



Education Law Center

*Making sure that all of Pennsylvania's children
have access to quality public schools*

WHEN IS YOUR CHILD WITH A DISABILITY ENTITLED TO COMPENSATORY EDUCATION?

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral, or contact an attorney of your choice.

WHAT IS COMPENSATORY EDUCATION?

A child with disabilities may be able to obtain "compensatory education" - makeup services - if she went without an appropriate program for some period of time. This could be because the child's Individualized Education Program (IEP) was inappropriate to her needs, or because the IEP, though appropriate, was not fully carried out by the school or a new school district in which the child was enrolling.

Compensatory education might also be available if there was an illegal delay in evaluating the child for special education, if, as a result, the child did not receive needed services. A child may be entitled to compensatory education because the school district violated the child or family's procedural rights in a significant way; for example, if the school district did not give the family a chance to participate in the development of the child's IEP.

WHAT SPECIFIC SERVICES SHOULD BE PROVIDED?

The purpose of compensatory education is to help the child make the progress that she would have made if an appropriate program had been available. The specific services provided must be tailored to the child's needs. Compensatory education can mean extra instruction or related services (such as therapies)

provided during the school year or Summer. In another case, a child may be allowed to continue to attend school for a period after completing the school year in which she turns 21. Sometimes school districts will agree to set aside money that the family can use to purchase educational services, such as tutoring, from a private provider. The amount of compensatory services provided (or the amount of money set aside) should reflect the type and amount of services the student has missed.

WHAT SHOULD I DO IF I THINK MY CHILD IS ENTITLED TO COMPENSATORY EDUCATION?

If you believe your child did not receive an appropriate program, you can ask your school district to provide compensatory education. You may want to get an evaluation to help you determine what type and amount of compensatory education your child needs. You can ask the district to do the evaluation, or you can obtain an evaluation from some other source. (For more information on obtaining evaluations and independent educational evaluations, see ELC's Fact Sheets on those subjects. The Fact Sheets and other ELC publications can be obtained from our office, or from our website at the address listed below.)

DO ANY DEADLINES APPLY?

YES! It's important to act promptly once you know that the school district has not provided an appropriate program. **A PARENT MUST REQUEST A SPECIAL EDUCATION HEARING WITHIN TWO YEARS OF THE DATE THAT THE PARENT KNOWS OR SHOULD HAVE KNOWN THAT THE SCHOOL DISTRICT WAS NOT PROVIDING THE CHILD WITH AN APPROPRIATE EDUCATION** unless the school or the school district specifically misrepresented to the parent that the problem was fixed or because the school or school district did not give the parent information that it was required to provide under the law. If the problem has been going on for more than two years, you can still request a hearing, but the Hearing Officer's award may be limited even if you win. (More on hearings below).

Another faster and possibly easier route for getting compensatory education services is filing a complaint with the Division of Compliance, Monitoring and Planning (DOC), Bureau of Special Education, Pennsylvania Department of Education. (More on complaints below). **BUT THE DEADLINE FOR FILING A DOC**

COMPLAINT IS **ONE YEAR** FROM THE DATE OF THE LEGAL VIOLATION, SO IT IS EVEN MORE IMPORTANT FOR THE PARENT TO FILE PROMPTLY. EVEN IF THE DOC REVIEWER AGREES THAT YOUR CHILD IS ENTITLED TO COMPENSATORY EDUCATION, THE AWARD CANNOT BE LONGER THAN ONE YEAR.

WHAT STEPS CAN I TAKE IF MY SCHOOL DISTRICT SAYS "NO"?

- **You can file a complaint with the Bureau of Special Education (BSE):** Send a letter marked "Complaint" to BSE at 333 Market St., Harrisburg, PA 17126-0333. For information on how to file a complaint, including the complaint form, see http://www.pde.state.pa.us/special_edu/cwp/view.asp?A=177&Q=125191. We recommend this approach if it is clear that your child did not receive services that were actually listed on her IEP, or her evaluation was delayed beyond the legal timelines and she was later determined to be eligible for services. **We don't recommend a BSE complaint if the facts are disputed or the question is whether the IEP is appropriate.** (In those situations, a hearing request or mediation are better options.) BSE will investigate your Complaint and send you a report within **60 calendar days**. If BSE agrees with you, it will order compensatory services - but it may leave it to the IEP Team (which includes the parents) to decide specifically what services, or how much service to provide.
- **You can ask for mediation:** Call the Office for Dispute Resolution (ODR), which operates the Special Education Mediation Service (800-222-3353). For more information on mediation in Pennsylvania, see <http://odr.pattan.net/mediation/default.aspx>. ODR will ask the district if it is willing to try mediation. If it is, ODR will assign a trained mediator who will hold a meeting at which the mediator will try to help you and the district work out an agreement. You don't have to agree to anything, but if you reach an agreement it must be listed on your child's IEP so that the district will be required to provide it.
- **You can ask for a special education hearing:** If you decide not to try mediation, or if mediation is unsuccessful, the next step is to request a hearing. For more details on how to make a hearing request, see ELC's Fact Sheet, *How to Resolve Special Education Disputes*, or contact the Office of

Dispute Resolution directly at 800-222-3353, or visit their website at, <http://odr.pattan.net/dueprocess/DueProcessFactSheet.aspx>.

- **What if your child is under age three?** For information on your dispute resolution options if your child is under age three (which include mediation, a complaint process, and a hearing), see <http://www.pattan.net/files/EI/ProblemSolvingEI-ffff.pdf> . The Office of Child Development and Early Learning (OCDEL), the agency that handles complaints, has **60 calendar days** to investigate and issue a report. Please note that different deadlines apply. For more details on the rights of children under age three, see ELC's manual, *The Right to Early Intervention for Infants and Toddlers and Their Families in Pennsylvania: A Handbook for Parents*).

There can be some hurdles involved in obtaining compensatory services, especially if you didn't complain about the problem with the district for a long time. You will need to convince your district or a Hearing Officer that your child did not receive appropriate services — not just that her program was less than perfect. However, many children do obtain compensatory services, and those services help the students make up for lost time and progress.

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Disability Rights Network of Pennsylvania (DRN), pursuant to the Developmentally Disabled Assistance and Bill of Rights Act, P.L. 101-496, and the P&A for Mentally Ill Individuals Act, P.L. 99-319. DRN is located at 1414 N. Cameron Street, Suite C, Harrisburg, PA 17103. Telephone: 800-692-7443 or 717-236-8110. Website: www.drnpa.org.

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