



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

April 18, 2018

David Kane, Esq.  
Sargent Rehabilitation Center  
800 Quaker Lane  
Warwick, Rhode Island 02818

Dear Mr. Kane:

This letter responds to your correspondence to Lisa Pagano, State Lead/Policy Specialist, Office of Special Education Programs (OSEP), U.S. Department of Education (Department). In your letter, you ask that OSEP clarify the obligation of local educational agencies (LEAs) to provide compensatory services to make up special education and related services missed when children with disabilities participate in required scheduled State assessment testing. We regret the delay in responding.

We note that section 607(d) of the Individuals with Disabilities Education Act (IDEA) prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented, and does not establish a policy or rule that would apply in all circumstances.

In your letter, you present two scenarios and ask whether an LEA has a responsibility to provide compensatory services to make up any special education and related services missed: (1) during the time a child participates in a required State or districtwide assessment program; and (2) when the parent withholds his or her child from participating in the State or districtwide assessment program (*e.g.*, the parent keeps the child home from school during the time that assessments are being administered).

Part B of the IDEA requires each LEA, along with the State educational agency, to ensure that a free appropriate public education (FAPE) is made available to all eligible children with disabilities within the jurisdiction of the LEA. 20 U.S.C. 1412(a)(1) and 20 U.S.C. 1413(a)(1). In order to make FAPE available, each child's individualized education program (IEP) must be developed and implemented in accordance with the requirements in 20 U.S.C 1414(d). 20 U.S.C. 1401(9). The IEP for each child must include, among other content, a statement of the specific special education and related services to be provided to the child, the projected dates for initiation of the services, and the *anticipated* frequency, location, and duration of the services. (Emphasis added). 20 U.S.C 1414(d)(1)(A)(i)(IV). 34 CFR §300.320(a)(4) and (7).

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In addition, all children with disabilities must be included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965 (ESEA), with appropriate accommodations, and alternate assessments where necessary and as indicated in their respective IEPs. 20 U.S.C. 1412(a)(16). All children, including children with disabilities, benefit from participating in State and districtwide assessments, which are an integral part of the educational accountability system under Title I of the ESEA and Part B of the IDEA, and are often used to measure student progress for the purpose of promotion, graduation, and access to educational services. In addition, assessment is an integral aspect of educational accountability systems that provide valuable information which benefits individual students by measuring individual progress against standards or by evaluating programs.

Participation in assessments is also addressed in the child's IEP. The IEP Team determines how the child will be assessed, including whether any individual appropriate accommodations are necessary to measure the academic achievement and functional performance of the child and whether the child must take an alternate assessment. 20 U.S.C. 1414(d)(1)(A)(i)(VI). Thus, children with disabilities must participate in all general State and/or districtwide assessments and during the administration of such tests, the LEA must implement the child's IEP by providing any required accommodations or an alternate assessment if determined necessary by the child's IEP Team.

Generally, a special education or related service missed due to participation in required scheduled assessments would not constitute a denial of FAPE and the LEA would not be required to make up the missed service. For a child who is absent from school on testing days due to a parent's choice, the LEA would not be obligated to make other arrangements to make up the missed services.

If you have any further questions, please do not hesitate to contact Ms. Pagano at 202-245-7413 or by email at [Lisa.Pagano@ed.gov](mailto:Lisa.Pagano@ed.gov).

Sincerely,

/s/

Ruth E. Ryder  
Acting Director  
Office of Special Education Programs