



Technical Assistance Bulletin

19-03

August 2019



Division of Early Intervention and Special Education Services

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Missed IEP Services

Part B of the Individuals with Disabilities Education Act (IDEA) requires local school systems and public agencies (LSS/PAs) to ensure that a free appropriate public education (FAPE) is provided to all children with disabilities within the school district or agency. In order to make FAPE available, each student’s Individualized Education Program (IEP) must be developed and implemented in accordance with the requirements of IDEA, including 20 U.S.C. 1414(d), 20 U.S.C. 1401(9), 34 C.F.R. §300.324, and COMAR 13A.05.01.07 through .10. All IEPs must include, among other components, a statement of the specific special education and related services to be provided to the student, the projected dates for initiation of services, and the anticipated frequency, location, and duration of the services. In general, LSS/PAs are required to provide services as they are indicated on an IEP (34 C.F.R §320(a)(4) and (7), COMAR 13A.05.01.09).

The intent of this Technical Assistance Bulletin (TAB) is to provide guidance on the decision-making for missed IEP services. The IDEA regulations do not specifically address the issue of missed special education and related services. So, local school systems/public agencies must consider the impact of a missed service, irrespective of the reason for missing the service, on the student’s progress and performance. They must also determine how to ensure the continued provision of FAPE in order for the student to continue making progress and ultimately meet the annual goals of the IEP. Therefore, decisions regarding whether missed IEP services are considered a denial of FAPE and should be made up must be on a case-by-case basis. And, because decisions should be made on a case-by-case basis, LSS/PAs should not establish a specific number of sessions that constitute a denial of FAPE. That said, in offering compensatory services, IEP teams should not offer a number of hours or sessions that are less than what the student has missed. To do so would be inconsistent with offering make-up services that are in conformity with the IEP.

Below are questions related to missed services that are often asked by LSS/PAs. This is not an exhaustive list of possible scenarios. The answers are generalities and are supported by Office of Special Education Programs (OSEP) letters as indicated at the end of the answer. Again, each

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student's IEP team must consider the impact of the missed sessions on the student's progress and performance and determine whether the interruption of services constitutes a denial of FAPE. And, IEP team considerations regarding make up or compensatory services should be included in the Prior Written Notice provided to families.

FREQUENTLY ASKED QUESTIONS

1. Do special education or related services missed due to student illness or family-initiated absence from school constitute a denial of FAPE?

In these situations, the general rule is that if the school district makes IEP services available to the student at a normally scheduled time, the school district is not obligated to make other arrangements to provide services if the student with a disability is absent from school at that time for reasons other than his or her participation in school-sponsored activities. However, if a student is absent from school for a prolonged period of time, or there is a pattern of repeated short-term absences from school, for reasons associated with the student's disability, it is appropriate for school officials to conduct an IEP meeting to review the current IEP to determine if it is necessary to modify the current program or placement (OSEP Letter to Balkman, 1995; OSEP Letter to Clarke, 2007).

2. Do special education or related services missed due to a field trip or other related school activity (e.g., assembly) constitute a denial of FAPE?

In those instances where a student with a disability does not attend school in order to participate in school-related activities such as field trips, the LSS/PA generally will be responsible for making alternative arrangements for providing IEP services. If participation in the school activity is required, the school district must arrange to provide the services specified in the student's IEP so that the student can receive the IEP services and participate in other required school activities. Similarly, the provision of special education services should not operate to preclude the student with a disability from participating in optional, school-related programs or activities in which nondisabled students regularly take part (OSEP Letter to Balkman, 1995).

3. Do special education or related services missed due to school staff attending professional development or other school-related activities constitute a denial of FAPE?

If the unavailability of school personnel means that IEP services are not made available at the student's regularly scheduled time, the LSS/PA would be required to make other arrangements to provide the services at that time or reschedule the required IEP services in order to meet its responsibility of providing FAPE to that student in accordance with his or her IEP (OSEP Letter to Balkman, 1995).

4. Do special education or related services missed due to participation in required scheduled assessments constitute a denial of FAPE?

All children with disabilities must be included in all general State and districtwide assessment programs, including assessments, with appropriate accommodations, and alternate assessments where necessary and as indicated on students' IEPs. Participation in assessments is addressed in the IEP, including whether any individual appropriate accommodations are necessary to measure the academic achievement and functional performance of the child and whether the child must take an alternate assessment.

Generally, a special education or related service missed due to participation in required scheduled assessments would not constitute a denial of FAPE and the LEA would not be required to make up the missed service. For a child who is absent from school on testing days due to a "parent's choice," the LSS/PA would not be obligated to make other arrangements to make up the missed services (OSEP Letter to Kane, 2018).

That said, IEP teams must consider the missed services resulting from assessments in the greater context of all missed services. More specifically, teams must consider the impact of all missed services on the student's progress and performance.

5. What should be done when a student refuses to participate in his IEP services or accept his IEP accommodations?

A student may reject IEP services or accommodations. In such case, the IEP team should convene and reevaluate the student based on the rejection and in some cases, revise the IEP. The refusals should be addressed to see if they impact the student's educational goals. (Rockbridge County, (VA) Sch. Div., 57 IDELR 144 (OCRXI D.C. (VA) 2011)).

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