

GUIDELINES FOR COMPENSATORY SERVICES

A. COMPENSATORY SERVICES

Compensatory services are required when a district has failed to provide the services in the IEP and the student suffers a loss of educational opportunity or benefit. Compensatory services are an "equitable" remedy, and not required in every instance of a violation of the law, but only when the violation results in loss of educational benefit or opportunity. These guidelines are to be used by IEP teams, which include the parent, to determine when such loss has been suffered and when compensatory education and/or services are required.

These guidelines set forth a procedure to follow for determining whether compensatory services are necessary, what services should be provided, and how and when. They are to be used *whenever* staff become aware that instruction/services have not been provided as specified in the IEP.

B. RELATIONSHIP OF THESE GUIDELINES TO OTHER REMEDIES

These guidelines are intended to be used by SFUSD to correct noncompliance problems before they are raised to the level of formal compliance issue with the California Department of Education.

There are, however, other statutory procedures that a parent³ may initiate to seek remedies for a district's failure to provide services in accordance with the IEP. A parent may file a formal complaint with the California Department of Education (CDE) alleging a violation of special education laws. However, in many instances, if CDE finds a violation, it will refer the matter to the IEP team to determine the type and level of compensatory services that may be necessary. In these instances, Section D, paragraphs 3 through 5 are to be followed; and section E is instructive.

A parent may also request a due process hearing from the State Special Education Hearing Office and the issues may involve the need for compensatory services. Typically the hearing officer will order specific remedies and not refer back to the IEP team. If the hearing officer does refer the matter back to the IEP team, again Section D, paragraphs 3 through 5 are to be followed; and section E is instructive.

³ Wherever "parent" is used in this document, it is to be interpreted in accordance with section 56028 of the Education Code to include anyone having legal custody of the child, an adult pupil for whom no guardian or conservator has been appointed, and the surrogate parent.

C. EXAMPLES OF NONCOMPLIANCE THAT WILL CAUSE A LOSS OF EDUCATIONAL OPPORTUNITY OR BENEFIT

1. **Referral** of student ultimately found eligible for special education was not acted upon within 15 days of receipt of a written referral and the assessment and IEP were not completed within the statutory timelines, and the IEP team determines, in accordance with Section D, below, that the student's ability to meet his/her goals in the time specified, or to progress in the regular curriculum will be or has been impaired.

2. **DIS** not provided as specified in the IEP to the extent that the IEP team determines, in accordance with Section D, below, that the student's ability to meet his or her goals in the time specified will be or has been impaired. (Note that this could include related services provided by County Mental Health or California Children's Services. If so, the IEP team must include a representative from CMH or CCS.)

3. **Special education services**, such as instruction by the Resource Specialist or Special Day Class teacher, or modifications and supports, behavioral plans, etc., not provided as specified in the IEP to the extent that the IEP team determines, in accordance with Section D, below, that the student's ability to meet his/her goals in the time specified, or to progress in the regular curriculum will be or has been impaired.

4. **Opportunities for participation in the general curriculum** and other **mainstreaming/inclusion opportunities** not provided as specified in the IEP to the extent that the IEP team determines, in accordance with Section D, below, that the student's ability to progress in the general curriculum and meet his/her goals in the time specified, or to meet his/her social or other "mainstreaming" goals will be or has been impaired.

5. **Transportation** not provided as specified in the IEP to such an extent that the student has been forced to involuntarily miss all or a portion of the school day(s), resulting in the loss of special education and/or DIS to such an extent that IEP team determines, in accordance with Section D, below, that the student's ability to meet his/her goals in the time specified, or to progress in the general curriculum will be or has been impaired.

6. **Requested IEP meetings** not conducted in a timely manner (within 30 days of the request) when requested by the parent or teacher, *or when the student is not making the anticipated progress* as specified in the IEP and the IEP team determines, in accordance with Section D, below, that the delay resulted in loss that cannot be overcome without some level of compensatory service/instruction.

D. PROCEDURES FOR DETERMINING COMPENSATORY SERVICES

1. Whenever a parent, or other person knowledgeable about the child, complains about/reports, formally or informally, the failure to provide the special education or services as specified in the IEP, or whenever any staff member reports to the principal that the IEP is not being fulfilled as written, the school site principal shall immediately notify, in writing, Program Integration and Compliance (PIC) of the complaint/report. If the complainant was not the parent,

the parent shall also receive the notice and a copy of these Guidelines. If the complaint was filed by the parent, the parent shall immediately be given a copy of these Guidelines.

Within 5 school days of the complaint/report, the principal shall determine whether the facts support the complaint/report. The principal is not expected to do a formal complaint investigation, but must make reasonable inquiries, such as looking at staff attendance logs, making inquiries of relevant staff/students, etc., to determine if the allegations are true. *In all instances, the principal should speak to the parent of the student involved.* If the principal finds no facts to support the complaint, the parent and PIC shall be so notified, in writing. The notice to the parent shall include a copy of the parent's right to file a formal complaint with the California Department of Education and/or to request a due process hearing.⁴

2. If noncompliance is found, the principal shall, in writing, report this to PIC and the parent, with a brief description of his/her specific findings. The principal shall convene an IEP meeting within 10 days of the finding of noncompliance, subject to the requirement that IEPs be adequately noticed and held at a mutually convenient time and place. (Note: The parent may participate by conference call *if* the parent is willing and otherwise unable to attend, or the parent may send a representative. Since this IEP meeting is being scheduled *because* of the district's failure, every effort should be made to accommodate the parent's schedule, of course being mindful of the necessity to act quickly so that the student is not subjected to further loss.) *The notice of IEP shall clearly state that the purpose of the meeting is to consider compensatory education/services, and all other IEP requirements (participants, translators, etc.) shall be followed.*

3. The IEP team shall meet and discuss the findings of noncompliance and the loss of educational opportunity or benefit the student suffered as a result of the noncompliance. In determining the amount and type of compensatory services/instruction that should be provided to the student, the IEP team should consider:

- (a) the student's rate of learning and recoupment capacity;
- (b) the services that are currently being provided and how the compensatory services can be addressed so as not to put the student in a position of "overload";
- (c) the student's current educational and personal schedule and how the compensatory services can be provided so as not to further disrupt the student's current educational program and life outside of school;
- (d) any concerns of the parent and/or student regarding additional services as compensation.

4. Immediately following the IEP meeting, a copy of the IEP shall be sent to PIC. The conclusions of the team as to whether or not the student will receive compensatory services, the type of service, and the frequency, duration and location of such services (as applicable) must be clearly stated in the IEP. Parent consent to the compensatory services (or none, as the case may be) must be evident on the IEP. If no compensatory services are to be given, the IEP team must document the reasons for that decision, the information the team relied upon to come to that conclusion, other options considered, if any, and any other factors relevant to that decision.⁵

⁴ Both of these rights are included in SFUSD's standard notice of parents' rights.

⁵ See notice requirements of the federal regulations, 34 C.F.R. § 300.503 (b).

5. If the parent does not consent, the procedures for obtaining consent must be followed (See SFUSD IEP Form F). In addition, the parent must be given notice that they have a right to request a hearing.

6. Staff responsible for providing the compensatory services must keep logs/records specifically indicating the dates/time that the compensatory services were delivered. These logs/records must clearly differentiate compensatory services from on-going IEP services. These logs/reports must be sent periodically to PIC until the compensatory services have been completed. (E.g., monthly reports would be appropriate for additional minutes/sessions of speech therapy, weekly tutorial services, etc., whereas if summer school was the remedy, the child's attendance and grades, etc. at summer school would be submitted upon completion.)

E. POSSIBLE OFFERS OF COMPENSATORY SERVICES

Wherever possible, compensatory services should either be carefully integrated into existing services (e.g., increasing speech therapy sessions from 30 minutes to 45 minutes) or provided during extended school year so as to respect the student's right to fully participate in his/her current IEP, extracurricular activities, and life outside of school generally. The parent's and/or student's schedules must be given careful consideration in the timing and delivery of such services. Nothing in this paragraph is intended to require the school district to provide services beyond a reasonable period of the school day (e.g., not at 7:00 P.M.), or on weekends or holidays, unless such services are otherwise provided to students by SFUSD or are to be provided by other private or public agencies.

Compensatory services may range from providing one service for every lost service, to reimbursing parents for private services obtained, or to a limited tutorial period. The type and extent of the service offered depends upon the loss suffered and what service level and delivery method is most likely to remediate the loss.

The following examples are only a few of many possibilities:

If the student missed, for example, six months of RSP/SDC or other placement due to failures of the district, the student could be offered daily or weekly tutorial services for a specified period of time in the areas that the placement was to address, summer school, or tuition in other private/public tutorial programs outside of the school day.

If DIS services were missed as a result of district failure, regular DIS sessions may be extended by a specified number of minutes for a specified period of time, e.g., 40 minutes per week instead of 20 minutes, for 20 months instead of one year.

In some situations it may be appropriate to provide similar, supportive services that will assist the student in recouping the loss. For example, medical judgment may dictate against increasing PT sessions, but adaptive PE, dance or other recreational programs may supplement the PT. Similarly, a young child may not be able to tolerate increased individual speech therapy sessions, or additional sessions would result in disrupting other IEP services. In such a case, other language opportunities could be provided, in group settings or in other instructional activities that

occur during the normal school day. If OT services were lost and the student could not tolerate additional one-to-therapy, other activities such as art classes (private or in the school) and other such supportive services might be appropriate.

For supports, modifications, mainstreaming opportunities, etc. that have been denied the student, it may be necessary to provide the student with a one-to-one aide to facilitate more rapid integration into the regular classroom, or provide additional assistance such as assistive technology so that the student can more readily catch up with the class. Tutorial and other such services may also be appropriate here, as well as DIS counseling services, summer school, etc.

When behavioral plans have not been implemented appropriately, staff must also consider and address the loss of education due to suspensions or other disciplinary proceedings, and remove any disciplinary proceedings from the pupils records that occurred during the period where the plan was not being implemented. *However*, any days the student was subjected to discipline during the loss of service must be counted toward allowable days for future suspensions, interim alternative educational placements, etc.

For a student who, for example, dropped out of school due to the lack of services, and is no longer of school age, the IEP team should consider such remedies as paying for adult vocational programs or tuition in community college or other adult programs, tutorial services in preparation for taking the GED, etc., for *specified* periods necessary to overcome the lost educational opportunity