

Back to School Considerations—Options for Ensuring FAPE

A Resource Document



The COVID-19 pandemic caused significant learning disruption. School divisions had to make decisions about closures, types of instruction (virtual instruction, hybrid instruction, in-person). Students with disabilities may need additional services and supports to regain skills lost as a result of decreased instructional time, lack of access to modifications, accommodations, or technology, etc. Even though school systems are not at fault for pandemic disruptions, students with disabilities are still entitled to a free appropriate public education (FAPE). The chart below clarifies the differences between types of “make-up” services. Pages 2-4 provide additional considerations for families, an area for notes, and resources.

Compensatory Education Services	COVID Recovery Services	Extended School Year (ESY)
<ul style="list-style-type: none"> ■ Students with IEPs and 504 plans may be eligible for compensatory education if the school has not provided FAPE, i.e., they did not provide services in the IEP or 504 plan or denied services to which the student was entitled. ■ Compensatory services can be agreed upon by IEP team but are more typically a remedy as a result of mediation or a due process hearing. ■ Compensatory services are not included in statute or regulations but came about through caselaw. ■ The amount of time awarded relates to how long the child was denied FAPE; whether the amount is reasonably calculated to provide the benefit the student would have received if not denied FAPE, and the level of services needed to catch up. 	<ul style="list-style-type: none"> ■ The primary difference between Compensatory vs. COVID Recovery services is that the school is not deemed to be at fault for loss of instruction due to the pandemic. ■ Recovery services may be needed to overcome lost instruction and lack of progress toward goals and objectives. ■ Reasons for lack of progress may include lack of in-person instruction; inability to provide needed modifications or accommodations at home; parents unable to assist with instruction; child could not benefit from virtual instruction. ■ IEP teams should be convened when there is a lack of expected progress as noted by parent concern, data collection, reevaluations, etc. ■ COVID recovery services are not in the law or regulations. VDOE has issued guidance. 	<ul style="list-style-type: none"> ■ Special education and related services provided to a student with a disability beyond the normal school year if the IEP team decides they are needed to ensure FAPE. ■ Key factors in considering ESY: regression, recoupment, degree of progress, emergent skills, behaviors, severity of disability, other factors. ■ ESY may be provided when IEP team decides that the benefits gained during the school year will be significantly jeopardized without ESY, i.e., the student will lose what has been learned. ■ ESY is included in statute and regulations. ■ ESY services are not a substitute for COVID Recovery services and cannot be used in their place. Students may be entitled to both ESY and COVID recovery services.

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In addition to thinking about recovery services, there are other factors to address with your child’s IEP team. The following is a list (not inclusive) of areas to discuss with the IEP team in order to ensure that as your child heads back to school, he or she will be provided FAPE. Covered below are location/transition back to school considerations, progress considerations, and service delivery considerations.

Location/Transition Considerations	Notes/Questions?
<ul style="list-style-type: none">■ Will learning be in-person, hybrid, or virtual? ■ Can I change my mind about the type of instruction I want for my child? ■ Will instruction return to a full-time schedule? ■ What precautions are in effect (masking, social distancing)? ■ What should I do to prepare my child to return to school? ■ What is the school doing to ensure that my child has a successful transition? ■ Other considerations related to your child	



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Progress Considerations	Notes/Questions
<ul style="list-style-type: none">■ Does your child need to be re-evaluated? How will the IEP team measure progress or lack thereof? ■ Have you shared progress data you took as a parent with the IEP team? ■ What skills has your child gained or lost? ■ What challenges impeded learning? ■ What is the timeframe for developing a new IEP based on updated information? ■ Other considerations for your child	



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Service Delivery Considerations	Notes/Questions
<ul style="list-style-type: none"> ■ Does your child need COVID recovery services? ■ Will my child’s placement be the same as it was pre-COVID? ■ How and where will related services (speech, OT, PT, etc.) be delivered? ■ Are there new behavior considerations that the IEP team should consider? ■ Does your child need new or different accommodations or modifications added to the IEP? ■ Are there additional things that need to be considered for your child? 	

The following resources may be helpful:

- [Compensatory Education \(peatc.org\)](https://peatc.org/compensatory-education)
- [COPPA FAQ on Compensatory Education in the Time of COVID-19](#)
- [Extended-Year-Services-ESY.pdf \(peatc.org\)](#)
- [VDOE COVID Recovery Services](#)
- [VDOE Resource Document on Extended School Year](#)
- [Wrightslaw: Compensatory Education Case Law](#)



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