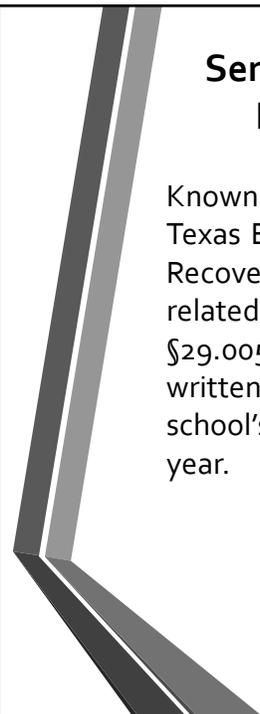


# The COVID 19 Special Education Recovery Act, Senate Bill 89: How to Appropriately Complete the Required Supplement

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## Senate Bill (SB) 89, passed during the 87<sup>th</sup> Regular Texas Legislative Session and took effect on June 7, 2021

Known as the COVID-19 Special Education Recovery Act, SB 89 amended the Texas Education Code by adding §29.0052. The COVID-19 Special Education Recovery Act requires schools to identify and address special education and related service interruptions during the COVID-19 pandemic. Under TEC §29.0052, the ARD committee must complete a required supplement as a written statement included in the child's IEP for each student enrolled in a school's special education program during the 2019-2020 or 2020-2021 school year.

## What must the supplement contain?

The required supplement must include the following information:

- If applicable, whether the written report of the student's full individual and initial evaluation (FIIE) was completed during the 2019-2020 or the 2020-2021 school year and, if so, whether the report was completed by the required date;
- If applicable, whether the student's initial IEP was developed during the 2019-2020 or 2020-2021 school year and, if so, whether the program was developed by the required date;
- For all students with an IEP, whether the provision of special education and related services to a student under their IEP during the 2019-2020 or 2020-2021 school year was interrupted, reduced, delayed, suspended, or discontinued; and
- Whether compensatory educational services are appropriate for the student based on the above information, or any other factors.

## Is a specific form required to be completed?

While the required content must be included with the written statement of the IEP, the specific location and format of the information may be determined locally. Documentation of the required elements of SB 8g may be included within the ARD committee deliberations and/or as a supplemental form that is included as part of the ARD committee paperwork.

## **When must the supplement be completed?**

The supplement must be completed by May 1, 2022.

## **If the ARD committee had already addressed the need for compensatory services due to virtual instruction during COVID, does the ARD committee need to meet again to specifically address the supplement?**

If the student's ARD committee documented all required information in the written statement of the IEP during the 2020-2021 school year, then the ARD committee is not required to prepare an additional supplement for this purpose.

## What is the timeline for FIE?

- The written report of an initial evaluation must be completed not later than the 45th school day following the date on which the local educational agency receives written consent for the evaluation from the child's parent. ; but
- If, the LEA received consent for the evaluation from the child's parent at least 35 but less than 45 school days before the last instructional day of the school year, the evaluation report must be provided to the parent not later than June 30 of that year.

## Does the timeline change if the student is three?

- The school must have an IEP is in effect for eligible children with disabilities on their third birthday.
- If a child's third birthday occurs during the summer, the child's ARD committee must determine the date when services will begin.
- Home instruction may be used for young children, ages three through five, when determined appropriate by the ARD committee.

### **Does the timeline change if the student is absent from school?**

If a student has been absent three or more days from school during that period, then the school can add the days to the 45 school days timeline to get the evaluation completed.

### **What must the school do if the parent requests a FIE?**

When the parent requests an evaluation, the school must provide the parent Prior Written Notice of the school's proposal to conduct an evaluation or refusal, along with Notice of Procedural Safeguards, not later than 15 school days from date the written request is received by the school district's special education director or district administrative employee.

## **What is the timeline when a student transfers into a school and was in the process of being evaluated at the previous school?**

If the student transfers into the school and was in the process of being evaluated for special education eligibility and enrolls before the previous school completed the FIE, the new school must coordinate with the previous school as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation.

The timelines for conducting the evaluation remain the same (i.e., 45 school days) for the new school unless the new LEA is making sufficient progress to ensure a prompt completion of the evaluation; and the parent and the new school agree to a specific time when the evaluation will be completed.

## **How is a school day defined?**

School day does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall term.

### **What is considered an absence?**

The child is considered absent for the school day if the child is not in attendance at the school's official attendance taking time or at the alternate attendance taking time set for that child.

### **If a student is on a field trip, is that considered an absence for the purposes of the evaluation?**

No. The child is considered in attendance if the child is off campus participating in an activity that is approved by the school board and is under the direction of a professional staff member of the school, or an adjunct staff member who has a minimum of a bachelor's degree and is eligible for participation in the Teacher Retirement System of Texas.

### **What is the timeline for the ARD committee to meet after the FIIE is completed?**

The ARD committee must determine initial eligibility within 30 calendar days from the date the evaluation report is completed. If the 30th day falls during the summer and school is not in session, the ARD committee has until the first day of classes to finalize decisions related to eligibility, IEP, and placement, unless the initial evaluation indicates that the child will need extended school year services during that summer.

### **Does the timeline change if the written consent for evaluation is received less than 45 school days before the end of the school year?**

If the school received the written consent for the evaluation from the parent at least 35 but fewer than 45 school days before the last instructional day of the school year and the child was not absent from school three or more days between the time that the school received written consent and the last instructional day of the school year, the ARD committee must meet not later than the 15th school day of the following school year, unless the initial evaluation indicates that the child will need extended school year services during that summer.

**What if written consent is received right before the end of the school year?**

The school will have 45 school days (that does not include the summer) to complete the evaluation and 30 calendar days to have the ARD meeting to review the evaluation and determine eligibility.

**For an initial ARD meeting, are days in the summer counted?**

No. For purposes of determining the timeline for an initial ARD committee meeting, it does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term.

### **What is considered as the “first day” of the initial evaluation timeline?**

The first day of a full individual and initial evaluation timeline is the first school day following the date written consent is received by the school from the parent.

### **What is considered the date of report for completing an initial evaluation?**

The date of report for a FIE is when the evaluation, including data gathering, has concluded, and the multidisciplinary team has determined if the student meets the criteria for a disability condition and has specified the educational needs of the student.

**If the FIEE was not timely completed, how does the ARD committee determine if compensatory services are warranted?**

The ARD committee needs to determine what services the student would have had during the delay in testing, and provide compensatory services for the amount of time the evaluation was overdue.

**What if the FIE found that the student did not have a disability?**

If the student did not qualify for special education and related services, no compensatory services would be needed.

**If a re-evaluation was due during COVID, does the ARD committee need to address that in the supplement?**

No. TEC §29.0052 provides for consideration of whether the written report of the student’s full individual and initial evaluation (FIIE) was timely completed and an ARD meeting was timely held to consider the FIIE during the 2019-2020 or the 2020-2021 school year. If not, what, if any, compensatory services may be warranted due to the delay.

**Could a student be entitled to compensatory services if the re-evaluation was delayed due to COVID?**

While SB 89 does not require re-evaluations to be addressed, if the re-evaluation was delayed due to COVID, the ARD committee should determine if the delay caused the student to miss any services. Since educational services should be based upon educational need rather than a label, a delay in a re-evaluation normally should not cause a failure to provide special education services that meets the student’s educational needs. However, to the extent that the re-evaluation determines that new services are warranted, the ARD committee must take into consideration whether the delay entitles the student to make up sessions for the new services that would have occurred had there been no delay.

## **How are compensatory services defined?**

Compensatory services are generally defined as educational services that a student needs to make up for skills lost because the school did not provide the services required by the IEP.

## **Are compensatory services during COVID due to the failure to implement the IEP?**

TEA has stated that when it comes to compensatory services needed to make up for services that could not be provided because of the COVID-19 pandemic, the ARD committee's determination should not be viewed as a remedy for a failure on the part of the school, but rather as a means to mitigate the impact of the loss of critical skills or learning that might have occurred as a result of special education and related services that could not be provided during the pandemic.

## **How do compensatory services differ from Extended School Year services?**

ESY is a separate requirement that must be considered for all students with disabilities. ESY is defined as the special education and related services that an ARD committee determines a student with a disability will be provided beyond the regular school year as set out in the student's IEP. ESY services are required only if the ARD committee determines and documents in the IEP that, in one or more critical areas addressed in the current IEP goals and objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time.

## **Can ESY count as the compensatory service?**

No. ESY is based upon the student's need for services to maintain critical skills that would suffer regression. Compensatory Services under SB 89 are due to lack of expected progress based upon instruction that occurred during COVID. The compensatory services are in addition to any ESY services the ARD committee determines are appropriate. When determining compensatory services, the ARD committee should consider how effective the remote services were in providing the student with a meaningful educational benefit.

## **How does the ARD committee determine whether compensatory services are warranted?**

TEA has stated that the ARD committee should review what special education and related services listed in the IEP were temporarily reduced or suspended due to school closure because of COVID-19. Service logs and temporary schedules should be compared with the IEP to document what the student missed. When determining whether a student needs compensatory services, the student's ARD committee must review the student's past and current needs considering the absence of special education and related services resulting from school closures and virtual instruction. In reviewing data, the ARD committee should discuss and weigh information from a variety of sources. For example, compare the statement of the child's present levels of academic achievement and functional performance in the IEP with the most current measures and observations. Further, progress monitoring by both the teacher and parent, work samples, teacher observations, and observations and progress monitoring collected by parents during at home learning all might be valuable.

## **What if the data shows that the student has not lost progress or will be able to make up the loss of progress in a short amount of time?**

If the student's data show that the student has not lost progress, or that the student will be able to make up for the lost progress in a short amount of time without the need for compensatory services, then the student does not need compensatory services.

### **What if the data shows that the student has not made progress or that progress is minimal?**

If the student's data show that the student has lost progress, then the student is entitled to compensatory services. The ARD committee must include in the student's IEP the type, location, duration, and frequency of the services the student needs to make up for that lost progress.

### **Are the compensatory services minute per minute?**

No. TEA has stated that the decision must be made based on data regarding student progress and should not be misconstrued to necessarily require an hour for hour or minute for minute makeup in services.

**If it is determined that the student is entitled to 5 hours of compensatory speech services, can the speech therapist make it up in a week?**

TEA has stated that ARD committees should keep the student and the family in mind when determining the duration and frequency of compensatory services. Overloading a student with compensatory services may ultimately do more harm than good. Likewise, removing a student too often from his/her routine settings, peers, and classes once school reopens in order to provide him/her with compensatory services may have a negative impact on the student's social and educational progress. The ARD committee should consult with the student, as appropriate, about how best to deliver compensatory services.

**If it is determined that the student is entitled to 5 hours of compensatory speech services, can the speech therapist make it up in a week? (cont'd)**

Remember, the purpose of the compensatory services is to close the gap caused by the disruption of services during COVID. The services need to be provided in a way that will help the student make gains and get the student to where they would be if instruction had been provided without interruption.

## Disclaimer

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