

# Coronavirus (COVID-19) Special Education Technical Assistance Advisory 2021-1: COVID-19 Compensatory Services and Recovery Support for Students with IEPs

---

To: Superintendents, Administrators of Special Education, Executive Directors of Collaboratives, Leaders of Approved Special Education Schools, Other Education Personnel, and Other Interested Parties

---

From: Russell Johnston, Senior Associate Commissioner, Massachusetts Department of Elementary and Secondary Education

---

Date: August 17, 2020

## Introduction

Beginning March 17, 2020, pursuant to an [order](#) from the Governor, public schools (including educational collaboratives) and most private special education schools in Massachusetts suspended in-person instruction in response to the COVID-19 pandemic through the end of the 2019-20 school year. Following extensions of the Governor's school closure order, the Department of Elementary and Secondary Education (Department) issued guidance<sup>1</sup> requiring districts and schools to provide students with access to remote learning opportunities and recommended teaching the content standards most critical for student success in the next grade level. On March 21, 2020, the United States Department of Education (USED) issued [guidance](#) clarifying that schools and districts were required to continue to provide a free appropriate public education (FAPE) to students with disabilities during the period of suspension of in-person instruction. USED acknowledged that FAPE would necessarily look different during the national emergency because of the need to protect the health and safety of students and their educators.<sup>2</sup>

With the unexpected suspension of in-person education due to the pandemic, schools and districts were not necessarily able to provide all special education instruction and services in the manner they were typically provided or described in students' Individualized Education Programs (IEPs). Also, despite efforts by schools and districts to create and implement remote learning plans for students with disabilities, some students may not have been able to access special education and related services necessary to make effective progress on IEP goals.

Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in or disruption to providing services, the U.S. Department of Education has stated that IEP teams must make an individualized determination whether and to what extent compensatory services may be needed.<sup>3</sup> Moving into the 2020-21 school year where instruction

may be in-person, remote, or a combination of both (a hybrid model), it is critical to identify and address the impact of the interruptions caused by the unexpected suspension of in-person education due to the COVID-19 pandemic on students with IEPs. The Department recommends that districts focus on authentic engagement of students with disabilities and their families in determining students' needs for services and support to mitigate the impact of extended school closures on their learning.

The purpose of this policy and practice guidance is to frame the considerations schools, districts and IEP Teams should make in determining the individual need of students with disabilities for compensatory education or support related to their disrupted education or inability to access special education services due to the COVID-19 pandemic. This guidance is solely intended to address the issues raised by the emergency shift to remote learning because of school building closures caused by the COVID-19 pandemic and should not be relied on or referenced for compensatory claims based on alleged deprivations of FAPE for other reasons. In presenting this guidance, the Department recognizes that current public health and safety needs may change, and that the U.S. Department of Education could release additional guidance that may require the Department to revisit this document.

The Department also recognizes the complexity of the tasks faced by schools and districts to safely return students to school in the new school year. School and district blueprints for the 2020-21 school year must include multiple models of instruction (in-person, remote and hybrid) in order to easily respond to changing circumstances because of the pandemic. Additionally, structures and systems must be adapted to complete special education evaluations that were left incomplete in the spring when schools were required to shift quickly to remote operations.

Within these priorities is also the need to determine students' needs related to the disruption of service delivery and instruction. These determinations will require districts to encourage and fully consider information and input provided by parents regarding their child's ability to access remote learning and the student's progress during school closure. The Department encourages schools and districts to work closely with parents and Special Education Parent Advisory Councils (SEPACs) to determine how to effectively address each of these areas timely and comprehensively, based on unique circumstances in each school or district and addressing the unique needs and circumstances of each individual student. Communication and transparency of student-centered decision making is essential.

### Terminology – Recovery Support, COVID-19 Compensatory Services and New IEP Services

In this guidance we use the following terms – “recovery support,” “COVID-19 Compensatory Services,” and “new IEP services” – to describe the types of supports and services a student may need to address the impact on their learning from the unexpected suspension of in-person education due to the COVID-19 pandemic.

## A. General Education Recovery Support

Many students may need some type of recovery support to address their educational and social emotional needs and to reorient them to learning in the 2020-21 school year. Neither state nor federal law defines the term “recovery support.” However, the term is increasingly being used by states to refer to the general education support that all students, including students with disabilities, may need to recover from educational gaps in learning or loss of skill – or even the impact on students’ emotional well-being – caused by the unexpected suspension of in-person education.

### **General Education Recovery**

**Support:** *may be made available to students with disabilities and students without disabilities who need it to address educational and social-emotional needs and reorient them to learning.*

### **COVID-19 Compensatory Services:**

*for students with IEPs to remedy skill or knowledge loss or lack of effective progress due to delayed, interrupted, suspended, or inaccessible IEP services because of the emergency suspension of in-person education related to the COVID-19 pandemic.*

**New IEP Services:** *to address new areas of disability-related need for students with IEPs.*

Despite the efforts that schools and districts made to deliver instruction and services remotely in the spring, students may show signs of regression or return to school in the fall with gaps in their learning when school resumes to a greater extent than is usually experienced over the summer, or demonstrate impacts of trauma experienced during this emergency. To mitigate the impact, students may need general education recovery support to regain lost skills and knowledge. Some recovery support may be provided to students through core instruction, and other support may be available through the school’s or district’s Tiered System of Support<sup>4</sup> or pursuant to the District Curriculum Accommodation Plan (DCAP).<sup>5</sup> For students with disabilities, access to recovery support does not need to be identified by the IEP Team but rather is made available to them the same way that it may be available to other students.

## B. COVID-19 Compensatory Services

In this guidance document, the term “COVID-19 Compensatory Services” (CCS) refers to services that a student’s IEP Team determines are needed to remedy a student’s skill or knowledge loss or lack of effective progress that resulted from delayed, interrupted, suspended, or inaccessible IEP services because of the emergency suspension of in-person education related to the COVID-19 pandemic.<sup>6</sup> Recognizing that these exceptional circumstances have likely impacted provision of services, USED stated that “[i]f a student does not receive services after an extended period of time, the student’s Team ... must make an individualized determination whether and to what extent compensatory services are needed, consistent with ... applicable requirements, [i.e., IEP Team requirements and data-based individualized decision-making] including to make up for any skills that have been lost.”<sup>7</sup>

Students with disabilities who did not receive or were unable to access any special education services during the suspension of in-person education are likely to require CCS and should be prioritized. Other students with IEPs, including students with significant and complex needs,<sup>8</sup> are also likely to require CCS and should be prioritized for consideration. For these priority

populations, the Department recommends that CCS determinations be made as soon as possible but not later than December 15, 2020.

Given that students and staff will need to acclimate to a new instructional environment this fall, the Department recognizes that for many students not in these priority populations, the individualized determination of the need for CCS will be informed by a period of initial observation, a period of re-acclimation to learning, and a review of data on recovery of learning loss and progress. Using data available from multiple sources, IEP Teams should determine whether, and to what extent, the student recouped the lost skills and/or behaviors or has made effective progress, and whether and to what extent the student needs CCS.

Determinations of CCS by the IEP Team must be based on information provided by the parents and data and information available from other sources, and be information-based, individualized determinations. CCS are not necessarily a 1:1 correspondence to missed IEP services but are identified following the individualized determination of a student's need.

### C. New IEP Services

Students may also require new services to address new areas of disability-related need, including mental health needs. Decisions regarding new IEP services must be made by IEP Teams in accordance with the requirements of state and federal special education law and must be documented in the student's IEP.

### Getting Started

While all students' education was affected by the sudden shift to remote instruction and service delivery, some students with disabilities experienced more significant challenges. It is critical that schools and districts attend to the needs of these students promptly in order be able to provide them with CCS. Therefore, the Department encourages schools and districts to promptly gather relevant information and data and convene IEP Teams to identify necessary CCS using data from parent input on student progress, remote learning assessments, other progress reporting, and/or other means. The Department recommends prioritizing the scheduling of IEP meetings to discuss CCS for the following student populations:

- Students with complex and significant needs<sup>9</sup>:
  - students already identified as "high needs" through the IEP process on the form entitled "[Primary Disability/Level of Need-PL 3](#);"
  - students who could not engage in remote learning due to their disability-related needs or lack of technology;
  - students who primarily use aided and augmentative communication;
  - students who are homeless;
  - students in foster care or congregate care; and
  - students dually identified as English Learners;
- Preschool aged children whose eligibility evaluations or start of preschool special education services have been delayed or interrupted; and

- Students who turned 22 during the suspension of in-person education or who will turn 22 during the first three months of the 2020-21 school year, and whose transition programs were interrupted or suspended before they aged out.<sup>10</sup>

CCS determinations for these prioritized student populations should be completed no later than December 15, 2020. The Department recognizes that in some schools and districts a large percentage of students may fall into one or more of the above categories. Schools and district should use ongoing parental engagement along with their discretion and professional judgment when determining which IEP meetings to prioritize.

### Reviewing Data from All Available Sources, Including from Parents and Caregivers

Determinations regarding CCS must be individualized decisions based on data and information that are made by a student's IEP Team, which includes the student's parents. The IEP Team will make determinations about a student's need for CCS following the review of data regarding a student's skills and progress toward meeting IEP goals during the period of unexpected suspension of in-person education due to COVID-19.

Because most students have spent several months in the full-time company of their families and caregivers, schools and districts should prioritize collecting data and information from families and caregivers. Families and caregivers can provide observational and other data about a student's access to learning, engagement, attention, behavior, progress, and skills, as well as information about students' home experiences and the effect of the COVID-19 pandemic on them. Schools and districts may provide families and caregivers with an optional tracking sheet to document information. Schools and districts must provide necessary translation and interpretation services for limited English proficient parents when collecting this kind of information.

The information and data to be collected and considered by the IEP Team may include:

- The instructional and special education services provided to the student during the period of suspension of in-person education, including whether particular services were not provided or could not be accessed by the student;
- Any barriers to the student's access during the period of unexpected remote instruction;
- Levels of academic and functional performance, including levels of performance on all IEP goals prior to the unexpected suspension of in-person education in March 2020, as compared to the

#### ***Information and data to be collected and considered by the IEP Team may include:***

- *Services provided or not provided or could not be accessed*
- *Barriers to access services*
- *Levels of academic and functional performance*
- *Data collection and progress monitoring in the spring and summer*
- *Information and observations of teachers, services providers, provider agencies*
- *Information and observations of parents, caregivers, and family members*
- *Information from childcare providers or EI, or Pre-ETS providers*
- *Past data about recoupment and progress after extended breaks*

student's current level of performance, as well as the expected growth through the end of the 2019-20 school year;

- Data collection or progress monitoring during spring 2020, and also summer 2020 for students receiving extended school year (ESY) services, including;
  - Information and observations from parents, caregivers and other family members, teachers, related services providers, provider agencies; and
  - For preschool age children, this may include information collected from childcare providers or Early Intervention (EI). For secondary students, this may include information collected from Pre-Employment Transition Services (Pre-ETS) providers; and
- Student data from previous school years indicating the student's ability to recoup lost skills or make effective progress after extended breaks in instruction, such as during the summer.

### Identifying General Education Recovery Support

Schools and districts should also review available data and information described above to identify a student's needs for general education recovery support. Recovery support may be provided to students with and without disabilities who need such support to mitigate impacts of the emergency shift to remote instruction, and to assist their successful transition to the 2020-21 school year. Some of that support may be available to all students, while other types may be offered through the school's or district's Tiered System of Support or the District Curriculum Accommodation Plan (DCAP). Schools and districts should review available data and information, including data from families, caregivers, and students themselves, in making the determination about the need for recovery support.

Recovery support may include both academic and non-academic support, including but not limited to the following:

- Academic scaffolds, accommodations, and differentiated core instruction informed by assessment data and observations;
- Tier 2 and Tier 3 interventions targeted at demonstrated academic need;
- Behavior plans, counseling, and other social emotional support; and
- Support for following new health and safety protocols (e.g., masking, hallway passing, hand washing, disinfecting, etc.).

Schools and districts already have in place efforts such as wrap-around services, the use of high-quality core curricular materials, evidence-based interventions, trauma informed practices, and strategies to engage learners to address factors that may impact student learning. These same systems and resources may be relied on or adapted to provide recovery support for students' needs related to the COVID-19 pandemic and suspension of in-person learning. Data-based, collaborative decision-making systems already in place to identify students' needs and appropriate support can be used to determine appropriate recovery services for students with and without disabilities. Collaboration and communication between students, educators, families, and community partners is a key component in determining and providing appropriate supports for all students. Schools and districts should maintain open channels of collaborative



communication with families regarding a student's need for recovery supports and their scope, frequency, and delivery, as well as progress monitoring.

For IEP Teams that are determining a student's need for CCS, the Team should also consider if any recovery support will be made available to the student, and whether or not that will impact the CCS decision.

### Determining COVID-19 Compensatory Services

In determining a student's need for CCS, the IEP Team must consider all information and data from parents about the student's ability to access remote learning and their child's progress during school closure. The IEP Team must review all sources of information and data in considering the student's loss of skills or lack of effective progress because of their inability to access or participate in services during the period of unexpected suspension of in-person education. CCS (and recovery support provided to students with IEPs) may not supplant, i.e., take the place of, the student's current IEP services. In other words, needed CCS and recovery support will be provided in addition to a student's current IEP services.

IEP Teams should consider the following questions to determine if CCS are warranted. The Team may determine that such services are needed based on answers to one or more of these questions:

1. Are there services in the student's IEP that were not offered or that the student could not access during the period of suspended in-person education?

Discuss the impact of the absence of services on the student's skills and/or behaviors or ability to make effective progress and identify what CCS are needed to address the impact. (CCS are not necessarily a 1:1 correspondence to missed IEP services but are identified following an individualized determination of need.)

2. To what extent has the student demonstrated regression in skills?
3. Has the student failed to make effective progress towards their IEP goals and in the general curriculum?<sup>11</sup>

IEP Teams considering the need for CCS should also discuss available recovery supports. An additional question for review is:

#### *Considerations if COVID-19 Compensatory Services Needed*

1. Are there **services in the student's IEP that were not offered or that the student was not able to access** when in-person education was suspended?
2. To what extent has the student **demonstrated regression** in skills?
3. Has the student **failed to make effective progress** towards their IEP goals and in the general curriculum?
4. Does the school or district have available **general education recovery support** that will support the student in recovering from educational gaps in learning or loss of skill, or the impact on student's emotional well-being, caused by the unexpected suspension of in-person education?
5. **What COVID-19 Compensatory Services are necessary** to address their special education needs arising from the suspension of in-person education?

4. Does the school or district have available general education recovery support that will support the student in recovering from educational gaps in learning or loss of skill, or the impact on student's emotional well-being, caused by the unexpected suspension of in-person education?

The Team should then discuss with specificity the student's need for CCS to address their unique needs:

5. What COVID-19 Compensatory Services are necessary to address the student's special education needs arising from the suspension of in-person education?

If the IEP Team determines that the student needs CCS, the Team should then discuss which services are required to address the documented regression of skills or failure to make effective progress so the student can make appropriate progress given their unique circumstances, and how those services will be provided, including the amount, type, duration, and progress monitoring of CCS.

### A. Students Needing New IEP Services

As part of the discussion about CCS, an IEP Team may identify that a student has additional disability-related needs, including but not limited to mental health needs. Consistent with the requirements in IDEA and state special education law, the IEP Team must use an appropriate process to identify the new services required and amend the student's IEP, including identifying and obtaining parental consent for assessments in areas not previously assessed. These IEP services are not CCS, but rather new services to be added to the student's IEP service delivery grid.

### B. The Difference Between Extended School Year (ESY) and COVID-19 Compensatory Services Analyses

Similar factors are considered in determining both ESY and CCS. However, ESY and CCS are two separate and distinct determinations made by an IEP Team. The IEP Team's assessment of a student's need for ESY programming is a predictive analysis that takes into account the student's history of significant regression and limited recoupment capability; the Team considers *what is likely to happen* without such services.<sup>12</sup> In contrast, in determining whether CCS are required, the IEP Team needs to consider what was the *actual impact* of the suspension of in-person education on the student's skills or ability to make effective progress toward their IEPs goals and in the general education curriculum.

## Decisions May Be Made at an IEP Team Meeting or Using Other Means Agreed to by Parents and Districts

### A. Documenting Meeting Requests Using the N1

There are two ways in which discussion and determination of CCS can occur. One is through an IEP Team meeting. The other is when parents and districts agree in writing to meet without convening the full IEP Team. The latter may be especially useful for students for whom it is



more likely that CCS are necessary, i.e., students with complex and significant needs (students already identified as “high needs” through the IEP process on the form entitled “[Primary Disability/Level of Need-PL 3](#)”; students who could not engage in remote learning due to their disability-related needs or technology barriers; students who primarily use aided and augmentative communication; students who are homeless; students in foster care or congregate care; and students dually identified as English Learners); preschool aged children whose evaluations have been or start of preschool special education services have been delayed or interrupted, and students who turned or are turning 22 and whose transition programs were interrupted or suspended before they aged out.

It is also permissible for parents and school districts to use a more informal process to determine CCS if parents and the district agree in writing to do so. Parents and districts can agree to use this flexibility when it is in the best interest of students to engage in a more informal process for determining CCS. This may allow decisions to be made as soon as possible so that CCS delivery may begin promptly.

Districts should use the [Notice of Proposed School District Action/N1](#) form to notify a student’s parent or guardian of the request to meet for the purpose of assessing the need for CCS. On that form, the district should select “Other” as the reason for the meeting and may specify that the purpose of the meeting is “Consideration of CCS due to the unexpected suspension of in-person education related to the COVID-19 pandemic.”

If parents and district mutually agree to meet without convening the whole IEP Team, the district must maintain written documentation of that agreement. Additionally, as required by IDEA, the parent and district must agree, in writing, that the attendance of a Team member is not necessary because the area of curriculum or related services is not being discussed, or if the Team member submits in writing (to the parent and the IEP Team), input into the CCS discussion.<sup>13</sup> The district must inform parents, using the [Notice of Proposed School District Action/N1](#), that they have the option to discuss the student’s need for CCS with the full IEP Team.

## **B. Amending the Student’s IEP When a Student Needs New IEP Services**

The IEP Team may also identify that an amendment of the student’s IEP is warranted when the student demonstrates new or different needs for special education and related services and requires new IEP services. These are *not* CCS. Rather, they are new IEP services required by the student because of the student’s disability and must be recorded in the IEP service delivery grid.

The IEP Team can agree in writing to amend or modify a student’s IEP to include the newly identified special education and related services subsequent to an annual meeting without holding an IEP Team meeting.<sup>14</sup> The Team must consider whether a student presenting with new needs may warrant a re-evaluation or a new evaluation if the student has not yet been evaluated in that area of suspected disability.

## **Evaluating the Need for COVID-19 Compensatory Services for Students Whose Eligibility Determination Was Delayed Because of the Suspension of In-Person Education**

With regard to students whose eligibility determination was delayed due to the inability to conduct in-person assessments in the spring, including preschool aged children referred by their parents or by Early Intervention (EI), the district must complete the evaluation as soon as possible.

Upon a determination by the IEP Team that a student is eligible for special education services, the IEP Team must consider as it is developing the student's IEP whether, due to the delay in completing the evaluation, the student requires CCS. These determinations must also be made for young children with disabilities referred by EI to the district for evaluation whose services have been provided in cooperation with EI during the period of suspension of in-person education, or pursuant to an Individualized Family Service Plan (IFSP). For some students, the general education recovery support that will be made available to all students who need it may be appropriate to address some or all of the student's needs.

### Which School or District is Responsible for Determining and Providing COVID-19 Compensatory Services?

#### A. When a Student Moves from One District to Another or Attends a New Program School in School Year 2020-21

Some additional considerations apply if a student attends a school or district in school year 2020-21 that is different than the school or district they were enrolled in and attending when in-person instruction was suspended in Spring 2020. Specifically, these considerations apply where the school or district that a student is enrolled in and attends during the 2020-21 school year, e.g., a program school,<sup>15</sup> is not the same school or district that was responsible for the student's remote learning and special education services during the Spring of the 2019-20 school year.

The current district/school of enrollment is responsible for convening the IEP Team to determine the need for CCS. This is because the current district/school of enrollment assumes programmatic responsibility for implementing the student's IEP upon enrollment.<sup>16</sup> The current district/school of enrollment should invite to the IEP Team meeting a representative from the former district/former school of enrollment.

The financial responsibility for providing CCS that are needed because of the 2019-20 suspension of in-person instruction remains with the former district/former school of enrollment. When the Team determines that the student needs CCS, the Department recommends that the former district/former school of enrollment contract with the current district/school of enrollment or a private provider in the area, to provide and implement the needed CCS. Depending on the type and amount of CCS to which the student is entitled, other arrangements mutually agreed to by the IEP Team and documented as set forth elsewhere in this guidance, can also be considered.

#### B. Determining COVID-19 Compensatory Services for Students in Out-of-District Placements in Educational Collaboratives or Approved Private Special Education Schools

For students in out-of-district placements, the district responsible for the student's special education program must convene an IEP Team meeting to determine the student's need for CCS. The district must collaborate with the educational collaborative or the approved special education school to gather relevant data and information for the IEP Team to consider in determining the student's need for CCS. As described above, the IEP Team must determine the amount, type, and duration of CCS, as well as whether there are necessary changes to the transportation arrangement to facilitate access to the services. As noted above, the parent and district may agree not to convene the Team, using procedures consistent with IDEA. In those circumstances, it is also necessary to include a representative of the out-of-district placement in the discussion about a student's need for CCS.

In general, it is likely that the educational collaborative or approved private special education school will have the primary role in providing necessary recovery support and CCS to a student whose service delivery and ability to make effective progress was interrupted or impacted by the school's shift to remote instruction in spring 2020. The Department urges school districts, educational collaboratives and approved special education schools to collaboratively determine how CCS will be delivered to the student to address the student's identified needs.

### Funding for COVID-19 Compensatory Services and Recovery Support

Districts may use IDEA Part B funds (Fund Codes 240 and 262) to pay for CCS and new IEP services for students with IEPs. The U.S. Department of Education has approved an extension of the allowable use period for Fiscal Year 19 grant funds; these funds may be used through September 30, 2022. In addition, districts may use funds made available through the CARES Act, Elementary and Secondary School Emergency Relief Fund (ESSER),<sup>17</sup> for CCS, recovery support, and new IEP services as necessary. The Department also recommends that districts, in collaboration with municipalities if necessary, consider allocating funding recouped from the School-Based Medicaid program for these purposes.

### Procedural Safeguards

Nothing in this guidance affects the due process rights identified in state and federal special education laws and regulations. Parents or guardians may pursue dispute resolution options through the [Bureau of Special Education Appeals](#) (BSEA) including a facilitated IEP Team meeting, a [mediation](#), and/or a [due process hearing](#). A parent or guardian may also file a complaint with the Department's [Problem Resolution System](#).

### Closing

For questions related to COVID-19 Compensatory Services, please contact the Department's Problem Resolution Office at 781-338-3700 or [compliance@doe.mass.edu](mailto:compliance@doe.mass.edu). For more guidance and information related to special education during the COVID-19 pandemic, please visit the Department's Coronavirus/COVID-19 special education [webpage](#).

## APPENDIX A – Summary Step-by-Step Process for Determining COVID-19 Compensatory Services for Students with IEPs

1. School districts must develop plans for IEP Teams to assess the needs of students with IEPs for COVID-19 Compensatory Services (CCS). School districts should begin with the following populations:
  - Students with complex and significant needs:
    - students already identified as “high needs” through the IEP process on the form entitled “[Primary Disability/Level of Need-PL 3](#);”
    - students who could not engage in remote learning due to their disability-related needs or technology barriers;
    - students who primarily use aided and augmentative communication;
    - students who are homeless;
    - students in foster care or congregate care; and
    - students dually identified as English Learners;
  - Preschool aged children whose eligibility evaluations or start of preschool special education services have been delayed or interrupted; and
  - Students who turned 22 during the suspension of in-person education or who will turn 22 during the first three months of the 2020-21 school year, and whose transition programs were interrupted or suspended before they aged out.

CCS determinations for these prioritized student populations should be completed no later than December 15, 2020. Prioritization of certain meetings and decisions must not in any way delay a school’s or district’s obligation to fully implement all students’ IEPs in the 2020-21 school year.

2. IEP Teams must encourage and consider parent information and input along with information from other Team members to make individualized decisions regarding CCS. Information and data to be collected and considered may include:
  - The instructional and special education services provided to the student during the period of suspension of in-person education, including whether particular services were not provided or could not be accessed by the student;
  - Any barriers to the student’s access during the period of unexpected remote instruction;
  - Levels of academic and functional performance, including levels of performance on all IEP goals prior to the unexpected suspension of in-person education in March, as compared to the student’s current level of performance, as well as the expected growth through the end of the 2019-20 school year;
  - Data collection or progress monitoring during spring 2020, and also summer 2020 for students receiving extended school year (ESY) services:

- Information and observations from parents, caregivers, teachers, related services providers, provider agencies, medical and other services providers working with the family, and other family members; and
    - For preschool age children, this may include information collected from childcare providers or Early Intervention (EI). For secondary students, this may include information collected from Pre-Employment Transition Services (Pre-ETS) providers; and
  - Student data from previous school years indicating the student's ability to recoup lost skills or make effective progress after extended breaks in instruction, such as during the summer.
3. Districts must convene an IEP Team meeting or agree in writing with parents to use an alternative means of meeting to review the student's IEP and available information data and make necessary determinations about CCS. IEP Teams should consider the following questions to determine if CCS are warranted, and may determine that such services are needed based on answers to one or more of these questions:
- a. Are there services in the student's IEP that were not offered or that the student was not able to access when in-person education was suspended. If so, identify those services and discuss how CCS will be offered? (CCS are not necessarily a 1:1 correspondence to missed IEP services but are identified following an individualized determination of need.)
  - b. To what extent has the student demonstrated regression in skills?
  - c. Has the student failed to make effective progress toward their IEP goals and in the general curriculum?
  - d. Does the student need additional supports and/or services temporarily to recover from the period of time the student did not receive or could not access services remotely?
4. Does the school or district have available general education recovery support that will support the student in recovering from educational gaps in learning or loss of skill, or the impact on student's emotional well-being, caused by the unexpected suspension of in-person education?
- If Yes, which recovery supports will the student access and how?
    - i. Will the recovery supports be sufficient to meet the student's needs arising from the suspension of in-person education?
    - ii. If yes, then the student will not require CCS.
    - iii. If no, then which CCS will be required? How will they be delivered?
5. What COVID-19 Compensatory Services are necessary to address their special education needs arising from the suspension of in-person education? The district must document in the [Notice of Proposed School District Action/N1](#) or meeting notes, and provide to the

parent in the parent's home language, the decision regarding CCS made at the IEP Team meeting or an alternative meeting as agreed to by the parents and district, including amount, type of service, duration, and progress monitoring.

6. Does the student have new or additional needs that will require new or additional IEP services?
  - If yes, then the district will seek consent for evaluation in a new area of suspected disability if appropriate, or the IEP Team will amend the student's IEP to include new services. These are not CCS.

## APPENDIX B – Questions and Answers on COVID-19 Compensatory Services and the Transition to Adult Life for Students Turning 22 between March 17 and December 23, 2020

The Department provides this Q & A on the provision of COVID-19 Compensatory Services (CCS) to students who turned 22 during the period of suspended in-person instruction due to COVID-19 beginning March 17, 2020, and for students who will turn 22 during the first three months of the 2020-21 school year following the resumption of instruction (whether instruction is provided in-person, through a hybrid model, or remotely).

The Department notes that schools and districts, like their adult agency counterparts, continue to experience significant challenges due to the COVID-19 emergency. More than ever, the Department encourages schools and districts to communicate fully and work closely with adult agency colleagues in a spirit of mutual understanding and support, to promote the best interests of students and families during these difficult times.

### 1. Must districts convene an IEP meeting for every student who has reached or will reach their 22nd birthday between March 17 and December 23, 2020?

Not necessarily. For some students, an IEP meeting may already have been held, and needed supports, resources, and connections for adult life may already be in place. In these cases, districts should communicate with students, families, and any appropriate adult agencies to reconfirm arrangements and confirm that all parties have the information and resources they need for a smooth transition. As always, districts should carefully document this communication and inform parents that they have the option of convening an IEP Team meeting if they choose to do so.

In other cases, students and families may agree with school personnel not to convene the IEP Team but rather to communicate and develop a written document to amend or modify the student's IEP, as IDEA allows.<sup>18</sup> In these instances, the Department encourages schools and districts to include relevant adult agency staff in these discussions.

For many other students, however, it will be important to convene an IEP meeting, even if the student's 22<sup>nd</sup> birthday has already passed, particularly if:



- The student was unable to access services during the unexpected suspension of in-person education.
- The student has demonstrated regression or has failed to make effective progress during remote learning.
- The student has significant difficulty with transitions and changes in routine, and there is concern that the suspension of in-person education will result in an unduly challenging move to adult agency services if no additional school services are provided.
- No connections, or minimal attempts at connections, have been made to the relevant adult agencies such as the Massachusetts Rehabilitation Commission (MRC), the Department of Developmental Services (DDS), or the Department of Mental Health (DMH).
- The student and family have been unable to follow through on identified transitional services with adult agencies because of COVID-19, or the adult agency(ies) have been unable to follow through because of COVID-19.
- The student had been expected to fulfill the requirements for the competency determination by their 22<sup>nd</sup> birthday but was unable to do so because of the suspension of in-person education.

## 2. Should IEP Teams consider whether COVID-19 Compensatory Services are required for those students who reached or will reach their 22nd birthday between March 17 and December 23, 2020?

Yes. When considering whether an individual student is entitled to CCS, IEP Teams should make an individualized determination based on the considerations outlined in this guidance document. In determining CCS, there is not a one-to-one correspondence between services missed during the pandemic and services to be obtained now.<sup>19</sup> The goal for these students is to facilitate a successful transition to adult life, including a smooth hand-off to any adult agency services for which they are determined eligible.

It is important to note that consistent with state and federal law, a student's entitlement to special education ends on the student's 22<sup>nd</sup> birthday or upon graduation with a regular diploma. A determination that CCS are due to a student does not extend the student's special education eligibility beyond the student's 22<sup>nd</sup> birthday.

## 3. What types of COVID-19 Compensatory Services might be provided to students who reached or will reach their 22nd birthday from March 17 to December 23, 2020?

The Department encourages IEP Teams to consider the student's postsecondary plans when discussing the type and frequency of any CCS which the Team decides would be appropriate to provide to these students. The IEP Team should consider the following non-exhaustive list of types of transition services as well as other services discussed above in this advisory:

- Accessing agency/community resources and services
- Instruction in activities for daily living, including personal finance and accessing healthcare

- Continue specialized instruction for the completion of an [MCAS portfolio appeal](#) for students who are seeking to earn a high school diploma
- Community-based instruction
- Community participation
- Health and safety
- Pre-vocational/employment support services
- Job search and retention skills
- Job coaching/training opportunities
- Preparation for college and/or postsecondary training
- Related services, e.g., counseling, occupational therapy, physical therapy, speech-language services
- Self-advocacy skills
- Social skills
- Travel Training

#### 4. Which funds may districts use to deliver COVID-19 Compensatory Services to students past their 22nd birthday?

Districts may choose to use federal, state, and/or local funds. The Department has now received additional clarification from the U.S. Department of Education’s Office of Special Education Programs that IDEA Part B funds may be used to fund CCS, even if the student has reached 22, the state’s maximum age of special education eligibility. This is a **unique circumstance due to the COVID-19 pandemic** and limited only to students who reached or will reach their 22<sup>nd</sup> birthday between March 17 and December 23, 2020 and who are determined to need CCS. Districts may also use ESSER (CARES Act) funds for this purpose. In addition, the Department is not aware of any prohibition on the use of local and/or state funds to cover the expense of necessary CCS, with the exception of Circuit Breaker reimbursement. Because state law reserves Circuit Breaker funds for “eligible” students,<sup>20</sup> and students’ eligibility is not extended past their 22<sup>nd</sup> birthday, these funds may not be used for CCS.

#### 5. How may districts work with adult agencies to enhance the student’s transition to adult life on or after the student’s 22nd birthday?

The Department strongly encourages districts to maintain close, productive relationships with adult agencies and providers and to invite representatives of these entities to IEP meetings, as required by [34 C.F.R. § 300.321\(b\)\(3\)](#) to meet each individual student’s needs. This approach is the most effective way to provide the continuity of support that students need to successfully transition to adult life. Districts should seek to understand agency services to the greatest extent possible and to serve as a connector and source of information for students and families. During IEP meetings, districts and adult agency personnel have the opportunity to agree on what services are required to meet the needs of each student, how services will be delivered, who will be responsible for providing each of the services, and determine who is responsible for funding different portions of the services. To help agency staff gain a better understanding of students, to familiarize students with new faces, and to improve school personnel’s

understanding of agency services, districts can invite their adult agency counterparts to participate in remote or in-person classes, programming or meetings, and educators can participate in remote or in-person adult agency programming or meetings.

---

<sup>1</sup> See [Remote Learning Recommendations During COVID-19 Closures](#) (On the Desktop - March 26, 2020) and [Updated Remote Learning Guidance](#) (On the Desktop – April 24, 2020).

<sup>2</sup> See U.S. Department of Education, Office for Civil Rights, Office for Special Education and Rehabilitative Services, [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschools, Elementary and Secondary Schools While Serving Children with Disabilities](#) (March 21, 2020); [Coronavirus/COVID-19 Frequently Asked Questions for Schools and Districts Regarding Special Education](#), (Updated May 15, 2020), 6.

<sup>3</sup> See [Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschools, Elementary and Secondary Schools While Serving Children with Disabilities](#) (March 21, 2020).

<sup>4</sup> See the Department's [Multi-Tiered Systems of Support \(MTSS\) Blueprint](#).

<sup>5</sup> [M.G.L. c. 71, § 38Q½](#).

<sup>6</sup> COVID-19 Compensatory Services are not the same as compensatory services, an equitable remedy ordered by a court, hearing officer or as part of a state complaint investigation when a school has been found to have failed to provide a student with FAPE. As mentioned above, COVID-19 compensatory services are services for students with IEPs necessary to remedy skill or knowledge loss or lack of effective progress due to delayed, interrupted, suspended, or inaccessible IEP services because of the emergency suspension of in-person education related to the COVID-19 pandemic.

<sup>7</sup> U.S. Department of Education, Office for Civil Rights, [Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#) (March 16, 2020), at 3. The Office for Civil Rights' guidance also refers to the requirement for compensatory services for students under Section 504 of the Rehabilitation Act of 1973, although that is not addressed here in Coronavirus (COVID-19) Special Education Technical Assistance Advisory 2021-1.

<sup>8</sup> For purpose of this guidance, students with complex and significant needs include: students already identified as "high needs" through the IEP process on the form entitled "[Primary Disability/Level of Need-PL 3](#);" students who could not engage in remote learning due to their disability-related needs; students who primarily use aided and augmentative communication; students who are homeless; students in foster care or congregate care; and students dually identified as English Learners.

<sup>9</sup> See [Guidance on Fall 2020 Special Education Services](#) (July 9, 2020), at 3. The Department urges schools and districts to prioritize in-person instruction for students with significant and complex needs.

<sup>10</sup> See Appendix B: Questions and Answers on the Transition to Adult Life for Students Turning 22 between March 17 and December 23, 2020

<sup>11</sup> The Department has provided guidance to schools and districts about the importance of progress monitoring during the period of remote learning, and factors to consider for remote progress monitoring. See [Coronavirus/COVID-19 Frequently Asked Questions for Schools and Districts Regarding Special Education](#), (Updated May 15, 2020). In limited circumstances where there is no progress data available, schools and districts should compare the student's current skills level compared to grade level expectations.

<sup>12</sup> See Massachusetts Department of Elementary and Secondary Education, [Question and Answer Guide on Special Education Extended Year Programs, 603 CMR 28.05\(4\)\(d\)](#).

<sup>13</sup> While IEP Team meetings regarding determination of compensatory services are not contemplated in the IDEA, the IEP Team requirements included in [34 C.F.R. §300.321](#), including requirements for excusal described in 34 C.F.R. §321(e)(1) and (2), must be followed.

<sup>14</sup> See [34 C.F.R. §300.324\(a\)\(4\)](#).

<sup>15</sup> [603 CMR 28.02\(16\)](#): "*Program school* shall mean the school in which the student is enrolled according to the provisions of M.G.L. c. 71, § 89 (charter schools); M.G.L. c. 71, § 94 (Commonwealth of Massachusetts virtual schools); M.G.L. c. 74 (vocational schools); M.G.L. c. 76, § 12A (Metco) or M.G.L. c. 76, § 12B (school choice), and shall not include schools approved under 603 CMR 28.09 or institutional school programs as described in 603 CMR 28.06(9)."

<sup>16</sup> [603 CMR 28.03\(1\)\(c\)](#)

<sup>17</sup> See Massachusetts Department of Elementary and Secondary Education, [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act Elementary and Secondary Schools Emergency Relief \(ESSER\) Fund: Quick Reference Guide – Fund Code 113 \(May 2020\)](#).

---

<sup>18</sup> [34 C.F.R. §300.324\(a\)\(4\)\(i\)](#) (“In making changes to a child’s IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child’s current IEP.”)

<sup>19</sup> Per IDEA and guidance from the U.S. Department of Education, the Department further notes that an IEP is not a guarantee of a specific educational or functional result for a student with a disability. See United States Department of Education, [Questions and Answers \(Q&A\) on U. S. Supreme Court Case Decision Endrew F. v. Douglas County School District Re-1](#), (December 7, 2021), at 7, Question #15.

<sup>20</sup> [603 CMR 28.02\(9\)](#) (“*Eligible student* shall mean a person aged three through 21 who has not attained a high school diploma or its equivalent, who has been determined by a Team to have a disability(ies), and as a consequence is unable to progress effectively in the general education program without specially designed instruction or is unable to access the general curriculum without a related service. An eligible student shall have the right to receive special education and any related services that are necessary for the student to benefit from special education or that are necessary for the student to access the general curriculum...”).