

The purpose of this document is to provide information, tips, and resources to help local education agencies (LEAs) and ARD committees appropriately and effectively consider the provision of compensatory services and extended school year (ESY) to students in accordance with federal and state requirements and consistent with TEA's expectation that LEAs provide students served by special education with the high quality instruction and services necessary for them to perform academically at the highest possible level during and after COVID-19 Texas school closures.

By reading this document, you will learn:

- The differences between ESY and compensatory services for students with disabilities;
- Key considerations for ensuring that students with disabilities receive continuity of services with minimal interruption during this unique situation; and
- Where to find helpful resources and tips related to ESY and providing compensatory services to students with disabilities, including best practices for delivering services remotely or virtually.

## Compensatory Services and ESY Services: Key Definitions and Distinctions

During the unique situation arising in response to the COVID-19 health and safety requirements, LEAs face new and unexpected challenges in delivering instruction and services via remote methods to students receiving special education services. Despite these challenges, LEAs must make reasonable efforts to provide high quality and effective special education and related services to students in accordance with their IEPs. At its core, the distinction between compensatory services and ESY can be described as follows:

- Compensatory services provide a student with a disability the educational services needed to make up for skills or learning that have been lost when services described in an IEP were not provided.
- ESY services provide individualized instruction and services to prevent the severe or substantial loss of skills or learning during the time beyond the regular school year when schools are not in session.

ESY services are not a substitute for compensatory services. If services are not provided as a result of the pandemic response, a consideration of compensatory services would need to be completed and an individualized plan created as needed. For some students, it may be appropriate to provide compensatory services beyond the regular school year (such as during the summer), but this would be a separate consideration from the student's ESY needs.

## Compensatory Services Defined

Compensatory services are generally defined as educational services that a student needs to make up for skills lost because an LEA did not provide the services required by the IEP. When it comes to compensatory services needed to make up for services that could not be provided because of the COVID-19 pandemic, the ARD committee's determination should not be viewed as remedy for a failure on the part of the LEA, but rather as a means to mitigate the impact of the loss of critical skills or learning that might have occurred as a result of special education and related services that could not be provided during the pandemic.



# Considerations for Extended School Year and Compensatory Services for Students with Disabilities During and After Texas School Closures Due to COVID-19

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## ESY Services Defined

ESY is a separate requirement that must be considered for all students with disabilities. ESY is defined as the special education and related services that are required by the Individuals with Disabilities Education Act (IDEA) that an ARD committee determines a student with a disability will be provided beyond the regular school year as set out in the student's IEP. ESY services are required only if the ARD committee determines and documents in the IEP that, in one or more critical areas addressed in the current IEP goals and objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. In Texas, severe and substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.

For additional state requirements related to ESY, please see: [19 TAC §89.1065. Extended School Year Services](#)

## Compensatory Services: Key Considerations and Guiding Questions

IDEA requires that every student who is eligible for special education be offered an IEP that is reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances. However, TEA strongly encourages all Texas LEAs to exceed that federal standard for a Free and Appropriate Public Education (FAPE). Our goal for special education is that it provides students with disabilities the individualized supports necessary to perform at the same or higher levels than their non-disabled peers to the degree appropriate based on each student's individual circumstances. ARD committees must at a minimum meet the FAPE standard and plan appropriate services and instruction that will accelerate students' learning, including any compensatory services that are required as a result of the pandemic response.

During this unprecedented time related to COVID-19, LEAs may need to provide instruction and services above and beyond what was reflected in a student's IEP prior to school closures in order to meet the needs of students with disabilities. Unique situations are likely to arise where LEAs are called upon to step outside of routine practices to ensure the continuation of students' IEPs, as required in IDEA. In some cases, the practical realities of the COVID-related health and safety concerns or requirements will prevent the LEA from providing the instruction and services spelled out in a student's IEP. In response, the LEA will need to take steps to ensure that ARD committees address on an individualized basis whether and to what extent this may have resulted in the need for compensatory services.

In accordance with guidance from TEA and from the United States Department of Education, Office for Special Education Programs (OSEP), ARD committees will need to make individualized decisions regarding the provision of compensatory services once schools reopen. Given the uncertainty about what regular school operations will look like in the near future and in light of the fact that LEAs have continued to provide some level of instruction and services to students throughout the closure of physical school buildings, an ARD committee may in some circumstances consider whether it makes sense to move forward with determinations either virtually or in person over the summer months.



ARD committees considering the provision of compensatory services remotely should carefully consider how effective remote services have been for individual students thus far and make adjustments to delivery methods and supports to ensure that the most effective services possible are provided to individual students.

## Key Considerations for LEAs and ARD Committees

- The ARD committee should review with the family what special education and related services listed in the IEP were temporarily reduced or suspended due to school closure because of COVID-19. Service logs and temporary schedules should be compared with the IEP to document what the student missed.
- When determining whether a student needs compensatory services, the student's ARD committee must review the student's past and current needs considering the absence of special education and related services resulting from school closures. In reviewing data, the ARD committee should discuss and weigh information from a variety of sources. For example, compare the statement of the child's present levels of academic achievement and functional performance in the IEP with the most current measures and observations. Further, progress monitoring by both the teacher and parent, work samples, teacher observations, and observations and progress monitoring collected by parents during at home learning all might be valuable. Finally, the need for a formal reevaluation should be considered if it is determined that it would yield missing data on the current performance level of the student.
- If the student's data show that the student has not lost progress, or that the student will be able to make up for the lost progress in a short amount of time without the need for compensatory services, then the ARD committee might determine that the student does not need compensatory services.
- If the student's data show that the student has lost progress, then the ARD committee must consider and, as applicable, include in the student's IEP the type, location, duration, and frequency of the services the student needs to make up for that lost progress. The decision must be made based on data regarding student progress and should not be misconstrued to necessarily require an hour for hour or minute for minute makeup in services.
- ARD committees should keep the student and the family in mind when determining the duration and frequency of compensatory services. Overloading a student with compensatory services may ultimately do more harm than good. Likewise, removing a student too often from his/her routine settings, peers, and classes once school reopens in order to provide him/her with compensatory services may have a negative impact on the student's social and educational progress. The ARD committee should consult with the student, as appropriate, about how best to deliver compensatory services.
- Following the ARD committee's initial determination regarding compensatory services, it must monitor and revise, as appropriate, with the objective of reasonably returning the student to the levels he or she would have been without the disruption of school closure on account of COVID-19.
- If a student experienced a pause during the initial evaluation process for special education eligibility due to concerns related to the COVID-19 pandemic response, and is later found to be eligible for

special education services, then the ARD committee should consider whether there is a need for services that address the delay in receiving special education services.

- If a student experienced a pause for reevaluation or an interruption in the actual testing midway through the reevaluation process, and is later found to be eligible for new special education services, then the ARD committee should consider whether there is also a need for services that address the delay in receiving the new special education services.
- If a student experienced an interruption in the delivery of compensatory services that were decided as part of the complaint process, mediation, or a due process hearing, then the ARD committee should consider whether there is need for additional compensatory services to address the delay in the student receiving other compensatory services as the result of a previous action.
- An LEA must not suggest, encourage, or pressure families to waive special education services for students, including compensatory services.

## Guiding Questions for LEAs and ARD Committees

- How has the LEA ensured effective communication with families regarding services provided and not provided?
- Does the Emergency Contingency Guidance document from TEA, or similar document prepared by the LEA, serve a purpose in planning for possible compensatory supports?
- Does the LEA have a method to project and plan for the most common types of services that will be needed as compensatory services?
- Does the LEA have a system to identify and track each student with a disability whose IEP was amended or supplemented due to the closure? Does the LEA have a system to identify and track each student with a disability whose IEP services were temporarily reduced or suspended regardless of a formal IEP amendment?
- Has the LEA conferred with its legal counsel and LEA leadership team for latest guidance and support?
- Does the contingency plan for providing compensatory services align with the plan for instructional continuity for general education?
- Can the student's needs be met through the general education supplemental programming provided by the LEA?
- How will the LEA ensure sufficient staffing for compensatory services provided?
- How is the LEA documenting consultation services to families in order to help the student continue to progress with their IEP goals?
- Was the student provided instruction or services via an alternative method (e.g. online math instruction, online speech therapy, or instruction provided telephonically) during the closure?
- Were alternative methods of instruction and services provided to the student as beneficial for the student as the methods normally used to serve the student?
- Was the student able to access the instruction and services?

- Is there clear documentation of the amount of instruction and services the student was provided during the closure (including dates, times, and duration)? If so, what amount of instruction and services did the student receive?
- How will the LEA clearly communicate the amount of instruction and time required of compensatory services so that parents and guardians, as members of the ARD committee can be well informed participants in the decision-making process?
- How will the LEAs monitor service times and notify families of completion?
- What percentage of the student's IEP-required instruction and services did the student receive?
- Are there indications that the student regressed either academically or non-academically during the closure? Has the student lost any specific skills?
- How can the ARD committee address the need to accelerate skill recuperation without overloading students and/or families with services?

## Extended School Year Services: Key Considerations and Guiding Questions

Extended School Year (ESY) services are an individualized instructional program for eligible students with disabilities that is provided beyond the regular school year. The purpose of ESY is to help students maintain critical skills over breaks. It is provided to minimize or prevent regression.

For additional state requirements related to ESY, please see:

- [19 TAC §89.1065. Extended School Year Services](#)
- [TEA Webpage: Extended School Year Services for Students with Disabilities](#)
- [Legal Framework Extended School Year Services](#)

### How are ESY Services Determined?

- The need for ESY services must be determined on an individual basis by a student's ARD committee.
- The need for ESY services must be documented by formal or informal evaluations provided by the LEA or the student's family.
- If a student requires or can reasonably be expected to require a significant amount of time to recoup acquired critical skills, then the ARD committee must discuss whether the student needs extended educational or related services during school breaks.

If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others, ESY services may be justified without consideration of the period of time for recoupment of such skills.

### Summer 2020 ESY Considerations

- Given the uncertainty surrounding when school buildings will reopen, schools should make contingency plans for school closures that would impact ESY. Possible scenarios that should be considered include: face to face instruction for all who are eligible, face to face instruction for limited

numbers of students who are eligible due to potential limitations of how many can be gathered in one place, and finally, the continuation of virtual learning for all who are eligible. LEAs should focus on ESY as a necessary service, regardless of the modality of delivery.

- LEAs must follow Commissioner rules outlined in 19 TAC §89.1065 when making decisions regarding ESY for summer 2020.
- ARD committees should consider the data they have already collected on student IEP goals. In general, ARD committees will have already identified or have the data necessary to determine which students need an extended 2019-2020 school year. The data for summer 2020 ESY, was likely collected based on regression and recoupment data from summer break between the 2018-2019 and 2019-2020 school years. Additional data, if needed, was likely collected over the 2019-2020 winter break.
- Due to the COVID-19 pandemic, ARD committees need to carefully consider any individual cases where an extended break due to school closure is likely to result in severe or substantial loss of critical skills, or regression is reasonably expected to result in the immediate physical harm to the student or others. In these situations, ESY services during summer 2020 may be justified without consideration of the period for recoupment.

## How are ESY Decisions Impacted Once Schools Resume in 2020-2021?

In most situations, LEAs will not have the opportunity to assess the amount of time needed to recoup losses on critical IEP skills that result from the current break from traditional school as a result of the COVID-19 pandemic until schools reopen for the 2020-2021 school year. At that time LEAs will need to:

- Assess students to determine present levels in relation to IEP goals;
- Provide instruction and reteaching of critical skills;
- Carefully monitor student's progress and recoupment of critical skills; and
- Use data to discuss as an ARD committee potential ESY eligibility during the 2020-2021 school year.
- In any case, the period for recoupment may not exceed 8 weeks.

Below are additional considerations to help LEAs and educators and during this time.

## Key Considerations for LEAs

### Maintaining Effective Communication with Parents and Families

- In cases where families were not responsive to the LEA's attempts to reach the families, LEAs should consider the possibility that many families may have been overwhelmed or had other extenuating circumstances.
- The LEA should maintain ongoing communication in the mode most accessible to individual families throughout the school closure period.
- The LEA should consider the resources and needs of families as they relate to various modes of communication.

- LEAs should provide informational resources about ESY to families so they can be informed and meaningfully engaged.

## Documentation of Events, Students and Family Needs

- The LEA should consider how to meet student's needs if access to instruction and/or services, as required in the IEP, is interrupted due to the sudden, unexpected, and unprecedented circumstances of COVID-19.
- The LEA should consider the unique circumstances and needs of the student's family.

## Monitoring the Delivery of Instruction and Services for Student Receiving Special Education Services

- The LEA must consider each student's individual needs and IEP requirements independent of other students, group, or class, as well as consider the needs and circumstances of each student's family on a case-by-case basis.
- The LEA should consider the monitoring process and methods that will meet the needs of the student, the student's family, and the LEA.
- The LEA should consider what is included in the monitoring, such as, but not limited to, accommodations, modifications, instruction, services, in-class support, inclusion, and instructional setting.
- The LEA should consider the role of evaluations in the monitoring process.
- The LEA should consider the need for ARD meetings to address any developing needs that may arise for students during the COVID-19 experience as well as the need for ARD meetings to address any changes in the student's needs once students return to the brick-and-mortar setting.

## Guiding Questions for LEAs and ARD Committees

- How did the remote services, such as the delivery of hard copies of packets with phone consultation, or instruction in an online virtual environment, impact the student's access to instruction/services/learning? How would instruction delivered in a similar way in the summer accomplish the goal of preventing regression?
- When and how will the LEA hold an ARD meeting to develop or amend an IEP, including the provision for the student to have an opportunity to receive instruction and services the student missed?
- How might the LEA provide the student with access to the instruction and/or services the student missed during the COVID-19 experience?
- What methods of communication are at the disposal of the LEA?
- How has the LEA ensured effective communication with families regarding services provided and those that were not provided?
- How is the LEA providing support to overwhelmed students and families?
- How may the LEA support families who may not have access to technology and other resources?
- What instruction and/or services did the student receive?

- What instruction and/or services did the student not receive?
- How was instruction provided?
- How were modifications and/or accommodations provided?
- How were related services provided?
- Does the monitoring include the identity of the provider, a description of what is being provided, the time of delivery, the duration of the delivery, the method of delivery, and if necessary, the location of the delivery?
- Does the monitoring include how the instruction and/or services relate to the student's IEP goals?
- What was the last assessment the student received for progress monitoring, prior to the school closing, and how might the LEA use this assessment to obtain an accurate picture of the student's current progress, maintenance, or regression of skill(s)?
- How will the LEA assess the student's skill(s) once the school returns to the brick-and-mortar setting?
- Does the new assessment assess the student's skill(s) using the same progress monitoring tools or methods as the last progress monitoring assessment provided to the student prior to the school closing?
- How will the LEA aggregate relevant parent-collected progress monitoring data?
- How will the LEA compare data for the student's current skill(s) with data from the last progress monitoring data and assessment acquired prior to the school closing?
- How does the difference or similarity between the two measurements reveal progress in skill(s), maintenance of skill(s), or regression in skill(s)?
- Is the method of progress monitoring and analysis appropriate for all students, regardless of disability type?
- Has the LEA ensured the amount of data collected during the school closing and when students return to the brick-and-mortar setting is commensurate with the amount of data collected at the last progress monitoring interval prior to the school closing?