



Karen B. Salmon, Ph.D.
State Superintendent of Schools



MARYLAND STATE DEPARTMENT OF EDUCATION
Division of Early Intervention and Special Education Services
Marcella E. Franczkowski, M.S., Assistant State Superintendent

Compensatory Education/Recovery Services Q&A
Responsive Answers to LSS/PA Questions

March 16, 2021

Q1. Must a decision be made about the need for compensatory education/recovery services for all students with disabilities?

A1. Yes. While not all students with disabilities may require compensatory education/recovery services, as part of the process of ensuring the provision of a Free Appropriate Public Education (FAPE) since the COVID-19 Pandemic, the Local School System /Public Agency (LSS/PA) must consider whether each student with a disability requires such services.

The process of ensuring a FAPE since the COVID-19 Pandemic involves the following (please see Recovery Flowchart in Technical Assistance Bulletin #20-09, released in June, 2020):

- a. Developing an IEP that is reasonably calculated to offer a FAPE during based on each student's identified needs;
- b. Continuously monitoring student progress in order to determine whether services and supports remain appropriate, and reviewing/revising education programs, consistent with that data;
- c. Conducting record reviews in order to identify any loss of a FAPE as a result of the failure to ensure that what was offered was reasonably calculated to address the student's identified needs, the failure to properly conduct progress monitoring, or the failure to address information about the lack of progress obtained through progress monitoring in a timely manner; and
- d. Offering compensatory education/recovery services for any identified loss of a FAPE.

The decision about the need for compensatory education/recovery services may be made using these Options:

- a. 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 parent of the decision through Prior Written Notice (PWN).
- b. The LSS/PA may make the decision in collaboration with the parent and documented in PWN.
- c. The LSS/PA may convene the IEP team to make the determination and provide PWN of the decision.

If the LSS/PA uses Option a or Option b to make the individualized compensatory education/recovery services determination and the parent disagrees with the determination, the LSS/PA may wish to offer an IEP team meeting to address the parent's concerns. The parent may also request an IEP team meeting. Offering an IEP team meeting with the compensatory education/recovery services determination can help reduce the need to engage in formal dispute resolution procedures.

Q2. When must the decision about the need for compensatory education/recovery services be made?

- A2. Each LSS/PA must have in place a SYSTEM process for monitoring for IDEA compliance, including the determination of need and provision of compensatory education/recovery services for each student. The LSS/PA is encouraged to consider the SYSTEM Process Plan for determining compensatory education/recovery services provided by the MSDE. Components for consideration of this process include:
- A SYSTEM process planning team;
 - Logistics and documentation;
 - Communication;
 - Professional development;
 - Implementation; and
 - Funding.

While a SYSTEM process must be implemented continuously, the timing of the decision about compensatory education/recovery services for each student must be based on the student's unique circumstances. If the LSS/PA has fulfilled its obligation to monitor to ensure that FAPE is being provided since the COVID-19 pandemic, and believes that an appropriate IEP has been in place for a student, it should inform the parent of that decision within one (1) year of the revision or amendment of the IEP to reflect instruction during the COVID-19 Pandemic.

If at any time since the COVID-19 pandemic, the LSS/PA has information that a student has experienced a loss of a FAPE, the LSS/PA has an obligation to notify the parent and take immediate steps to remediate the loss without delay through compensatory education/recovery services.

For example, progress monitoring data may result in the need to review/revise a student's IEP. If, during that process, it is discovered that the IEP was not reasonably designed to offer a FAPE when it was initially revised or amended to reflect virtual learning, the IEP must be revised, and a decision made about compensatory education/recovery services for the lack of an appropriate IEP without delay. If the IEP was reasonably designed to offer a FAPE, but the IEP was not fully implemented, a decision must be made, without delay, about compensatory education/recovery services for the inability or unwillingness to implement the IEP.

As another example, if progress monitoring reveals a lack of expected progress towards achievement of annual goals, but the IEP was reasonably calculated to offer a FAPE at the time of the initial revision or amendment to reflect virtual learning, no compensatory education/recovery services may be needed. The IEP team's only obligation may be to revise the IEP to address the lack of expected progress. However, if there is a delay in addressing the lack of progress, a determination of the compensatory education/recovery services needed to remediate that delay must be made as soon as the delay is discovered.

The LSS/PA is encouraged to consider using the Individualized Decision-Making Process Tool for determining compensatory education/recovery services for each student provided by the MSDE.

Q3. How is the decision about whether a student requires compensatory education/recovery services to be communicated to parents?

A3. As with any decision about a FAPE for a student, regardless of whether the LSS/PA proposes or refuses to provide compensatory education/recovery services, it must be communicated to parents consistent with the IDEA PWN requirements. This means that, even if the decision is that a student does not require compensatory education/recovery services, that decision must be communicated to the parent through PWN. This allows the parent to determine whether s/he agrees with the decision, and if not, to exercise the procedural safeguards to dispute the decision.

Q4. How will the MSDE handle State complaints about the determination of whether a student requires compensatory education/recovery services and what services are appropriate?

As with any allegation that the LSS/PA has not offered a FAPE, the MSDE is required to determine whether there is data to support the determination. Therefore, it is important for the LSS/PA to ensure that there is appropriate documentation of the decisions made, the basis for the decisions, the data used in making the decisions, and all options considered, consistent with the PWN requirements, as such documentation will be requested through a State complaint investigation.

Q5. How far back in time will the MSDE investigate an allegation about a determination of whether a student requires compensatory education/recovery services and what services are appropriate?

Consistent with the MSDE State complaint procedures, an investigation into the determination of whether a student requires compensatory education/recovery services, like any determination regarding the provision of a FAPE, can be conducted up to one (1) year after the date of that decision, consistent with information in *Parental Rights: Maryland Procedural Safeguard Notice*. This is the case even though the decision may be made using data obtained during a time period longer than one (1) year before the compensatory education/recovery services decision is made and the State complaint is filed.

Scenarios

Scenario #1 A parent files a State complaint in April 2021 alleging that the LSS/PA has not ensured that the student has been provided a FAPE during the COVID-19 pandemic since April 2020.

In this case, the investigation will focus on whether a decision was properly made about how a FAPE can be provided, combined with the use of low and no tech options, as needed, consistent with the data, and following proper procedures.

The investigation will also focus on whether there has been proper progress monitoring and whether the IEP was reviewed/revise, as appropriate, consistent with any data from that progress monitoring indicating that the student was not making expected progress towards achievement of the annual IEP goals.

If the data used to amend or revise the IEP does not indicate that the amendment or revision was designed to offer the student a FAPE, or the IEP team did not address lack of progress in a timely manner, the investigation will focus on whether the LSS/PA offered compensatory education/recovery services to address the loss of a FAPE without delay consistent with the data about the impact on the student's ability to benefit from the education program.

Scenario #2 A parent files a State complaint in October 2021 alleging that a decision made by the LSS/PA in September 2021 about the need for compensatory education/recovery services during the COVID-19 pandemic since April 2020 did not ensure a FAPE for the student.

In this case, the investigation will cover the information the team had in September 2021 about whether the IEP as amended or revised was reasonably calculated to offer a FAPE. The investigation will also cover information that the team had in September 2021 about the student's progress since April 2020, and a determination will be made about whether the decision made in September 2021 was consistent with the data.

Maryland State Department of Education
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Hot Topics Q&A, March 16, 2021

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Karen B. Salmon, Ph.D., State Superintendent of Schools

Clarence C. Crawford, President, Maryland State Board of Education

Larry Hogan, Governor

Carol A. Williamson, Ed.D., Deputy State Superintendent for Teaching and Learning

Marcella E. Franczkowski, M.S., Assistant State Superintendent, Division of Early Intervention and Special Education Services

200 West Baltimore Street
Baltimore, Maryland 21201
MarylandPublicSchools.org
MarylandLearningLinks.org