

Catching Up and Keeping Up

Special Education Mediation Services (SEMS)





SPECIAL EDUCATION MEDIATION SERVICES LEARNING MODULE

Catching Up & Keeping Up

Grant-Funded

A Grant-Funded Initiative of the Michigan Department of Education Office of Special Education (OSE).

Free

Offer FREE mediation, IEP facilitation and collaborative communication training to schools and parents across Michigan.

Federally Mandated

Enables the OSE to meet its obligation under the IDEA to provide statewide mediation services at no-cost to schools and parents to resolve special education disputes.



Today's Topics

Four specific concepts, in guidance and law, intended to help students with disabilities catch up and keep up:

- Contingency Learning Plans
- Extended School Year (ESY)
- Compensatory Education
- Recovery Services





Definitions



- **Contingency Learning Plans**

A back up learning plan to be implemented when or if the full offer of a FAPE cannot be provided.

- **Compensatory Education**

A legal remedy for a denial of FAPE.

- **Extended School Year**

Services needed to provide FAPE and prevent predicted regression. Focus is on maintenance of a skill, not remediation or development.

- **Recovery Services**

Address forgone learning due to COVID-19 pandemic school closures. The focus is on recouping skills lost due to the pandemic and the additional impact beyond what all students experienced.



The Impact of the Covid-19 Pandemic



“Long before the pandemic first shuttered America’s schools in spring 2020, students from historically marginalized communities already faced challenges in accessing basic educational resources—from well-trained, well-paid teachers and staff to adequate buildings and books. For these students, there was already a crisis of educational opportunity—a crisis that COVID-19 appears to have made worse.”



The Impact of the Covid-19 Pandemic



- Despite the realities of the pandemic, the obligation of districts to deliver FAPE has not changed.
- These tools are designed to help parents partner with schools to improve student outcomes.
- The requirement under IDEA to consider the unique needs of each student means that which tool is the best fit should be decided on a case by-case basis.

Contingency Learning Plans





CLP Definition



Whether the school year begins fully virtual, hybrid, in-person, or in another format, each student with an IEP should have a contingency learning plan (CLP) to be implemented when or if the full offer of a FAPE cannot be provided.

https://www.michigan.gov/documents/mde/ReturntoSchool_699307_7.pdf

https://www.michigan.gov/-/media/Project/Websites/mde/Year/2021/10/26/sitecore/media-library/Project/Websites/mde/RecommendedUse_ContingencyLearningPlans_2021-2022.pdf?rev=31e75c026ed944fcb291faddcd9ff89a

Factors to Consider

Each student's IEP must be current to start the school year and is the basis for discussion regarding the development of a contingency learning plan.

Parents must be provided meaningful participation and be fully informed of the special education programs, services, and supports available in the brick-and-mortar setting.

A contingency learning plan should be referenced in the IEP, and developed outside of the IEP, collaboratively with parents, and in accordance with the student's IEP.



Developing a CLP



- Created during annual IEP review or as an amendment.
- Must provide parent with notice of the full offer of a FAPE.
 - Details the special education programs, services, and supports that the student is entitled to receive.
- Relevant members of the IEP team, including the parents, develop the contingency learning plan.
- Changes to the contingency learning plan can be made, as needed, without convening an IEP team meeting but should include parent input.

Universal and Individual



Although IEP team conversations and considerations regarding the need for a contingency learning plan appear to be somewhat universal:

The events that would trigger the implementation of the plan are individualized within the context of the COVID-19 pandemic.

The development of the contingency learning plan is also highly individualized and should be in accordance with each student's IEP.

Predictive or Reactive?



CLPs are to **anticipate** necessary changes when service delivery changes from in-person to virtual or hybrid:

They should be in place to allow a seamless transition when a decision is made to change the method of education and service delivery.

Every effort should be made to ensure all the providers, the parent/guardians and the student know what will change, when it will happen and how the services will be delivered.

Extended School Year



ESY Summary



- Services provided outside the normal school year needed to provide FAPE.
- Decisions individualized and based on data, not formula.
- No new goals are developed for ESY.
- Only used for skill maintenance, not development or remediation.

ESY Summary Continued



- Provided only for annual goals where there is an area of concern (no new goals).
- Based on regression/recoupment, nature/severity of the disability, and/or critical stage or area of learning.
- LRE and services are not identical to those provided during the school year.



Eligibility Criteria

- Current annual goals must address one or more skills requiring ESY services.
- One of 3 areas of concern must be demonstrated by data:
 1. Regression and recoupment;
 2. Nature or severity of disability;
 3. Critical stage or area of learning.





ESY is Not

- Recovery services.
- Based solely on disability category or program assignment.
- Required for every student with a disability.
- Just services over the summer.
- Summer school.
- Required to be provided in a traditional or classroom setting.
- Automatically included in a child's IEP from year to year.
- To work on new goals or objectives.



Goals Area - Ask:



Is there one or more current annual goal(s) that address skills which need to be maintained without interruption for the student to benefit meaningfully from a FAPE?

Areas of Concern- Ask:



Is there data that shows:

- A serious potential for regression of skill in the goal area?
- A potential recoupment period beyond a reasonable amount of time?
- The nature and severity of the student's disability warrants ESY?
- A skill that needs to be mastered immediately or it will be permanently reduced/lost?
- Any changes in the student's physical, mental, or sensory status that makes it possible to predict an accelerated rate of learning during ESY?

Yes to any question = ESY



Compensatory Education

section



Compensatory Education



Remedy for a district's failure to provide FAPE that resulted in harm to the student.

Not specifically in IDEA. Originated from courts and hearing officers pursuant to 34 CFR 300.516 authority to "grant such relief as the court determines appropriate."

State Educational Agencies (like the MDE/OSE) can also grant comp ed via state complaint or focused monitoring corrective action for denial of FAPE.

When Compensatory Education Can be Considered

- A delay in a district's identification of an eligible student, resulting in missed services.
- IEP was not implemented as written.
- A student was not provided access to IEP provisions and/or general education curriculum for a period of time, due to:
 - a. Improper disciplinary removal(s)
 - b. Errors in manifestation determination findings
 - c. Their IEP lacking appropriate services, accommodations, modifications, and/or supports.





More About Comp Ed

- Purpose is not punitive. It is to put the student in the position they would have been in if FAPE had been provided.
- Can result from procedural non-compliance if there is harm to the student.
- Provided outside the school day/school year, but is not ESY.



Additional Considerations



Some parent advocates and attorneys believe that an IEP Team can consider compensatory education without a formal court, state or administrative order.

No caselaw or authority in Michigan has formally ruled on this issue.

Compensatory like services sometimes are discussed at an IEP meeting as “remedial education,” or “remediation”.



Developing a Compensatory Education Plan

- A compensatory education plan must be developed with input from the student's IEP team.
- As with an IEP, the district has an obligation to develop and issue an offer, based upon the needs of the student and/or the findings of noncompliance.
- Although opportunity for meaningful parental input must be provided, agreement from the parent(s) is not required.



Characteristics



- A supplement to current instruction and educational opportunities.
- Totally different analysis from and doesn't interfere with Extended School Year (ESY).
- Provided outside the course of the regular school day (before school, after school, and/or during the summer or other breaks).



Specifics of a Compensatory Education Plan

- Description of the services to be provided and who will provide the services.
- The time, frequency, location, and start date of services.
- The compensatory education plan should take into consideration the availability of the student and other ongoing activities, such as sports, music, clubs, camps, etc.
- When transportation is required to access compensatory education services, it must be provided at no expense to the parent.





Compensatory Education - Ask:

- How much actual loss has occurred?
- What is needed to put the student back to where they would have been?
- How much can the student tolerate?
- From a practical standpoint, when will the provision of added learning most benefit the student?

Think creatively about how this can happen!



Transferability



- If a student moves to a new district, the former district remains responsible for developing and implementing the compensatory education plan.
- A district may contract with the student's new district or a private agency to provide the required compensatory education.
- When a State complaint resolution decision has ordered relief that can reasonably be implemented in a new state and the parent does not reject the remaining compensatory services, the MDE must ensure the decision is implemented in the new State.

Disagreements



- In the event a parent disagrees with a districts offer they may choose to pursue one or more dispute resolution option(s).
- If a parent declines all or part of an offer of compensatory education, the district should obtain from them a written statement of their decision.
- If a district is unable to obtain a written statement or communication, the district must document all attempts to contact the parent for the delivery of services.

Recovery Services





Recovery Services

- May be considered in response to the forgone learning that happened due to COVID-19.
- Not mandatory.
- Not a remedy.
- Look at additional impact the closure may have had for students with IEPs.
 - Overall loss to gen ed population.
 - How much more loss, if any, impacted the student with an IEP.





Recovery Services Dates

Federal COVID relief funding permits use to address the academic impacts of lost instructional time.

- ESSER I (CARES): Expires 9/30/22
- ESSER II (CRRSA): Expires 9/30/23
- ESSER III (ARP): Expires 9/30/24





Recovery Services

- Must align with the IEP, intended to support goal achievement and progress in general curriculum.
- Supplement, not supplant, FAPE services.
- Determined in collaboration with family.
- Can be provided over the summer but are not ESY.
- Provided during school day.





OSEP Guidance

- Be aware of child find obligations and/or the need to review and revise IEPs due to the adverse impact of long COVID.
- Mitigation and Risk Prevention
- If the IEP Team or group of knowledgeable persons making a placement decision is unable or unwilling to address the school-related health needs of an eligible child with a disability who is at increased risk of severe illness from COVID-19, the parent may utilize IDEA's dispute resolution procedures and mechanisms or Section 504's procedural safeguards
- <https://www2.ed.gov/documents/coronavirus/letter-to-educators-and-parents-regarding-new-cdc-recommendations-03-24-2022.pdf>





Handouts



Guidance for Extended School Year Services in Michigan [PDF]
<https://www.michigan.gov/-/media/Project/Websites/mde/specialeducation/iep/GuidanceDocforESY.pdf?rev=f350facdc5084cddb21b726a49237a3f>

Standards for Extended School Year Services in Michigan [PDF]
<https://www.michigan.gov/-/media/Project/Websites/mde/specialeducation/policies/StandardsForESY.pdf?rev=653be3cf04f043d6a133ae79a4c05b65>

Compensatory Education
<https://www.michigan.gov/-/media/Project/Websites/mde/specialeducation/DRO/CompensatoryEducation.pdf?rev=be3b9415b95a4d63a0ace8fb0a907c93>

Comparison of Compensatory Education and Recovery Services Due to COVID-19
https://www.michigan.gov/-/media/Project/Websites/mde/specialeducation/COVID/RecoveryServices_SidebySide.pdf?rev=7728dbf6e7d44c99a60c8a322d6d23bf

SUMMARY

There are four distinct means for students to catch up and keep up to overcome the impact of the pandemic or other learning loss.

Although there is guidance from agencies on some of these concepts, there isn't very much authority indicating specifically what an IEP Team either can't or must provide in a specific situation.

SEMS can provide either mediation or facilitative services to help schools and families navigate any of these processes!



Thank You!

Special Education Mediation Services

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