

# Delayed or Denied Evaluations & Compensatory Services



The purpose of this guidance is to assist admission, review, and dismissal (ARD) committees in appropriately considering the provision of compensatory services for a student with an individualized educational program (IEP) who was not provided timely access to special education and related services due to an initial delay or denial in conducting an evaluation.

## INFORMATION FOR ARD COMMITTEES:

### COMPENSATORY SERVICES DEFINED:



Compensatory services are generally defined as educational services that a student needs to make up for progress or skills lost because a Local Education Agency (LEA) did not provide the student with a free appropriate public education (FAPE). This includes situations where a child does not receive special education services because he or she was denied a timely initial evaluation but is later found eligible. If an initial evaluation was denied when it should not have been, resulting in delayed access to FAPE, then compensatory services may be necessary to remedy the initial failure to identify.

### HOW CAN SCHOOLS PROVIDE COMPENSATORY EDUCATION SERVICES?

Compensatory services can come in many forms and must be individualized to the student's unique circumstances. ARD committees have discretion to determine the compensatory services that will remedy the LEA's failure to provide FAPE during the time the student did not receive special education services.

Compensatory services can be provided during the regular school day, before or after school, over weekends, during school breaks, or by outside service providers.

If compensatory services are to be provided during the school day, the student's least restrictive environment cannot be altered due to the provision of compensatory education services.



## COMPENSATORY SERVICES: GUIDELINES FOR ARD COMMITTEES

- » Determinations about compensatory services are made based on the totality of the circumstances for each individual student.
- » The ARD committee should consider the need for compensatory services as part of the initial IEP if a student was previously denied an evaluation or if the evaluation was late. Anytime the need for compensatory services is raised, the ARD committee should consider the need as soon as possible, but in no case later than the next ARD committee meeting.
- » The ARD committee will consider the length of time, amount and type of special education services that the student did not receive, and any non-special education supports, services, or interventions that were provided during the time the evaluation was delayed or denied.
- » Decisions about compensatory services should be data based. The ARD committee will review student data and progress during the time that the student should have been but was not receiving special education services. The ARD committee should carefully consider:
  - Was the student making progress (i.e., evidence of student growth)?
  - Was the gap between the student's skills and grade level expectations increasing or decreasing (i.e., was the student catching up to peers or falling further behind)?
- » Students for whom a lack of special education services exacerbated existing skill deficits when compared to grade level expectations are likely to need compensatory services.
- » The ARD committee must consider and, as applicable, include in the student's IEP the type, amount, location, duration, and frequency of the services the student will be provided to make up for lost special education and related services. The ARD committee needs to think about how to reduce the impact of missed services and ways to accelerate the student's progress rather than simply making up for service minutes that were not provided.
- » ARD committees must carefully consider student and the family input when determining how and when compensatory services will be provided. Overloading a student with compensatory services on top of existing services, may ultimately do more harm than good. Likewise, removing a student too often from their routine settings, peers, and classes to provide them with compensatory services may have a negative impact on the student's social and educational progress.
- » Following the ARD committee's initial determination regarding compensatory services, it must monitor and revise, as appropriate, those services with the objective of reasonably bringing the student to the levels he or she would have been without the disruption of a delayed evaluation.
- » An LEA must not suggest, encourage, or pressure families to waive special education services for students, including compensatory services.

