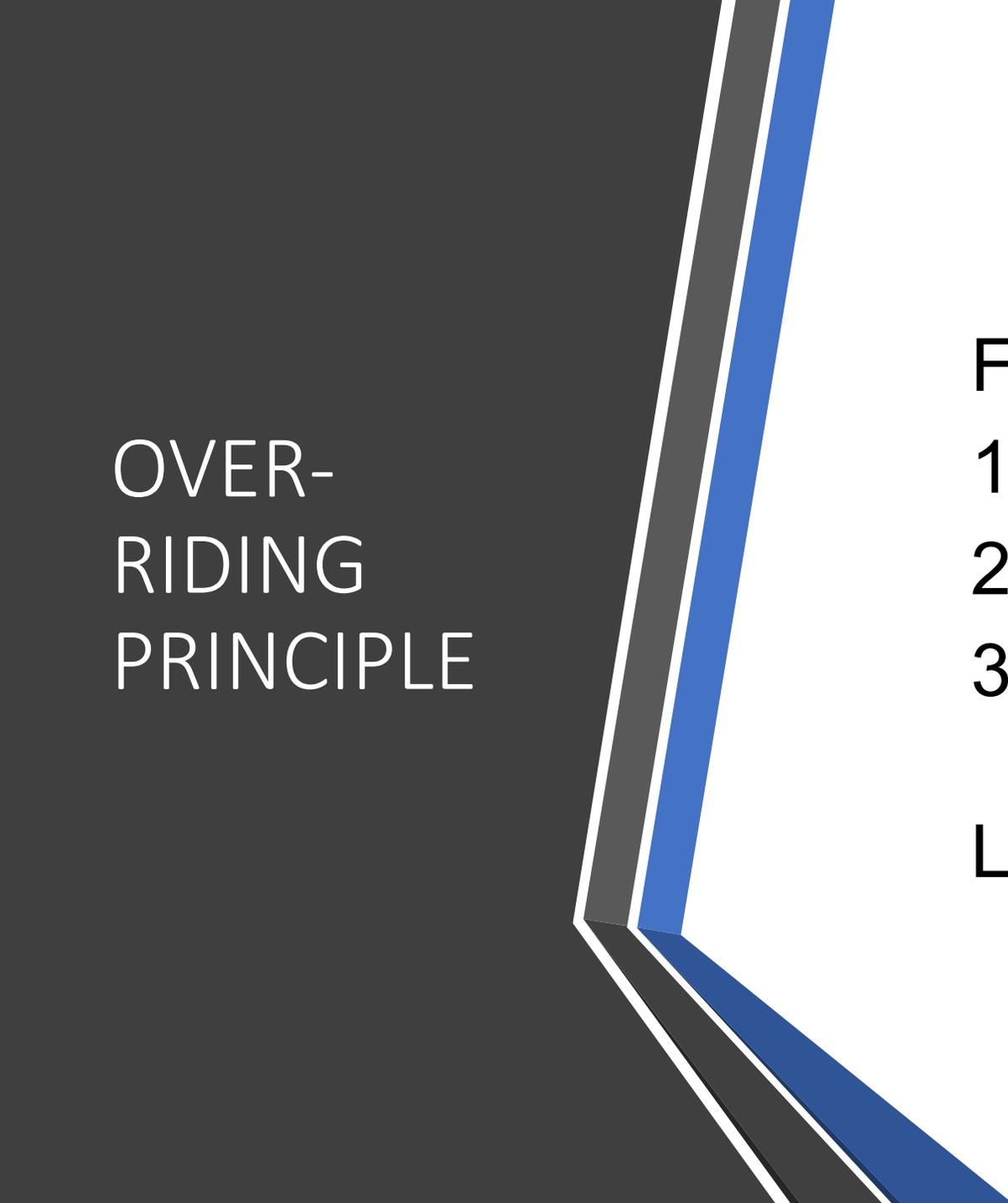




COMPENSATORY EDUCATION GUIDANCE IN LIGHT OF COVID-19 QUESTIONS AND ANSWERS

A decorative graphic on the left side of the slide, consisting of several parallel lines in blue and grey, forming a shape that resembles a stylized 'L' or a corner. The lines are set against a dark grey background.

OVER-
RIDING
PRINCIPLE

FOLLOW THREE RULES:

1. Do the right thing
2. Do the best you can
3. Always show people you care

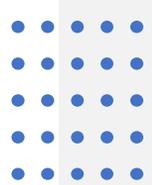
Lou Holtz

**BUT IS IT REALLY
COMPENSATORY
EDUCATIONAL
SERVICES?**

Compensatory educational service is a framework with which we are familiar.

The principles can be applied to the current situation.

OSEP USES THIS LANGUAGE



Definition of Compensate

1. To supply an equivalent for
2. To offset an error, defect, or undesired effect
3. a) To provide with means of counteracting a variation
b) To neutralize the effect of

- - Merriam Webster - -

Recognition of Differences

NOT A
DELIBERATE
FAILURE TO
PROVIDE A FAPE

NOT A COURT
ORDERED
REMEDY

TEACHERS AND
RELATED STAFF
HAVE BEEN
WORKING HARD
TO PROVIDE A
FAPE

IN-PERSON
SERVICES WERE
NOT SAFE OR
FEASIBLE; WE
HAD NO OTHER
OPTIONS

BEFORE WE DIG IN

The Arizona Department of Education offers the following **guidance to assist PEAs in fulfilling their obligation to provide a FAPE to students with disabilities.** However, due to the nature of a pandemic and the unprecedented circumstances of this interruption to the typical operations of brick and mortar schools, **this guidance cannot provide an answer to every circumstance that may arise once students return to public school campuses.**

This guidance also does not substitute for legal advice and **PEAs are always encouraged to consult with their legal counsel when deciding how to proceed in a specific factual scenario.**

If a public education agency (PEA) provided some services during the school closure, or only enrichment opportunities, must it assess the needs of individual students for compensatory education?

- Yes. PEAs are required to provide equitable access to general education opportunities **and continue to provide a free and appropriate education (FAPE) to students with disabilities to the maximum extent possible.**
- It is acknowledged that, despite best intentions, efforts, and creative solutions, there are some students who will not receive a FAPE over the course of the school closure.
- Therefore, PEAs will need to make individual determinations, for each student, as to whether compensatory educational services will be owed due to the PEAs failure or inability to provide a FAPE.

**Must ALL
students with
disabilities be
provided with
compensatory
educational
services?**

NO. An individual determination must be made related to whether a FAPE was provided to the student and whether or not compensatory educational services are necessary to remedy the PEAs failure or inability to provide a FAPE.

How should a PEA determine whether a student with a disability should receive compensatory education services?

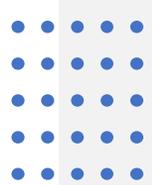
- Compensatory educational services should be determined by looking at the **totality of the circumstances for each student, including parental input, and determining the amount of service, if any, needed to remedy the educational deficits resulting from a failure or inability to provide a FAPE.**
- **A formal IEP meeting is not required** to make a determination of the need for, the amount or delivery of compensatory educational services. However, in looking at the **totality of the circumstances, parental input should be solicited and considered.** It is then incumbent upon the PEA to make an offer of compensatory educational services when the determination has been made that an individual student was not provided with, or the PEA was unable to provide services during the period of school closure that would constitute a FAPE for that student.

Does an IEP meeting need to be held to determine the need for compensatory educational services?

- **NO. IEP teams do not have to meet to determine if a student requires compensatory services.**
- **However, parental input should be solicited and considered when determining the need for compensatory educational services and how those services will be provided.**

Does a PEA have to provide the same amount (minute for minute) of service time missed from the IEP as compensatory educational services?

- **No.** Compensatory educational services are not a contractual remedy, but an equitable remedy. It is designed to ensure that the student is appropriately educated within the meaning of the IDEA and as such "[t]here is no obligation to provide day-for-day or minute for minute compensation for time missed." See *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1496-97 (9th Cir.1994). **Compensatory educational services should be determined by looking at the totality of the circumstances for each student and determining the amount of service needed to remedy the educational deficits resulting from a failure to provide a FAPE.**



What Information Should Be Considered?

In making an individualized determination as to whether a student is owed compensatory educational services, schools should consider a variety of factors, **including but not limited to;**

- Services provided during the period of school closure
- Ability of the student to access any services provided during the period of school closure
- Regression in skills
- Progress or lack of progress made on IEP goals
- Parental input

Some Things to Consider

- **This is not an exhaustive list. Each student's circumstances are unique.**
 1. **What services were provided to the student during the closure?**
 2. **What was the ability of the student to access the services provided?**
 3. **Was there a regression in skills related to IEP goals?**
 4. **Was there progress or a lack of expected progress on IEP goals?**
 5. **Where does the student need to be in order to make progress once the student returns to the to school campus?**
 6. **What was the impact of the school closure on the student?**
 7. **Parental input?**



What might this look like?

- In determining whether a FAPE was provided during the time of school closure, the best source of data may be **4th quarter progress reports** as this data is most likely to capture student performance during the closure itself.
- If 4th quarter progress reporting is not available, nothing in this guidance would prohibit a PEA from **collecting data to assess the need for compensatory educational services during the summer break** if it was safe and feasible to do so.
- In any event, it is recommended that **PEAs collect data and solicit parental input no later than 30 school days of students returning to the school campus**, to determine the need for compensatory services.

Must parents be involved in the determination of compensatory educational service provision?

Yes. PEAs should solicit and consider parental input to determine whether compensatory educational services are needed, and if necessary, how those services will be delivered.



If a parent refuses the IEP services provided by the PEA during the period of school closure, must the PEA make a determination of the need for compensatory educational services?

- It is strongly recommended that PEAs document attempts to provide services, that were accessible to students, through alternative or virtual formats, and to record contact and communications with parents and students.
- Because the compensatory educational services framework is founded on the failure or inability of the PEA to provide a FAPE, a parent's refusal of services may excuse the PEA of its obligation to consider compensatory educational services.
- However, please consult with your legal counsel for advice related to specific factual circumstances.

When can compensatory educational services be provided?

- Compensatory educational services may be provided during the regular school day, over school breaks, in intensive, targeted, individualized programs, or by outside service providers.
- If compensatory educational services are to be provided during the school day, *the student's least restrictive environment cannot be altered* due to the provision of the compensatory educational services.
- Because the provision of compensatory educational services is an equitable remedy, PEAs are encouraged to be creative in designing a plan to deliver compensatory educational services that meet the needs of the individual student in remedying the failure or inability of the PEA to provide a FAPE.

A dark blue, irregularly shaped graphic with a splatter effect, containing white text. The graphic is centered on a white background and has a rough, hand-painted appearance with some lighter blue and white splatters around its edges.

Schools have flexibility
and can be creative in
fashioning offers of
compensatory educational
services.

Can a PEA offer *all* students summer school as compensatory educational services?

No. PEAs must ensure that individualized determinations are made related to the extent to which a student may require compensatory services. Schools should not create blanket rules offering a set amount of compensatory service to all students, or to subsets of students with disabilities, when they return to school campuses. In order to provide a FAPE, schools have an obligation to consider compensatory education for each student with a disability without the need for parents or guardians to file a state administrative complaint or a due process request for hearing.

**Or: Provide
ESY to all
students
instead of
compensatory
educational
service?**

No. Compensatory services should not be confused with extended school year services (ESY). ESY is designed to maintain skills over school breaks and prevent degradation of skills that will not be recouped within a reasonable time once school resumes. The determination of the need for ESY services is a separate determination made in a student's IEP meeting.

Compensatory educational services are delivered when the PEA has failed or was unable to provide a FAPE to a student. In the current circumstance, the failure or inability to provide a FAPE was due to school closure related to the COVID-19 pandemic.

Can a parent refuse an offer of compensatory educational services?

- **Yes. A parent can refuse an offer of compensatory educational services.** It is recommended that PEAs document the offer and parental input into the need for compensatory services, as well as the parent's refusal of the services offered. Prior written notice (PWN) may be used to document an offer of compensatory educational services and the parent's refusal. If the parent refuses the offer, the PEA has met its obligation by making the compensatory educational services available.

What happens if a parent disagrees with the offer of compensatory educational services?

- Parents retain their procedural safeguards in the event their child has been denied a FAPE.
- Parental rights under the IDEA have not been waived.
- It is recommended that an alternative dispute resolution process such as **mediation** be used to resolve disagreements related to the need for compensatory educational services or the amount of compensatory educational services offered.

Must an IEP meeting be held once school resumes if a student's needs have changed as the result of the school closure?

If a student's educational, social/emotional, or behavioral needs have changed to the degree that the student's ongoing services or supports are no longer sufficient to provide a FAPE, the student's IEP team should meet to determine if the current IEP requires revision to reflect the student's current needs.

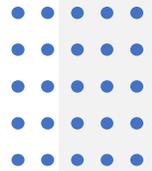
- Example: Student who did not have behaviors that impeded learning when school closed, has now developed behaviors that impede his progress
- Example: Student has become markedly more anxious or depressed or has lost core academic skills previously learned

This is not the same as, or a substitute for, compensatory educational services, nor will it be necessary in all cases.

What happens if a PEA does not have the time, forgets, or fails for any reason, to make individualized determinations of the need for compensatory educational services to the students it serves?

Parents retain their procedural safeguards and may file a state administrative complaint or file a request for a due process hearing if their child is denied a free and appropriate public education, including the failure or inability of the PEA to provide a FAPE to the student during the time of an extended closure.

However, it is not advised that PEAs wait until a parent submits a state administrative complaint or files a request for a due process hearing as this may further delay the provision of a FAPE and result in the need for additional compensatory educational services.



What obligation does the PEA have to a student with a disability who was enrolled at the time of the school closure but graduated or “aged out” before students return to campus for the 2020/2021 school year?

- The provision of compensatory educational services is an equitable remedy that is appropriate when a PEA either failed or was unable to provide an enrolled student with a disability a FAPE.
- **It would fall to the PEA in which the student was enrolled at the time of the failure or inability to provide a FAPE to make a determination as to whether or not compensatory educational services need to be provided to the student and to deliver those services as appropriate.**
- School districts have flexibility and can be creative in fashioning compensatory educational services offers, and the unique needs of the student should be considered. However, please consult with your legal counsel for advice related to specific factual circumstances.

What obligation does a PEA have to a student who was enrolled during school closure but has since withdrawn from school?

The provision of compensatory educational services is an equitable remedy that is appropriate when a PEA either failed or was unable to provide an enrolled student with a disability a FAPE.

It would fall to the PEA in which the student was enrolled at the time of the failure or inability to provide a FAPE to make a determination as to whether or not compensatory educational services need to be provided to the student and to deliver those services as appropriate.

**THIS IS JUST THE BEGINNING.
THERE IS MORE TO COME.**

**ADE is here to support you and we will be providing
more resources in the coming weeks.**

Thank
you

