COMPENSATORY EDUCATION AND COVID-19

A REVIEW OF STATES’ GUIDANCE AND RESOURCES FOR PARENTS OF STUDENTS WITH DISABILITIES

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# Table of Contents

INTRODUCTION AND BACKGROUND ............................................. Page 3  
PURPOSE ............................................................................. Page 3  
FINDINGS AND IMPLICATIONS ............................................. Page 4  
RECOMMENDATIONS ............................................................. Page 6  
RESOURCES ........................................................................ Page 7  
EXEMPLAR STATE GUIDANCE ............................................. Page 8  
STATE DASHBOARD .............................................................. Page 9
INTRODUCTION AND BACKGROUND

As a result of COVID-19 and associated school closures and disruptions to learning, students with disabilities have faced numerous obstacles in obtaining a free and appropriate education (FAPE). As many students return to in-person schooling for the 2021-22 school year, there exists a strong body of evidence that demonstrates that school closures had a significant and disproportionate negative impact on students with disabilities. These impacts included learning loss, slower than expected progress on educational goals, and lost skills, among others. Students with disabilities may also face new challenges as a result of Long COVID complications, closures, and less-than-optimal or non-existent learning environments.

In response, the U.S. Department of Education (ED) issued initial guidance in March, 2020 regarding the potential for students protected under the Individuals with Disabilities Education Act (IDEA) to obtain compensatory educational services, more commonly referred to as “compensatory services.” The goal of these services is to put the student in the place he or she would have been had FAPE been provided and the student had not been deprived of special education and related services. COPAA also issued a clarifying FAQ document based on its interpretation of the ED guidance. Most state departments of education, in turn, responded by issuing their own guidance to the local educational agencies they oversee on the topic. Then, in September, 2021, ED issued updated guidance to provide greater clarity to schools, parents, and other stakeholders regarding state and district obligations regarding compensatory services and other issues related to IEP development and implementation.

PURPOSE OF THIS RESOURCE

We have prepared this resource to help parents find resources in their state and utilize our findings and recommendations to better advocate for compensatory education services as needed and legally warranted.

In order to shed light on this, as a first step, COPAA reviewed guidance from state departments of education regarding their policies and procedures for determining and awarding compensatory educational services to eligible students.
To obtain information as to whether eligible students have been able to successfully access needed compensatory services as envisioned in the guidance issued by ED, COPAA is calling on its members and all parents of students with disabilities to help raise awareness about this issue by gathering evidence about whether parents have been able to obtain services from their school. Click here to complete a short survey that will help us gather this evidence.

**FINDINGS AND IMPLICATIONS**

COPAA’s analysis of guidance issued by state departments of education on the topic of compensatory services related to COVID-19 raises concerns about the potential that students whom should be eligible for services may not be able to obtain them, as well as concerns about whether students have equitable access to services due to the variation in states’ interpretation of policies. Our review also raised other concerns. For example:

- Several states have not issued formal guidance or made guidance readily available to their local educational agencies and parents, or removed previously issued guidance from their websites
- Some states’ guidance on compensatory services is inconsistent or incomplete compared to ED guidance and many lack key details and clarity that parents need.

At the same time, COPAA found that many states provided accurate and detailed guidance and some developed helpful tools to assist parents in understanding the process and obtaining warranted services. See exemplars below.

Among key findings, a number of themes emerged:

**Differing Names and Definitions.** States are using a variety of different names and definitions when referring to compensatory services related to COVID. While most states referred to “compensatory education” or “compensatory services” related to COVID—the latter term mirroring language used by ED—a number of states use the term “recovery services” to describe these services. However, recovery services are typically provided to all students, regardless of whether they have a disability. A student with disabilities may be provided both recovery services and compensatory services if recommended by their team. Others terms used by states included “COVID Impact Services & Supports” and “Additional Services.” The practice of using different terms to describe the services and process referenced in the federal guidance
could lead to confusion by schools and parents as to the process and student eligibility. What is important is that IEP teams individualize compensatory services for the student that are designed to make the student whole; to place the student in the situation he/she/they would have had if there had been no gaps in appropriate special education services.

**Different Processes.** While most states appeared to follow ED guidance for determining and awarding compensatory services, some states appeared to provide a different and, in some cases, a more stringent interpretation than the guidance provided by ED, potentially making it more difficult for some students to obtain services.

**Timeframe is Unclear.** More than half of states that issued guidance did so early on in the pandemic (Spring or Summer of 2020), and consequently, many do not address eligibility for services related to learning closures or disruptions during the 2020-21 or 2021-22 school years, despite the fact that students with disabilities may have faced less than optimal learning environments and limited access to related services due to school closures and reliance on distance learning, homebound learning, and independent study models. Without clear guidance on timeframes, parents and their students may be missing out on eligible compensatory services.

**Statute of Limitations.** IDEA provides a two-year statute of limitations for claims (although states may provide shorter statutes of limitations) and given that COVID school closures started in March, 2020, it is important for parents to obtain resolution of compensatory services claims before March, 2022, and to be aware of the need to pursue any outstanding claims within the time period of the statute of limitations in their state.

**Limited Data to Know Whether Students Are Obtaining Compensatory Education Services.** COPAA’s analysis was limited due to the fact that virtually no data exists as to the number of students who have been able to successfully obtain services when warranted.

**Difficulty in Finding Guidance and Support.** Our review of state department of education websites underscores the need for states need to make it easier for users to locate key resources and staff contact information as well as the need to provide information in language and format that are accessible to parents.
RECOMMENDATIONS

➤ Federal Government

- ED should urge states to review and update their guidance in light of updated September 2021 guidance and also proactively reach out to state educational agencies to ensure they are aware of and following new guidance.
- ED should provide ongoing technical assistance to states given the availability of federal education stimulus funding through the Elementary and Secondary School Relief Funding (ESSER) that is available to support the provision of compensatory services to students with disabilities, including providing training and support to school teams responsible to provide these services. (LINK TO: Sept. 2021 guidance)

➤ States and Districts

- State Departments of Education should clarify and, where necessary, correct their guidance on compensatory services to align with Federal guidance issued September 21, 2021 and ensure their local educational agencies (LEAs) receive and understand the new guidance.
- States and LEAs should reopen the compensatory services award process if needed to ensure the 2020-21 and 2021-22 school years are included in the eligible time frame.
- State and local educational agencies should proactively communicate with parents about the new guidance and continued availability of compensatory services.
- State departments of education should publicly report data on the number of compensatory service requests and awards
- School districts should require IEP teams to conduct (1) an annual review of current levels of academic achievement and functional performance; (2) a determination of what services were provided during the period since March 13, 2020 and whether they were different from what was provided in the previous IEP; (3) a determination of whether such services were effective, utilizing data collected by the parent, as
well as observations and testing results; (4) a determination of whether the student made the progress expected from the prior IEP; (5) a determination of what services, over and above what is necessary to provide a FAPE, need to be provided to place the student in the position the student would have been in had the IEP services been provided; and (6) an honest and direct discussion about how the compensatory services can be provided, in what time frame, to actually benefit the student.

➢ *Parents/Guardians/Students*

- Parents should ask their school for their policy on compensatory services related to COVID.
- Parents should request compensatory services through the child’s IEP team when warranted/as needed.
- Parents should seek remedy (e.g., due process or state complaint) if they think their request for compensatory services has not been appropriately addressed.

**NEXT STEPS**

- COPAA asks members, especially parents and guardians of students with disabilities, to participate in a brief survey to help us better understand student needs with respect to compensatory services and how your school/district/state is responding to these needs. [Click here to participate in the survey.](#)
- COPAA is also monitoring the evolution of legal cases and caselaw regarding compensatory services related to COVID.

**RESOURCES**

• COPAA Compensatory Education Dashboard, including links to each state’s department of education guidance regarding COVID compensatory services *(Oct, 2021)*
• COPAA Position Statement on Provision of Compensatory Education in Response to Lost Education as a Result of COVID-19 *(July, 2020)*
• FAQ on Compensatory Education in the Time of COVID-19 *(Aug, 2020)*

**EXEMPLAR STATE GUIDANCE**

COPAA’s review found that several states provided in-depth, accurate guidance and helpful tools to assist parents in understanding the process and obtaining warranted services. Following are examples of state guidance on key issues that we found especially informative and useful. (Keep in mind we are fully aware that there may be significant variance between what state’s guidance states and what is actually happening for students. If you find that to be the case or want to share further information please [Click here to complete a short survey](#) to comment on how these examples or your state guidance)

• **Parent Friendly** explanation of compensatory services and tools for parents
  - Louisiana
  - Washington
  - Oregon

• **Students Who Have Aged Out**: Guidance regarding services for students who may have aged out of IDEA eligibility during COVID
  - Wisconsin

• **Homeschooling and Compensatory Education Services**
  - Missouri

• **Easy to Understand, User-Friendly Information**
  - Wisconsin

• **New Needs/Services** resulting due to impact of COVID
  - Maryland
DASHBOARD

COPAA Compensatory Education Dashboard, including links to each state’s department of education guidance regarding COVID compensatory services. Visit this page to find your state information. For questions contact Chris Roe, Director of State Policy, chris@copaa.org

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