



We have the legal right of way.

COMPENSATORY EDUCATION AND ESY DISCUSSIONS AFTER COVID-19: Fact Sheet

One of the most important things you can be doing for your child's education is preparing for your child's eventual return to a more typical school environment. An important part of this is making sure you and the school have a plan for how distance learning will be implemented during the closure. You also need to be ready to request compensatory education services and Extended School Year (ESY) services. You and your school district should recognize that despite everyone's best efforts, the services your child receives during this closure will not be as robust as what your child receives in the school building. **Because your child will not automatically be entitled to receive these services, it will be up to you to collect the data to justify the request.**

General Standards

Compensatory education is a legal remedy that is used to make up for services that should have been provided to a student but were not. Typically, this means services that were on the IEP but not provided. It can also be awarded for services that should have been on the IEP and were not. The purpose of compensatory education services is to put the child in the position the child would be in had the district provided the appropriate services in the first place.

Extended School Year (ESY) refers to services that are provided when a child needs additional services to receive a FAPE. In Ohio, the team often looks at the regression-recoupment standard. Under this analysis, a student is eligible for ESY services when the child demonstrates significant regression of skills over long breaks (such as over the summer) and cannot recoup those skills in a reasonable amount of time. ESY can be necessary to keep your child learning, including when your child is working on "emerging skills" or "breakthrough opportunities," such as when your child is learning to read. The Team is required to determine if your child requires ESY for FAPE generally.

Delivery of Compensatory Education and ESY Services. Both compensatory education services and ESY services are required to be individualized to your child's needs. The school district cannot make one-size-fits-all determinations as to compensatory education and/or ESY. Also, while these services are most



often delivered during the summer, this is not a requirement, and in many cases, there are good reasons to offer the services during the school year.

COVID-19 Guidance Regarding Compensatory Education and ESY

The legal standards for compensatory education and ESY remain in effect during the COVID crisis. The U.S. Department of Education has issued guidance to school districts to make **individualized determinations** as to whether students with disabilities are owed compensatory education because of changes or interruptions to services due to COVID-19.

Similarly, the Ohio Department of Education has directed that ESY determinations be made on a case-by-case basis based on established ESY standards.

This means that your child will not automatically be awarded compensatory education or ESY after school resumes, and the services provided may not be hour-for-hour based on what is missed. This requires that you collect information and document the need for either service.

How to prepare for the conversation

Make sure a plan is in place for remote learning.

- **Meet with your child's IEP or 504 team to create a distance learning plan.** The plan should include the details of how instruction will be delivered during the pandemic and should account for your family's ability to access internet and other technology barriers.
- **Create a specific plan and include data tracking.** Data tracking should be spelled out as much as possible and should clearly define your role in collecting information about your child's performance as well as those of other team members.
- **Ask the school for frequent progress reporting.** You should be getting regular updates so that you know if your child is benefitting from the services and if changes need to be made to the plan.
- **There should be on-going communication about your child's performance.** Come up with a plan for regular communication that works for you. Phone calls and video conferencing are great, but do your best to maintain good documentation of these calls and conferences. The documentation should include who was on the conversation and what was discussed.
- **Make sure the plan includes related services.** If your child receives related services (e.g. physical, occupational, or speech therapy), the distance learning plan should specify how and when they will be delivered during the closure.
- **Do NOT agree to changes to your child's IEP to reflect the school's COVID-19 limitations.** Your child's IEP should not be amended to reflect the reduced services your child may be receiving during the school closure. The IEP reflects your child's individual requirements for FAPE which did not change

just because the school can no longer give in-person instruction. Agreeing to reductions in services could limit the amount of compensatory services your child receives.

Collect your own data

- **Track performance on IEP goals and objectives, if possible.** IEP goals should be written objectively and in measurable terms. This means that you should be able to set up trials of your child’s IEP goals at home. If this is not possible, your child’s goals may not be written properly. There are some goals that you may not be able to measure at home (such as goals that relate to social interactions with peers). Here is an example of tracking:

Goals	Trial 1 – March 15th	Trial 2 – March 31st	Trial 3 – April 15th	Goal met?
1. Reading comprehension - Student will correctly identify the main idea of a passage written at the 5th grade level in four out of five trials by the end of the IEP.	Student correctly identified the main idea in 3 of 5 trials	Student correctly identified the main idea in 1 of 5 trials	Student correctly identified the main idea in 0 of 5 trials	No

- **Take videos (on cell phone) of your child.** This is the most convenient way you can establish a record of your child’s progress that can be used in discussions. Set up trials of IEP goals and record your child’s performance. This can help establish whether your child has regressed on critical skills.
- **Create simple checklists to track information.** In addition to videos, create simple checklists to track your child’s progress on academics, behavior, and work completion.

School Work Log - May 19	
Johnny woke up on time for school work according to schedule.	✓
Johnny successfully participated in general education video conference from 9:00-11:00	✓
Johnny successfully completed assigned worksheets, taking appropriate breaks.	✗

- **Keep track of what the school offers to your child.** In addition to tracking your child’s progress, you also need to keep track of when the school actually provides services to your child. You should keep a record of all instruction

sessions, assignments, etc. This will be very important when you are having a discussion about services your child missed because the school district's records may not reflect what actually occurred. Here is an example of a system you might use:

Service	Provider	Date	Time	Minutes Provided
OT (via Zoom)	Mrs. Smith (OT Therapist)	May 1	10:00-10:30	30
Reading Intervention (goal 2 of IEP)	Mr. Brown (Intervention Specialist)	May 2	11:00-12:00	60

- **Track how much time child is working.** You and the team need to have an idea of the time your child is spending on schoolwork. If your child is not paying attention or refusing to do the work provided, you should keep track of that too.
- **If appropriate, keep data on your child's behavior.** If your child has behavioral needs that impact his or her education, keep track of the behavior as best you can. This can include documenting the behavior itself, what you do to address the behavior, and your child's response to your intervention. Your ability to track behavior related to peer interactions will naturally be limited, so keep the data as best you can.
- **Keep an organized notebook of information and observations.** Come up with a system of keeping all your documentation together. The data you collect is the best possible evidence for getting services down the road. This is good practice not only during the COVID-19 school closure, but all the time.

Reach out to other providers

- **Ask outside providers for feedback about your remote plan.** Your child's community providers are often great allies in conversations about your child's educational needs. If you are able, get feedback from these providers on the remote learning plan. Make sure the providers are making recommendations using the proper educational standards. For example, "The student requires this service in order to receive an appropriate education because..." is a much stronger recommendation than "The student would benefit from this service."
- **Ask outside providers for recommendations about how to make up services.** Once the need for compensatory education or ESY is established, ask the provider for recommendations as to how the services should be delivered.

Look at child's history of service provision

- **Does the child have a history of receiving ESY?** If your child has received ESY services before, this is typically the best evidence that your child would likely need these services again.
- **Is there a historical tendency to lose skills?** Whether or not your child has received ESY in the past, check to see if your child has a tendency to regress on skills over long breaks. This is likely to be exacerbated during the long COVID-19 closure and will strengthen your argument for ESY services.

Contact an advocate if you need help

The information provided in this fact sheet will help you be in the best position to advocate for your child's needs for compensatory education or ESY. You should follow as many of these steps as you can. But if you need more help than this fact sheet provides, please contact DRO or an advocate of your choice.