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Additional resources are available on OSE's Special Education Resources and Guidance related to Coronavirus (COVID-19) webpage. This webpage also includes the guidance on compensatory services provided by the U.S. Department of Education Office of Special Education Program in its March 2020 Questions and Answers on Providing Services

The University of the State of New York
New York State Education Department
Office of Special Education

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What compensatory services can a Committee consider for a student with a disability?

If appropriate, compensatory services could be provided in a number of ways, such as extending the school day, providing tutoring before and after school, or providing additional services during regular school hours.

Is a student automatically entitled to compensatory services because his/her special education programs and services provided through remote and/or hybrid instruction did not mirror the offer of FAPE on his/her IEP?

No. During the COVID-19 pandemic, schools may not have been able to provide all education and related services in the same mode as typically provided. As such, during this period the provision of FAPE could include, as appropriate, special education and related services provided through remote and/or hybrid instruction at a frequency and/or duration that may differ from the IEP (see Question #1 of the March 27, 2020 guidance). Additionally, school districts were provided guidance that it was not necessary to amend IEPs because an alternate mode of instruction is used to provide special education and related services (see Questions #3 and #4 of the March 27, 2020 guidance). Alternative options for instruction and related service delivery, even when provided in a different mode, frequency and/or duration of services from the IEP recommendation, would not necessarily result in a denial of FAPE.

For students who did not receive full in-person instruction, must compensatory services be considered for those whose needs are so complex that they were not able to participate in or benefit from remote and/or hybrid instruction?

Yes. For students with needs so complex that they were not able to participate in or benefit from special education programs and services in learning modalities other than full in-person instruction, the Committee must determine the type and extent of compensatory services that may be necessary to address a loss of skills.

What documentation should a Committee consider when determining whether a student requires

documentation form is required, each school district's documentation of services must at a minimum describe the learning modality/modalities made available to the student and the IEP 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

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

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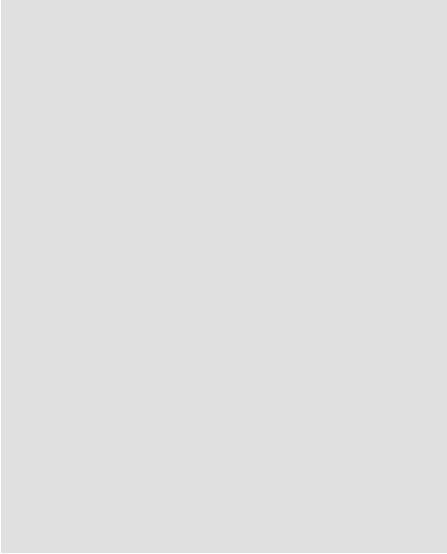
student's Committee is informed of those changes. Additionally, prior written notice of the Committee's proposal or refusal to provide compensatory services, including the type, frequency, and location of compensatory services to be provided to the student, must be provided to the parent pursuant to Commissioner's Regulation section 200.5(a).

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).



including any loss in skills that occurred as a result of a student not receiving education or services due to the COVID-19 pandemic.

ESY services are not a form of compensatory services. ESY services are a 12-month service and/or program for students determined to be eligible in accordance with sections 200.6(k)(1) or