

# FAPE and Compensatory Education

Teams Live Event  
April 22, 2021

*Admissions and Release Committee Guide to  
Free Appropriate Public Education and  
Compensatory Education*

# Presenters

**Sylvia Starkey**

KDE Division of IDEA  
Monitoring and Results

**Veronica Sullivan**

KDE Division of IDEA  
Implementation and Preschool

**Rhonda Logsdon**

Kentucky Special Parent  
Information Network (KY-SPIN)



# Background and Why

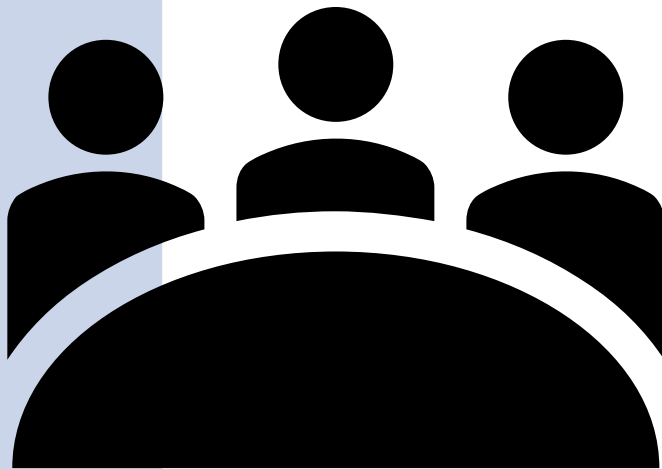
Support Admissions and Release Committees (ARCs) with individual decisions regarding the provision of compensatory education.

Gain a deeper understanding of a free appropriate public education (FAPE).

Support parents and families as ARC members during discussions that include compensatory education.

Provide resources to ARC members.

# Guidance for All ARC Members



# What is FAPE?

[Kentucky Administrative Regulations](#) define a free, appropriate public education (FAPE) as “special education and related services that:

- A. Are provided at public expense, under public supervision and direction, and without charge;
- B. Meet the standards of the Kentucky Department of Education included in 707 KAR Chapter 1 and the Program of Studies, 704 KAR 3:303, as appropriate;
- C. Include preschool, elementary school or secondary school education in the state; and
- D. Are provided in conformity with an individual education program (IEP) that meets the requirements of 707 KAR 1:320.”

# FAPE and COVID-19

- Regardless of the instructional delivery model, districts continue to be responsible for providing FAPE.
- During COVID-19, some districts were unable to provide FAPE for unavoidable reasons.
- IEPs may have been impossible to implement as written.
- Regardless of the reason why, the only remedy for failing to provide FAPE is compensatory education.

# What is Compensatory Education?

- Not defined in the IDEA
- Shaped by case law
- Designed to protect the entitlement of students with disabilities
- Purpose:
  - “Compensatory awards should aim to place disabled children in the same position they would have otherwise occupied but the for school district’s violation of IDEA.” (*Reid v. District of Columbia*, 43 IDELR 32 (D.C. Cir. 2005)).

Compensatory  
Education  
Terminology

“Unfinished learning”

“Lost learning”

“Post-COVID instruction”



# Role of the ARC

- ARCs must review the status of special education and related services and ongoing progress monitoring.
- The ARC must determine on a case-by-case basis whether compensatory education is owed.
- If so, the ARC must determine the logistics of compensatory education.

# Parental Input

- Parents are critical members of the ARC.
- Parental input and professional judgement are important.
- Meeting notices should specify that compensatory education will be discussed
- Consider explaining compensatory education to parents first.
- This will allow parents to meaningfully engage in discussions about compensatory education for their child.
- Parents must be able to voice their concerns and provide information about their child's response to non-traditional instruction (NTI).
- TIP: Schedule parent-requested ARCs for comp ed promptly.

# Important Case Law

- Have a working knowledge of case law including:
  - *Hendrick Hudson v. Rowley* (1982)
    - *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982)
  - *Deal v. Hamilton* (2004)
    - *Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840 (6th Cir. 2004)
  - *Andrew F. v. Douglas County* (2017)
    - *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, (2017)

## Two-Part FAPE Test

1. Has the district complied with the procedures set forth in the IDEA?
2. Was the IEP reasonably calculated, and did it enable the student to receive educational benefit?

# Review of Data

Data sources might include, but are not limited to, the following:

- Parental input
- The student's current IEP
- Documentation of special education and related services that were *and* were not provided to the student
- Grades from before, during and after NTI
- Work samples from before, during and after NTI
- NTI attendance logs
- Information regarding the student's access to internet, one-to-one technology devices such as a tablet or computer, accommodations, assistive technology and supplementary aids and services
- Progress toward IEP goals before, during and after NTI
- Evaluation, reevaluation and eligibility deadlines
- Informal observations/anecdotal notes

# Answering the Second Question

- Review all of the student's data.
- Equity and access are important!
- Discuss how the district mitigated any barriers that were present
- Discuss the student's rate of progress prior to long-term NTI.
  - Was the student able to maintain a similar rate of progress during NTI?
  - Was there a noticeable difference in progress when the student returned to in-person instruction?
  - Is there a correlation between an increase in progress and a barrier to learning which was unable to be safely mitigated during NTI?

# Determining Minutes

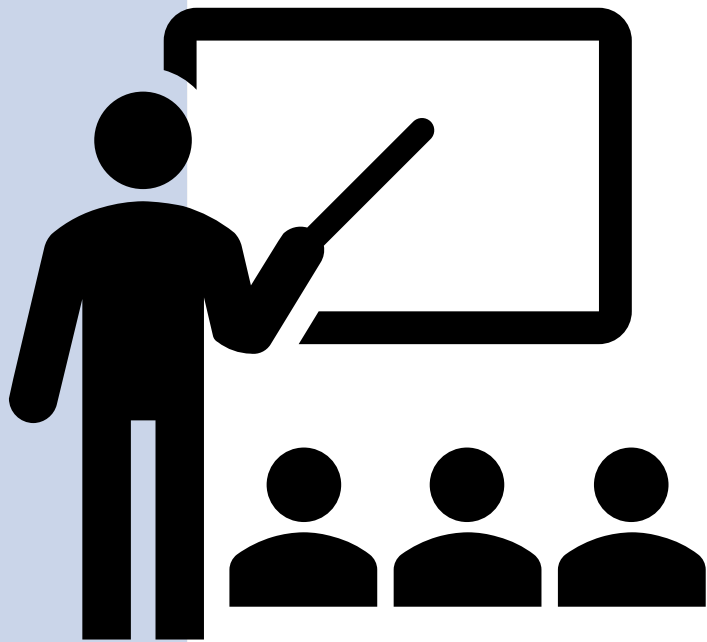
- Two types:
  - Quantitative, or minute-for-minute
  - Qualitative
    - Determined by the effect of the loss of educational benefit based on the student's unique situation.
    - ARCs must examine the benefit the student would have received if offered FAPE.
- Decisions must be made on a case-by-case basis
- ARC determines the best approach for the student

# Logistics

- Documentation
- Scheduling Meetings
- Scheduling Services
- Outside Providers
- Transportation
- Attendance
- Financial Considerations
- Class Size
- Schoolwide Opportunities



# Resources for the ARC



# Guiding Questions for ARCs

## Compensatory Education Suggested Guiding Questions for the ARC



### **Pre-COVID Performance Levels of the Student:**

- What were the student's present levels of performance?
- Was the student making expected progress on IEP goals?
- What special education and related services were specified in the student's IEP?

### **During NTI:**

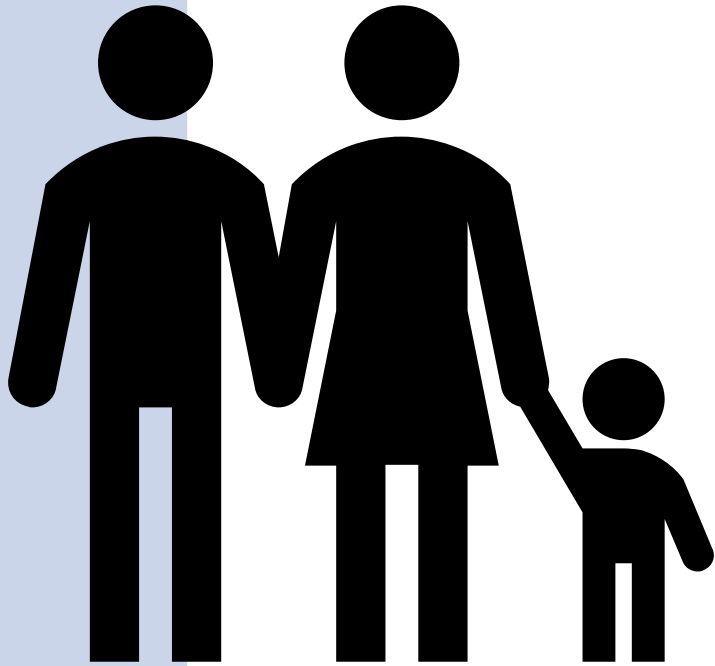
- How did the student continue to receive IEP services and supports?
- What IEP services and supports were not provided?
- Were barriers to equity and access present for the student as a result of NTI? How did the district address those barriers? Were any unable to be removed due to public health concerns?
- How was the student's attendance and level of engagement? If lacking, how was this addressed?
- Did the school or district note any new areas of concern for the student? If so, how were they addressed?
- How did the student respond to NTI?
- How did the school or district engage the student's family?



# Example Comp Ed Log

Date	Provider Name	Content Covered/Notes	Number of Minutes	Provider Initials
3/5/21	S. Ayad	Direct instruction in number modeling	27	SA
3/6/21	S. Ayad	No session — teacher was sick	0	SA
3/7/21	S. Ayad	Direct instruction in array multiplication	30	SA
3/8/21	J. Hernandez	OT — Worked with student on fine motor strengthening activities.	25	JH
3/8/21	J. Hernandez	OT — Reviewed student's sensory diet- added deep pressure and movement activities	23	JH
3/10/21	S. Ayad	Direct instruction in building array models	29	SA
3/11/21	M. Lanceta	Speech — direct instruction in /r/ blends	30	LL

# Guidance to Support Parents and Families



# Special Education and FAPE

- Regardless of the location, all students receiving special education and related services have the right to a free appropriate public education (FAPE).
- Special education means instruction that is specially designed to meet the unique needs of the student.
- FAPE calls for special education and related services to be provided at no cost to parents.
- FAPE also includes related services that help the student benefit from their educational program. Some examples of related services include speech, physical or occupational therapy.

# Specially Designed Instruction

- Specially designed instruction means adapting as appropriate the content, methodology or delivery of instruction to address the unique needs of the student with a disability and ensure access of the student to the general curriculum.
- Local school districts may operate under a variety of delivery models

<b>Traditional</b>	<b>Hybrid</b>	<b>NTI</b>	<b>Self-Paced</b>
Monday-Friday, in-person instruction	a mix of in-person and Non-Traditional Instruction (NTI)	Non-Traditional Instruction (NTI) or virtual instruction	Work is sent home and student completes with minimal to no teacher involvement

# IEP Implementation Expectations in a Variety of Instructional Delivery Models

# IEP Implementation

How will my child receive special education (adaptations to content and delivery of instruction)?

<b>Traditional</b>	<b>Hybrid</b>	<b>NTI</b>
Special education and general education teacher's direct instruction in the classroom	Special education teacher(s) provides direct instruction in the classroom as well as online or over the phone	Special education teacher(s) provide direct instruction online or over the phone



# IEP Implementation

How can I expect my child's progress to be monitored?

<b>Traditional</b>	<b>Hybrid</b>	<b>NTI</b>
Special education and general education teachers will collect progress data from instruction in the classroom	Special education and general education teachers collect ongoing progress data from instruction in the classroom, online, over the phone, or through paper assignments designed for individual students	Special education and general education teachers collect ongoing progress data from instruction online, over the phone, or through paper assignments designed for individual students

# IEP Implementation

How will my child receive supplementary aids and services to help them progress in the general curriculum?

<b>Traditional</b>	<b>Hybrid</b>	<b>NTI</b>
Student will be provided supplementary aids and services as needed through the school day	Student will be provided supplementary aids and services as needed through the school day	Student will be provided supplementary aids and services as needed through the school day

How will my child receive accommodations on assignments and tests (e.g., reader, scribe, extended time)?

<b>Traditional</b>	<b>Hybrid</b>	<b>NTI</b>
Accommodations will be provided as part of the student's instructional routine within the classroom	Accommodations will be provided as part of the student's instructional routine within the virtual and traditional classroom	Accommodations will be provided as part of the student's instructional routine within the virtual classroom

# More Information on IEPs

## The Parent Involvement Initiative



<https://hdi.uky.edu/spdg/parents>



<https://www.kyspin.com/>

Please contact Rhonda Logsdon at [Rhonda@kyspin.com](mailto:Rhonda@kyspin.com)

# Compensatory Education

Questions to Prepare Parents and Families for ARC Discussions

# What is Compensatory Education?

- When special education services within a student's Individual Education Program (IEP) are not provided, compensatory education services may be needed as a remedy for the inability or failure to provide a FAPE.
- Compensatory education should aim to place students with disabilities in the same position they would have occupied had the inability or failure to provide FAPE not occurred.

# Will All Students be Provided Comp Ed Due to COVID?

- No. Compensatory education services must be determined on a case-by-case basis.

# Can a Student Receive Comp Ed if They Are Over 21?

- Yes. If the inability or failure to provide a FAPE occurred prior to a student reaching their 21st birthday or graduating, compensatory education services may be considered as a remedy by the ARC.

For more information see: [Letter to Riffel](#), Aug. 22, 2000

# How is Comp Ed Provided?

- When planning compensatory education services provided to a student, the student's ARC, which includes the student's parents, must make decisions regarding the type, location and amount of services to be provided.
- Compensatory education services and transportation to receive those services are provided at no cost to the parent or family.



# Will Comp Ed Look the Same for All Students?

- No. Compensatory education services should be decided on a case-by-case basis. Students may be provided services before or after school, on weekends or over the summer, and also will receive individualized services.

# Are Comp Ed and ESY the Same?

- No. Compensatory education services and extended school year (ESY) services are different, and some students may receive both.

# What if I Disagree with the Decision?

- If a disagreement arises, KDE suggests parents first contact the principal of the student's school or the Director of Special Education (DoSE) in the district to ensure they are aware of the problem. An online directory is available to help parents contact the DoSE.
- If these methods do not resolve the disagreement, three other conflict resolution options are available. Parties may resolve IDEA disputes through mediation, a formal written complaint or a due process hearing.
- [KDE Dispute Resolution webpage](#)

# Important Things to Remember

# Things to Remember

- Compensatory education is the remedy provided to a student when a denial of FAPE has occurred. It is designed to put the student in the place they otherwise would have been in had there not been a denial of FAPE.
- The ARC must develop an individualized implementation plan for compensatory education services and document the decisions in the ARC Conference Summary.
- Ongoing progress monitoring must be collected.
- The district is responsible for all costs associated with providing compensatory education services.

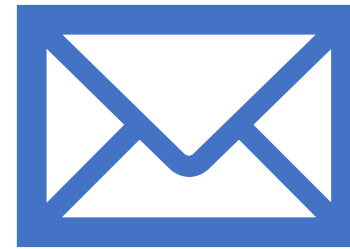
# Things to Remember

- A special education teacher must provide specially designed instruction and the appropriate related service provider must provide related services.
- The district must provide or pay for transportation for the student.
- For preschool students, if the compensatory education is provided during a different preschool session, the session cannot exceed a class size of 20.
- General services offered to all students cannot take the place of required compensatory education services determined by the ARC.
- Districts should maintain a detailed log of compensatory education services as they are provided to the student, including ongoing progress monitoring. This should be maintained in the student's due process folder.

For more information on compensatory education, please contact:  
Sylvia Starkey or Veronica Sullivan



[sylvia.starkey@education.ky.gov](mailto:sylvia.starkey@education.ky.gov)



[veronica.sullivan@education.ky.gov](mailto:veronica.sullivan@education.ky.gov)