

Learning Loss and Compensatory Education Due to Covid-19

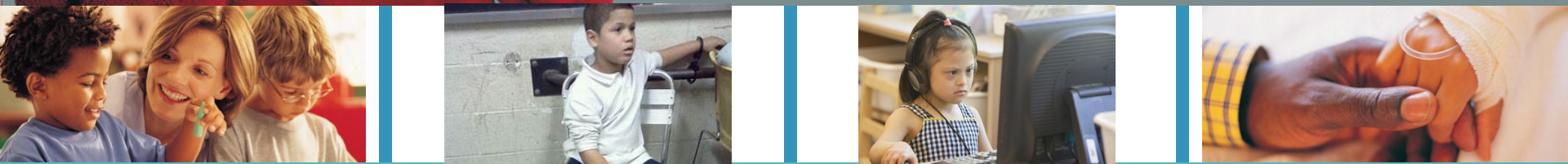
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Creating Opportunities Protecting Rights Changing Lives

The Council of Parent
Attorneys and Advocates



COPAA

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Protecting the Civil Rights of Students

WITH DISABILITIES AND THEIR FAMILIES SINCE 1998

Nationwide Peer-to-Peer Network

Empowering Parents, Practitioners

Impact Litigation, Amicus Curiae Briefs



COPAA's Guiding Principles in Response to the Covid-19 Pandemic

- Children with disabilities and their parents have rights under the Individuals with Disabilities Education Act (IDEA). Now more than ever, COPAA supports families in their efforts to ensure that their rights are being enforced and their educational needs are being met.

COPAA's Guiding Principles in Response to the Covid-19 Pandemic

1. IDEA Rights Remain—No Waivers during Covid-19
2. Individualization—Schools still must support your child's specific and unique needs.
3. Partnership—Parents are crucial members of their children's IEP teams, and you can bring valuable information to the IEP table, especially during the pandemic.
4. Measurement—Helping track your child's **progress** or **loss** is more important now than ever.

Covid has presented unprecedented challenges for schools and families



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And yet...

- Obligations under the law have NOT changed.
- The U.S. Department of Education has made clear that during Covid, schools “remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities.”

See the Office of Special Education Programs, “OSEP QA 20-21,” Sept. 2020

Now is the time to fully embrace the IDEA's **required partnership** between schools and families to innovate, individualize and advocate for more resources to allow services to continue and **to meet student needs**



What Does FAPE (Free Appropriate Public Education) Mean?

- FAPE is the central guarantee of the Individuals with Disabilities Education Act (IDEA).
- FAPE is the provision of special education and related services at public expense, provided through an individualized education program (IEP) for a child with a disability.
- Special education is “specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a verified disability...”

34 C.F.R. § 300.17; 34 C.F.R. § 300.39(a)(1)).

Students are entitled to FAPE

Schools must continue, working under the constraints of the pandemic circumstances, to ensure that students with disabilities are provided with a free and appropriate public education (FAPE) that includes challenging and ambitious goals commensurate with a student's abilities.

"The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."

~ Justice Roberts

To be clear, this applies to the child's abilities and potential - not to the closure of schools.



Endrew F. , 2017 United States Supreme Court case

- Schools must be able “to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.”
- School authorities have an obligation to inform themselves about the child’s potential for growth. In these times that starts with understanding where they are now.

Endrew F. v. Douglas County Sch. Dist, 580 U.S. ___, (2017).



Key Term in Special Education Advocacy: Appropriate Progress

- Your child with a disability has the right to an IEP that provides a means for them to make **progress that is appropriate** for them.

Appropriate Progress

- As you advocate for your child, remember the following:
 - The standard isn't whether your child has received "some educational benefit" during the last year.
 - The standard isn't whether "all students" have struggled to learn or have lost skills during Covid.
 - The standard isn't to "wait and see" how your child is doing in the fall or when things are "back to normal."

So, what *should* your child's IEP team be doing?

- Instead, the job of your child's IEP team is to determine
 - how much and what kind of progress is appropriate for your child given their unique circumstances,
 - what academic and functional goals are appropriate for your child, and
 - what programming and supports the school must provide your child in order for them to make appropriate progress and meet those goals.

What can you do to help make sure that all of this happens?

- We all know that special education advocacy can be challenging, and the challenges may have only increased due to Covid and school shut-downs, remote learning, and/or periods of quarantine or illness.
- There is one piece of the process that is absolutely critical...

The Key to Determining Educational Progress or Loss

DATA

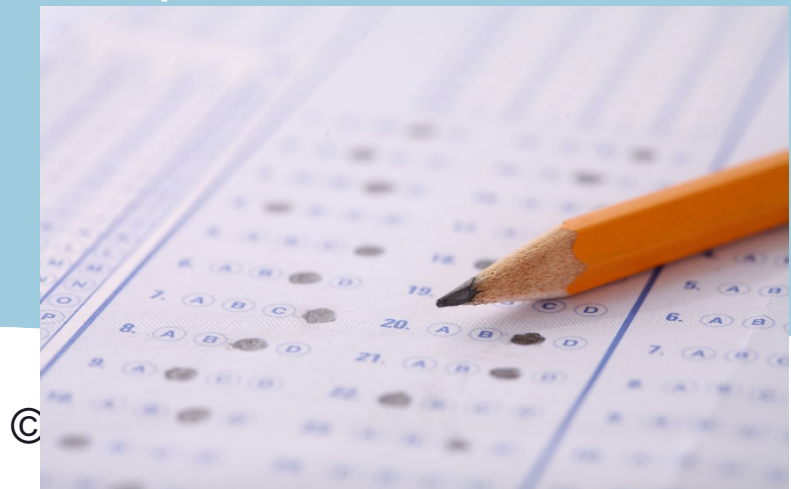


Data is the starting point.

- Whether your child has been attending school in person, remotely, or a combination of the two, always strive to come to the IEP table with data.
- Gather as much information as you can to show the rest of the IEP team how your child has been doing throughout the pandemic period.
- Remember, for the team to set appropriate goals for a child and decide how to get them there, the team first needs to know where the child is *now*.

Consider your child's academic needs

- Consider how your child is doing with specific academic skills, such as math, reading, or test-taking, etc.
- Think about whether your child has regressed (lost skills) *OR* has been unable to make appropriate progress during the pandemic period.



What do you do when your child needs more academic supports due to the pandemic upheaval?

- How can you document those academic skill challenges to share them with the rest of team?



Gather current academic work samples

- If your child is submitting work online, capture a few screenshots of the assignments your child has done during remote learning.
- If you have similar samples of work in the same skill areas from last spring—before the school closure period—gather those as well for comparison purposes.



Document academic difficulties

- Is your child struggling with reading? If you're concerned about regression, you might use your phone to take a video of him or her reading aloud.
- Consider asking your child's case manager if the school can conduct a reading evaluation remotely. This may provide some useful information about your child's current academic performance.

Consider your child's behavioral needs

- Consider what behavioral needs your child has shown during the past year, particularly during remote and/or hybrid learning.
- Consider whether your child is showing avoidance behaviors, becoming exceedingly frustrated, or is having particular difficulty concentrating, for example. Also think about any times when your child may have demonstrated self-injurious behaviors.

Document Behavioral Challenges

- If possible, make notes about how often these challenges last, and when they occur (during reading class, for example). Include dates.
- If your child has not been in school in person this year, you may be the primary source of data when it comes to your child's disability-related behavioral needs.

Children with disabilities have a right to positive behavioral interventions and supports

- The IDEA requires that each child's IEP team consider and, as appropriate, develop “positive behavioral interventions and supports” to help ensure that a child with a disability can learn in his or her educational environment. This is of particular importance for a child “whose behavior impedes the child's learning or that of others.”

How to make use of data to advocate for your child with a disability

- Data will help your child's IEP team complete the "Present Levels of Academic Achievement and Functional Performance" section of the IEP.
- Be sure that the Present Levels section has been updated to reflect how your child is doing *now*, in light of Covid and remote and/or hybrid learning.
- Having specific data and documentation to share with the team will be helpful with this step.
- Are your child's difficulties connected to their disability? If so, be prepared to discuss that with the IEP team.

Communication with the IEP TEAM

1. Communication Logs are a Must

Establish a daily or weekly home and school communication log - electronic student portal or paper.

2. Parent Meetings are Essential

Set up regular parent meetings monthly or quarterly depending child's level of need with your IEP team.

3. Be Prepared

Effectively communicating with your IEP team also means that you should be prepared to participate in the discussion about your child's progress and/or evaluations.

4. Formally Request Methods of Communication on IEP

Be sure to always formally request any methods of communication at an IEP meeting to be included on the IEP. Remember if it is not included on the IEP then it is likely not to happen.

5. Never Hesitate

If you have a concern, question, or simply something to share with your school team about your child do not hesitate to contact them. It is critical to your child's education that you establish an open line of communication.

Compensatory Education



Equity and the IDEA

- Federal courts have made clear that when a child has not received a free appropriate public education, that child may be entitled to an *equitable remedy* as a result.
- That remedy is often in the form of **compensatory education, or “compensatory services.”**
- Compensatory services may be appropriate when a child with a disability has suffered an educational loss or deficit when that child has not been provided a free appropriate public education (FAPE).

Definition

- Compensatory education is an equitable remedy to remediate the loss of a FAPE for a period of time. It aims to provide “services prospectively to compensate for a past deficient program.”

Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1280 (11th Cir. 2008).

Comp Ed Design

Compensatory education is designed to put a student **in the place he/she would have been** had the student not been deprived of special education and related services. The content of a program of compensatory education needs to be based on a student's individual level of performance.



Reid Standard

Such awards “should place children in the position they would have been in but for the violation of the Act.”

Reid v. District of Columbia, 401 F.3d 516, 518 (D.C. Cir. 2005).

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No-Fault

An award of compensatory education **does not** require a finding of negligence or fault on the part of a school district. Instead, compensatory education merely remedies a loss of special education services without regard to the cause of that loss.

Threshold



Services Listed in IEP
Were Not Delivered;



Student Failed to Make
Progress Contemplated
in IEP;



Failure to Make
Progress Attributable to
Loss of Services.

VDOE Guidance

https://www.doe.virginia.gov/support/health_medical/office/covid-19-sess-faq.shtml#comp

- Compensatory Education, Recovery Services, and Extended School Year Services
- The term compensatory services is generally attached to the provision of additional special education and related services due to the failure of a school division to provide FAPE. The IEP Team should determine what impact the extended school closure due to the COVID-19 situation had on the ability of the school division to provide even comparable services to its students with disabilities and then to determine what, if any, recovery services should be provided based upon individual student needs. For more information please review the document titled [VDOE Considerations for COVID Recovery Services for Students with Disabilities](#) (Word).

Does your child need compensatory services due to Covid?

- Has your child been **unable to make appropriate progress** during the Covid pandemic period (due to school closures, remote learning, quarantines, etc.)?
- Has your child **lost academic or functional/behavioral skills** during the Covid pandemic period?
- Has your child not received all of the service minutes in their IEP due to Covid, with a resulting loss of skills or inability to make appropriate progress?

See U.S. Department of Education, “Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak,” March 2020.

If so...

- Share with the IEP team all of the documentation and data that you have to show this loss of skills or lack of appropriate progress.
- Explain that your child is entitled to a FAPE, and that Covid may have prevented this.
- Ask that your child be provided with the special education and related services that they need—including compensatory services, as appropriate.

What are compensatory services?

- Compensatory services may include both special education and related services, including:
 - more intensive supports and services during the regular school day and school year to help your child regain lost skills and/or make appropriate progress;
 - additional educational services outside of the regular school day;
 - additional services during an Extended School Year (ESY) period

EXPERT



You cannot win a claim for compensated in a due process hearing without an expert.

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Every federal Circuit Court of Appeals has recognized that compensatory education is an appropriate remedy to redress a school district's denial of FAPE.

All COVID state complaints and many court cases so far that meet threshold discussed earlier have been found in favor of the parents.

General Remedial Services

School districts may argue that all students suffered from a loss of educational services, that students with disabilities who are eligible for special education are general education students first and foremost, and that the remedial education planned for all students will compensate special education students for their lost educational opportunities as well.

A student with an IEP has certain goals and objectives to meet in the time period of the IEP. To meet those goals, supplemental individualized services are provided in the IEP.

While general remedial services will be helpful in many cases, they do not take the place of compensatory education in making up for lost education during COVID-19 closures and distance learning.



CLAIM

All students suffered from a reduction in services because of school closings

Answer

Federal law requires school districts to provide FAPE to eligible students. Eligible students who were deprived of FAPE during the school closings are entitled to compensatory education.

No money

- School districts may be financially strained in reopening after the COVID-19 closure. The right of a student with a disability to a free appropriate public education (FAPE) is an entitlement under federal law. School districts are free to opt for more economical alternatives provided, however, that the educational program provided meets the standard of a FAPE.



Questions/Discussion