

# ESY, FAPE, and COVID-19



## PATHFINDER SERVICES OF ND

During the COVID-19 National Emergency, the ND Department of Public Instruction (NDDPI) and the US Department of Education (USDOE) have provided valuable guidance for parents and educators to ensure that ALL students will continue to have an equal opportunity to study and learn. As part of this guidance, school districts are reminded that as they provide educational opportunities to the general student population, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of a free appropriate public education (FAPE).

### Access to a Free Appropriate Public Education (FAPE)

The determination of how FAPE is to be provided is addressed on an individual basis. Under federal law FAPE is special education and related services that:

- are provided to children and youth with disabilities at public expense, under public supervision and direction, and without charge to the parents;
- meet the standards of the state education agency, including the requirements of the Individuals with Disabilities Education Act (IDEA);
- include an appropriate preschool, elementary, and secondary school education in North Dakota; and
- are provided according to requirements for the individualized education program (IEP).

To assure that a student is receiving FAPE, the school districts must review the delivery of special education and related services, as well as the general education curriculum for each student. This process will ensure that students with disabilities have equal access to distance learning and that, to the greatest extent possible, each student with a disability is provided the special education and related services identified in the student's IEP developed under the IDEA.

Communication is vital between the case manager, administrator(s), the general education teachers, the parent/guardian and related services providers to ensure students with disabilities can be appropriately involved and make progress toward the general education standards and IEP goals.

### Free Appropriate Public Education and Extended School Year

For some students to receive a free appropriate public education (FAPE) they may need to receive needed services during time periods when other students, whether they have a disability or not, normally would not be served. As part of the individualized education program (IEP) process, a multidisciplinary team must determine if a child needs a program of special education and related services extending beyond the normal school year. For such a child, restricting services to a standard number of school days per year does not allow development of an education program that is truly individualized. A child may require extended school year (ESY) services in order to receive FAPE.



## What determines the need for ESY services?

Reasons why ESY services may be needed vary from child to child. Some children may suffer severe losses of social, behavioral, academic, communication, or self-sufficiency skills during interruptions in instruction. This is particularly true during long breaks such as summer vacations and holidays. Losses suffered may be so extensive that when school resumes, excessive amounts of time are needed to recover (recoup) lost skills, as compared to typical same age peers.

A child may experience losses because he or she reaches a critical learning stage at the end of a school year. He or she may need ESY services to avoid permanent loss of a learning opportunity. For other children, skills that support continued placement in the least restrictive environment (LRE) can be maintained only by ESY services. The IEP team will use regression/recoupment criteria in determining the need for ESY services, while considering a broad range of other factors.

## Who determines the need for ESY services?

The IEP team determines the need for ESY services. The team consists of the parent(s) of the student, the child if appropriate, general education teacher(s), special education teacher(s) and related service providers, administrator or school district representative, and others as appropriate. Each person fulfills an important role by bringing and sharing critical information about the child and his or her need for ESY services.

## When should the IEP team meet to determine ESY services?

The team must consider the needs for ESY services at the annual IEP meeting. However, under some circumstances the need for ESY services and the characteristics of ESY services may not be known at the time of the annual IEP meeting. In that case, the team can identify the date it will reconvene to determine need and services to be provided. The team may also plan what data should be gathered to assist in making those later determinations. An addendum documenting ESY determinations would then be completed and attached to the current IEP at that later time.

The IEP team meeting during which ESY needs and services are determined should be accomplished in sufficient time to permit any party to exhaust administrative remedies prior to the break in services. Thus, the IEP document will serve to notify the parents of whatever ESY determinations have been made. As part of the IEP process, the parents are fully informed of their rights and of procedures through which they may question a decision of the IEP team.

## Should new goals and objectives be developed for ESY services?

ESY services address the maintenance of previously learned skills, as identified in the current IEP. The intent of ESY services is not to teach new skills. Therefore, new goals and objectives should not be added to a child's IEP for implementation of ESY services.

**The critical question that each IEP team member must ask is “Will the learning that occurred during the regular school year be significantly jeopardized if ESY services are not provided?”**

## Regression and Recoupment

### Regression

A decline to a lower level of functioning demonstrated by a decrease of previously learned skills that occurs as a result of an interruption in educational programming.

### Recoupment

The ability to recover or regain skills at the level demonstrated prior to the interruption of educational programming.

## Extended School Year and Compensatory Education

As stated above, the purpose of extended school year services is to address the maintenance of previously learned skills, not to teach new skills. Compensatory education are services that are provided to “compensate” for services that were not provided to the student to receive a free and appropriate public education as compared to his/her peer. As cited in the NDDPI document, COVID-19 and Extended School Year, “It is important to remember that special education and related services support the student’s involvement and participation in general education. Therefore, decisions made regarding the provision of general education will directly impact how compensatory education is determined. Compensatory education determination is completed separately from determination for ESY.”

Parents are reminded to review the documentation of the need for extended school year services found in their child’s IEP (Section G of the IEP). If you have questions regarding ESY services, contact your local special education unit or school district. When normal school operations return, the NDDPI and the USDOE remind school district that, “each IEP team for students with an IEP must review the provision of FAPE during the period of distance learning, to determine whether compensatory services are warranted in any service area, including instruction and/or any individual therapies”.

**Extended school year MUST be considered for each student with a disability. Justification for the decision made MUST BE STATED BELOW.**

- The review of each goal indicates that an extended school year is needed.
- The team has determined that ESY is not necessary.
- The team needs to collect further data before making this determination and will meet again by \_\_\_\_\_.

**Justification for the above decision:**

### IEP Form Excerpt

## Additional Resources

Guidelines: Extended School Year (ESY) Services

<https://www.nd.gov/dpi/sites/www/files/documents/SpecEd/Guidelines/ESYDocumentReformatted.pdf>

Frequently Asked Questions for Families and Parents of Students with Disabilities

<https://www.nd.gov/dpi/sites/www/files/documents/Covid-19/Parent%20FAQs.pdf>

Parent Guide to Special Education

<https://www.nd.gov/dpi/sites/www/files/documents/SpecEd/Guidelines/Parent%20Guide%20to%20Special%20Education%202018.pdf>

School Closure Guidance for Public School Districts and Non-Public Schools – Process Toolkit

<https://www.nd.gov/dpi/sites/www/files/documents/Academic%20Support/Process%20Toolkit%20Version%202.pdf>

Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities

<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students

<https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf>

Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak – March 2020


<https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf>

COVID-19 Special Education

<https://www.nd.gov/dpi/covid-19-special-education>

COVID-19 and Extended School Year

<https://www.nd.gov/dpi/covid-19-extschoolyear>

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