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

October 15, 2026

Ms. Karen Kockler
kkockler1975@gmail.com

Dear Ms. Kockler:

This message is in response to your June 16, 2026, electronic correspondence (email) addressed to the U.S. Department of Education (Department) Office of Special Education Programs (OSEP) regarding questions and concerns about the service and workload expectations of speech-language pathologists (SLPs) across Illinois. Specifically, you ask a series of questions about SLPs who work in schools and are required to make up missed minutes as compensatory services. It is my pleasure to respond to your questions and concerns.

OSEP is responsible for administering the Individuals with Disabilities Education Act (IDEA). This Federal program provides financial assistance to State educational agencies (SEAs), and through SEAs to local educational agencies (LEAs), to help meet the unique educational needs of eligible children with one or more of the specified disability areas defined at 34 C.F.R. § 300.8 of the Federal regulations implementing Part B of the IDEA (Part B). You can access the Part B regulations at https://sites.ed.gov/idea/statuteregulations/.

The cornerstone of the IDEA is the entitlement of each eligible child with a disability to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet the child's unique needs and that prepare the child for further education, employment, and independent living. 20 U.S.C. §1400(d)(1)(A). Under the IDEA, the primary vehicle for providing FAPE is through an appropriately developed individualized education program (IEP) that is based on the individual needs of the child, which may include speech and language therapy services. The nature, location, and frequency of those services are determined on an individual basis by a student's IEP team.

While IDEA requires a student's IEP to be reviewed and updated at least once annually, it also allows an IEP team to revise the contents of a student's IEP based on the needs of the student, based on their present levels of performance. However, the school and LEA is legally required to strictly follow every accommodation, service, and modification listed in the IEP until such revisions are made. This context is critical when responding to your questions below.

Question 1: Can administrators require every missed therapy service minute to be made up as compensatory services? Noting that such requirements are often written into Collective Bargaining Agreements (CBA) across the State.

Answer: OSEP's April 19, 2018, Letter to Lipsitt, describes the purpose of compensatory services, stating that:

> The IDEA regulations require each SEA to adopt procedures for resolving complaints filed by an organization or individual, including those from another State, alleging that a public agency has violated a requirement of Part B of the Act or the Part B regulations. 34 CFR §300.151(a)(1). In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B, must address: (1) the failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) appropriate future provision of services for all children with disabilities. 34 CFR §300.151(b)(1) and (2). In resolving State complaints, the SEA is responsible for ensuring that all public agencies within its jurisdiction meet IDEA requirements, and appropriate implementation of the State complaint procedures is critical to the SEA's exercise of its general supervision responsibilities. An SEA, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children.
>
> The purpose of a compensatory services award is to remedy the public agency's failure to provide a child with a disability with "appropriate services" during the time that the child is (or was) entitled to a free appropriate public education and was denied appropriate services. An SEA has broad discretion in determining a suitable remedy when it concludes that a violation of an IDEA requirement has resulted in a failure to provide appropriate services to a particular child or group of children. There is nothing in the IDEA or its implementing regulations that would limit an SEA's authority in resolving a State complaint to award compensatory services, or require such an award, based on a specific set of facts and circumstances, or a particular finding of noncompliance.

While OSEP cannot review, comment, or opine on the merits of potential features of a CBA, OSEP notes that a CBA cannot legally restrict, redefine, or supersede a student's individual rights under IDEA. Concerns regarding specific provisions with a CBA should be brought to the respective school board and/or the appropriate State agency, such as the Illinois State Board of Education (ISBE).

Question 2: Can OSEP provide definitions of what constitutes missed minutes/sessions and compensatory services and who is responsible for making those decisions and how?

Answer: Neither "missed minutes" nor "compensatory services" are defined by IDEA. As noted above in OSEP's Letter to Lipsitt, compensatory services are designed to remedy a situation where a school district failed to provide a student with FAPE. While missed therapy minutes may be an appropriate reason to provide compensatory services, IDEA does not mandate a "minute-for-minute" replacement requirement in the law. Instead, OSEP's December 20, 2013, Letter to Pergament, describes that:

Generally, the decision to provide "make up" or compensatory education when there is a disruption in the provision of educational services, and the nature and amount of the special education and related services that are to be provided as compensatory education, is an individualized determination made by the individualized education program (IEP) Team in accordance with the requirements in 34 CFR §§300.320-300.324. That is, the IEP Team must determine whether the child was denied educational benefit because of the disruption in educational services and whether compensatory education is needed to "make up" for the denial

including addressing any skills that may have been lost. The parent and the LEA may agree not to convene an IEP Team meeting for the purposes of making changes to a child's IEP after the annual IEP Team meeting for the school year has already occurred, and instead, address changes, such as the provision of compensatory education, by developing a written document to amend or modify the child's current IEP. 34 CFR §300.324(a)(4)(i). If the latter occurs, and the parents and the LEA agree to changes to the child's IEP to provide for compensatory education, the LEA must ensure that the child's IEP Team is informed of those changes. 34 CFR §300.324(a)(4)(ii).

If an IEP Team decides not to provide compensatory education services to a child with a disability and the parent believes that his or her child is entitled to those services, the parent may pursue dispute resolution options provided under Part B of the IDEA. Parents of children with disabilities may resolve disputes with public agencies regarding the provision of a free appropriate public education to their children by: (1) filing a State complaint directly with the State educational agency, in accordance with 34 CFR §§300.151 through 300.153; (2) requesting mediation pursuant to 34 CFR §300.506; and (3) using the due process provisions pursuant to 34 CFR §§300.507 through 300.516.

Additionally, OSEP's January 10, 2022, Letter to the Council of Administrators of Special Education (CASE), reiterates these requirements under IDEA. However, it provides an important clarification to those requirements:

> One of IDEA's basic tenets is to bring together the parents and school personnel to address the individual needs of each eligible child with a disability through the use of an IEP Team.
>
> Consistent with this, we believe that in situations where compensatory services are necessary to address the impact of service disruptions and limitations on a particular child, school personnel and the child's parent should work together collaboratively to develop a plan for providing such services in a reasonable manner. It is inconsistent with IDEA to require such parents to file a State complaint or a due process complaint as the only vehicle for obtaining compensatory services—and then to return to an IEP Team meeting to determine what those services will be.

Question 3: What are IDEA's requirements of SLPs, when schedules are regularly at capacity from providing direct IEP services to students, leaving insufficient to no time to make up missed services? Noting that there are an insufficient number of qualified SLPs available to meet these demands.

Answer: While OSEP acknowledges the severe nationwide shortage of special education teachers and related service providers, the legal rights and protections of students with disabilities under IDEA remain absolute. Regardless of the challenges that a school or LEA may experience, such as staffing shortages, they do not excuse school districts from providing FAPE, and States cannot ignore IDEA requirements or lower certification standards to fill empty positions.

On October 4, 2022, OSEP released Memo 22-01 about personnel qualifications under Part B of IDEA in recognition of these challenges. Later, on January 13, 2025, OSEP released a Dear Colleague Letter (DCL) on special education personnel retention, emphasizing that leadership can significantly affect special educator morale, workload management, educator effectiveness and perceptions of working conditions, improving overall job satisfaction and in turn retention.

Question 4: Can administrators treat Illinois Administrative Code Section 226.735, Workload for Special Educators as optional? Noting that the State rule is not being enforced in all Illinois school districts.

Answer: OSEP cannot review, comment, or opine upon a State rule, such as Illinois' Administrative Code Section 226.735 Workload for Special Educators, unless there is a credible allegation of the rule's noncompliance with specific requirements under IDEA. Otherwise, such concerns regarding enforcement of this State rule should be brought directly to ISBE.

Question 5: Must districts make up missed services during the regular school year? Is it possible to provide them through afterschool services, extended school year (ESY) services, and/or through contracting with a clinical facility?

Answer: As previously noted, if it is determined that a student was denied educational benefit because of the disruption in educational services and compensatory education is needed to address the provision of educational services, then the nature and amount of the special education and related services that are to be provided as compensatory education is decided by the IEP Team in accordance with the requirements in 34 C.F.R. §§ 300.320-300.324. The decisions are based on the individual rights and needs of the student, not what is most convenient for the school, LEA, or any individual teacher or related service provider.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

Thank you for sharing your questions with OSEP. If you have additional questions, please contact OSEP's Illinois Part B State Lead, Dr. Josiah Willey at Josiah.Willey@ed.gov.

Sincerely,

AL JONES Digitally signed by AL JONES Date: 2026.10.15 15:24:45 -04'00'

Al C. Jones Jr., Ed.D.
Associate Division Director
Monitoring and State Improvement Planning Division
U.S. Department of Education