



STATE OF ALABAMA
DEPARTMENT OF EDUCATION



Eric G. Mackey, Ed.D.
State Superintendent of Education

March 17, 2021

MEMORANDUM

TO: City and County Superintendents of Education

FROM: Eric G. Mackey 
State Superintendent of Education

RE: COVID-19 Impact Services for Students With Disabilities

Local education agencies (LEAs) and schools had to pivot quickly to continue to provide special education and related services for students with disabilities (SWDs) due to the COVID-19 national emergency. This has not been an easy task and LEAs are commended for finding ways to put in place remote instruction and additional supports so that SWDs can make progress.

There have been many challenges to providing a free appropriate public education (FAPE) during this time and the exceptional efforts of LEA personnel, parents, and students have not gone unnoticed. Despite the significant challenges for LEAs, parents, and students, the obligations, rights, and responsibilities under the *Individuals with Disabilities Education Act* (IDEA) have not been removed or diminished. Accordingly, if an LEA is unable to provide a FAPE for a student with a disability under the IDEA through remote learning, it must ensure that the student receives appropriate COVID-19 Impact Services once in-person instruction resumes.

Providing special education and related services effectively requires extensive collaboration and coordination in the best of times. With the sudden and dramatic impact that the pandemic had on our educational system, some special education and related services have been understandably disrupted despite the good faith efforts of LEA personnel.

COVID-19 Impact Services must be considered and addressed for students who qualify for special education and related services under the IDEA who were adversely impacted as a result of school closures and remote learning.

During upcoming individualized education program (IEP) annual reviews or when parents or teachers request a COVID-19 impact review, IEP Teams must revisit each student's needs to identify whether COVID-19 Impact Services are required. The IEP Teams must make individualized determinations regarding whether—and the extent to which—a student requires COVID-19 Impact Services.

A presentation that includes information related to COVID-19 Impact Services is enclosed and is also posted on the Alabama State Department of Education website. Department Offices, select Special Education Services, select Policies & Procedures, select COVID 19).

For questions or clarifications, please contact Special Education Services at 334-694-4782 or by email at speced@alsde.edu.

EGM/DC/SR

Enclosure

cc: City and County Coordinators of Special Education
Dr. Daniel Boyd
Mrs. Angela Martin
Dr. DaLee Chambers

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03/17/2021

COVID-19 Impact Services for Students with Disabilities

Alabama State Department of Education



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The purpose of this presentation is to inform about COVID-19 Impact Services for students with disabilities.

"Do the right thing, do the best you can, and always show people you care. You've got to make a sincere attempt to have the right goals to begin with, then go after them with appropriate effort, and remember that you can't really achieve anything great without the help of others."

-Lou Holtz

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COVID-19 Impact Services

The Office of Special Education Programs (OSEP) uses “compensatory education” to describe recovery services or COVID-19 Impact Services for students with disabilities who were adversely impacted as a result of school closures and remote learning due to the pandemic.

In this context, it **does not** mean the local education agency (LEA) did something wrong.



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COVID-19 Impact Services (continued)

- Not a deliberate failure to provide a free appropriate public education (FAPE).
- Not a court ordered remedy.
- LEA personnel have been working hard to provide a FAPE.
- In person services were not safe or feasible at times.
- LEAs had limited options.



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Free Appropriate Public Education (FAPE) During COVID-19

- Remote/distance instruction
- In-person instruction
- Hybrid

No matter what primary instructional delivery approach is chosen:

State education agencies (SEAs), local education agencies (LEAs), and individualized education program (IEP) Teams continue to be responsible for ensuring that a FAPE is provided to all children with disabilities. (OSEP QA 20-01)



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Free Appropriate Public Education (FAPE) During COVID-19 (continued)

IEP Teams should identify how the special education and related services included in a child's IEP will be provided and should consider a variety of instructional methods and settings.

(OSEP QA 20-01)



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Remedies for Failure to Provide Appropriate Services

What is required when there is a failure to provide appropriate services?

Corrective action appropriate to address the needs of the child (such as compensatory services...).

(34 C.F.R. § 300.151(b)(1))



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COVID-19 Impact Services

The **purpose** of COVID-19 Impact Services is to place the student in the position that the student would have been in had the district been able to provide the appropriate services in the first place.



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What is required?

COVID-19 Impact Services must be considered and addressed for students who qualify for special education and related services under the IDEA who were adversely impacted as a result of school closures and remote learning.

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When Should COVID-19 Impact Discussions Occur?

- During the upcoming annual IEP review.
- When parents or teachers request a COVID-19 Impact Review.
- *Sooner rather than later for students who are scheduled to exit high school this year.**



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Possible Causes of Missed Services

Student Focused:

- In person instruction not safe and the student was not available to learn because the nature of his or her disability made it difficult to engage the student remotely.

Merced, D. (November 13, 2020). *Compensatory Education: A framework to aid the hearing officer in crafting an award*, Alabama State Department of Education Idea Impartial Hearing Officer Training.



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Possible Causes of Missed Services (continued)

IEP Focused:

- Inability to implement the provisions in the child's IEP.
- Failure to [timely] establish remote learning program.
- Lack of adequate number of personnel to deliver necessary services.
- Failure to provide necessary technology and adequate access to internet despite LEA's remote learning program relying on same.

Merced, D. (November 13, 2020). *Compensatory Education: A framework to aid the hearing officer in crafting an award*, Alabama State Department of Education Idea Impartial Hearing Officer Training.



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Possible Causes of Missed Services (continued)

Other:

- Inability to evaluate/reevaluate within required timelines.
- Delay in completing evaluation and offering FAPE to a student who qualifies (through no fault of the student or family).

Merced, D. (November 13, 2020). *Compensatory Education: A framework to aid the hearing officer in crafting an award*, Alabama State Department of Education Idea Impartial Hearing Officer Training.



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Possible Causes of Missed Services (continued)

Causes That May or May Not Be Attributable to the LEA:

- Absences (i.e., not accessing pre-recorded lessons; not participating in live, virtual classes).
- Extended illness.
- Remote learning resistance/refusal despite school district's good faith efforts to assess and address.

Merced, D. (November 13, 2020). *Compensatory Education: A framework to aid the hearing officer in crafting an award*, Alabama State Department of Education Idea Impartial Hearing Officer Training.

COVID-19 Impact Services may or may not be justified for missed services in these instances. It depends on if there was anything the LEA could or should have done to mitigate the situation.



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Considerations for COVID-19 Impact Services

When the COVID-19 Impact discussions occur:

- IEP Teams **must** revisit each student's **needs** to identify whether compensatory education is required.
- IEP Teams **must** make **individualized determinations** regarding whether-and the extent to which-a student requires COVID-19 Impact Services.
- Schools **must not** create blanket rules offering a set amount of compensatory services to all or to subsets of students with disabilities.

Questions and Answers on Providing Services to Children With Disabilities During the Coronavirus Disease 2019 Outbreak, 76 IDELR 77 (EDU 2020).



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Considerations for COVID-19 Impact Services (continued)

- Identify services provided during COVID-19.
- Identify services not provided during COVID-19 that the student needed to meet his or her needs.
- Review progress toward IEP goals.
- Consider general education learning environment and core instruction provided.
- Review engagement/accessibility to instruction (ensure parent and teacher input).
- Consider whether new needs have emerged during or because of COVID-19.

Merced, D. (November 13, 2020). Compensatory Education: A framework to aid the hearing officer in crafting an award, Alabama State Department of Education Idea Impartial Hearing Officer Training.



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Considerations for COVID-19 Impact Services (continued)

- Some students with disabilities may still be on target with goals and objectives, whereas other students may have been adversely impacted.



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Considerations for COVID-19 Impact Services (continued)

- **Parental input** is key and parent information and concerns must be considered in determining whether or not COVID-19 Impact Services are necessary for FAPE, how much service time is needed, and how the services will be delivered.
- IEP Teams have flexibility and can **be creative** in fashioning COVID-19 Impact Services.

Millward, H. (February 16, 2021). *Recovery Services: What are they and when are they appropriate?* Fairfax County, VA SEPTA Training.



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Using Data for COVID-19 Impact Reviews

- Observations
- Work Samples
- Behavior Logs
- Screenings and Assessments
- Parent Interviews/Observations

(When possible, compare data from prior to COVID-19 and now)



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Using Data for COVID-19 Impact Reviews (continued)

- Progress Reports
- Report Cards
- Mastery of IEP Goals and Benchmarks



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Steps for COVID-19 Impact Review

1. Use data to identify student's past performance.
2. Estimate student's rate of progress prior to COVID-19.
3. Use data to establish student's progress during COVID-19.
4. Compare the special education services provided pre-COVID-19 and during COVID-19.
5. Estimate educational deficits due to COVID-19, if any.
6. Consider the cause of the educational deficits (student focused, IEP focused, other).
7. Determine whether COVID-19 Impact Services are justified.



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Calculating COVID-19 Impact Services

- Educational services above and beyond what is currently due the student.
- No obligation to provide day-for-day or minute-for-minute compensation for missed services.
- No minimum or maximum level of compensatory education.
- Amount is based on what is needed to place the student in the position he or she would be in if the services outlined in the IEP had been provided.



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Extended School Year (ESY) vs. COVID-19 Impact Services

- By definition, ESY services are not compensatory services.
- However, COVID-19 Impact Services might be offered during the summer or during other breaks in the academic calendar.



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COVID-19 Impact and Transition to Adult Life

- According to the IDEA, students with disabilities who have not earned a regular high school diploma are entitled to services up to age 21.
- Some students may require services beyond the age of 21 to compensate for the impact of COVID-19.



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COVID-19 Impact and Transition to Adult Life (continued)

- Were age-appropriate Transition assessments completed for current Transition planning?
- Did the student have opportunities for training and development in postsecondary education/training, employment, and community/independent living?
- Did the student make progress toward his or her annual postsecondary Transition goals?
- Did the student master and/or make expected progress toward his or her long-term goals for postsecondary education/training, employment, community/independent living?



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COVID-19 Impact and Transition to Adult Life (continued)

- Has the student met requirements for graduation?
- Have referrals and/or intake occurred with developmental services agencies and/or Vocational Rehabilitation (VR) for students who require services after high school?
- Is the student prepared to advocate for him or herself?
- Is the Summary of Performance (SOP) completed?



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COVID-19 Impact and Transition to Adult Life (continued)

When Students Scheduled to Exit High School Require COVID-19 Impact Services:

- The student might receive services beyond age 21.
- The student might exit and continue to receive limited services for a period of time (such as related services and/or postsecondary transition counseling; See Los Angeles Unified School District, California State Educational Agency, August 24, 2020, (77 IDELR 116)).



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COVID-19 Impact Services

- The IEP Team determines if COVID-19 Impact Services are needed.
- This must be a collaborative effort.



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COVID-19 Impact Services (continued)

If COVID-19 Impact Services Are Justified

The IEP Team must identify:

- Type of COVID-19 Impact Services.
- Frequency and Duration.



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Documenting COVID-19 Impact REVIEW

After a COVID-19 Impact Review

- The LEA should state in a *Notice of Proposal or Refusal to Take Action* either that the IEP Team has decided that the district will or will not provide COVID-19 Impact Services.
- All required elements of the *Notice of Proposal or Refusal to Take Action* should be completed.
- If the IEP Team has decided to provide COVID-19 Impact Services, the types and amounts of services, and when the services will be provided should be included in the notice.



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Documenting COVID-19 Impact Services

- If the IEP Team has decided to provide COVID-19 Impact Services, the types and amounts of services, and when the services will be provided should be listed in the *Notice of Proposal or Refusal* and might also be included in the IEP.
- COVID-19 Impact Services listed in the IEP should be clearly labeled and distinguished from other special education and related services listed in the IEP.



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COVID-19 Impact Services and Dispute Resolution

- As with any IEP Team decision, the COVID-19 impact decisions might become the subject of a dispute.
- Any disputes arising from these discussions and decisions can be resolved through the IDEA's standard dispute resolution mechanisms (i.e., mediation, written state complaint, due process complaint).
- Alabama also offers **IEP facilitation**, a student-focused process designed to help the IEP Team overcome challenges to collaboration.



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COVID-19 Impact Services and Dispute Resolution (continued)

Absent certain statutory exceptions, parents have **two years** from the date they knew or should have known of a violation of the IDEA to request a due process hearing through the filing of an administrative complaint.



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COVID-19 Impact Services and Dispute Resolution (continued)

- Alternative dispute resolution has been widely utilized and is viewed as a **positive** alternative to written state complaints and due process complaints.
- IEP facilitation and mediation allows the parties to work through issues while maintaining control.



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COVID-19 Impact Services and Dispute Resolution (continued)

The ALSDE offers IEP facilitation and mediation at **no cost** to the parties.

**For more information
about IEP facilitation and mediation:**

Call 334-694-4782 or
email brush-harrison@alsde.edu



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COVID-19 Impact and Transition Back to In-Person Educational Services

- Some students may prefer remote learning. (e.g., students with school phobia).
- What transition services, if any, does the student need to transition back to in-person educational services?



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For more information contact:

Alabama State Department of Education

Special Education Services

334-694-4782

speced@alsde.edu