

## **FAQs - OCR COVID-19 Compensatory Services Resolution Agreement**

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### **Outreach**

- **Who is responsible for contacting parents/guardians?**

Parents/guardians of a student with a disability who was enrolled in FCPS during the Pandemic Period (April 14, 2020 to June 10, 2022) will receive written notice from FCPS to inform them of the requirement for their child's school team [i.e., individualized education program (IEP) or 504 Committee] to convene a meeting to make a determination about compensatory education for their child. This notice will be disseminated to currently enrolled students and students who are no longer enrolled in FCPS (i.e., graduates, students who have transferred to other school divisions, and students who have exited school). School-based staff will be responsible for contacting the parent/guardian of each student with a disability, who is currently enrolled in FCPS **and** had an IEP or 504 Plan during the Pandemic Period, to convene a meeting to make an individualized determination about compensatory education and document the decision in the tracking database by the end of the 2022-23 school year.

For students no longer enrolled in FCPS who had an IEP or 504 Plan during the Pandemic Period, parents/guardians will receive notification from central office that a meeting will be held at the request of the eligible student, parent, or guardian. Parents, guardians, or adult students will need to contact the school the student would now attend to request a meeting. This [link](#) can be used to determine which school your child would attend based on your most recent Fairfax County address.

In addition to the targeted communication to parents/guardians of students with disabilities, FCPS will also:

- Conduct three public meetings to provide an overview of the Plan, including the criteria for determining compensatory education, and information about formal and informal dispute resolution options.
- Post information about the Plan on the division homepage, each school's website, and on the Special Education Procedural Support website. This

information will be accessible to persons with disabilities and translated into major languages spoken in FCPS.

- **If a parent of a currently enrolled student with a disability refuses to attend an IEP or 504 Plan meeting, does the meeting need to be held to determine compensatory education?**

Yes. If a parent/guardian refuses a meeting for the determination of compensatory education, the school team is still required to meet, make a decision, and provide prior written notice (PWN). Document the parent's refusal to attend the meeting as you do for any IEP or 504 Plan meeting.

### [Training](#)

- **What guidance will school staff receive regarding COVID-19 compensatory education?**

FCPS will provide written guidance and professional development on the determination and provision of compensatory education. The guidance will include the distinction between compensatory education and recovery services and the criteria for IEP teams and 504 Plan knowledgeable committees to use for making compensatory education determinations.

- **How will training be delivered to staff?**

Training will be delivered synchronously to department chairs, school-based 504 coordinators, and administrators through the January 9, 2023 AM and PM department chair meetings.

The expectation is that special education department chairs will be provided specific material that will require turnaround training to school staff.

Impacted staff are encouraged to attend optional training being offered virtually on January 26, 2023, by central office staff. The training will be offered three times during the day to provide staff the opportunity to attend other training offered on this date.

- **What support will be in place to ensure COVID-19 compensatory education determinations are completed?**

FCPS will appoint a Plan Administrator who will oversee the completion of the process and a centralized tracking mechanism in SEA-STARS to track compensatory education decisions for every student, as well as services delivered, for reporting to the Office for Civil Rights.

Professional development and training will be provided to school administrators and staff regarding the Plan, tracking mechanism, documentation of services in SEA-STARS, and the need for transportation for students receiving services outside of the school day.

Points of contact for staff include the FCPS Office of Special Education Procedural Support ([OCR2022resolution@fcps.edu](mailto:OCR2022resolution@fcps.edu)), FCPS Parent Resource Center ([prc@fcps.edu](mailto:prc@fcps.edu)), FCPS Office of the Ombuds ([ombuds@fcps.edu](mailto:ombuds@fcps.edu)).

## Logistics

- **What are school teams responsible for?**

School teams will be responsible for scheduling meetings, convening the IEP team or 504 Plan knowledgeable committee to review data, make an individualized determination regarding compensatory education for each student, and document the outcomes. As determined by the IEP team or knowledgeable committee, school teams will also determine a plan for providing compensatory education and document an appropriate and reasonable timeframe for providing the services.

Schools may begin compensatory education considerations in IEP or Section 504 meetings mid to late January 2023.

If the annual IEP is due after spring break, and the team would like to hold the meeting earlier, consider moving the annual meeting forward instead of completing an addendum. Annual meetings for 504 Plans may need to be moved up as well.

- **If a student has transitioned to another school (ES, MS, HS) since the Pandemic Period, who holds the meeting for the determination of compensatory education?**

For currently enrolled FCPS students, the school the student is currently attending will hold the meeting. School staff will reach out to the previous school for additional information or data as needed.

- **Which school is responsible for meeting with graduates?**

The last school the student attended while enrolled in FCPS is responsible for meeting with graduates.

- **Will there be a mass mailing to students and families who have moved and/or graduated?**

Central office staff will be reaching out to those students who may have moved or graduated using their last known contact information.

- **Can we be sure to manage parent expectations regarding the scheduling of IEP/ Section 504 Plan meetings?**

During the public meetings and letter to families, it will be shared that school teams will be striving to schedule meetings at a mutually agreed upon date and time as is

expected with all IEP meetings and for Section 504 Plan meetings where the parent would like to attend.

- **Are schools able to access Blackboard Recordings of meetings that occurred prior to June 2021?**

The answer to this depends on what actions were taken at the end of our contract with Blackboard. Prior to the move from Blackboard to Schoology, school teams were instructed to make sure all meeting recordings on Blackboard were to be copied and placed in students' special services files. If this did not occur, those recordings no longer exist.

- **Does a meeting need to be held or can it be an addendum without a meeting?**

A meeting must be held to make the determination regarding compensatory education.

### **Criteria, Consideration, and Determination**

- **What data will teams use to determine the need for compensatory education?**

IEP teams and 504 Committees will consider the following:

- Present levels of academic achievement and functional performance
- Rate of acquisition toward IEP goals (for students with IEPs)
- Frequency and duration of special education and related services provided to student

For each of these time periods:

- pre-Pandemic Period (before April 14, 2020)
- Pandemic Period (April 14, 2020 to June 10, 2022)
  - Initial Pandemic Period (virtual learning - spring, 2020 + ESY)
  - 2020-21 School Year (virtual, hybrid, in-person learning)
  - 2021-22 School Year (in-person; less than 1% of students virtual due to medical needs)
- post-Pandemic Period (after June 10, 2022 to current)

School teams will need to consider whether all accommodations were provided to the student during the Pandemic Period. If not, did it impact their learning and progress? If an accommodation was unavailable, the school team will need to consider if there was an impact to learning and progress.

For parents/guardians who have placed their children in private schools or with a private provider, school staff will need to ask parents to provide data and any other pertinent information from the private school or private provider.

Additional training on how to use the data in the determination is forthcoming through department chair meetings and central office communication.

- **How do we determine compensatory education for a student with a 504 Plan?**

The Section 504 Plan knowledgeable committee will use the same process outlined above, except for progress toward goals. Section 504 Committees will need to consider whether all accommodations were provided to the student during the Pandemic Period. If not, did it impact their learning and progress? If an accommodation was unavailable, the Section 504 Committee will need to consider if there was an impact to learning and progress.

Parent consent is not required for a Section 504 Plan, but a PWN will be required for compensatory education determinations. If parents disagree with the determination, they have the right to request an impartial hearing.

- **Can students receive both Recovery services and compensatory education?**

A student who currently has recovery services listed in their IEP or 504 Plan will continue to receive the recovery services as outlined in their respective plans. If the IEP team or 504 knowledgeable committee determines a student who is currently receiving recovery services also requires compensatory education, a student could receive both compensatory education and recovery services.

- Compensatory education is special education and related aids/services provided to a student to remedy educational deficits that resulted from the failure to provide services or evaluations during a specified time period, in this case, during the COVID-19 pandemic.
- Recovery services are special education and related aids/services provided to a student to address the impact of learning loss that resulted from pandemic-related school closures during the COVID-19 pandemic.

Moving forward, IEP teams and Section 504 knowledgeable committees will consider compensatory education, not recovery services, for students with disabilities relative to the Pandemic Period.

- **Can Extended School Year (ESY) serve as compensatory education?**

No, ESY is considered each year during the annual IEP. Special education and related services are provided beyond the normal school year if the IEP team decides that the benefits gained during the school year will be significantly jeopardized without ESY (i.e., the student will lose what has been learned) Please see this [link](#) for additional information regarding ESY.

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 is to put the

child in the position the child would be in had the school division provided the necessary services in the first place.

- **If a student has already received Recovery services, do we still need to consider compensatory education?**

The IEP team or Section 504 Plan knowledgeable committee can consider Recovery services that have already been provided as a factor in determining compensatory education if those Recovery services, based on an individual determination of the student's compensatory education needs, address the specific needs of the student.

If the Recovery services that have already been provided do not address the specific individualized compensatory education needs of the student, the team cannot directly subtract provided recovery services from the total amount of the compensatory education the team determines is needed.

- **Can compensatory education be considered for a delay in evaluations, eligibility, and provision of services?**

Yes. The IEP team or Section 504 Plan knowledgeable committee will need to consider whether a delay in evaluations, eligibility, and/or provision of services impacted a student's learning or progress.

- **If a parent/guardian provided support to their child during the Pandemic Period, is it factored into the determination of compensatory education?**

Support provided by parents or guardians during the Pandemic Period will not be counted as services or specialized instruction provided by FCPS. If the student had one-on-one accommodation or service on the IEP, the IEP team or Section 504 Plan knowledgeable committee will need to determine how that service was being delivered. If the student did not receive one-on-one, how did that impact learning and progress?

The team will need to determine if the student had one-on-one as an accommodation or service on the IEP. If yes, how was the one-on-one accommodation or service being delivered? If the student did not receive that one-on-one, how did that impact learning and progress? The support provided by parents/guardians during the Pandemic Period will not be counted as services or specialized instruction provided by FCPS.

- **If a parent/guardian did not make the student available to access educational services or the student did not have access to the internet or wi-fi during the Pandemic Period, how is compensatory education determined?**

An IEP or Section 504 Plan meeting will need to be conducted for either scenario.

In situations where students were unable to access educational services, school teams should have engaged in conversations with parents since students returned to full-time learning through the IEP or Section 504 Plan process to determine if there were gaps in

learning or progress that needed to be addressed through Recovery services. The IEP team or 504 knowledgeable committee will need to consider compensatory education for these students.

For students who did not have access to the internet or wi-fi, the IEP team or Section 504 Plan knowledgeable committee will need to consider whether there was an impact on learning or progress.

- **If a student moved into FCPS from another school division this school year, do we need to hold a compensatory education meeting?**

Under the agreement, school staff do not need to meet to address compensatory education for these students. However, if parents request a meeting to consider compensatory education, the team needs to meet to consider the request.

### Provision of Services

- **When will compensatory education be provided?**

The IEP team or Section 504 Plan knowledgeable committee will document an appropriate and reasonable timeframe for the completion of the agreed-upon compensatory education.

Parents/guardians may request reimbursement for out-of-pocket expenses incurred by the parent or guardian to provide services through private or non-FCPS personnel that were required by the IEP or Section 504 Plan during the Pandemic Period. See the Private Reimbursement section for more information.

- **Who will be responsible for providing compensatory education?**

School-based administrators or their designee will be responsible for identifying a teacher to provide compensatory education. Current schools, neighboring schools, pyramids, and regions are encouraged to work together to identify staff to provide services.

The Office of Special Education Procedural Support is working to build a centralized database of staff willing to provide services for compensatory education.

If there is not a staff member in the school-based pool of compensatory education providers or the central office pool of providers when an IEP team or 504 knowledgeable committee determines a student requires compensatory education, school staff will document on the IEP and PWN that services will begin when a compensatory provider is identified.

- **What is the timeline for school teams to start and complete this process?**

An IEP or Section 504 Plan meeting must be convened for all students with a disability who attended FCPS during the Pandemic Period (April 14, 2020 - June 10, 2022) to

make an individualized determination regarding compensatory education and/or related aids/services by the end of the 2022-23 school year.

- **Can compensatory education occur during the school day?**

Compensatory education may be embedded within the school day if determined appropriate and does not interfere with other required programming or services.

- **Will school staff be paid for providing compensatory education outside of contracted school hours?**

School staff will be compensated for services provided outside of contract hours. Additional information is forthcoming.

- **Is there a timeframe that the compensatory education needs to be completed?**

The determination of the need for compensatory education must be made by June 23, 2023 by the IEP team or Section 504 Plan knowledgeable committee. The services need to be completed within a reasonable and appropriate timeframe as documented in the IEP and Section 504 Plan. FCPS will work collaboratively with families to ensure students receive the services they need as in a timely manner to ensure educational gaps are closed.

- **How do you determine the amount of compensatory education services and who will provide them?**

Compensatory education is an individualized decision based on the data and impact.

- **What if the school team makes a determination that a student is owed compensatory education, but the student is unavailable to receive the services (e.g., summer vacation, other activities)?**

Schools and families will need to work collaboratively to determine a reasonable time period in which to deliver compensatory education to students. Be sure to document the information in a PWN provided to the parent.

### [Reimbursement for Out-of-pocket expenses](#)

- **Can a request for reimbursement for a private provider/services by a parent be considered for compensatory education?**

Parents/guardians may request reimbursement for out-of-pocket expenses incurred by the parent or guardian to provide services required by the IEP or Section 504 Plan by private or non-FCPS personnel that were not provided during the Pandemic Period. Private providers can also be considered for providing compensatory education moving forward.



## Special Circumstances

- **Where will the funding for compensatory education come from?**

FCPS has set aside funding for these services. Decisions for compensatory education will be based on individual needs.

- **Are students with individualized service plans (ISP) able to be considered for compensatory education?**

Students with ISPs are not able to be considered for compensatory education determination.

- **What about students found eligible in the spring of 2022?**

The Pandemic Period is defined as April 14, 2020 through June 10, 2022; therefore, compensatory education will need to be considered for students found eligible in the spring of 2022.

- **What if a student had an IEP at the start of the Pandemic Period and moved to a Section 504 Plan during the Pandemic Period? Does the student need to be considered for compensatory services under both the IEP and Section 504 Plan?**

The entire time frame would need to be considered to determine if there was any impact on progress and learning for the student. Utilize the document that matches the eligibility the student currently has.