

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY

OFFICE OF SPECIAL EDUCATION  
ASSISTANT COMMISSIONER  
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June 2021

TO: School District Superintendents  
School Principals  
BOCES District Superintendents  
School District Business Officers  
Charter School Leaders  
Special Education Directors  
Directors of Pupil Personnel Services  
Chairpersons of Committees on Special Education  
Chairpersons of Committees on Preschool Special Education  
Administrators of Nonpublic Schools with Approved Special Education Programs  
Organizations, Parents and Individuals Concerned with Special Education  
Preschool Providers of Special Education Programs and Services  
Superintendents, Special Act School Districts  
Superintendents, State-Operated Schools  
Superintendents, State-Supported Schools

FROM: Christopher Suriano

SUBJECT: Extended School Year Programs During Summer 2021

This guidance is to inform the provision of the Summer 2021 Extended School Year (ESY) special education programs which, pursuant to New York State (NYS) Education Law section 4408, are approved to operate during-0.01221 4369.96 TmoY(k)3 ( 0)10 (: )6 (s)4 (t)2 (r)7 5(er)7

prevent substantial regression. Substantial regression means a student's inability to maintain developmental levels due to a loss of skill or knowledge over the summer months of such severity as to require an inordinate period of review at the beginning of the school year (e.g.,





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Special Education Program in its March 2020 [Questions and Answers on Providing Services to Children with Disabilities During the COVID-19 Outbreak](#). School districts are strongly encouraged to use the guidance provided in the policy brief and the

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services provided to the student during the COVID-19 pandemic along with any applicable related communication, agreement with or consent from the parent.

For the student's educational progress and achievement, Committees must continue utilizing progress monitoring, adapted to address the learning modalities where necessary, to examine the student's academic performance over time and evaluate the effectiveness of instruction during the COVID-19 pandemic.

School districts should maintain documentation of all attempts to provide IEP programs and services that were available to students through learning modalities other than full in-person learning as well as all contact and communication with parents and students. Documentation of parental refusal to have their child participate in the learning modality/modalities offered should be considered in determining whether there was a denial of FAPE.

Documentation to determine the provision of FAPE and student progress during the COVID-19 pandemic will assist the Committee when determining whether and to what extent compensatory services are needed to make up for any delay or disruption in educational programs and services due to this health crisis.

What information should Committees consider in making an individual determination of whether and to what extent compensatory services may be needed ?

Committees may consider some or all of the following questions in their decision-making process:

- x How long was the school closed and/or not providing full in-person learning?
- x Was the student provided instruction or services in a learning modality/modalities other than full in-person learning (e.g., remote synchronous and/or asynchronous instruction and/or related services? To what extent?
- x What documentation is there to demonstrate that the student benefited from the learning modality/modalities described above? Was the student engaged and able to access the instruction and services?
- x Is there documentation of the amount of instruction and services the student was provided during the learning modality/modalities described above (including dates, times, and duration)? If so, what amount of instruction and services did the student receive?
- x Have there been changes in the student's educational progress and achievement, including progress toward meeting IEP goals, and ability to participate in the general education curriculum? What are those changes?
- x Are there indications that the student regressed during the time the student was not receiving full in-person learning? What specific skills regressed?

- x Is there a possibility that the student will require extended school year services due to regression?
- x Did any new needs develop for the student (e.g., emotional, medical, behavioral, academic) such that the student should be provided with additional special education or related services?

(Adapted, from LRP Publications, "Serving a student after a COVID-19-related school closure: questions the individualized education program (IEP) team should ask," March 24, 2020).

This list is not exhaustive. Each student's circumstances will differ and the determination of compensatory services must be made on a student-specific individual basis.

How can districts pay for compensatory services?

Compensatory services provided to remedy a past denial of FAPE may be paid for with IDEA Part B funds, including supplemental IDEA Part B LEA allocations under the federal American Rescue Plan (ARP) Act. In addition, such services are an eligible use of LEA allocations of federal Elementary and Secondary School Emergency Relief (ESSER) and Governor's Emergency Education Relief (GEER) funds under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act) and ARP Act.

Should parents be involved in the determination of compensatory services?

Yes. Committees should obtain and consider parental input in determining whether compensatory services may be needed, and, if determined necessary, how those services will be delivered.

If a Committee determines a student is entitled to compensatory services, where are these services provided?

Can a student continue to receive compensatory services after his/her entitlement to FAPE ends (i.e., the student attained the age of 21 or earned a regular high school diploma)?

Yes. Because compensatory services are a remedy for the past denial of educational and related services that were not originally provided, they are available even after the right to FAPE has ended. Therefore, a student's attainment of age 21 or graduation with a regular high school diploma (i.e., local or Regents diploma) does not affect his/her right to compensatory services. The compensatory services, however, must be the type of educational and related services that are part of an elementary or secondary school education and not the provision of instruction or services at the postsecondary level. [USDE's Office of Special Education Programs, [Letter to Riffel](#), August 22, 2000].

What options do parents have if they disagree with a Committee's decision not to provide compensatory services or with the amount and/or type of services recommended?

Parents of students with disabilities may resolve disputes with school districts regarding the provision of FAPE by pursuing one of the dispute resolution options provided for in the IDEA. A parent may file a State complaint directly with NYSED in accordance with Commissioner's Regulation section 200.5(l), request mediation in accordance with Commissioner's Regulation section 200.5(h), or file a due process complaint and proceed to hearing in accordance with Commissioner's Regulation section 200.5(j).

Can parents decline a school district's offer of compensatory services?

Yes. A parent can refuse an offer of compensatory services. School districts should document compensatory services offered as well as the parent's refusal of the services. Prior written notice may be used to document an offer of compensatory services and the parent's refusal of this offer. The prior written notice must be provided in the parent's native language or other mode of communication unless it is clearly not feasible to do so.

What is the difference between compensatory services and Extended School Year (ESY) services?

While both compensatory services and ESY services must be

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|   | <p>It is important to remember that determinations regarding ESY services are prospective and not intended to make up for past denials of FAPE. (See Question #4 of USDE's <a href="#">Questions and Answers on IDEA Part B Provision of Services</a> - September 28, 2020.)</p> |
| <p>Relevant Laws/<br/>Regulations/ Federal<br/>Policy</p> | <p>OSEP <a href="#">Questions and Answers on Providing Services To Children With Disabilities During The Coronavirus Disease 2019 Outbreak</a> (March 12, 2020)</p> <p>OSEP <a href="#">Letter to Lipsitt</a></p> <p>OSEP <a href="#">Letter to Riffel</a></p>                   |

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