EDUCATION LAW CENTER | FACT SHEET

YOUR CHILD'S RIGHT TO COVID COMPENSATORY SERVICES

February 2024

Research shows that school-age children experienced significant learning loss during the COVID-19 pandemic: The average student lost more than half a school year of learning in math and nearly a quarter of a school year in reading.[1] Black and Brown students and students experiencing poverty were disproportionately impacted due to a lack of adequate school resources and extended time in remote instruction, resulting in more significant learning losses for Black and Brown students as compared with their white classmates.[2] Students with disabilities also experienced significant and extended educational disruptions that led to larger drops in achievement than students without disabilities—the largest declines in the past few decades.[3]

This fact sheet explains the rights of students with disabilities to receive COVID compensatory services (CCS) for the education, services, and supports they did not receive as a result of the COVID-19 pandemic. **For more information about CCS in Philadelphia, see the update on page 4.**

WHAT IS COMPENSATORY EDUCATION?

Students with disabilities are entitled to receive a free appropriate public education (FAPE) under Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).[4] When a child is denied a FAPE, they are entitled to makeup services for the education they were not provided. These services — termed compensatory education services — include a range of special education supports meant to put a student in the original position that they would have been in if the school had provided appropriate special education services and supports.[5] Compensatory education is to be provided in addition to the regular services a child gets from an individualized education program (IEP) or Section 504 plan.

CAN A PARENT REQUEST COMPENSATORY EDUCATION?

Yes. Parents/caregivers/educational decision makers[6] can make a claim in writing that their child was denied FAPE and is entitled to compensatory education to make up for services that were not provided, including educational services which were not provided as a result of the COVID-19 pandemic. They can request an IEP/Section 504 team meeting to address this issue. A school district, charter school, or intermediate unit must address this request and may offer an award of compensatory education, which a parent/guardian may accept or may reject and challenge through a dispute resolution process. If a claim for compensatory education is challenged, the Pennsylvania Department of Education or an administrative hearing officer can determine and award compensatory education.[7] For more information on the procedures, calculations, and legal redresses available for compensatory education, visit our Right to Compensatory Education fact sheet.

WHAT ARE COVID COMPENSATORY SERVICES?

COVID compensatory services (CCS) are compensatory education services that students with disabilities are entitled to receive if they did not make meaningful progress or lost skills during the COVID-19 pandemic.[8] Most school districts in the nation operated in a virtual capacity during the pandemic,[9] which routinely led to a lack of access to special education services.

Students with disabilities had a right to FAPE even during the pandemic when schools were forced to close.[10] Compensatory services must be provided for any educational impact that occurred because a student with a disability did not receive the evaluations or services they should have during the pandemic.[11] This includes the failure to receive support to access the curriculum and individualized behavioral supports.[12]

School districts have been found to be in violation of federal law when they have not provided compensatory services to address educational denials during COVID-19, even if not due to the conscious effort of the districts.[13] The right to FAPE did not change with the pandemic, so IEPs or Section 504 plans must have been followed in full.[14] School districts cannot limit IEP services or lower standards for virtual IEPs[15] unless agreed upon, for example, through a reevaluation.[16]

WHO IS RESPONSIBLE FOR DETERMINING COVID COMPENSATORY SERVICES?

The Pennsylvania Department of Education developed a process for all school districts in Pennsylvania to determine whether students with disabilities are eligible for CCS. [17] Your child's IEP or Section 504 team should meet to develop a plan to gather data on your child's skills and compare that to the baseline from before the pandemic.[18] If there was a loss of skills, behaviors, or lack of meaningful progress, your child will be eligible for CCS, the amount of which the team should determine. [19]

IEP and Section 504 teams must make individual determinations of whether compensatory education is appropriate. Some factors to consider include:

- The aids and services required by the student's Section 504 plan or IEP that was in effect at the beginning of March 2020;
- The frequency and duration of missed instruction and related services;
- Whether special education and/or related services that were provided during the pandemic period were appropriate based on the student's individual needs;
- The student's levels of performance and progress on IEP goals[20] in comparison to achievement before the pandemic;
- The results of updated evaluations and whether evaluations were delayed;
- The student's engagement in learning and access to learning materials during remote learning;
- Observations from teachers, service providers, parents, caregivers, and other family members;
- The amount of skill/behavior loss or lack of progress due to the pandemic.[21]

HOW CAN PARENTS/GUARDIANS PARTICIPATE IN THE PROCESS FOR DETERMINING CCS?

Preparing for the meeting

School districts in Pennsylvania were required to hold CCS meetings for all students with disabilities after the return to in-person instruction. However, if that did not happen, you can request an IEP/Section 504 meeting for your child, in writing.

Once a meeting has been set up, it is important to prepare. Gather your child's educational records (for example, IEPs, Section 504 plans, evaluations, and progress reports) prior to the pandemic, during the pandemic, and now. Review any progress reports before and during the pandemic, including any information about what services were provided at the time. If you do not already have notes about your child's educational experience during the pandemic, think back to that time and record what you remember. Think through any examples of learning loss or educational difficulties that you can pinpoint in your child's education during the pandemic. These materials will provide the best evidence of what your child was lacking and what services need to be made up.

You should also brainstorm what services and delivery methods would be appropriate makeup services for your child, which can be proposed to the IEP/Section 504 team.

Attending the meeting

The meeting will be a conversation with your child's whole IEP/Section 504 team. It is your chance to explain why your child should be eligible for CCS.

Bring to the meeting any materials that will be helpful in showing your child's educational achievement and services they did/did not have access to during the pandemic, including:

- Service logs and receipts
- Calendars that note any dates of services or important dates in your child's learning
- Receipts of out-of-pocket educational expenses
- Progress reports
- Communication with teachers and/or support staff

The IEP/Section 504 team, which includes you as the parent/guardian, will develop a plan for CCS at the meeting, or deny the provision of CCS.

Receiving notice of CCS determinations

After the meeting, you should receive a Notice of Recommended Educational Placement (NOREP) that outlines the CCS determination, either detailing the hours your child is entitled to or the denial of CCS. You must reply to the NOREP within 10 days of receiving it.[22] If you choose to disagree with the decision, follow the steps below to challenge the decision.

Check with your school district to see if it will supply the compensatory services or if you will have to find private providers on your own. If the services will be provided by the school district, you

may be able to receive additional CCS for transportation to and from the service. If you have to find your own providers, you can be reimbursed for the amount you spend.

Challenging CCS decisions

If you believe your child did not receive a FAPE during the pandemic period and is not receiving the appropriate services to make up for that denial, you can challenge the CCS determination. You may be able to challenge the decision if:

- No meeting was held to determine CCS
- Your child was found not eligible
- CCS was awarded but not actually provided
- The CCS award given was too small.

To challenge the decision, follow the steps in the Resolving Special Education Disagreements fact sheet. Based on what you disagree with about the CCS determination, you may file a complaint with the Bureau of Special Education, request a due process hearing,[23] or file a complaint to the Department of Education's OCR.[24] If you choose not to formally file a complaint, you can also ask for an additional IEP/Section 504 meeting or request mediation to resolve the disagreement.

THE CCS PROCESS IN THE SCHOOL DISTRICT OF PHILADELPHIA

ELC filed a complaint with the Pennsylvania Department of Education in December 2022 on behalf of all students with disabilities in the School District of Philadelphia, based on the District's failure to determine and provide CCS.[25] Accordingly, PDE has directed the district to hold IEP and Section 504 meetings as soon as possible, but no later than Feb. 29, 2024, to determine appropriate CCS offerings for all students with disabilities who were in the district during the closure time and in the 2020-2021 school year.[26] If students were denied a FAPE during the pandemic, including not receiving timely evaluations or required services in IEPs or Section 504 plans, the district must provide them with CCS.[27] **If your child was a student with a disability and enrolled in the district during this time period, they are entitled to a meeting to determine their CCS qualification.** Consider using this pre-meeting checklist used by Pittsburgh Public Schools and described below to help prepare for the meeting. The CCS determination will be recorded in a NOREP, which you can review and note your agreement or disagreement. If you disagree with the CCS determination, you can follow the steps for challenging CCS decisions above.

> If your child did not receive a NOREP with a CCS determination by Feb. 29, 2024, you can notify PDE's Bureau of Special Education and the Education Law Center. You may also request an IEP meeting or follow the actions to challenge, as mentioned at the top of this page.

THE CCS PROCESS IN PITTSBURGH PUBLIC SCHOOLS

Under Pittsburgh Public Schools' policy, if your child was not provided with the special education services, or evaluation that they were entitled to between March 16, 2020, and June 16, 2022, they may qualify for COVID Compensatory Services 2.0.[28] This second version of CCS expanded the eligibility period to include the 2021-2022 school year.[29] Eligible students will be entitled to an IEP

or 504 meeting, which will be organized by the school district, and the IEP/504 team will then determine what compensatory services are appropriate.[30]

You, as the child's parent/guardian/caregiver, are an essential part of the team. Filling out a pre-meeting checklist can help organize recollection of your child's education during the pandemic and what you wish to see as the result of the meeting. The checklist asks questions about access to services, changes in learning achievement, other pandemic-related factors, and more. The school district recommends that you bring this checklist, as well as educational documentation such as service logs, out-of-pocket expenses, or any other data that you may have from the pandemic period to the meeting. Visit the school district's Frequently Asked Questions on its CCS 2.0 website for further guidance on the process.

If your child has not received a CCS determination, you may request an IEP meeting in writing. If a meeting is still not convened, you may follow the challenge actions outlined above.

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice — visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) — or contact another attorney of your choice.

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[1] See Sean Reardon and Thomas Kane, The Education Recovery Scorecard available at https://educationrecoveryscorecard.org/wp-content/uploads/2024/01/ERS-Report-Final-1.31.pdf.
[2] SARAH COHODES ET AL., CTR. FOR REINVENTING PUBLIC ED ., STUDENT ACHIEVEMENT GAPS AND THE PANDEMIC : A NEW REVIEW OF EVIDENCE FROM 2021-2022 6 (2022), https://crpe.org/wp-content/uploads/final_Academic-consensus-panel-2022.pdf.
[3] *See* Evie Blad, *Special Education During the Pandemic, in Charts*, Education Week (Oct. 17. 2022), https://www.edweek.org/teaching-learning/special-education-during-the-pandemic-in-charts/2022/10.
[4] 34 CFR § 300.101.
[5] See *Reid ex rel. Reid v. D.C.*, 401 F.3d 516, 518 (D.C. Cir. 2005) (explaining that compensatory education should "place disabled children in the same position they would have occupied but for the school district's violations of IDEA").
[6] Under federal and state law, the term "parent" includes a biological or foster parent, guardian, a caregiver acting in the place of a parent, a surrogate parent appointed by a local education agency and a court-appointed Educational Decision Maker. See 34 C.F.R. § 300.30 and 300.519; 237 Pa. Code Rule 1147.
[7] OFF. OF CIV. RTS., U.S. DEP. OF ED., FACT SHEET: PROVIDING STUDENTS WITH DISABILITIES FREE APPROPRIATE PUBLIC EDUCATION DURING THE COVID-19 PANDEMIC AND ADDRESSING THE NEED FOR COMPENSATORY SERVICES UNDER SECTION 504 (2022). https://www2.ed.gov/about/offices/list/ocr/docs/factsheet-504.html.
[8] *See* OFF. OF SPEC. ED. AND REHAB. SERVS., U.S. DEP. OF ED., RETURN TO SCHOOL ROADMAP: DEVELOPMENT AND IMPLEMENTATION OF INDIVIDUALIZED EDUCATION PROGRAMS IN THE LEAST RESTRICTIVE ENVIRONMENT UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (2021). https://sites.ed.gov/idea/idea-files/return-to-school-roadmap-development-and-implementation-of-ieps; *see also* PATTAN, PENNSYLVANIA COVID-19 COMPENSATORY SERVICES, AT HTTPS://WWW.PATTAN.NET/CMSPAGES/GETAMAZONFILE.ASPX?PATH=~%5CPATTAN%5CMEDIA%5CMATERIALS%5CPUBLICATIONS%5CIMAGES%5CPA-COVID-19-COMPENSTORY-SVCS-FLOW-7-20-WBAL.PDF&HASH=FBDFECD8A16A50F4A3A74AE9BFE985E74325B51353E1E0A6C869353A11CDCAA7&EXT=.PDF

[9] School districts define the "pandemic period" in different lengths based on differing mandated school closure durations and differing ability to return students to a school program that could provide a FAPE. *See, e.g.*, PITTSBURGH PUBLIC SCHOOLS, COVID COMPENSATORY SERVICES 2.0 FAQS (2023). HTTPS://WWW.PGHSCHOOLS.ORG/DEPARTMENTS/PSE-SPECIAL-EDUCATION/COVID-COMPENSATORY-SERVICES.(Pittsburgh Public Schools extends the pandemic period to June 2022).
[10] OFF. OF SPEC. ED. AND REHAB. SERVS., U.S. DEP. OF ED., RETURN TO SCHOOL ROADMAP: DEVELOPMENT AND IMPLEMENTATION OF INDIVIDUALIZED EDUCATION PROGRAMS IN THE LEAST RESTRICTIVE ENVIRONMENT UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (2021). https://sites.ed.gov/idea/idea-files/return-to-school-roadmap-development-and-implementation-of-ieps/.
[11] OFF. OF CIV. RTS., U.S. DEP. OF ED., FACT SHEET: PROVIDING STUDENTS WITH DISABILITIES FREE APPROPRIATE PUBLIC EDUCATION DURING THE COVID-19 PANDEMIC AND ADDRESSING THE NEED FOR COMPENSATORY SERVICES UNDER SECTION 504 (2022). https://www2.ed.gov/about/offices/list/ocr/docs/factsheet-504.html.
[12] *Id.*
[13] *See* OFF. OF CIV. RTS., U.S. DEP. OF ED., Letter to LA Unified School District (2022). https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/09215901-a.pdf (describing that the district telling staff they did not need to provide the same amount of services during remote learning was a violation of FAPE); *see also* OFF. OF CIV. RTS., U.S. DEP. OF ED., Letter to Fairfax County Public Schools (2022). https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/11215901-a.pdf (describing that the school division thinking that it was not required to provide compensatory education because it was not at fault for the inaccessibility to services was inappropriate and a violation of FAPE).
[14] *Id.*; U.S. DEP. OF ED., QUESTIONS AND ANSWERS ON PROVIDING SERVICES TO CHILDREN WITH DISABILITIES DURING THE CORONAVIRUS DISEASE 2019 OUTBREAK (2020). https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf. (stating that "if an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE.").
[15] OFF. OF CIV. RTS., U.S. DEP. OF ED., LETTER TO FAIRFAX COUNTY PUBLIC SCHOOLS, 8 (2025). https://www.ed.gov/about/news/press-release/us-department-of-educations-office-civil-rights-launches-title-vi-investigation-fairfax-county-public-schools.
[16] *Abigail, P. through Sarah F. v. Old Forge Sch. Dist.*, No. 3:21-CV-02033, 2023 WL 2505011, at *12-13 (M.D. Pa. Mar. 14, 2023).
[17] PATTAN, PENNSYLVANIA COVID-19 COMPENSATORY SERVICES, AT HTTPS://WWW.PATTAN.NET/CMSPAGES/GETAMAZONFILE.ASPX?PATH=~%5CPATTAN%5CMEDIA%5CMATERIALS%5CPUBLICATIONS%5CIMAGES%5CPA-COVID-19-COMPENSTORY-SVCS-FLOW-7-20-WBAL.PDF&HASH=FBDFECD8A16A50F4A3A74AE9BFE985E74325B51353E1E0A6C869353A11CDCAA7&EXT=.PDF.
[18] *Id.*
[19] *Id.*
[20] See *Abigail, P. through Sarah F. v. Old Forge Sch. Dist.*, No. 3:21-CV-02033, 2023 WL 2505011, at *12-13 (M.D. Pa. Mar. 14, 2023) (explaining that in-person learning is not necessary for FAPE and a student does not need CCS if they have made progress toward their goals).
[21] *See* OFF. OF CIV. RTS., U.S. DEP. OF ED., Letter to LA Unified School District (2022). https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/09215901-a.pdf; *see also* PATTAN, PENNSYLVANIA COVID-19 COMPENSATORY SERVICES, AT HTTPS://WWW.PATTAN.NET/CMSPAGES/GETAMAZONFILE.ASPX?PATH=~%5CPATTAN%5CMEDIA%5CMATERIALS%5CPUBLICATIONS%5CIMAGES%5CPA-COVID-19-COMPENSTORY-SVCS-FLOW-7-20-WBAL.PDF&HASH=FBDFECD8A16A50F4A3A74AE9BFE985E74325B51353E1E0A6C869353A11CDCAA7&EXT=.PDF.
[22] PA. DEP. OF ED., NOTICE OF RECOMMENDED EDUCATIONAL PLACEMENT (2009), https://www.pattan.net/assets/PaTTAN/de/de805b00-70f0-4d54-90d1-4822158379fb.pdf.
[23] 34 CFR § 300.507.
[24] OFF. OF CIV. RTS., U.S. DEP. OF ED., FACT SHEET: PROVIDING STUDENTS WITH DISABILITIES FREE APPROPRIATE PUBLIC EDUCATION DURING THE COVID-19 PANDEMIC AND ADDRESSING THE NEED FOR COMPENSATORY SERVICES UNDER SECTION 504 (2022). https://www2.ed.gov/about/offices/list/ocr/docs/factsheet-504.html.
[25] 22 Pa. Code Chapter 14 ("Chapter 14"), 22 Pa. Code Chapter 15 ("Chapter 15")
[26]Sch. Dist. of Philadelphia, Bureau of Special Ed. Complaint Investigation Rep. (Pa. Dep. of Ed. 2023), https://www.elc-pa.org/wp-content/uploads/2023/05/SDP-IDEA-CIR-03.17.2023-w-Enclosures.pdf.
[27] *Id.*
[28] PITTSBURGH PUBLIC SCHOOLS, COVID COMPENSATORY SERVICES 2.0 (2023). https://www.pghschools.org/departments/pse-special-education/covid-compensatory-services#:~:text=Covid%20Compensatory%20Services%20are%20used,entitled%20during%20the%20pandemic%20period.
[29] *Id.*
[30] *Id.*