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Navigating Compensatory Education/Recovery Services during the COVID-19 Pandemic

Background

The Parents' Guide: Navigating Compensatory Education/Recovery Services during the COVID-19 Pandemic has been created by the Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services (DEI/SES) to assist parents to understand how compensatory education/recovery services will be determined for their child to address any loss of a free appropriate public education (**FAPE**) that may have occurred during the COVID-19 Pandemic.

The way children are educated during the COVID-19 pandemic continues to change, moving from face-to-face instruction to virtual learning and now shifting again to combinations of teaching methods. It is important for families to understand that they can expect their children to continue to receive a FAPE through an appropriate Individualized Education Program (IEP) and it is now more important than ever for school systems and families to work together.

This document is designed to assist families with understanding what the local school systems and public agencies (LSS/PA) must do to make sure that this happens and how they must offer compensatory education/recovery services, if it does not occur. This document also offers information and suggestions for families and school professionals, working together, to ensure that the delivery of special education instruction, services and supports continues to be designed to meet the individual needs of students with disabilities.

Questions & Answers for Families

- **What must the Local School System (LSS)/Public Agency (PA) do to ensure that a FAPE is being provided?**

Each LSS/PA has always been required to have a system in place for continuous internal monitoring by the school system staff to be sure that they follow the Individuals with Disabilities Education Act (IDEA) for all students with disabilities. This requirement, like other IDEA requirements, is still in effect during the COVID-19 pandemic. The school system staff must conduct record reviews and other activities to ensure that: (a) each student's IEP addresses the student's needs identified in the evaluation data; (b) the required IEP services are being provided to the student; (c) there is ongoing monitoring of progress towards achievement of the annual IEP goals; and (d) the IEP is revised through the IEP team or amended through agreement with the family to address any lack of progress.

- **What information must the LSS/PA provide to families about whether their child is receiving a FAPE?**

Families must be given regular reports of their student's progress towards the annual IEP goals. This way they will know whether their children are making progress as expected or if changes need to be made to address any lack of progress. Also, the MSDE has required the LSSs/PAs to inform all families, in writing, whether their child has been provided with a FAPE since the beginning of the COVID-19 pandemic. The written document must include all components of Prior Written Notice (PWN). This means the document must include:

- the decisions made;
- the basis for the decisions; and
- the data on which the decisions are based.

If the LSS/PA identifies that they did not comply with requirements, the LSS/PA must offer compensatory education/recovery services needed to remediate, or make up for, any loss of FAPE to the student. Examples of failure to comply could include an IEP that does not address the student's needs based on the data in their records, or a lack of evidence that the IEP was implemented properly. Other examples include a failure to monitor the student's progress or a failure to timely address any identified lack of progress.

- **How may the decision about Compensatory Education/Recovery Services be made?**

The decision about whether compensatory education/recovery services are needed and the amount and type may be made in the following ways:

- a. The LSS/PA may make the decision in collaboration with the family and provide written notice of the decision;

- b. The LSS/PA may convene the IEP team to make the decision and provide the family with written notice of the decision; or
- c. The LSS/PA may make the decision based on data in the student's education record and information from the school staff and inform the family of the decision in writing.

If the LSS/PA makes the decision based on its review of the student's record and the family disagrees with the decision:

- The family should reach out to the child's case manager or the school's principal immediately; and
- Request either an informal meeting with the school staff or an IEP team meeting to consider their concerns.

If the LSS/PA does not agree to meet informally or through an IEP team, or if the family disagrees with the outcome of the informal or IEP team meeting, the family may:

- Request mediation;
- File a State complaint; or
- File a due process complaint to resolve their concerns.

- **What information should be considered when determining whether and what Compensatory Education/Recovery Services are required?**

An IEP is not a guarantee of specific outcomes but is a statement of what a student could reasonably be expected to accomplish in one (1) year and how the student will be assisted in doing so. When considering whether or not to agree with the decision about the need for compensatory education/recovery services, families should be thinking about what they expected their child to accomplish during the time period of the IEP. They should also consider whether the LSS/PA did everything they were expected to do to help the child meet those expectations, and if not, what services could be provided to help their child accelerate the growth in their skills or appropriate progress towards achievement of the IEP goals.

- **When must the decision about the need for Compensatory Education/Recovery Services be made?**

The MSDE has informed the LSSs/PAs that the timing of the decision for each student must be based on the student's individual needs. However, the LSS/PA must determine whether each student is being provided with a FAPE since the COVID-19 pandemic within one (1) year of the revision or amendment of the IEP to reflect instruction during the pandemic.

If at any time since the COVID-19 pandemic, there is information that a student has experienced a loss of a FAPE, the LSS/PA must notify the family and take immediate steps to offer compensatory education/recovery services. The LSS/PA is not permitted to

allow an ongoing loss of a FAPE until such time as all instruction can be provided face-to-face in a school building.

Information that a student has experienced a loss of a FAPE does not have to come from the school system's monitoring for IDEA compliance. If at any time the family believes there has been a loss of FAPE, they should notify the child's case manager or the school's principal and provide information about their concerns and request an IEP meeting.

If there is data that a student is not benefitting from virtual learning, consideration should be given to additional no tech and low tech supports that can be provided until face-to-face instruction can resume, and the student's progress should be closely monitored to determine the effectiveness of those supports.

If there is data that a student can only benefit from face-to-face instruction, the decision about the student's needs should not be delayed until such instruction can be provided. Instead, the decision must be documented and the ongoing loss of a FAPE must be monitored until a remedy can be provided.



How Parents Can Effectively Participate in the IEP Team Meetings about Compensatory Education/Recovery Services for Their Child

Effective Strategies to Remember



BEFORE THE MEETING

- Review your child's IEP so that you know what services and supports should have been provided.
- Review the Present Levels of Academic Achievement and Functional Performance section of the IEP and use that to compare what your child is able to do today. Be prepared to talk about any changes.
- Write down your observations about how your child is doing with online instruction and with in-person instruction. It is best to try to describe the things that you see with as much detail as possible. This is data that the team will need to consider.
- Make note of any new needs, behaviors, concerns that have arisen during virtual learning, hybrid or transitioning back to in-person instruction.

- Know the roles and responsibilities of the members of your IEP team. If you don't know, ask for an explanation.
- Organize your information and ideas so that it can be easily shared with team members.
- Write down your questions and concerns.



DURING THE MEETING

- Be prepared. Have your information organized so that you are ready to discuss your concerns, questions and data with the rest of the team.
- Share data and observations with the team. You may want to consider sharing this information before the meeting so that team members have had a chance to read through the information and are prepared to discuss it.
- Share your concerns and any new needs that you feel your child has developed.
- Share your questions and concerns with the team. Take and keep notes on the team's discussion and feedback. If there are 'action items' that will be taken, clarify when you can expect each item to be completed.
- Share your ideas of what might work or not work related to when and how compensatory education/recovery services could be provided, if it is determined that they will be necessary.



AFTER THE MEETING

- Review the Prior Written Notice and ask any follow-up questions.
- Continue to review progress and compare to what you see at home.
- Continue to collect data, keep track of any services given or missed.
- If compensatory education/recovery services have been offered and are being provided, keep notes about the impact of these services and share any concerns with your child's IEP team. Keep in mind that compensatory education/recovery services are to be given in addition to what is written in the IEP.
- Keep in mind that even if it has been determined that Compensatory Education/Recovery Services are not required, the IEP must address all of a student's needs including any new ones as a result of the pandemic.

- Continue to communicate and build positive relationships with the members of the IEP team.
- Any time you have concerns about lack of expected progress you should reach out to your child’s case manager or your LSS Family Support team. You may also wish to request an IEP team meeting.



Resources

For more information, contact the MSDE Family Support Services Specialists in the Division of Early Intervention and Special Education Services at 410-767-0255 or 410-767-7770.

Also, check the [MSDE Family Support Services web page](#) for a directory of family support services.

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