



CONSIDERATIONS IN DETERMINING LOSS OF LEARNING DUE TO SUSPENSION OF IN-PERSON INSTRUCTION

This document provides IEP teams with guidance around potential learning loss and the possible need for learning loss services and or supports resulting from COVID-19 related school closures or suspension of in-person instruction.

Federal and State Guidance on Loss of Learning

U.S. Department of Education and California Department of Education (CDE) have stated that the Local Educational Agency (LEA/District) (in collaboration with the IEP team) must make an **individualized determination** whether and to what extent compensatory services may be needed, consistent with applicable requirements, including the remediation of any lost skills (learning loss).

"The Department understands there may be exceptional circumstances that could affect how a particular service is provided. In addition, an IEP Team and, as appropriate to an individual student with a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements."

For additional information view the article titled, [Questions and Answers on Providing Services to Children with Disabilities during the Coronavirus Disease 2019 Outbreak](#).

Loss of Learning vs. Compensatory Education

The term "**loss of learning**" implies that an LEA/district provided FAPE. However, the student did not make meaningful progress in the virtual platform, and the student's educational benefit was impacted. Therefore, IEP teams should consider working with parents to develop a student plan to address any loss of skills or lack of progress caused by the COVID-19 suspension of services.

The term "**compensatory education**" describes educational services provided as an appropriate equitable remedy when the responsible LEA/district has failed to provide a student with a disability with an appropriate education as required by the Individuals with Disabilities Education Act (IDEA). The remedy of compensatory education is designed to deliver an eligible student with the services that the student should have received pursuant to the IDEA's guarantee of FAPE ([Reid v District of Columbia, 43 IDELR 32 \(D.C. Cir. 2005\)](#)).

Loss of Learning

Services were provided as written in the IEP but learning loss occurred as a result of lack of access to in person instruction because of COVID-19

Compensatory Ed

LEA/District was unable to provide all the services in the IEP through its remote learning program

To view additional information on determining the need for compensatory services, refer to the document titled ["School Closures: General Considerations, Compensatory Education, and Revisiting Current Student Needs."](#)

Loss of Learning Definition and Considerations

Reframing "compensatory education" as learning loss ([Van Duyn Van Duyn v. Baker School District 5 J](#)) allows school districts to acknowledge the impact of the pandemic without admitting an intentional denial of FAPE (Fagen Freidman and Fulfrost LLP). USDOE, OCR, and CDE have stated that IEP teams should determine whether loss of learning services is warranted. LEA's must make an **individualized determination** that includes input from all IEP members. Consider the following strategies to calculate the loss of learning.

Activities to Calculate Loss of Learning

Proactive Strategies	Documentation to Use in the Decision-Making Process	Questions to Consider
<ul style="list-style-type: none"> Regularly track and monitor progress related to goals and services, provide progress reports if applicable Hold IEP meetings to amend services and supports if student data indicates loss of learning Conduct assessments to the best of your ability Where appropriate, provide prior written notice 	<ul style="list-style-type: none"> Type of support and services the LEA/district provided (especially in response to any reported regression of skills) and delivery model provided during the suspension of in-person services Dates, times services were provided, name of the service provider, and duration of service Anecdotal session notes (student behavior, engagement, rate of progress made on IEP goals, and attendance) Any delays in providing services and accessibility of services All communication with parents: concerns with IEP implementation and input regarding student progress Student's level of progress during closure versus prior to closure (include measurement tools) Attempts to address a student's lack of progress through IEP process Regression of skill and recoupment time once the student returns to in-person instruction 	<ul style="list-style-type: none"> According to student data and documentation, did IEP services and supports provide educational benefit? Did the student make meaningful progress towards goals? What parent input did the IEP team receive?

Accelerated Learning

The Covid-19 pandemic has presented learning challenges for all students. Typically, educators will target learning loss with remediation services and supports. However, consider a plan that will **accelerate learning** as an approach to mitigate lost skills. An accelerated learning approach will focus on **grade-level standards** instead of "meeting the students where they are" and is considered a whole-school approach.

Accelerated Learning Plan

How to Create a Plan for Accelerated Learning	<ul style="list-style-type: none"> Plan-Begin planning now and assemble a diverse team to charge the Accelerated Learning project. Include stakeholders that can plan academic strategy, update curricular resources, and design trainings for teachers and leaders. Devise a draft scope and sequence that focuses on grade-appropriate assignments, strong instruction, and deep engagement. Prioritize-Analyze data to deepen your understanding of current student learning needs, collect more information if needed.
How to Accelerate Learning (two-year plan)	<ul style="list-style-type: none"> Prioritize-To determines how to address unfinished learning. You will need to prioritize the most critical prerequisite skills per grade level. Identify exactly what unfinished learning needs to be addressed, when, and how. Plan your approach to assessing students' unfinished learning based on prerequisite skills. Adopt-Begin making updates to your LEA's pacing guides or scope and sequence that reflect your acceleration plan. Ensure-Begin your teacher and leader training plan to support your staff to accelerate student learning (rather than remediate). Monitor-Plan a monitoring system for your student's progress on grade-appropriate assignments and adjust your supports for teachers and leaders based on results.



Continuum of Services to Address Loss of Learning

In determining loss of learning services and supports, consider a student's individual circumstances, including strengths, the impact of disability, and stamina. Consider the following modalities to mitigate the loss of learning:

- General education programs (accelerated learning or remediation) or LEA's Tiered System of Support and core instruction. If the IEP team is considering general education support, a student with an IEP may or may not require additional special education supports and/or services to access the program.
- Loss of learning services identified through the IEP process.
- Targeted one-on-one instruction combined with adjustments based on frequent progress monitoring.
- Suppose the school is considering utilizing the summer break to offer learning loss remediation for the general education population. In that case, students with IEPs must also be able to access this learning time. If a student with an IEP is enrolled in a summer program, the school must hold an IEP to determine what services may be necessary to assist the student in accessing. This may be included as part of or all of the learning loss remediation for the student, as determined appropriate by the IEP team. This would not be considered ESY.

The figure below describes three-scenarios when student data indicates a loss of learning due to virtual learning:

- When Services were provided as written in the IEP but learning loss occurred as a result of lack of access to in person instruction because of COVID 19.
 - An IEP team meeting should be held to determine if the student will require special education supports and/or services in order to access the general education program and the need for **loss of learning services**, agreements should be documented in services and/or notes section of the IEP accordingly.
- LEA/District offered some of the services written in the IEP
 - An IEP team meeting should be held to determine if the student will require special education supports and/or services in order to access the general education program and discuss the need for additional **compensatory services and loss of learning services**., agreements should be documented in services and/or notes section of the IEP accordingly. *If the IEP team determines the need for compensatory services, reference "[School Closures: General Considerations, Compensatory Education, and Revisiting Current Student Needs.](#)" Some students may require a combination of compensatory services and loss of learning services.*
- LEA/District was unable to provide all the services in the IEP through its remote learning program
 - An IEP team meeting should be held to determine if the student will require special education supports and/or services in order to access the general education program and discuss the need for additional **compensatory services**, agreements should be documented in services and/or notes section of the IEP accordingly.





Student data indicates a loss of learning due to virtual learning.

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Addressing Loss of Learning Services in the IEP

If the IEP team determines the need for loss of learning services based on the student data, they must then discuss the manner in which loss of learning services will be provided. The most appropriate time for the IEP team to decide on the student's loss of learning services is when the team has sufficient data to support their decisions. IEP teams may or may not have adequate data to make determinations regarding loss of learning services prior to reopening of in-person instruction. If teams do not have data to make such determinations, they should seek to gather the data in a timely fashion and inform parents they will convene to discuss services as soon as possible with the data obtained.

Loss of learning services will vary by student and should be individualized. When IEP teams meet to discuss the loss of learning services, it is recommended that the IEP team review progress before, during, and after the period of missed services. The following are considerations for determining the need for loss of learning services. These considerations and any agreements made should be documented clearly in the notes page of the IEP document:

1. Inform the parent(s)/guardian(s) of their rights by providing a written copy of the procedural safeguards in their primary language. Allow opportunities to discuss any questions regarding educational rights and safeguards.
2. Decisions made should be supported by data.
3. Identify the educational loss caused by virtual learning.
4. Determine how to target loss of learning due to virtual learning. Create a clear understanding of the purpose and nature of the loss of learning services being provided. It may not be necessary to match the loss of learning services hour for hour, based on the amount of skill lost. One must look at the "lost opportunity" and define the need based on the current deficit.
5. Consider how much service a child can tolerate in a period of time.
6. Determine the time frame, location, provider, and method for providing the loss of learning services. In the agreement, define the duration and quantity of the educational offer. Identify who will provide the service to establish a clear understanding between educators and parents about the goals and nature of the services to be provided.
7. Consider Reviewing the current offer of FAPE to determine if there is a need to update services to address transition, behavioral, and/ or mental health needs or reintegration into the student's typical learning environment. Additional formal and/or informal assessments may be necessary.
8. While services may be provided over the summer, participation in Extended School Year (ESY) may not count as a loss of learning service. Eligibility for ESY should be determined by the IEP team based on a consideration of the student's difficulty with regression and recoupment of skills following extended school breaks. See Extended School Year section below.
9. Document the offer/agreement with the parents on the service page and the notes page of the IEP document.
10. Create a log to record the provision of loss of learning services and ensure full implementation of the service(s). If a child refuses to participate in the loss of learning services, convene an IEP meeting to discuss and consider any changes that may be needed to the plan. The team should also clearly define how/when services are made up if the provider or student misses a session.
11. The team should define and agree to a mode of communication that will keep team members abreast of service provision and progress towards goals.



12. LEA's should work with parents regarding the scheduling of loss of learning services. Services can be provided outside the student's typical school hours (in hybrid models, can be on "off" days or times) but shall not take a student away from opportunities offered to other students (Such as after-school activities).

Extended School Year

Extended School Year services are special education services provided to a student with a disability during extended school breaks. Per IDEA and CA Ed. Code, these services assist the student in working toward the same goals and objectives that the student works on during the school year and are only provided in those areas on the current IEP that the student has demonstrated:

- a. Regression of skills during an extended school break and,
- b. Limited ability to benefit from re-teaching of skills after an extended school break.

In addition to the two criteria above, case law includes "emerging skills" (i.e., when a student is on the brink of learning to read) to analyze eligibility for ESY. Suppose a student is in a critical stage of learning a skill that could lead to a greater level of independence, and interruption of instruction would cause loss of the current skill development level. In that case, ESY should be considered by the IEP team (*Reusch v. Fountain, 1994*). For more information on ESY, refer to the [FAQ for Extended School Year](#).



ESY was not developed to address the loss of learning caused by a global pandemic

Provide Prior Written Notice

In addition to holding an IEP meeting with parent involvement and discussing how to address the loss of learning appropriately, LEAs will need to follow up with prior written notice. Prior written notice is a document that is required following the proposal and/or refusal related to the initiation or change in the identification, evaluation, educational placement, or offer of FAPE (34 CFR 500.503). 34 CFR 300.503 (a). Suppose the IEP team is offering **loss of learning services**. In that case, a prior written notice should be presented to the parent and provide a comprehensive review of any and all actions proposed and/or refused by an LEA/district. The information included should be sufficient to ensure that parents understand the rationale by which decisions were made and all things that were considered. Providing prior written notice affords parents an additional opportunity to consider and/or object to decisions that were made prior to implementation by an LEA. For more information, reference the [Prior Written Notice](#) guide.

