

COVID-19 Recovery Services *versus* Compensatory Services



Office of Special Education



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COVID-19 Recovery Services versus Compensatory Services Due to Emergency School Closures

According to the Individual with Disabilities Education Act (IDEA) 2004, each student with disabilities is entitled to a free appropriate public education (FAPE). Due to the unprecedented national emergency created by the COVID-19 pandemic, the United States Department of Education (USDE) and the Office of Special Education Programs (OSEP) have provided guidance to states regarding the remedy necessary to address the regression or loss of skills as a result of the mandated school closure. This guidance made a distinction between the services essential due to COVID-19 and the traditional compensatory services that are necessary due to a deliberate denial of FAPE by a school system. In the case of the COVID-19 school closures and the stay-at-home order by the Governor, denial of FAPE was beyond the control of schools. Schools were closed because in-person services were not safe or feasible, which left no other options for schools but to offer a “good faith effort” of providing services and FAPE. To refer to the services necessary to address the possible regression or loss of skills that students might have experienced, in spite of school systems’ “good faith efforts” of FAPE provision during school closures, West Virginia has adopted the term “COVID-19 Recovery Services.”

If no special education or related services were considered, attempted or offered through a Distance Learning Plan during the mandated school closures, students may be entitled to compensatory services instead of COVID-19 Recovery Services.

COVID-19 Recovery Services

COVID-19 Recovery Services refer to the services necessary to address the regression or loss of skill experienced by some students due to missed or disrupted services during COVID-19 mandated school closures that was not a deliberate failure to provide FAPE. The purpose of the COVID-19 Recovery Services is to ensure that students return to school with a plan to allow for appropriate progress despite the changes experienced with the school closures. These educational services will vary based on the unique challenges faced by each school system, or school. In general, school systems should base COVID-19 Recovery Services on the premise that all students will need new baseline data collected and possibly

additional supports provided to address any unfinished learning or skill regression starting the 2020-2021 school year. Tiered supports should be implemented by state and local school systems when considering the recovery services to address all student's needs, targeted groups of students, and individualized needs of students. According to the United States Department of Education (USDE) and Office of Special Education Programs (OSEP), the services are not based on a minute-for-minute or day-for-day provision of services. The IEP Team determines the COVID-19 Recovery Services based on the needs of the student to allow for appropriate progress toward IEP goals moving forward.

Determining the Need for COVID-19 Recovery Services

Many students, both general and special education, may have experienced some regression or loss of skills due to the COVID-19 school closures and the Governor's stay-at-home order. Upon re-entry, it is suggested that each district develop a district-wide procedure/plan with a timeline for service providers to gather data appropriate to support decision-making on student's present levels and ability to recover skills. The first 30 days of school is commonly suggested in states' guidance as a timeline to gather data. Schools should consider services provided and data collected through Remote Learning Plans that may change the need for and amount of COVID-19 Recovery Services. The students who have difficulty improving those skills within the county plan timeline should be considered for COVID-19 Recovery Services. Special educators and service providers should contact the parent(s)/guardian(s) to receive feedback on regression, if any, they have observed and concerns they have about IEP goals. Parent(s)/guardian(s) should be informed and consulted throughout the process of gathering information and documenting the recovery of skills. IEP Teams determine whether and to what extent COVID-19 Recovery Services may be warranted. Students who may require COVID-19 Recovery Services will need an IEP Team meeting scheduled to determine these services.

IEP Team Considerations for COVID-19 Recovery Services

The IEP Team's focus when considering recovery services should be:

- » Present levels of performance (pre- and post-COVID)
- » Parent(s)/guardian information
- » Student's present progress toward each IEP goal after attempts to recoup the skill
- » Documented services with data from the student's Remote Learning Plan
- » Lack of services due to unforeseen circumstances including accessibility

The next step is evaluating, revising, adding and determining the COVID-19 Recovery Services for special education and related services to ensure that each student makes appropriate progress toward IEP goals. The decision should be based on empirical, qualitative and predictive data. COVID-19 Recovery Services should not be based on the availability of staffing or programming.

Documenting COVID-19 Recovery Services on the IEP

The need for COVID-19 Recovery Services is supported by data, documentation and information throughout the IEP. By indicating these services separately on the services page, IEP Teams acknowledge the effort to make up for regression or lack of progress during the school closures. If a duration date for these recovery services is determined to be less than the length of the IEP, this should be indicated. Documentation of progress should be provided to ensure these services are no longer needed. If this cannot be determined an IEP Team may amend or conduct a meeting to update services and/or the duration date not to exceed the length of the current IEP. The least restrictive environment (LRE) may change as a result of these increased services.

Provision of COVID-19 Recovery Services

When considering the provision of COVID-19 Recovery Services several factors should be considered, including:

- » Least restrictive environment, and
- » Direct instruction the student will miss due to receiving the COVID-19 Recovery Services.

Careful consideration should be given as to when to provide the COVID-19 Recovery Services. These services can be provided:

- » During the regular school day
- » During weekends
- » During the evening
- » During school breaks
- » Using intensive, targeted, individualized programs
- » By outside service providers

Parents/guardians and schools are encouraged to develop creative and innovative ways to deliver COVID-19 Recovery Services.

Please note: The IEP Team should create a COVID-19 Recovery Services Plan, using a district-designed format, to document the provision of the recovery services when the services are provided outside the school day. Services provided outside the school day cannot be documented on the IEP due to the LRE determined by the calculation of minutes based on the bell-to-bell schedule. If recovery services are provided during the school day, the least restrictive environment (LRE) may or may not be altered due to the provision of the COVID-19 Recovery Services. For example, a student who receives only speech therapy services for 30 minutes per week could receive an additional 15 minutes per week of COVID-19 Recovery Services without affecting the student's LRE.

Parent(s)/Guardian Refusal of COVID-19 Recovery Services/Plan

If the parent(s)/guardian refuses COVID-19 Recovery Services, this should be documented on the Prior Written Notice (PWN). This does not result in the revocation of all services on the current IEP. The district has met its obligation by offering COVID-19 Recovery Services.

Disagreement on the COVID-19 Recovery Services/Plan

The student's service providers should collaborate with the parent(s)/guardian throughout the process of determining the need and planning for COVID-19 Recovery Services. If the parent(s)/guardian disagrees with the student's final COVID-19 Recovery Services Plan, they retain all rights afforded through IDEA Procedural Safeguards. A Facilitated IEP (FIEP) Team meeting may be a first option to gain agreement between the district and parent(s)/guardian. Both parties must agree to convene the FIEP Team meeting. If this is not a successful option, the dispute resolution process provides additional options (i.e., mediation, state complaint or due process hearing).

Whether the parent(s)/guardian agrees or disagrees, the district must provide PWN to document the IEP Team decision regarding COVID-19 Recovery Services. The PWN should provide an explanation why the district is initiating/or refusing services and the basis for this decision in sufficient detail.

Frequently Asked Questions

Q. Are districts required to provide COVID-19 Recovery Services to all students receiving special education and related services as a result of the school closures?

- A. IEP Teams should make individualized determinations as to whether and to what extent a student may require COVID-19 Recovery Services to remediate a loss or regression.

IEP teams should consider the following factors when determining service needs:

- » Rate of progress on IEP goals prior to closure/disruption
- » Difference between IEP progress monitoring data immediately preceding closure/disruption and IEP progress monitoring data collected at a reasonable time after returning to in-person instruction
- » Difference between services identified on the IEP and services offered during closure/disruption, including amount, frequency, duration, type and delivery model
- » Accessibility of the services provided to the student during closure/disruption
- » Changes in the general education curriculum and level and type of instruction for all students during closure
- » Input and information from parent(s)/guardian concerning student performance during closure or interruption of services

Q. What happens if the parent(s)/guardian refused services during the school closure? Are districts required to consider and offer COVID-19 Recovery Services?

- A. Refusal of services by the parent(s)/guardian may excuse the district from its obligation to provide COVID-19 Recovery Services depending on the individual circumstances. The IEP Team should review documentation of all attempts to contact and communicate with the parent(s)/guardians and students. The inability to access the services offered would not be considered a refusal. Similarly, the student's inability to benefit from the services offered would not be considered a refusal. The PWN should document the initiation or refusal of services and the basis for this determination in sufficient detail.



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