

## Interruptions in Service

Although minor interruptions in service will not necessarily be deemed a denial of a free, appropriate, public, education (FAPE)<sup>1</sup>, to the greatest extent possible, districts must implement the individualized education program (IEP) as written. When a student's IEP is not implemented as written, the IEP Team should consider the reason for the service interruption, and whether the interruption impacted the student's ability to make progress toward IEP goals to the extent that the student was denied educational benefit<sup>2</sup>. Such interruptions may be considered a failure to provide the student with a FAPE.<sup>3</sup>

When a local agency's failure to provide appropriate services results in a denial of FAPE, a legal remedy includes providing the student with compensatory education services.<sup>4</sup> Compensatory education services are intended to provide such services necessary to bring the child to the place they would have been absent the denial of appropriate services.

### Guidance<sup>5</sup> from the U.S. Department of Education provides:

- “Generally, the decision to provide “make up” or compensatory education when there is a disruption in the provision of educational services, and the nature and amount of the special education and related services that are to be provided as compensatory education, is an individualized determination made by the IEP Team in accordance with the requirements in 34 CFR §§300.320-300.324.”
  - “The IEP Team must determine whether the child was denied educational benefit because of the disruption in educational services and whether compensatory education is needed to “make up” for the denial including addressing any skills that may have been lost.”

### General Considerations

#### Document any interruptions or variation to IEP requirements.

- Adequate documentation of any deviation from delivering the explicit IEP services and supports identified in the IEP must be recorded in writing and communicated to the IEP Team, including the parents.
- When a student's services have been interrupted, written documentation describing the reason for the interruption is necessary, in part, for determining whether the student may require compensatory education services. These determinations must be made by the IEP Team on a case-by-case basis.

#### The IEP Team should convene when:

- there are patterns of service interruptions;
- there are exceptional children teacher or related service provider vacancies, extended absences, or inconsistent availability; and/or
- the student is not making progress toward IEP goals.

#### Daily/Weekly Service Frequencies may:

- mitigate need for compensatory education services given how often services are delivered; and
- provide opportunities for students to regroup quickly from occasional interruptions to service.

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<sup>1</sup> *Andrew F. v. Douglas County School District Re-1*, 137 S. Ct. 988 (March 22, 2017).

<sup>2</sup> *Id.* The Court held that to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

<sup>3</sup> *Sumter County School District v. J.H.*, 642 F.3d 478, U.S. Court of Appeals, Fourth Circuit (April 27, 2011)

<sup>4</sup> 34 CFR 300.151(b) Remedies for denial of appropriate services.

<sup>5</sup> Letter to Pergament, Office of Special Education and Rehabilitative Services (OSERS, December 20, 2013)

## Monthly Service Frequencies may:

- require compensatory education given the amount of time that lapses between services; and
- require immediate intervention by the IEP Team if patterns of interrupted service occur and progress toward IEP goals is adversely impacted.

## Examples of Service Interruptions

The chart below contains examples of service interruptions, actions required, and important points to consider. These examples are based on specific factual circumstances, and in consideration of federal guidance presented in opinion letters. These examples may not reflect all appropriate required actions and considerations; therefore, determinations of what action may be required (e.g., compensatory education services), must be made by an IEP Team on a case-by-case basis, based on a totality of the circumstances, including the reason for the service interruption.

| <b>Event</b>   | <b>Action Required</b>   |
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| <b>Occasional Student Absences</b><br>Student absent due to illness or due to parent-initiated activities.   | No compensatory education required for occasional student absences if services were made available.  |
| <b>Chronic Student Absences</b><br>e.g., Absences or tardies that continually interrupt service delivery, are consecutive in nature, and often unexcused, or rise to the level of truancy. | Generally, if the school district makes IEP services available to the student at the normally scheduled time, the school district is not obligated to make other arrangements to provide services if the student is absent from school.<br><br>However, patterns of chronic absenteeism often represent a change in the student’s progress and may require the IEP Team to meet to review and revise services.   |
| <b>Student not available due to participation in school sponsored event</b><br>e.g., assembly, field trip, field day, or other school related activities.                                  | Compensatory education <i>may be required</i> if:<br>- chronic interruptions in service cause a denial of FAPE; or<br>- a combination of events lead to chronic interruptions.<br><br>If patterns emerge, it is recommended that the IEP Team convene to determine whether specific actions (revise/revise the IEP, compensatory education, etc.) are required.  |
| <b>Student not available for services</b> due to participation in state mandated assessments.  | No compensatory education required for missed services due to student’s participation in State mandated testing. <sup>6</sup> “The student has a right to participate in State mandated assessments as part of the IEP.”<br><br><i>Note: This event is specific to the student’s participation in state mandated assessments and not because the school is conducting assessments and the EC Teacher or Related Service Provider is unavailable because of test administration duties.</i> |

<sup>6</sup> Letter to Kane (OSEP 2018)



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| <p><b>School Closed</b><br/>No students in attendance, e.g., ordinary inclement weather, school breaks, holidays.</p>   | <p>Generally, no compensatory education required. The public school unit is not required to provide EC services when all students are not provided instruction, i.e., school is closed.</p>   |
| <p><b>Occasional School Personnel Absences</b><br/><br/>Related Service Provider or EC Teacher is absent without qualified substitute, e.g., school personnel, or related services provider absent due to illness, attending IEP meeting, professional conference, etc.</p> | <p>Compensatory education <i>may be required</i> if:<br/>- chronic interruptions in service cause a denial of FAPE; or<br/>- a combination of events/absences of school personnel lead to chronic interruptions.</p> <p>If patterns emerge, it is recommended that the IEP Team convene to determine whether specific actions (revise/revise the IEP, compensatory education, etc.) are required.</p>   |
| <p><b>School Personnel Vacancies</b></p>  | <p>Compensatory Services must be considered. Parents must be notified when vacancies impacting the delivery of services occur. Progress monitoring of the impacted IEP goals should occur at the beginning of the vacancy, throughout the vacancy and once the vacancy has been filled. These data will form the basis of the IEP Team decision regarding whether compensatory education must be provided.</p> <p><i>Note: If staff or provider shortages are resulting in inconsistent service delivery, a PSU should develop alternative means (emergency contracting, redistributing personnel assignments, etc.) to mitigate the potential scope of compensatory services rather than accruing extended periods without service delivery without intervention by the PSU.</i></p> |
| <p><b>Combination of Events</b><br/>e.g., Student absences, participation in school sponsored events, school personnel absences</p>   | <p>Compensatory education <i>may be required</i> if:<br/>- chronic interruptions in service cause a denial of FAPE; or<br/>- a combination of events/absences of school personnel lead to chronic interruptions.</p> <p>If patterns emerge, it is recommended that the IEP Team convene to determine whether specific actions (revise/revise, compensatory education, etc.) are required.</p>   |