

Know Your Rights

Requesting Compensatory Education Due to COVID-19

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In the spring of 2020 Oregon students were required to move their learning from school to home because of COVID-19. Distance learning continues into the 2020-2021 school year as the primary schooling model statewide. Unfortunately, many students with disabilities have struggled to access special education services during distance learning. Others have not received necessary services as schools tried to provide distance learning. And for many, distance learning has simply not worked.

- » For additional guidance on schooling during COVID-19, see [Know Your Rights: Making Up for Lost Education during COVID-19](#).

However, even when schools are directed by state officials to send children home and educate through distance learning, you should know that schools still have to provide students with disabilities a Free Appropriate Public Education (often called a FAPE.) Parents or guardians have the legal right to ask for compensatory education if their student has not received FAPE. Compensatory education is a legal remedy for situations in which a school district has to make up for education or services that it did not provide.

Compensatory education can come in many forms. It could be the special education instruction or related services and other supports that are listed on a student's IEP – such as make up hours of counseling, speech therapy, occupational therapy or physical therapy. It could also take the form of some other service that would restore the student to the place where he or she would have been if provided with what was on the IEP.

Remember: Schools must have an “Individualized Education Program” or “IEP” for each student who is eligible for special education services. That means that even when schooling is remote or students are spending only part of the day in school because of COVID-19, an IEP must still be created and delivered (or implemented) in a way that meets a student's unique needs. The IEP is created by the IEP team. Parents are important members of the IEP team and have a right to help create their child's IEP. COVID-19 and remote learning do not change these rules.

What is compensatory education?

Compensatory education is a legal remedy that requires a school district to provide services that make up for services that it was required to provide but did not. It is a remedy that is awarded to “compensate” the student for education that the student should have received. The school district can provide these services directly or pay someone else to give them to the student.

When a school district owes compensatory education, it may not make sense to make up for what was lost by providing the exact number of hours or type of service that were listed on the IEP. Instead, the goal of compensatory education is to help the student catch up to where he or she would have been if the services on the IEP had been provided to the student. That means that it may be reasonable to provide some other sort of service or support.

When is a student entitled to compensatory education?

Compensatory education is a legal remedy that is owed whenever there is a violation of a student’s rights to FAPE because required services were not provided. That includes during periods of distance learning. When students with disabilities are entitled to compensatory education, it must be based on their individual needs and circumstances.

The Oregon Department of Education recognizes that students with disabilities may need additional “catch-up” services when they return to school buildings because of COVID-19 related disruption in education. ODE and school districts may refer to these services as “compensatory services”. Be aware that districts may reject using the term “compensatory education” to address a student’s needs for increased services due to distance learning’s impact. Some districts may even request that you sign a waiver giving up your right to request compensatory education at a later time.

PLEASE DO NOT SIGN A COMPENSATORY EDUCATION
WAIVER WITHOUT CONSULTING AN ATTORNEY.

However, if the district agrees to provide what your child needs, this distinction in terminology is probably acceptable as long as you are not required to sign anything that waives your right to future complaints or claims. The process for determining a student’s need for either compensatory education or compensatory services is the same and all student and parent rights under special education law (such as the right to object and file a complaint) continue regardless of which term is used.

Regression as a basis for compensatory education

Regression is one factor a school district and IEP team should consider in determining a student's need for compensatory education. Regression is the loss of previously attained IEP skills. Parents should share any loss of skills they see and can also ask teachers, therapists, or other providers if they have seen a loss of skills. Some other ways of seeing a loss of skills is to look at the student's progress reports, see if the student has met all of his or her IEP goals, or look at recent evaluations that may show regression. It may take schools some time after students return to school buildings to determine an individual student's level of regression. In cases where there is disagreement or it is hard to understand how much regression has occurred during the COVID crisis, it may make sense to request a new evaluation of academic or social skills.

What if the student hasn't lost skill or regressed?

Remember the goal of compensatory education is to get the student to where he or she would have been if the services had been provided. That is why the school district will look to see if there is a loss in skills. A district will probably determine that a student does not need compensatory education unless there is a showing of significant lost progress.

Ask for evaluations to help show a loss in skill or regression

If the parents and the school district are not sure if the student has lost skills or regressed, parents have the right to ask for updated evaluations of a student in all areas of suspected disability. A new evaluation may be helpful to show whether the student has lost skills. Updated psychoeducational evaluations may be warranted, as well as updated evaluations in speech, occupational therapy, and physical therapy. This can also include updated functional behavior assessments for students that have behavioral needs and supports.

In cases where the primary concern is that a student has lost academic skills such as reading or math, parents should consider requesting academic skill assessments such as the Northwest Evaluation Association's Measures of Academic Performance (often called MAP testing.)

If parents disagree with a school district's evaluation, they have the right to request an Independent Educational Evaluation ("IEE"). The school district must pay for an IEE if it agrees with the parent's request. If the district refuses a parent's request for an IEE, it must immediately file for a due process hearing and prove to an impartial hearing officer that its evaluation was appropriate, accurate, and thorough.

How much compensatory education is a student entitled to?

The compensatory education services a student may get depend on the student's individual needs. There is no clear rule, but there are two common ways for deciding the amount of services. These are the "Quantitative" and "Qualitative" methods.

- » Quantitative (One-for-One) Method: One simple way to decide how much a student should get is to look at what was written on the IEP and how much the student actually received. This is called a "one-for-one" or "quantitative" method. For example, if the student's IEP says the student should get speech therapy once a week for 30 minutes but the school district did not have a speech therapist for six weeks, this student would get six 30-minute make-up (compensatory) sessions of speech therapy.
- » Qualitative (Catch-Up) Method: For some students, a simple one-for-one make-up is not enough. Students who have regressed and lost skills because they did not get the special education instruction and related services listed on their IEP may need more education and related services than what they missed. The school district must look at what the student needs to "catch up" to where the student would have been if the student received the services in the first place. The school district should look at any regression in academic, social, behavioral, speech, fine motor, and physical skills.

Feedback from parents, teachers, therapists, or other providers can be helpful in determining extent of loss of skill. Some other ways of understanding the extent of lost skills are looking at the student's progress reports, seeing if the student has met all his or her IEP goals, or looking at recent evaluations that show regression.

Evaluation

Other things to think about:

Some factors that may support a request for compensatory education due to COVID-19 distance learning are listed below:

- » Were you offered any choice about whether your child should receive reduced services during COVID?
- » Even if you agreed to reduced services during COVID, did the school district give you choice and tell you about your rights to disagree? (Or did the district just say this is all it could do for your child?)
- » Was there an IEP meeting to talk about decreasing services?
- » Did the school district provide a Prior Written Notice telling you about the decrease in services and its reasons for why it had decided to reduce them?



- » Did you receive a new IEP?
- » Were the changes made to the education or related services based on your child’s actual needs? (Or were they presented as some sort of cut that was happening for every child with an IEP?)

If the answer to any of these questions was no, parents should talk to the school district about compensatory education.

What Steps Should Parents Take to Get Compensatory Education?

STEP 1 – CONTACT THE SCHOOL DISTRICT:

Contact the school district to ask for compensatory education. The request should be in writing such as an email, letter, or note. In that request, you should ask for a Prior Written Notice if the district refuses to provide Compensatory Education. You should keep a copy of their request and also keep a copy of what the school sends back.

STEP 2 – THE IEP MEETING:

Someone from the school district should contact you and set up an IEP meeting. At the meeting, the IEP team should talk about:

- » What instruction and related services did your child receive during distance learning? Are there documents showing the services your child received? Parent logs of services that your child received should be considered.
- » Were the services and instruction the same as what was on your child’s IEP? Did your child regress (lose) skills because of missed instruction and/or services? Was your child able to make progress on his or her IEP goals?
- » Are any new or updated evaluations needed?
- » If the school district did not provide services that were on the IEP or your child has lost skills (regressed), what services are needed to help your child get to where he or she needs to be?

STEP 3 – MAKE SURE THE DECISION IS IN WRITING:

If the IEP team, including the you, agrees that your child needs compensatory education, you should receive a document called a “Prior Written Notice” or a letter which tells the you exactly what compensatory education your child will get and when it will be provided.

If the district does not provide an explanation of what compensatory education it will provide, you should ask for this record.

What if the Parent and District Disagree about Compensatory Education?

In Oregon, if the school district does not agree to provide compensatory education, you have a right to file either of two different kinds of complaints or seek mediation to resolve your dispute.

- » The Oregon Department of Education’s website explains these options at: <https://www.oregon.gov/ode/rules-and-policies/Documents/comparisonchart.pdf>

If you choose to use any of these methods to resolve your dispute about compensatory education, you will need to explain how your child did not receive needed services and supports due to school closures and distance learning.

Here are some examples of how you might effectively explain how your child did not receive needed services:

- » My child has not received the related services they were entitled to pursuant to their IEP. (Be sure to share all the information about the services on your child’s IEP that were not given - such as the type of service, how often it was supposed to be, and what your child actually received.)
- » My child was not provided the supports and related services he or she required to make adequate progress on their IEP goals. (Be sure to talk about the goals that your child did not make progress on or did not achieve.)

You will also need to state how you want to fix or “remedy” the problem. Some examples of this are:

- » I am asking for [number] of 30-minute speech therapy sessions to make up for services my child did not get during remote learning.
- » I am asking for [number] of hours of additional instruction with a special education teacher because my child did not get schooling during distance learning from COVID-19 school closures.

Remember: Compensatory education does not have to be given during the school day, or even by school staff.



Forms of compensatory education can include:

- » Services during the regular school day,
- » After school hours,
- » Over school breaks,
- » Or with a provider who does not work directly for the school district.

Least Restrictive Environment (LRE)

School districts must provide students with disabilities their services in the least restrictive environment (“LRE”). This legal right has not changed even as schools are changing the way that education is provided to students without disabilities. When the IEP calls for the services to be integrated (given to the student alongside students without disabilities) a parent should make sure to talk with their school about how this will be done as schools reopen during the COVID pandemic and for any compensatory education.

In-Person or Remote Learning for the 2020-2021 School Year

School districts are still not required to provide in-person learning for students at this time in the 2020-2021 school year. However, ODE has strongly stated that students with disabilities should be prioritized for in-person learning if it is safe to do so.

- » A full copy of ODE’s school year 2020-2021 guidance for school districts about reopening schools here: <https://www.oregon.gov/ode/students-and-family/healthsafety/Documents/Ready%20Schools%20Safe%20Learners%202020-21%20Guidance.pdf>

All schools may reopen when the region the school is in meets state standards. However, it is still up to the school district to decide whether it can open safely. If the school district offers in person education and related services for the 2020-2021 school year and parents opt for remote learning, this could have an impact on future claims for compensatory education.



More Resources

» [DRO Know Your Rights: Making Up for Loss Education during COVID-19](#)

Contact us at: 503-243-2081 or 1-800-452-1694 or write us at Disability Rights Oregon, 511 SW 10th Avenue, Suite 200, Portland, Oregon 97205

SAMPLE LETTER REQUESTING COMPENSATORY EDUCATION

Date:

Name of School District Special Education Director

Name of School District

Address of School

E-Mail or Fax Number of School District Special Education Director

Dear (School District Special Education Director Name):

I am the parent of (Child's Name), date of birth (XX/XX/XXXX) and who is a student in the (X) grade at (Name of School) school.

My child was not able to access their special education instruction and related services as a result of the COVID-19 school closure due to the nature of his/her disability.

I am requesting an IEP meeting to discuss compensatory education services for my child. I can be reached at the above numbers to discuss this matter further. I look forward to working with the school district to discuss my child's needs further.

Sincerely,

(Your Name)

Parent Name

Address

Phone Number

E-Mail Address

cc: (List of other people to whom you are sending this letter)

