Determining the Need for Pandemic-Related Compensatory Services at IEP Meetings During the 2023-24 School Year

To address gaps caused by the periods of blended and remote learning at the beginning of the pandemic, New York City Public Schools (NYCPS) operated Special Education Recovery Services (SERS) during the 2021-2022 school year and considered the need for additional compensatory services as a part of IEP reviews during the 2022-2023 school year. Due to these efforts, many students made significant progress and will not require special education services beyond those recommended on their IEPs for the 2023-24 school year. However, some students still have gaps that may need to be addressed through providing additional services and/or instruction. Therefore, in the 2023-2024 school year, schools and IEP teams must continue to determine if such gaps remain, and recommend and provide compensatory services when needed, as described here.

Consistent with federal and state guidance, IEP meetings during the 2023-24 school year must include individualized determinations as to whether the student needs any additional “compensatory” services, in addition to currently recommended services and any Special Education Recovery Services (SERS) or other IEP recommended compensatory services that the student has received to address the impacts of school closures between March 2020 and August 2021. The IEP team must have this conversation at all IEP meetings, including (at minimum) the student’s annual review and following any evaluation, regardless of whether the parent has suggested that their child requires additional services.1

The parent or school may request an IEP meeting at any time to determine whether the student may require additional services, including due to the impact of services not received during the March 2020 through August 2021 periods of blended and remote learning. Parents and schools may also request a reevaluation at any time. Schools must seek a reevaluation when it appears student needs may have changed. Either a requested IEP meeting or a reevaluation may result in the student’s annual review being held at an earlier date than otherwise anticipated.

The IEP team’s determination as to whether compensatory services are required – including any disagreement with a parent request for services – must be documented on the IEP in SESIS. SESIS has been modified to include fields that capture pandemic-related compensatory education determinations and recommendations.2 For guidance on this functionality, please see page 23 of the SESIS IEP Guide.

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1 **For students currently attending private schools:** Compensatory services determinations should be made at IEP meetings only for students who attended NYCPS or charter schools or were placed by NYCPS at state-approved non-public schools at any point during the periods of remote and blended learning between March 2020 and August 2021. If the student did not attend an NYCPS, charter school, or state-approved non-public school during the periods of blended/remote learning at the beginning of the pandemic, the IEP team should indicate this on the Compensatory Services page of the IEP and compensatory services should not be recommended. If a student with an IESP attended an NYCPS, charter school, or state-approved non-public school between March 2020 and August 2021 and requires compensatory services, the IEP team should contact sers@schools.nyc.gov.

2 The Compensatory Services page of the IEP in SESIS should be used only for compensatory services required as a result of the COVID-19 pandemic. Additionally, IEP teams should, as a matter of course, consider whether students require additional services to address learning gaps and deficits caused by a failure to implement the student’s IEP.
Resolving Disputes

As detailed in the Procedural Safeguards Notice, parents have the right to dispute decisions made by the IEP team, including determinations regarding compensatory services. In addition, parents may contact NYCPS's central Special Education Office (SEO) at SERS@schools.nyc.gov or by calling 311 to escalate any concerns or questions regarding IEP team decisions relating to compensatory services. SEO will work with Superintendents, CSE chairpersons, and their designees to support schools and parents in resolving such disputes – including through an expedited IEP meeting with supervisor attendance - where appropriate.

Schools and CSEs are encouraged to use third-party mediation (and inform parents of their rights to do so) to resolve disagreements about the amount of, or continuing need for, additional services. Either the parent or school may initiate mediation. Schools or parents may submit requests for mediation by emailing IHOQuest@schools.nyc.gov, and questions about mediation can be directed to IHOMediation@schools.nyc.gov.

School building leaders and CSE chairpersons should notify SEO of situations in which a parent is dissatisfied with IEP team decisions about compensatory services, including instances where the parent has filed a request for impartial hearing or mediation, by emailing SERS@schools.nyc.gov.

and recommend those services on the IEP, as appropriate; any recommendations for additional services not attributable to the COVID-19 pandemic should not be documented on the Compensatory Services page. IEP teams should distinguish between these two bases for additional services to the greatest degree possible.
Guidance for IEP Meetings

IEP teams are empowered to agree to compensatory services as appropriate, based on student need. During IEP meetings through the end of the 2023-24 school year, IEP teams should:

- Prior to any IEP meeting, consult with the student’s teacher(s) and provider(s) to discuss the student’s progress and need for additional services.
- Explain to the parent that the student’s teachers and providers will continue the process of assessing the student’s progress and needs and will discuss that progress at future IEP meetings. As needed, the district representative will also explain to parents that this ongoing assessment of student need does not imply that provision of additional services will be sufficient or necessary to address lack of progress due to the pandemic.
- Closely review current services and progress reports, teacher/provider reports and input, parent input and concerns, and any recent assessments, and update IEPs and/or make referrals for reevaluation, as needed, with consideration to expected progress of student’s IEP goal(s)
- Discuss additional services that may be required and the intended service delivery method.
  - School building leaders can utilize funds available through the Academic Recovery SAM to pay teachers and related service providers for coverage, per session or overtime, to deliver compensatory services.
  - For students with sensory integration needs, Sensory Education, Exploration and Discovery program (SEED) may be appropriate. Contact seedprogramors@schools.nyc.gov in advance of the IEP meeting for more information.
  - When necessary, consult with your school building leadership or CSE chairperson to arrange alternate means to provide compensatory services, including services at alternate times, or via SETSS voucher (“P4”) or Related Service Authorization (RSA).
- Consult with your school building leadership or CSE chairperson in advance of meetings for students you anticipate may require alternate arrangements, or where the parent has requested compensatory services outside of what the school can provide. Discuss future options or needs for additional services, such as:
  - Additional post-secondary transition support; and
  - Additional academic recovery options that may become available, including the SEED program for students with sensory needs.

In addition to the steps and considerations described above, the following questions can be used to guide an IEP team when considering the need for compensatory services (adapted in part from the New York State Education Department’s Compensatory Services for Students with Disabilities as a Result of the COVID-19 Pandemic policy brief):

- For how long did the student receive blended and/or fully remote learning?
- To what extent was the student provided instruction or services in a learning modality/modalities other than full in-person learning (e.g., remote synchronous and/or asynchronous instruction and/or related services)?

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3 When compensatory services are recommended for students who attend private schools (including state-approved non-public schools), issuance of a P4 or RSA may be required. In such instances, CSEs must support families in locating a provider from the independent registry and authorize enhanced SETSS rates, when necessary.
● What documentation is there to demonstrate that the student benefited from the learning modality/modalities described above? Was the student engaged and able to access the instruction and services?

● Is there documentation of the amount of instruction and services the student was provided during the learning modality/modalities described above (including dates, times, and duration)? If so, what amount of instruction and services did the student receive?

● Have there been changes in the student’s educational progress and achievement, including anticipated progress toward meeting IEP goals, and ability to participate in the general education curriculum? What are those changes?

● Was there a delay in an initial evaluation, reevaluation, or in the development and / or implementation of an IEP?

● Are there indications that the student regressed during the time the student was not receiving full in-person learning? What specific skills regressed? What are the student’s skills at this point in time?

● Is there a possibility that the student will require extended school year (ESY) services due to regression?4

● Did any new needs develop for the student (e.g., emotional, medical, behavioral, academic) such that their IEP should be modified to provide additional or modified program(s) or related services? Does the student require a reevaluation to ascertain the extent and impact of any perceived new needs?

● What benefit has the student received from any SERS that have been provided? Could identified areas of need be addressed by additional services, or is a reevaluation required?

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4 Note that ESY is not a form of compensatory services and should be considered based on the potential for substantial regression during the summer, if not provided. See SOPM at page 75.