

Compensatory Education

What is meant by “compensatory education” and why do we bring it up now?

Let’s start with the second half of the question first. *Why do we bring up the topic of “compensatory education” now?*

Well, it is “annual review season” and before one looks to evaluate or reevaluate a student with a disability to answer the mystery of why adequate progress is not being made toward IEP (Individualized Education Program) goals, the “team” should first determine if the program, related services, and relative accommodations and/or modifications have been delivered as described in the IEP.

Not just now but, especially coming out of several years where a “pandemic” impacted the world and the world of special education in particular, odds are that the method of delivery of instruction and the level of services may not have looked like what the IEP described and/or what the team had in mind when drafting the IEP. No one anticipated the concepts of “remote instruction” or “teletherapy”, and even when they became our reality in early 2020, nobody could have predicted how long these terms would remain part of our everyday vocabulary. We are only now seeing their lasting impact on our lives and the lives of our children/students.

A constant throughout the pandemic has been the provision of continued guidance from the **United States Department of Education (USDOE)** and the **Office of Special Education and Rehabilitative Services (OSERS)** to Local Education Agencies (LEA) (“school districts” in NYS) reminding them that they were not relieved of their obligation to continue to provide students with disabilities a **Free and Appropriate Public Education (FAPE)**. (See [Resource 1](#) below).

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It is worth noting that **there has never been more access to funding for states and schools than right now**, because of the CARES Act Emergency Relief funding they have received. It is important for school districts and parents to understand that while services provided in the general education setting can help recover lost skills and catch students up academically, they are not the same as specially designed individualized instruction for students with disabilities.

It is very important to make sure the program and services contained in the student's IEP were followed and provided in a manner that allowed the student access to FAPE. Just because a student may have been provided with "remote instruction" or "teletherapy" does not mean they gained educational benefit. We know remote instruction does not work for everyone, but for many students with disabilities, the challenges presented by remote instruction may have led to the potential denial of FAPE.

Remember, you and the Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) developed the IEP as a team and for the benefit of the specific student. If any of that student's programs or services were not delivered as described in the IEP, it is important for the CSE/CPSE to consider if "compensatory education services" would allow the student to access FAPE.

In other words, if a student did not receive a particular service (i.e. speech/language, occupational therapy, or physical therapies, etc.) in compliance with the frequency, duration, location, etc., as documented in their IEP, there is a very good chance that the child has been denied their right to FAPE. As such, they may be entitled to receive "compensatory education" to remedy the situation.

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The CSE/CPSE, of which you as a parent are an important member, should meet to determine if there is a need for compensatory education, and if so, the manner in which those services will be provided. The program placement, locations, types of related services (frequency and duration), as well as program modifications and accommodations, are all listed in the IEP. The district should have maintained records regarding the attendance and methods of delivery.

Progress monitoring and annual data collection can be important sources of information to consider when calculating the amount of compensatory services. The potential “fly in the ointment” is understanding that “compensatory services” are not meant to provide “session for session” but to provide the amount of services needed for the student to make appropriate educational gains.

For example, if a student only received 25 out of 50 of their speech and language sessions (50%), but after looking at the progress monitoring and data collection, the student has achieved 75% of their speech and language goals, the district is not required to provide all 25 “missed” sessions. They are only required to provide enough sessions to ensure the student meets 100% of their documented goals for speech and language.

This may sound complicated and a bit elusive, however, this position is not new. In fact, it has been upheld and reasserted by USDOE and OSERS throughout the pandemic in its guidance to state departments of education and has been passed on by the states to their local education agencies. In June 2021 Christopher Suriano, Assistant Commissioner of New York State Education Department, Office of Special Education set forth guidance on compensatory services that was distributed to school districts (see [Resource 2](#) below) which is a very worthwhile read for any parent of a student with disabilities.

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It is worth noting here that **Extended School Year (ESY)** services *are not the same* as **Compensatory Services** and should not be confused when the “team” is considering a compensatory calculation. Compensatory Services can be delivered in a variety of ways (during school day, after school, over the summer, etc.) so teams are encouraged to be flexible.

Compensatory services are meant to recapture services that were lost as a result of failure to deliver them consistent with the IEP thereby denying the student access to FAPE. **Extended School Year services** are those designed to to *maintain skills* previously acquired *not teach new skills*. These are not mutually exclusive services, but must be set forth in the IEP and identified appropriately.

It should go without saying, however, it is certainly worth repeating, “collaboration” is so very important in the education of your child. Family engagement is something that the school districts are responsible for ensuring as per regulations. Please know that you, as a parent, are a very vital and important part of the CSE/CPSE team. The best way to develop good advocacy skills that allow your and your child’s voice to be heard at the table is to be well-informed.

1. [US DOE Fact Sheet Providing Students with Disabilities Free Appropriate Public Education During the COVID-19 Pandemic and Addressing the Need for Compensatory Services Under Section 504](#)
2. [NYSED Office of Special Education Compensatory Services for Students with Disabilities as a Result of the COVID-19 Pandemic](#)

For further information, or technical assistance, please feel free to contact
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