



Welcome!

xMinds IEP Clinic

**Featuring Keynote Speaker Kimberly Glassman, Esq.
Law Office of Brian K. Gruber**

**Sponsors: Suzanne Keith Blattner, ED.S. & Associates and the
Weinfeld Education Group, LLC**

We will begin at 12 pm. Thank you for being here!

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1

How to Request Compensatory Education Services Following Virtual Instruction



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2

What is Compensatory Education?

- ❖ Compensatory education is a legal remedy to address a denial of a Free Appropriate Public Education
- ❖ Compensatory education services are services intended to put a student in the position they would have been in but for a denial of FAPE
- ❖ Compensatory education services are above and beyond the IEP
- ❖ Compensatory education is a qualitative analysis, not an hour-for-hour replacement of missed services



3

Why compensatory education?

- ❖ When schools closed to in person instruction in March 2020, the [U.S. Department of Education](#) issued guidance stating that once school resumes in person, school districts must determine whether and to what extent compensatory services are needed to make up for any skills that may be lost
- ❖ The [Maryland State Department of Education](#) echoed this guidance in their Technical Assistance Bulletin 20-01

4

Special Education During Covid-19 & Virtual Instruction

- During virtual instruction, schools developed Individualized Distance Learning Plans to outline the special education, related services, accommodations, and supplemental aids and services to be provided during virtual instruction
- In the Spring of 2020, in MCPS, the IDLPs were a statement of what services from the IEP would continue to be provided during virtual instruction
- In the Fall of 2020, MCPS shifted the IDLP to specifically state what from the original IEP had to be modified due to virtual instruction
- For some students, the IDLP provided less services than were in the original IEP or there were goals that could not be addressed in a virtual setting
- Maryland State Department of Education considers the distance learning plans to serve as an IEP amendment, which means many schools are using the IDLP to start the compensatory education discussion

5

When discussing compensatory education, start with the goals and services in the original IEP





If so, consider a request for compensatory education services and ask that it be based on the pre-Covid IEP services

If the IEP services were changed or goals were not addressed, look at the impact on the student:

- Did the student lose previously acquired skills?
- Did skills remain stagnant?
- Did the student fail to make adequate progress?

6

What information do I need?

- ❖ Gather all of your sources of data about your child. This can include the IEP, progress reports, report cards, MAP scores, other test scores, and work samples
- ❖ Include anecdotal information on the supports you provided at home for your child to be able to complete school work during virtual instruction
- ❖ Make note of any changes from the IEP to the IDLP, including goals that could not be addressed virtually or any reductions in services
- ❖ If you do not have information on a particular goal or skill, request new baseline data upon a return to school

7

FACTORS TO CONSIDER IN DETERMINING COMPENSATORY EDUCATION

- **MSDE** issued a Parent's Guide on Navigating Compensatory Education During Covid-19
- IEP teams should be looking at educational data from:
 - Prior to school closures;
 - During virtual instruction; and
 - Upon a return to in person instruction

8

When are Compensatory Education decisions being made?

- ❖ MSDE has directed school systems to make compensatory education decisions within a year of the virtual instruction IEP amendment
- ❖ If an IEP team knows a student did not make adequate progress or regressed, compensatory education should be put in place right away
- ❖ If an IEP team needs more information to determine the impact of virtual instruction on a student, that data should be gathered and reviewed
- ❖ Information that a student experienced a loss of FAPE does not have to come from any particular source. If a parent believes there is a loss of FAPE, the parent can initiate the compensatory education discussion

Dear Families,

This letter will provide you with information about the steps that Montgomery County Public Schools (MCPS) will take to address the negative effects that school building closures may have had on your student. We expect that some students with an Individualized Education Program (IEP) may have regressed and might struggle to recoup previous skill levels. Some students with an IEP will need extra supports and services to continue on the path to meaningful progress toward their annual goals.

Continuity of Learning Services: March–June 2020 and September 2020–June 2021

On March 12, 2020, the Maryland State Department of Education (MSDE) superintendent of schools closed Maryland school buildings for in-person student instruction in response to the COVID-19 pandemic. From March through June 2020, school buildings were closed and MCPS offered continuity of learning services for students based on their individualized needs from through a virtual platform. In August 2020, MCPS began the 2020–2021 school year with virtual instruction. Currently, most students are receiving instruction and IEP services through a combination of virtual and in-person learning.

Determination of Impact: Compensatory/Recovery Services

MSDE has provided Maryland school systems with guidelines for compensatory/recovery services to address the negative impact of school closures. Following MSDE guidance, all MCPS school teams will analyze data on the progress of every student with an IEP to determine if compensatory/recovery services are warranted. School teams will consider student progress:

- before COVID-19 school closures;
- during virtual learning; and
- after re-entry to school buildings.

Some students will have made the expected progress and will not be eligible for compensatory/recovery services. Other students will not have made expected progress or experienced a regression in skills. If your student is eligible for compensatory/recovery services, you will be contacted via telephone or video conference with school staff members to discuss a plan to address compensatory/recovery services.

Please understand that all the necessary data may not be obtained and analyzed during the 2020–2021 school year. We appreciate your patience as we work through this process, and be assured that we will collaborate with you to ensure that your student’s needs are addressed. If you have any questions or concerns, please contact [your student’s school-based special education case manager.]

How is parent input considered? If you are in MCPS, you may have gotten this parent input form

Because you know your child best and your point of view is an important consideration in making educational decisions, we are interested in your observations about your child in preparation for the upcoming compensatory services meeting. Your concerns will be noted for purposes of determining if compensatory services are warranted.

1. What progress have you noticed your child has made during virtual instruction?
2. What strengths do you feel your child has demonstrated during virtual instruction?
3. What have you noticed about your child’s behavior during virtual instruction?
4. What have you noticed about your child’s work during virtual instruction?
5. What concerns (if any) did you have about virtual instruction?

6. Do you have any data regarding your child’s engagement or progress during virtual instruction that you would like to share with the team? Please list here or attach to this form.

7. What supports/strategies would you like to see for your child as they are transitioning/resuming to in-person instruction?

8. How do you think that the school can help your child as they transition to in-person instruction?

9. Please describe the supports that you, a family member, or a caregiver provided during virtual instruction?

10. Comments

Information to Consider

- ❖ If you were not provided a parent input form, you can and should still provide your input to the IEP team by email and document your request in writing
- ❖ Schools should be looking at regression or a lack of appropriate progress
- ❖ Appropriate progress is unique to the individual student - an IEP is not a guaranty of a specific result, but must be designed for a student to make adequate progress in light of their abilities
- ❖ If a student did not make progress at the same pace as prior to virtual instruction, had skills remain stagnant, or lost skills, then the student may qualify for compensatory education
- ❖ The MSDE guide suggests parents should consider whether the school did everything they could to try to help. Proceed with the discussion. It is quite possible that your child's school did everything they could to try to help, but your child's needs simply could not be met in a virtual classroom and compensatory services are still in order

11

What types of services can be provided through compensatory education?



- Compensatory education can be any type of service a student needs to remediate a denial of FAPE
- This can include the more traditional academic and related services, like tutoring, speech therapy, occupational therapy, etc.
- It can also be a camp, class, social skills group or other activity designed to remediate what was lost during virtual instruction

The goal is to put the child in the position he/she would have been in but for the denial of FAPE

12

When should I hear from my child's school?

- ❖ MSDE guidance states that each local school system must determine whether a student requires compensatory education within one year of the revision/amendment to the IEP to reflect instruction during the pandemic
- ❖ Many families already received a form letter outlining the process and meetings should be happening this fall. Follow up with your child's school if you have not heard anything around the first interim progress report.
- ❖ This means that IEP and 504 teams should be meeting to discuss and determine compensatory services within 1 year of the virtual school IDLP/virtual learning 504

13

How are compensatory services provided?

- ❖ **Compensatory education services are provided outside of the school day**
- ❖ **It can be after school, on weekends, or during other school breaks**
- ❖ **The options I have seen are:**
 - Compensatory services managed by the school your child attends, where a teacher from that school provides the services after school
 - Compensatory services managed by MCPS central office, where they identify a service provider to implement the services
 - Services funded by MCPS or services identified by parents to be reimbursed. This requires a request to the Resolution and Compliance Unit, an Administrative Review, and reaching a specific agreement with MCPS

14

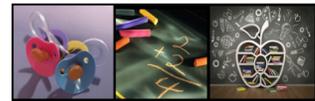
What if I disagree with the decision?

- ❖ Any disagreement should be documented in the Prior Written Notice
- ❖ A parent who disagrees with the outcome of a compensatory education decision can request mediation, file a State Complaint, or file a due process complaint
- ❖ MSDE has issued findings following State Complaints that the services outlined in the IDLP are the basis of compensatory services, even if the IDLP provided less services than the IEP
- ❖ If you are objecting to both the reduction in services and the resulting compensatory education, it must be specified in the complaint or mediation request

Parental Rights

MARYLAND PROCEDURAL SAFEGUARDS NOTICE

*Infants and Toddlers Early Intervention
Preschool Special Education
and
Special Education*



REVISED January 2021



MARYLAND STATE DEPARTMENT OF EDUCATION
DIVISION OF EARLY INTERVENTION/SPECIAL EDUCATION SERVICES

15

Other Tips - IEPs vs. Compensatory

Education

- ❖ IEPs should address all student needs, including any new or changed needs as a result of the pandemic. This is separate and apart from any obligation to provide compensatory education services as a result of educational harm during the pandemic.
- ❖ Some students may respond better to increasing or modifying services within the school day than to adding services outside of the school day. Some students may require both IEP changes and compensatory education.
- ❖ A student who is not eligible for or would not benefit from compensatory education may still require changes to the IEP based on changed needs when returning to school.
- ❖ IEP changes may include an increase to special education or related services, change in delivery model from inside to outside general education, changes to least restrictive environment and placement, or any of the above.

16

IEP services vs. Compensatory Education continued

- ❖ Compensatory education is designed to address specific deficits caused by a denial of FAPE. It is delivered for a specific period of time and then concludes, unless an agreement to extend is reached.
- ❖ IEPs must be reasonably calculated to ensure that students make progress in light of their unique needs.
- ❖ Compensatory services must do more than they IEP, it must compensate for past educational harms caused by denials of FAPE.
- ❖ The IEP continues for the full IEP year and any changes are reviewed as part of the next annual review.



17

Questions???

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18