



## **NDSC Policy Brief on Compensatory Education for Students with Disabilities**

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### **What is Compensatory Education?**

Compensatory education is special education instruction and/or related services (e.g. speech, occupational and physical therapies) owed to students with disabilities as a result of a school district's failure to provide them with services in accordance with their Individualized Education Program (IEP).

A student may be entitled to compensatory education any time the school district fails to provide them with services. Often it is because the school district was at fault in some way. However, the fact that the district was not responsible for the pandemic does not mean the student loses the right to compensatory services. Below are two examples of when a student may be entitled to compensatory services:

- Student was unable to access distance learning without in-person support and was unable to participate in classroom activities, work assignments, or related services until school buildings reopened.
- Student's IEP includes 30 minutes of speech or other therapy a week, but student did not receive this service during the pandemic school closures.

### **What has the U.S. Department of Education (ED) said about Compensatory Education Services?**

In September 2021, ED released a *Return to School Roadmap* (<https://sites.ed.gov/idea/files/rts-iep-09-30-2021.pdf>). In this document, ED emphasized that even when states and districts have worked hard to meet children's needs during the pandemic, families and students retained their rights to receive appropriate services under IDEA. A section on considering the need for compensatory services starts on page 24. The document provides answers to commonly asked questions about how to determine whether these services are needed on an individualized basis.

In response to ED's *Roadmap*, the Council of Administrators of Special Education (CASE), which represents local special education directors, sent a letter to ED claiming it was up to a hearing officer, or court, or the result of filing a State complaint, to determine when compensatory services are necessary. The U.S. Office of Special Education and Rehabilitative Services (OSERS) sent CASE a response in January 2022 disagreeing with this interpretation and reinforcing that it is an IEP team decision <https://sites.ed.gov/idea/idea-files/policy-letter-january-10-2022-to-wolfram-and-mandlawitz>.

In April 2022, the U.S. Office of Civil Rights (OCR) resolved an investigation of the Los Angeles Unified School District to ensure that students with disabilities receive educational services, including compensatory services, during and resulting from the COVID-19 pandemic. This OCR press release summarizes the settlement: <https://www.ed.gov/news/press-releases/office-civil-rights-reaches-resolution-agreement-nations-second-largest-school-district-los-angeles-unified-meet-needs-students-disabilities-during-covid-19-pandemic>. A very

important point made in the settlement is that the district incorrectly informed staff that it was not responsible for providing compensatory education to students with disabilities who did not receive FAPE during the COVID-19 school closure period because the district was not at fault for the closure. This is a common and inaccurate claim that families may hear in other parts of the country.

### **Additional Resources Regarding Compensatory Education Services**

A *U.S. News and World Report* article describes how to get compensatory education services for your child <https://www.usnews.com/education/k12/articles/how-to-get-compensatory-education-for-your-child>.

The Council of Parent Attorneys and Advocates (COPAA) provides a review of state guidance and resources for parents (released in October 2021) [https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/2021\\_docs/compervicesreview\\_final\\_10-.pdf](https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/2021_docs/compervicesreview_final_10-.pdf). There is also a state dashboard with links to information in your state: <https://www.copaa.org/general/custom.asp?page=CompEdStateDash>. COPAA also published the results of a parent survey on compensatory education with recommendations at <https://www.copaa.org/page/CompServ>.

The Disability Rights Education and Defense Fund (DREDF), which is located in California, published a sample letter parents can use to request compensatory education services. There is a reference to a California statute in the letter that can be removed for those from other states. <https://dredf.org/special-education/sample-letters/sample-letter-asking-for-compensatory-education/>.

### **Where to Get Help**

- Find your local Parent Training and Information Center <https://www.parentcenterhub.org/find-your-center/>
- Find your state disability rights organization (protection and advocacy organization) <https://www.ndrn.org/about/ndrn-member-agencies/>
- Find a local attorney or advocate <https://www.copaa.org/search/custom.asp?id=1489>

### **National Down Syndrome Congress**

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