

Addressing COVID-19 Special Education Service Interruptions: Recovery Services, Compensatory Services, and ESY

Indiana Department of Education (IDOE) has received a number of inquiries from schools regarding the provision of services for students with disabilities in order to make up for service interruptions caused by temporary COVID-19 school building closures and the use of continuous learning options other than in-school instructional service delivery. Specifically, schools want to know if students with disabilities must be provided with compensatory services as a result of COVID-19 building closures and what framework to use to determine the nature and extent of services to be provided.

Recovery Services

Neither the Individuals with Disabilities Education Act (IDEA) nor Article 7 defines the term “recovery services.” This term is increasingly being used by educators across the country in lieu of the term compensatory services in response to the unprecedented impact COVID-19 has had on our schools and its impact on the learning of ALL students. The term recovery services reflects the universal need of all learners to recover from any educational gaps in learning or loss of skills caused by the unexpected school building closures.

Compensatory Services

“Compensatory services” are an equitable remedy under the Individuals with Disabilities Education Act (IDEA). Compensatory services may be ordered in a complaint investigation report or in a due process hearing when a school has failed to provide a student with a free appropriate public education (FAPE). Sometimes a school will voluntarily offer a student compensatory services when it becomes aware of an inadvertent failure to provide services required by a specific student’s IEP or other potential FAPE violation. In each of these situations, the purpose of compensatory services is to put the child in the same position he or she would have been if the school had not violated Article 7 or the IDEA.

Extended School Year (ESY) Services

Article 7 defines ESY services as “special education and related services that:

- (1) Are provided to a student with a disability:

- (A) beyond the normal school year or instructional day of the public agency;
 - (B) in accordance with the student's IEP; and
 - (C) at no cost to the parent or student; and
- (2) Meet the standards of the department of education." 511 IAC 7-32-39

Recovery Services vs. Compensatory Services

As schools began to close in March, 2020, the United States Department of Education (USED) advised that schools make individualized determinations as to whether compensatory services would be needed to ensure FAPE during the COVID-19 outbreak. However, because school buildings were mandatorily closed due to the public health emergency, the usual framework for determining whether compensatory services should be provided does not seem to fit the current circumstances. School districts did not fail to provide FAPE because the district stopped implementing a student's IEP; instead, the entire country moved to distance education without choice.

NOTE: If a student with a disability was refused services by a school, or otherwise did not receive services or instruction, while other students were receiving services during the building closures, then actual compensatory services may be warranted.

Despite the timely development of Continuous Learning Plans and other significant efforts by Indiana schools to ensure continuity of learning during the COVID-19 school building closures, many students are likely to show signs of regression or display gaps in their learning when schools reopen. To mitigate this regression and close these gaps, many students - including general education students and special populations such as students with disabilities or EL students - will need additional services and support to regain lost educational skills.

The term "recovery services," rather than compensatory services, aptly describes the universal provision of services for all students showing signs of skill regression upon re-entry to school as a systemic approach to help our schools recover from unavoidable COVID-19 service delivery interruptions. It is up to local schools to determine the universal recovery skills to be provided to students, and this may be interwoven into the MTSS plan for the school year. Recovery services can be provided over an extended period of time - not just in the first weeks of returning to school. Also, recovery services do not need to be a minute for minute replacement for services that were not provided during the building closures.

It is important school staff are documenting with specificity the recovery services being provided to students with disabilities while monitoring and tracking individual student progress. This information will be necessary to inform the CCC in making a future determination as to what additional services may be necessary to ensure the provision of a FAPE.

The amount, frequency, and type of services, beyond the universal recovery services provided to all students during this time, needs to be based on the present levels of performance data collected during both the building closures and during the first days and weeks of school re-entry. The individualized recovery services to be provided to a student with a disability should be determined by the case conference committee (CCC), based on the unique needs of the student and his or her present levels of performance once school has been back in session long enough to determine if there are gaps that linger beyond the delays exhibited by other students. This is an individual determination; not all students with disabilities will need individualized recovery services written into the IEP. When describing recovery services in the IEP, staff should clearly note in the "Written Notes" section of the IEP that these services are being provided due to the COVID-19 school building closures. Also, note in the IEP that these recovery services are not ESY services.

Service Provision Considerations:

- Whether the student participated in continuous learning opportunities provided by the school and district during the COVID-19 school building closure;
- Parent observations of the student's learning during the continuous learning opportunities provided by the school or district;
- Teacher observations of the student's learning in the continuous learning opportunities provided by the school or district;
- Whether there were services identified in the student's IEP prior to the school closure that the school or district was unable to provide during the building closure due to restrictions on in-person services;
- Whether the student continued making progress toward meeting his/her IEP goals;
- Whether the student experienced any additional or new social-emotional health issues during building closure and re-entry;
- Whether the student experienced any regression during the period of school building closure; and
- Whether the student has historically needed ESY services to avoid skill regression after extended school breaks (in this case ESY may be considered in addition to recovery services).

