarded under the CARES Act Elementary and Secondary School Emergency Relief Fund (ESSER Fund) to provide compensatory and/or recovery services to students with disabilities. The American Rescue Plan Act of 2021 (P.L. 117-2) (ARPA) will also be able to use forthcoming ESSER III funds for the same purposes. Information on allowable use of these federal funds will be forthcoming from the Department.

The Maine Department of Education will be issuing general guidance for both summer programming and reopening guidance for the Fall of 2021 in the near future.

Disagreements about Compensatory Services

If a student's parent(s)/guardian(s) disagrees with the IEP team's proposed type, frequency or location of compensatory services, the parent(s)/guardian(s) may pursue dispute resolution options, such as mediation conferences and/or due process hearings in order to resolve the disagreement. Additionally, a student's parent(s)/guardian(s) may seek dispute resolution if there is disagreement with the IEP team's determination that the student does not require compensatory services. Information and resources on COVID-19 pertaining to special education can be found on the [Office of Special Services](#) web page. Maine DOE Office of Special Services and the [Dispute Resolution Team](#) are available as resources to support SAUs, educators, and families. More information is available on the Maine DOE [Special Services webpage](#).