



School Closures: General Considerations, Compensatory Education, and Revisiting Current Student Needs

This resource is intended to provide guidance to Individualized Education Program (IEP) teams when determining changes to a student's IEP during and after school site closures. The document is organized into three distinct yet interconnected sections. First, general considerations related to service tracking and progress monitoring during school closures are provided to ensure IEP teams have collected the data required to make informed decisions regarding the provision of FAPE. Next, specific considerations for decision-making are presented, including how to address compensatory education services within the IEP document. Lastly, helpful reminders to consider when revisiting current student needs and subsequent IEP services in light of the student's special circumstances during school closures and distance learning are also provided.

For additional resources, please visit the EDCOE Charter SELPA website at www.charterselpa.org as well as [resources specific to COVID-19](#).

General Considerations

Documentation of service delivery and student progress are vital to understanding whether a student is benefitting from their educational program as well as determining whether compensatory education is warranted due to an LEA's failure to provide a student with a Free and Appropriate Public Education (FAPE). Knowledge of this data continues to be essential in light of the unique circumstances related to school closure and distance learning. For this reason, the following sections provide helpful reminders for tracking services and monitoring student progress.

Service Tracking During Closure or Distance Learning

LEAs have requirements to track distance learning for all students, which includes: evidence of participation in online activities, completion of regular assignments, completion of assessments, and contacts between teachers and students or parents/guardians [([Ed. Code, § 43505\(d\)](#).) and ([Ed. Code, § 43504\(i\)\(2\)](#).)]. It is recommended that LEAs also implement a consistent system for tracking the provision of special education and related services to students with IEPs during school closure or distance learning. Service tracking also includes logging of services with NPA/S.

It is especially important for teams to note attempts to provide services that were planned, but could not be provided, or were refused. When doing so, include the date services were

attempted; reason services were not delivered; and a list of any attempts to provide services, including attempted mode, persons involved, attempted location(s) of service delivery, and any follow up by the case manager.

Progress Monitoring During Closure or Distance Learning

Effective progress monitoring during school closures helps IEP teams make informed and data-based decisions regarding compensatory education and adjustments to the IEP that may be needed when in-person school activities resume. When IEP services are delivered, the student's case manager (or designee) and related services provider(s) should monitor and document a student's progress towards IEP goals. General education teachers should monitor the student's progress in the general education curriculum. Ongoing communication with IEP team members is critical to tracking a student's progress during distance learning.

Compensatory Education

The term compensatory education describes educational services provided as an appropriate equitable remedy when the responsible Local Educational Agency (LEA) has failed to provide a student with a disability with an appropriate education as required by the Individuals with Disabilities Education Act (IDEA). The remedy of compensatory education is designed to deliver an eligible student with the services that student should have received pursuant to the IDEA's guarantee of FAPE ([Reid v District of Columbia, 43 IDELR 32 \(D.C. Cir. 2005\)](#)). Data obtained from progress monitoring and service tracking will be used to make this determination and the extent of the student's need will likely not be known until after the interruption in services has ended.

Determination of Compensatory Education Services

According to [CDE's Special Education Guidance for COVID-19](#) (posted 09-Apr-2020),

“LEAs should plan to make individualized determinations, in collaboration with the IEP team, regarding whether or not compensatory education and services may be needed for a student. Educational needs can be measured by assessing whether or not the student continued making progress in the general education curriculum, or alternative course of study specified in their IEP, or toward meeting their individualized IEP goals and/or if any regression occurred during the period of school site closure.”

The following list provides questions IEP teams may consider when determining whether compensatory education is owed based on a denial of FAPE:

- Did the LEA provide an individualized offer of FAPE through the IEP/amendment process?
- Was the parent/guardian provided an opportunity for meaningful involvement throughout the IEP process?



- Were all services provided as written in the IEP/amendment?
- Did the LEA follow the [CDE's guidance](#) related to distance learning in order to support students with disabilities during school closures?
- Was the student made available for services during distance learning or virtual instruction? If “no”, did the IEP team explore, address and support potential barriers to access including family needs related to distance learning?

If the LEA answered “no” to any of the above questions, compensatory education services may be warranted as determined by the IEP team in an IEP meeting. In addition to a discussion regarding compensatory education, responses to these questions may initiate further discussion about the appropriateness of the student’s IEP based on the student’s present levels of functioning and current needs. For more information on these discussions, please refer to the section below titled: *Revisiting IEP Services based on Current Student Needs*.

Addressing Compensatory Education Services in the IEP

If the IEP team determines compensatory education is owed based on a denial of FAPE, they must then discuss the manner in which compensatory services will be provided. The most appropriate time for the IEP team to decide on compensatory services for the student is when the team has sufficient data to support their decisions. IEP teams may or may not have sufficient data to make determinations regarding compensatory education prior to reopening of in-person instruction. If teams do not have data to make such determinations, they should seek to gather the data in a timely fashion and inform parents they will convene to discuss compensatory services as soon as possible with the data obtained.

Compensatory services will vary by student and should be individualized. When IEP teams meet to discuss compensatory services, it is recommended that the IEP team review progress before, during and after the period of missed services. The following are considerations for determining the need for compensatory services. These considerations and any agreements made should be documented clearly in the notes page of the IEP document:

1. Inform the parent(s)/guardian(s) of their rights by providing a written copy of the procedural safeguards in their primary language. Allow opportunities to discuss any questions regarding educational rights and safeguards.
2. Decisions made should be supported by data.
3. Identify the educational loss caused by missed services or inability to provide FAPE as agreed upon in the IEP. The IEP team needs to determine whether the student would be in a better position if he/she had not been denied access to previously agreed upon services ([Somberg v Utica Cmty. Schs., 73 IDELR 88 \(6th Cir. 2018\)](#)).
4. Determine how to compensate for missed services. Create a clear understanding of the purpose and nature of the compensatory services being provided. It may not be necessary to match compensatory services hour for hour, based on the amount of lost instructional time. One must look at the “lost opportunity” and define the need based on the current deficit.



5. Consider how much service a child can tolerate in a period of time. For example, if a student has speech 2 times a week, it may not be in the best interest of the child to now have speech 4 times per week. Look at the overall time owed- for example 400 minutes- then space the obligation over a reasonable amount of time.
6. Determine the time frame, location, provider, and method for providing the compensatory services. In the agreement define the duration and quantity of the compensatory education offer. Identify who will provide the service as to establish a clear understanding between educators and parents about the goals and nature of the services to be provided.
7. Consider Reviewing the current offer of FAPE to determine if there is a need to update services in order to address transition, behavioral, and/ or mental health needs, or reintegration into the student's typical learning environment. Additional formal and/or informal assessments may be necessary. See Revisiting the IEP section below.
8. While services may be provided over the summer, participation in Extended School Year (ESY) may not count as a compensatory service. Eligibility for ESY should be determined by the IEP team based on a consideration of the student's difficulty with regression and recoupment of skills following extended school breaks.
9. Document the offer/agreement with the parents in the notes page of the IEP document.
10. Create a log to record the provision of compensatory services and ensure full implementation of the service(s). In the event that a child refuses to participate in the compensatory services, convene an IEP meeting to discuss and consider any changes that may be needed to the plan. Team should also clearly define how/when services will be made up if the provider or student misses a session.
11. The team should define and agree to a mode of communication that will keep team members abreast of service provision and progress towards goals.
12. LEA's should work with parents regarding scheduling of compensatory services. Services can be provided outside the student's typical school hours (in hybrid models, can be on "off" days or times) but shall not take a student away from opportunities offered to other students (Such as after school activities).

Additional considerations:

1. "A student with a disability can receive an award of compensatory education at any age, including while the child is still in school or past the maximum age for eligibility under the IDEA". ([Lester H. v Gilhool, 16 IDELR 1354](#))
2. The award of compensatory education may be available even if the student has enrolled in another district or moved out of state. ([D.F. v. Collingswood Borough Bd. of Educ., 59 IDELR 21 \(3rd Cir. 2012\)](#))
3. The award of compensatory education is not limited to prospective relief but may also include reimbursement for private services the parents obtained to make up for deficiencies in the student's IEP ([I.T. v Department of Educ., State of Hawaii, 62 IDELR 178 \(D.Hawaii 2013\)](#)).



Important reminder: After the IEP meeting, a Prior Written Notice (PWN) should be provided to the parent/guardian outlining the purpose of the meeting, review of progress, and the IEP team’s plan regarding what will restore the student’s educational benefit missed during the school closure.

If the IEP team is unable to come to agreement regarding compensatory services please contact your SELPA Program Specialist to learn more about the [continuum of Alternative Dispute Resolution \(ADR\) services](#). In some [cases](#) LEAs may be ordered by the courts to provide compensatory education or reimbursement for outside services to a student that has been denied FAPE.

Revisiting IEP Services Based on Current Student Needs

When revisiting IEP services based on current student needs, the IEP team should consider the thread of educational benefit as they would when creating an IEP prior to school closures. IEP teams will also need to discuss whether or not the student’s “progress is appropriate” in light of the child’s circumstances” ([Andrew F. v. Douglas County School District](#)). Teams may want to consider the special circumstances each individual student faced during school closures, such as access to resources and assistance for distance learning, the home environment, anxiety/fear related to the reason for the school closure, homelessness, and more.

Conversations around change of services and additional needs as a result of closure are different than compensatory education discussions. Due to school closures, the student’s needs may have changed for a number of reasons. The IEP team should consider an offer of services that reflects the student’s present levels of performance, “child’s circumstances”, the LEA’s current educational model, and plans for re-opening. The IEP team may discuss the possibility of additional services that may not have been a previous concern but have come to light during/after school closures: mental health needs, behavior needs, social emotional needs, attention needs, and more. The following is a list of considerations to assist the IEP team in determining the offer of FAPE based on the student’s current needs:

1. Inform the parent(s)/guardian(s) of their rights by providing a written copy of the procedural safeguards in the primary language. Allow opportunities to discuss any questions regarding educational rights and safeguards.
2. Identify and review any data obtained prior to the closures, during the closures, and upon return to in-person instruction (Progress Monitoring).
3. Use the data to update present levels, areas of need, and goals to reflect the student’s circumstances (Present Levels Of Performance).
4. The team should consider the updated present levels, areas of need, and goals and in determining appropriate supplementary aids and services. The team should consider regression and difficulties with recoupment that exceed those of non-disabled peers, to inform the offer of FAPE.



5. The team should consider each student's unique circumstances ([Endrew F. v. Douglas County](#)) and whether they warrant additional services in areas including, but not limited to, behavior, social emotional, attention, mental health, and more.
6. The team should define the duration and frequency of the additional services. If the reopening model is hybrid and includes some in person and some distance learning, work with parents to schedule services during school hours on the school campus, unless the IEP team determines that the service is necessary at a different location/time given the student's individualized needs. Services should not take a student away from opportunities offered to other students (Such as after school activities).
7. In all cases, ensure the offer of services is individualized to allow the student access to FAPE in the Least Restrictive Environment (LRE). In a distance learning or hybrid educational setting, the LRE is the model provided to all students in the general education setting. Teams should continue to consider access to and interaction with general education peers.

