

Compensatory Education for Students with Disabilities During the COVID-19 Pandemic



Introduction

Students with disabilities* are entitled to a free appropriate public education (FAPE) and may require **compensatory education** to remedy any educational or other deficits that resulted when a student with an individualized education program (IEP) or Section 504 Plan did not receive the regular or special education, and/or related services designed to meet their individual educational needs during the Pandemic Period (April 14, 2020 - June 10, 2022).

The COVID-19 pandemic resulted in a learning disruption that impacted schools around the world. Many students continue to be impacted by this learning disruption.

*This term includes students who have IEPs and those who have 504 Plans.



Background

In early 2021, the United States Department of Education Office for Civil Rights (OCR) opened directed investigations into services during the COVID-19 pandemic with various school divisions, including [Los Angeles](#), [Seattle](#), [Indiana](#), and [Fairfax](#), in early 2021.



OCR's Investigation

In a directed investigation, OCR investigated whether Fairfax County Public Schools (FCPS) provided a FAPE to each qualified student with a disability (SWD) as required by federal law and provided students with disabilities equal access to education under Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35.



Resolution Agreement

FCPS agreed to resolve this directed investigation initiated by the OCR, by voluntarily entering into this [Resolution Agreement](#) to address the violations and concerns that OCR identified in a letter of resolution.



FCPS' Compensatory Education Plan

FCPS has created a Plan, based on the resolution agreement, to determine whether compensatory education is owed to students with disabilities due to the Pandemic Period, and will actively work with parents, guardians, and eligible adult students with disabilities to make the determinations discussed in the Plan.



Five (5) Resolution Agreement Components

- I. Designated Administrator to Ensure Implementation of this Agreement

 - II. Creation of a Plan for Compensatory Education
 - A. Criteria for Determining Provision of FAPE and Compensatory Education
 - B. Tracking Mechanisms
 - C. Division Staff Training and Parent/Guardian and Stakeholder Outreach
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Five (5) Resolution Agreement Components *continued ...*

- III. Criteria for Determining Compensatory Education
 - A. Compensatory Education
 - B. Compensatory Education Owed

 - IV. Data Tracking of Services Provided to Students with Disabilities and Compensatory Education
 - A. Data tracking
 - B. Training on data tracking

 - V. Division Staff Training and Outreach Plan
 - A. Division Staff Training and Guidance
 - B. Outreach Plan
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Resolution Agreement Details (The Plan)



I. Designated Administrator to Ensure Implementation of this Agreement

FCPS will designate an administrator (Plan Administrator) who will oversee the creation and implementation of the FCPS plan for compensatory education. FCPS will ensure that the Plan Administrator is a Division-level administrator who has Section 504 and Title II expertise.

Reporting Requirements:

- ✓ Provide qualifications, position roles and responsibilities, and support structure for the Plan Administrator to OCR **by December 9, 2022.**
- Provide name and contact information for the Plan Administrator to OCR **within 21 days** of OCR's approval.

II. Creation of a Plan for Compensatory Education (The Plan)

FCPS will:

- Determine whether SWD received an appropriate education to meet their individual needs from April 14, 2020, through June 10, 2022 .
 - Make individualized determinations for each SWD regarding whether compensatory education and/or related services are owed.
 - Make decisions regarding Compensatory Education that are distinct from Recovery services for students, including providing the procedural protections afforded by Section 504.
 - Create a plan that will describe for FCPS staff, students, and parent/guardians the efforts FCPS will undertake to consider and address the compensatory education needs of students with disabilities.
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II. Creation of a Plan for Compensatory Education (The Plan)

continued ...

The Plan will describe the following:

A. Criteria for Determining Provision of FAPE and Compensatory Education:

Develop a description of the criteria for IEP teams and for 504 Plan knowledgeable committees to use in determining whether SWD received appropriate services to meet their individual needs during the Pandemic Period.

B. Tracking Mechanisms:

Document and track for each SWD whether the determination regarding compensatory education has been made; the amount, nature of, and timeframe for the compensatory education (if any) to be provided; and how FCPS will monitor the implementation of compensatory education for those students who are to receive it.

II. Creation of a Plan for Compensatory Education (The Plan)

continued ...

C. Division Staff Training and Parent/Guardian and Stakeholder Outreach:

Provide a description of the training and/or written guidance regarding the Plan for compensatory education, including the criteria to be used when making those determinations and the FCPS outreach to parents/guardian and stakeholders regarding the Plan.

Reporting Requirement:

- ✓ FCPS will provide for OCR's review and approval the Plan described under Section II A-C above **by December 9, 2022.**

III. Criteria for Determining Compensatory Education

- A. **Compensatory Education:** FCPS will provide written notice to all parents/guardians of SWD or eligible students, that an IEP or 504 meeting will be convened for each student by the end of the 2022-23 school year. A determination about compensatory education will be made for each student and the IEP teams and Section 504 knowledgeable committees will consider and document:
1. Did FCPS fail to provide the student with the regular or special education and related aids/services required by the student's Section 504 plan or IEP that was in effect at the beginning of March 2020?
 - a. The IEP team and Section 504 committee will determine whether the student received the amount and type of the regular or special education, and related aids/services that were required by the Section 504 plan or IEP that was in effect on April 14, 2020. The services provided by parents or guardians during the pandemic period will not be counted as services provided by FCPS.

III. Criteria for Determining Compensatory Education *continued ...*

- b. Provide the student's parent or guardian access to the information recorded by FCPS regarding the amount of special education, related aids/services provided during the Pandemic Period, including the option to review IEP or Section 504 service logs.
 - c. Notify the student's parent or guardian of the process to challenge the determination made by the Section 504 or IEP team regarding whether or to what degree services were provided to the student during the Pandemic Period, consistent with Section 504 procedural safeguards.
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III. Criteria for Determining Compensatory Education *continued ...*

2. Were changes made to the student's IEP or Section 504 plan during the Pandemic Period (Temporary Learning Plans (TLPs), Virtual IEPs, or other remote learning plans) that resulted in lesser services being provided to the student than the Section 504 plan or IEP in effect prior to the changes?
 3. For students with IEPs, was goal progress impacted by remote learning? To make this individualized determination, IEP teams will consider, at minimum:
 - a. Present levels of academic achievement and functional performance.
 - b. Previous rate of progress toward IEP goals pre-Pandemic Period.
 - c. Documented frequency and duration of special education and related services provided to the student prior to the service disruptions caused by the COVID-19 pandemic.
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III. Criteria for Determining Compensatory Education *continued...*

B. **Compensatory Education Owed:** For students with disabilities who did not receive the regular or special education and/or related aids/services designed to meet their individual educational needs during the Pandemic Period, IEP teams or Section 504 knowledgeable committees will do the following:

1. Make an individualized determination regarding what compensatory education the student needs to return the student to the position the student would be in if the student received services that met his or her individual needs.
 2. State the factors considered by the IEP team or Section 504 committee in determining any compensatory education owed to the student.
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III. Criteria for Determining Compensatory Education *continued...*

3. Develop a plan for providing timely compensatory education:
 - a. The team may consider recovery services already being provided as a factor in determining compensatory education if those recovery services, based on an individualized determination of the student's compensatory education needs, address the specific individualized needs of the student.
 - b. However, when the recovery services already being provided do not address the specific individualized compensatory education needs of the student, the team cannot directly subtract provided recovery minutes from the total amount of compensatory education the team determines is needed
 - c. The team will include an appropriate and reasonable timeframe for the completion of the agreed-upon compensatory services.
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III. Criteria for Determining Compensatory Education *continued...*

4. Provide the student's parent/guardian notice of the procedural safeguards, including the right to challenge the IEP team or Section 504 committee's determination through an impartial hearing.
 5. Provide the student's parent/guardian notice of the process to follow for requesting reimbursement for out-of-pocket expenses incurred by the parent or guardian to provide services required by the student's IEP or Section 504 Plan by private or non-FCPS personnel that were not provided during the Pandemic Period.
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III. Criteria for Determining Compensatory Education *continued...*

Reporting Requirements:

- ✓ Provide for OCR review and approval the written notification that FCPS will provide to parents/guardians of all students with IEPs or Section 504 plans **by December 9, 2022.**

 - 2. Notification will be provided without request by the parents/guardians **within 30 calendar days** of OCR's approval of the written notification. The notification will be translated into the major languages spoken within the division.
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III. Criteria for Determining Compensatory Education *continued...*

Reporting Requirements:

3. The notification will include:
 - a. A statement that FCPS will convene meetings for all FCPS students who have an IEP or Section 504 plan during the Pandemic Period to discuss IEP and Section 504 implementation and consideration of compensatory education services. For students who are no longer with FCPS, the notification will state that a meeting will be held at the request of the eligible student, parents, or guardians.
 - b. Process for all IEP teams and Section 504 committees to make an individualized determination regarding whether Pandemic Period compensatory education is owed to a student.
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III. Criteria for Determining Compensatory Education *continued...*

Reporting Requirements:

3. The notification will include:
 - c. Process for parents/guardians to request reimbursement for out-of-pocket expenses incurred to provide services required by IEPs or Section 504 Plans by private or non-FCPS personnel that were not provided during the Pandemic Period.
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III. Criteria for Determining Compensatory Education *continued...*

Reporting Requirements:

4. Provide written notification of the compensatory education assessment determination by the IEP team or Section 504 knowledgeable committee.
- ✓ Provide for OCR review and approval a written template Prior Written Notice that will be provided to parents/guardians of all students with IEPs and Section 504 Plans to describe the completed Pandemic Period compensatory education assessments as determined by the student's IEP team or Section 504 knowledgeable committee **by December 9, 2022**. The PWN will be sent to each parent/guardian **within 10 business days** of the IEP team or Section 504 Plan meeting.

III. Criteria for Determining Compensatory Education *continued...*

Reporting Requirements:

6. Provide OCR with documentary evidence that written notifications of the compensatory education assessment determination by the IEP teams or Section 504 knowledgeable committees have been sent to parents or guardians of all students with IEPs and Section 504 plans **on a quarterly basis through June 30, 2023.**
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IV. Data Tracking of Services Provided to Students with Disabilities and Compensatory Education

A. Data tracking

Develop an electronic tracking system that tracks each determination made by IEP teams or Section 504 committees regarding compensatory services, including the reason for the determination. For each student determined to be in need of compensatory services, FCPS will provide the exact minute, type, and date of related aids and services provided as compensatory education for students with IEPs and Section 504 plans **by January 17, 2023**.

This system will include and allow for the creation of weekly reports that show the number of minutes of special education, related aids, or services that are required by the IEP or Section 504 Plan, the actual service minutes provided, the type of services, and service date; and the corresponding compensatory services specific to minutes, type, and date of provision for services.



IV. Data Tracking of Services Provided to Students with Disabilities and Compensatory Education

B. Training on data tracking

Train and/or provide written guidance to relevant division level and school-level staff on the use of this tracking system **by March 1, 2023**

Reporting Requirements:

1. Provide documentation to OCR illustrating the special education tracking system as required by Section IV **by February 1, 2023.**
2. Provide OCR with documentation that division-level and school-level staff receive the data tracking training **by March 1, 2023.**

IV. Data Tracking of Services Provided to Students with Disabilities and Compensatory Education *continued ...*

Reporting Requirements:

3. Provide OCR with the name and contact information for a designated staff member knowledgeable about the tracking system **by February 1, 2023**. This staff member will provide to OCR quarterly data of aggregate compensatory education services provided to students listed by student ID#.
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IV. Data Tracking of Services Provided to Students with Disabilities and Compensatory Education *continued ...*

Reporting Requirements:

4. Quarterly, and lasting through the implementation of the Plan, FCPS will provide OCR with a report, which will include:
 - a. Documentary evidence that approved written notifications as described in the reporting requirements in Section III.B. have been sent to parents or guardians of all students with IEPs and Section 504 plans.
 - b. Documentation of the number of Pandemic Period compensatory education determinations that were completed by FCPS during the time period.
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IV. Data Tracking of Services Provided to Students with Disabilities and Compensatory Education *continued ...*

Reporting Requirements

- c. Random sampling of reports generated from the electronic data tracking system, **not to exceed 100**, reflecting individual compensatory services determinations, including all information outlined in Section IV A. This sampling will include equal distribution students from each region and include ES, MS, and HS. OCR reserves the right at any time to request additional reports for review.
5. FCPS will **meet with OCR on a quarterly basis** until such time as OCR closes its monitoring of this agreement to discuss compensatory education data. The Plan Administrator, designated staff members or designees will attend the meetings.

V. Division Staff Training and Outreach Plan

- A. Division Staff Training and Guidance:** FCPS will provide written guidance and/or training regarding the Plan and criteria described in Section II, and the data tracking process described in Section IV to all relevant division-level and school-level staff who have responsibilities under Section 504 and Title II. The guidance and training will include information about:
1. FCPS' commitment to implement the Plan as part of its obligation to provide a free appropriate public education for students with disabilities.
 2. The distinction between recovery services and compensatory education.
 3. Compensatory education service determinations, including the criteria IEP teams and Section 504 knowledgeable will use.
 4. The requirement that staff input data as described in Section IV.A.
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V. Division Staff Training and Outreach Plan *continued ...*

5. Compensatory education being an equitable remedy to address the inability or failure of FCPS to provide appropriate services to a student with a disability during the pandemic period.
6. FCPS role in implementing the Plan.

Reporting Requirements:

- ✓ **Within ten (10) business days** of OCR's approval of the Plan, FCPS will provide a draft of the written guidance and/or training materials for the training described in Section V.A. above to OCR for review and approval.
2. **Within seventy-five (75) school days** of OCR's approval of the training materials, FCPS will provide OCR documentation demonstrating that the written guidance and/or training has been provided to all to relevant FCPS staff who provide special or regular education, and related aids for Students with Disabilities.

V. Division Staff Training and Outreach Plan *continued ...*

- B. **Outreach Plan:** FCPS will ensure that parents/guardians and other stakeholders are informed about the Plan, including FCPS processes for resolution consistent with the requirements of IEP and Section 504 processes, regarding disputes arising from compensatory education determinations and utilizing FCPS existing points of contact for addressing parent/guardians questions and concerns.
 - ✓ **Within five (5) calendar days** of OCR's approval of the Plan, FCPS will announce in a public statement to all parents and guardians - including all parents and guardians of students with disabilities enrolled in FCPS during the Pandemic Period - that FCPS has created a Plan to determine whether compensatory education is owed to students with disabilities due to the Pandemic Period and FCPS will actively work with parents/guardians of students with disabilities to make the determinations discussed in the Plan.

V. Division Staff Training and Outreach Plan *continued ...*

2. The existing FCPS points of contact for addressing parents/guardians inquiries and concerns include but are not limited to the following:
 - a. FCPS Office of Special Education Procedural Support
 - b. FCPS Parent Resource Center
 - c. FCPS Office of the Family and Student Ombuds
 - d. Plan Administrator

 3. The Plan Administrator will document, track, and address concerns and/or complaints regarding the implementation of the Plan that are submitted to the FCPS points of contact.
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V. Division Staff Training and Outreach Plan *continued ...*

4. The Plan Administrator will coordinate the communications outreach to parent/guardians and other stakeholders about the Plan, including the following:
 - ✓ In order to educate parents/guardians on the Plan and the process for Pandemic Period compensatory education assessments and determinations to be completed through the IEP and Section 504 processes, FCPS will provide, at public meetings, an overview of the Plan, including informal and formal resolution consistent with the requirements of IEP and Section 504 processes for disputes arising from compensatory education determinations. FCPS will convene *three such community education public meetings*, which will take place **within ninety (90) business days** of executing this Agreement.
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V. Division Staff Training and Outreach Plan *continued ...*

- b. FCPS will create a public-facing website with links to the Plan itself, as well as notifications of the three (3) formal parent/guardian public meetings described above and contact information for addressing concerns with FCPS points of contact. This will be posted on the FCPS homepage, each school's website, and on the special education webpage, and will be accessible for persons with disabilities and translated in the major languages spoken in FCPS.
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V. Division Staff Training and Outreach Plan *continued ...*

Reporting Requirements:

- ✓ Provide for OCR's review and approval the public Statement of Provision of Services for all Students with Disabilities described under Section V.B. I. **Within five (5) days** of OCR's approval of this statement, FCPS will publish this statement on the main division website and the special education procedural support website and distribute this statement to all parents/guardians - including all parents/guardians of students with disabilities enrolled in FCPS during the pandemic period **by December 9, 2022.**
- ✓ Provide OCR with copies of presentation slides and/or written materials it will use for the three (3) formal parent/guardian-attended public meetings described above in Section V.B.3. OCR will provide substantive feedback to FCPS regarding any misalignment with law or this Agreement **by December 22, 2022.**

V. Division Staff Training and Outreach Plan *continued ...*

Reporting Requirements:

- ✓ Provide to OCR the dates of the scheduled public meetings and the website links to the announcement of the public **by January 9, 2023.**
- 4. Provide OCR documentary evidence that the meetings were conducted **by March 15, 2023.**
- ✓ Provide for OCR's review and approval the content to be posted on its public-facing website described above in Section V.B.3.c. by **December 22, 2022.**

FCPS will provide OCR with the links to the information posted on the FCPS website **within 15 days** of OCR's approval.



V. Division Staff Training and Outreach Plan *continued ...*

6. The Plan Administrator will provide OCR with a summary of the complaints and concerns related to implementation of the Plan reported through FCPS' resolution processes or otherwise collected by FCPS schools from parents/guardians or other stakeholders, disaggregated by region, **twice a year**, until the conclusion of the monitoring of this Agreement. The summary must include any complaints or concerns relating to barriers to providing compensatory education deemed necessary for receipt of FAPE, such as staffing shortages.
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General Requirements

- Outreach to current parents/guardians/adult students
 - Outreach to former parents/guardians/adult students
 - IEP and 504 meetings to consider compensatory education for all current students
 - IEP and 504 meetings to consider compensatory education upon request for all former students
 - Ongoing monitoring of progress of compensatory education determinations and service delivery
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Timeline

January 9: Professional development for staff begins

January 10, 12, and 17: Public Meetings

January 12 (or before): FCPS central office will contact parents/guardians/adult students regarding scheduling IEP and 504 meetings to consider compensatory education, the process for determining compensatory education, and the process for requesting reimbursement for out-of-pocket expenses

January 10: School-based staff may begin contacting parents/guardians to schedule IEP and 504 meetings to consider compensatory education

February 1-June 16: IEP and 504 Plan meetings held to determine compensatory education

February 2 and beyond: Compensatory education may be delivered



What happens next?

Once case managers have begun to receive training on determining compensatory education

- parents/guardians of current students will be contacted to schedule IEP or 504 meetings
- parents/guardians/adult students who no longer attend FCPS will request an IEP or 504 meeting

IEP and 504 Plan Meetings

- For students who need to have annual meetings before June 16, 2023, the compensatory education conversation will occur as part of the annual meeting.
 - Some annual meeting dates will be moved up to allow for the compensatory education conversation to occur before the end of the school year.
 - Some IEPs will be addended to allow for the compensatory education conversation to occur before the end of the school year.
 - Contact your child's case manager with specific questions about scheduling your child's meeting
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Reimbursement for out-of-pocket expenses

- Gather invoices, receipts, and any other documentation of the services rendered at parent expense.
- Share documentation with your child's case manager.
- The team will consider reimbursement for the out-of-pocket expenses.
- Parent/guardian will be asked to provide a completed IRS W-9 to establish them as a vendor, as required by [FCPS Regulation 5810.9.](#)
- Parent will be reimbursed for the out-of-pocket expense, usually within 45 days.

What if I disagree?

Parents/guardians/adult students have the right to disagree with the team's compensatory education determination.

[Dispute resolution](#) options are available.



Dispute Resolution Options

Special Education

- Administrative review
- Due process hearing
- Facilitated IEP
- Mediation
- Office for Civil Rights complaint
- Informal resolution meeting
- State complaint

Section 504

- Administrative review
- Section 504 impartial hearing
- Mediation
- Office for Civil Rights complaint
- Informal resolution meeting



Questions?

What if I still have questions?

Contact us at

OCR2022resolution@fcps.edu





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