



# STATE OF NEW JERSEY DEPARTMENT OF EDUCATION

A Memo from the New Jersey Department of Education

Date: March 3, 2021  
To: Chief School Administrators, Charter School and Renaissance School Project Leads, Administrators of Approved Private Schools for Students with Disabilities  
Route To: Directors of Special Education  
From: Peggy McDonald, Ed.D., Assistant Commissioner  
Division of Student Services

## Guidance Regarding Compensatory Education Determinations for Students with Disabilities as a Result of COVID-19

The purpose of this Broadcast Memo is to provide guidance to schools, students, parents/guardians of students with disabilities, advocacy groups, and other key stakeholders regarding compensatory education for students with disabilities. The changes in school schedules during the past year due to COVID-19 have significantly impacted the services included in students' Individualized Education Programs (IEPs).<sup>1</sup> Students with disabilities who do not receive the services included in their IEPs may be entitled to compensatory education 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 Education

Compensatory education for services missed during the pandemic is provided when the failure to provide those services has denied the student his or her right to a FAPE. Although it is not defined in the federal Individuals with Disabilities Education Act (IDEA), the goal of compensatory education 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 education 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 school district. Neither the IDEA nor the State's special education regulations require a 1:1 ratio when calculating the amount of compensatory education to be awarded to a student with a disability. **It is the role of the IEP team to determine the need, type, amount, frequency, duration, and location of compensatory education necessary to address lack of progress toward IEP goals and objectives resulting from missed services.**

### IEP Team Meetings

IEP teams should utilize the next virtual or in-person IEP meeting, or a meeting once in-person instruction resumes, 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 education. If it is determined that compensatory education is required, the IEP team may agree to develop a written document to amend or modify the student's IEP. Whether or not the IEP team meets in-person or virtually, districts must ensure proper written notice is provided to the student's parent(s)/guardian(s) if the IEP team proposes changes to the student's IEP, including the type, frequency, and location of compensatory education to be provided to the student. Proper written notice also includes the right of parents/guardians to seek compensatory education by requesting a special education mediation conference or due process hearing.

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

### **Determining the Need for Compensatory Education**

The first step for the IEP team in determining if compensatory education is required as a result of the disruption to services caused by the pandemic is to 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 hybrid instruction. Following the review of achievement and progress data, the IEP team should determine what services were missed and what goals and objectives the student was expected to achieve but did not achieve due to the absence of services. The IEP team should then determine if compensatory education is required to ensure that the student has the opportunity to achieve those goals and objectives. If compensatory education is 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 education.

### **Providing Inclusive Learning Loss and Recovery Services**

In addition to compensatory special education and related 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. These programs may provide additional opportunities for compensatory education. Further, school officials are reminded that funding for compensatory education is not limited to the district's IDEA grant. Districts may use funds awarded under the CARES Act Elementary and Secondary School Emergency Relief Fund (ESSER Fund) to provide compensatory education and/or recovery services to students with disabilities. Additional information on allowable uses is available at [ESSER Fund Guidance](#). Districts will also be able to use forthcoming [ESSER II funds](#) for the same purposes.

### **Disagreements about Compensatory Education**

If a student's parent(s)/guardian(s) disagrees with the IEP team's proposed type, frequency or location of compensatory education, 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 education. Compensatory education may be awarded by an Administrative Law Judge (ALJ) following a special education due process hearing.

Information about the impact of COVID-19 on students with disabilities is available on the NJDOE's [COVID-19 webpage](#). Additionally, staff from the NJDOE Office of Special Education and the Office of Special Education Policy and Dispute Resolution are available as resources to support districts, educators, and families. More information is available on the NJDOE [Special Education webpage](#).

- c: Members, State Board of Education
- Angelica Allen-McMillan, Ed.D., Acting Commissioner of Education
- NJDOE Staff
- Statewide Parent Advocacy Network
- Garden State Coalition of Schools
- NJ LEE Group