

**Technical Assistant Bulletin** (original release date August 2019)

**Missed IEP Services**

**Compensatory Services Guidance**

**September 2019**

**Overall Emphasis and Purpose:**

The Individuals with Disabilities Education Act (IDEA) requires school systems to ensure that a free appropriate public education (FAPE) is provided to all eligible student receiving special education services. At times, and for a variety of reasons, students miss services that are required by their Individualized Education Programs (IEPs). Missed services may result in a denial of FAPE and impact a student’s progress. Decisions regarding the reasons for and impact of missed services are made on a case by case basis.

Services missed for the following reason do not need to be made up:

- Due to student illnesses or family choice do not need to be made up. However, if there is a chronic attendance concern, an IEP team meeting should be convened.
- When the student is participating in state and district assessments.

Services missed for the following reasons must be made up:

- Due to unavailability of school staff, whether it is for illness, scheduling, professional development, or any other staff related issue must be made up;
- Services missed for assemblies or field trips.
- An IEP team meeting must be convened if a student refuses services or accommodations.

**What this means for you as a Special Educator/Service Provider:**

- Every service missed due to staff unavailability, whether it is due to illness, staff meeting, IEP team meeting, or professional development *must be made up*.
- Staff must attempt to make up missed services as quickly as possible, but in no case beyond the end of the quarter.
- IEP teams will be required to consider whether compensatory services are due based on the impact of missed services to the student. (See Fact Sheet 3 for guidance on Compensatory Services). The decision is made on a case by case basis, and not a formula for how many services can be missed before there is impact from the lapse.
- If compensatory services are appropriate due to the impact of missed services on the student’s progress, the same amount of services, sessions, or hours missed should be provided.
- If *compensatory services* are required, they cannot be provided during the school day.
- Missed services that can be made up prior to the end of the quarter can be provided during the school day.
- Documentation must be kept, and reviewed with the team periodically, on all special education and related services that a student is provided and those that are missed.

**What the Special Educator/Service Provider needs to do if not already doing:**

- Make every attempt to make up services missed due to provider unavailability prior to the next progress reporting cycle.
- If the service provider is unable to make up services within a reasonable amount of time (within the same quarter), the IEP team will need to convene to determine the impact of the missed services and the amount of compensatory services that are due to the student.
- If the IEP team determines that there is an impact from the missed services that were unable to be made up in a timely manner, the team *“should not offer a number of hours or sessions that are less than what the student missed.”*
- If the IEP team determines that there is no impact from the missed services, the team should consider whether continuation of the services are required as a part of the provision of FAPE.
- If a student repeatedly misses services due to student refusal, the IEP team should convene as quickly as possible and consider whether these services continue to be appropriate for the student to receive a FAPE. If they are considered necessary, the team should develop a plan to ensure the student receives the services on the IEP. Retain documentation for all services a student has received.

## Compensatory Services Guidance:

Compensatory services are considered whenever there is a significant lapse in implementation of services that are on, or should have been on, the student's existing Individualized Education Program (IEP). Compensatory services are an "equitable" remedy and are not part of a state or federal regulation but have been court ordered as a result of procedural and/or substantive violations of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). The intention of providing compensatory services is to get the student back to the place they would have been absent the violation or lapse in services. There is not a requirement that compensatory services be provided on a 1:1 basis, but rather, "are any services that are determined by an IEP team to be appropriate based on an analysis of progress." Compensatory services may be any remedy agreed to by the parents, including monetary reimbursement, private tutoring, or services from AACPS staff outside of the school day. Compensatory services cannot be provided during the school day and must take place either before or after school, during the summer, or at some other time agreeable to the parent.

### What this means for you as a Special Educator/Service Provider

- If you determine there has been a lapse in implementation of services on an IEP, either due to timeline delays or staffing issues during a time period when the student was present, schedule an IEP team meeting to consider compensatory services.
- You will need data to help the team determine whether compensatory services are warranted. If so, identify what those services will be.
- Obtain data showing progress on goals both before the lapse, during the lapse, and after the lapse.
- Obtain information from the student's teachers and service providers, including observations, grades, and work samples (as appropriate), for the IEP team to consider in determining whether compensatory services are warranted, and if so, what they should be.
- Document the team's discussion and decision in the IEP Team Report/ Prior Written Notice.
- **Do not change the student's IEP. Compensatory services are provided outside of the school day and are not included on the IEP.**

### What the Special Educator/Service Provider needs to do if not already doing:

- Be proactive about scheduling IEP team meetings to consider compensatory services if there has been a lapse in appropriate services.
- Obtain and review data prior to the IEP team meeting.
- Organize or graph progress data before, during, and after the lapse to make it easier for the team to review.
- If compensatory services are found to be appropriate and the team makes a decision about what they should be, follow up by helping to locate a service provider and by collaborating with the provider and parent or guardian.
- Clearly document the discussion and decision on the IEP Team Report/Prior Written Notice, including a description of the services, the duration of the services, and what will happen during the services (i.e. work on math goals, work on articulation).

