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# Planning for Individualized COVID-19 Recovery Services



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## Disclaimer

This guidance is not legal advice, nor should it be construed as legal advice. This guidance does not establish additional requirements not otherwise imposed by law. The Oregon Department of Education (ODE) encourages districts and parents to consult with their own legal counsel and to consider state and federal guidance and laws when deciding how best to deliver Individualized COVID-19 Recovery Services.

All sample documents are intended to support districts in the implementation of the guidance and are not required as written. The [Individualized COVID-19 Recovery Services Review form](#) is a required documentation step. Districts may develop their own forms as long as the information is equivalent in content to the ODE sample form as required in OAR 581-015-2228(6).

As more information becomes available, ODE may adjust this guidance to reflect or convey new details.

## Background / Context

The worldwide COVID-19 pandemic caused major disruptions in nearly all aspects of life. Within education, responding to the risk of COVID-19 required rapid pivots to distance learning for schools across Oregon. Some students have achieved success through Comprehensive Distance Learning (CDL). Some students, though, have navigated CDL, but may need additional support as they return to the 2021-22 school year.

The Individuals with Disabilities Education Act (IDEA) provides for compensatory education when there is a denial of a free appropriate public education (FAPE). This guidance does not describe that kind of compensatory education. It instead discusses the services described in [Oregon Administrative Rule \(OAR\) 581-015-2228](#), which are intended to address a loss of services due to COVID-19 and/or a child's circumstances following the COVID-19 pandemic, which are not necessarily compensatory education. To reflect that difference, ODE refers to the services described in OAR 581-015-2228 and this guidance as Individualized COVID-19 Recovery Services, to distinguish them from [Extended School Year \(ESY\) Services](#) or compensatory education. Whether, and to what extent, a student needs Individualized COVID-19 Recovery Services is a determination made for each student experiencing disability based on the student's unique circumstances. ODE encourages school districts to refer to Individualized COVID-19 Recovery Services in a similar manner to maintain that distinction.

Though this guidance focuses on Individualized Education Program (IEP) team processes in the context of Individualized COVID-19 Recovery Services, it is critical to note that all IEP team decisions should be made within the larger general education context. To the extent that all students require planning and support for the 2021-22 school year, students experiencing disability must be afforded equal access to the general curriculum and opportunities available for all children.

Where general education planning and support processes are insufficient for a student that qualifies for special education services, individualized decisions must be made by the IEP team to ensure that the student is able to access the general curriculum and a FAPE is made available. As always, FAPE must be determined individually for each eligible child, and the IDEA establishes the IEP team, as defined in OAR 581-015-2210, as the group of people responsible for making that determination. School districts “must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F. v. Douglas County School Dist. Re-1*, 137 S. Ct. 988 (2017).

This guidance is not intended to limit a school district’s ability or options to provide recovery services to students more generally. This guidance is intended to assist IEP teams in making critical decisions about Individualized COVID-19 Recovery Services. It is important to note that all IDEA requirements remain in effect and this guidance does not usurp the authority of IEP teams to make appropriate decisions for students.

### **Overview of Individualized COVID-19 Recovery Services**

As we shift to a school year where most students will re-enter schools full time for in-person instruction, all students will have [unfinished learning](#). It remains important for schools to consider the needs of all students as they return to the classroom. And for children experiencing disability, it is particularly important that each child’s individual needs and circumstances are fully considered and that those students receive the services necessary to ensure they are able to receive FAPE and access the general curriculum. For many students, including some experiencing disabilities, the services the school provides to support all students as we move beyond the 2020-21 school year will be sufficient.

Making decisions about Individualized COVID-19 Recovery Services will require deep, meaningful partnership and participation by all members of the IEP team. In the event the IEP team cannot agree on whether a child needs Individualized COVID-19 Recovery Services, or the amount, frequency, or duration of those services, the use of IDEA dispute resolution mechanisms remains an available option, as appropriate.

An IEP team must consider Individualized COVID-19 Recovery Services under the circumstances described in OAR 581-015-2228 or if otherwise required under the IDEA. As with other special education services, Individualized COVID-19 Recovery Services should be determined by the IEP team while looking at the totality of the circumstances for each student and determining the services needed to address the impacts of the COVID-19 pandemic on the individual student. Parent information and concerns must be considered, as is typical within the IEP team process. IEP teams should seek parental input related to whether and how much service time is needed and how the services will be delivered. Schools have flexibility and can be creative in fashioning Individualized COVID-19 Recovery Services.

Individual IEP teams are well-positioned to understand the student’s individual circumstances, strengths, and needs. The best informed and most appropriate decisions come from IEP teams that follow a meaningful deliberative process. Therefore, the process for considering the need

for Individualized COVID-19 Recovery Services necessarily orients around the IEP team and their decision-making authority. The IEP team for each eligible child should discuss the child's circumstances following and in light of the COVID-19 pandemic.

### Required (Per [OAR 581-015-2228 Individualized COVID-19 Recovery Services](#))

- School districts must notify parents and, as applicable, adult students that IEP teams can meet to discuss the need for Individualized COVID-19 Recovery Services. ODE has developed the optional [Individualized COVID-19 Recovery Services Parent Letter](#) for this purpose.
- The IEP team for each eligible child with a disability shall consider the need for Individualized COVID-19 Recovery Services at least at each initial IEP meeting and at each annual review meeting held before the end of the 2022-23 school year. Determinations can be made earlier if requested by the parent or determined necessary by any other member of the IEP team.
  - The determination of need for Individualized COVID-19 Recovery Services is made by the IEP team after a review of student performance and [data](#) including pre-COVID-19 closures, student participation and performance during COVID-19 closures, and performance upon return to school. The IEP team [should consider the student's progress](#) compared to the progress of all students during this time period.
  - Where appropriate decisions cannot yet be made based on the professional judgment of the team, IEP teams may need a period of time to gather additional data on the student's performance and assess their skills in relation to pre-COVID-19 closure and their learning rate compared to peers and with consideration of the educational experiences being offered by the school district.
- Following the IEP process, but before any decisions from the meeting are implemented, the school district must provide the parent(s) and, as applicable, adult student, with prior written notice related to the proposal for Individualized COVID-19 Recovery Services using the sample [Individualized COVID-19 Recovery Services Review form](#) developed by the ODE or a form developed by the school district that contains the same content as required in OAR 581-015-2228(6).
- School districts may determine that a student experiencing disability is served appropriately through the same services and supports available to all students through general education and through the services and supports included in the current IEP. Such students might not require Individualized COVID-19 Recovery Services.
  - If an IEP team determines that a student does not require Individualized COVID-19 Recovery Services, the IEP team must still consider the need for these services at the next annual review meeting, or earlier if requested by the parent or any other member of the IEP team.
  - When a school district determines that Individualized COVID-19 Recovery Services are not required, the school district must provide the parent and, as applicable, the adult student with a prior written notice documenting the decision using the sample [Individualized COVID-19 Recovery Services Review](#)

[form](#) developed by the ODE or a form developed by the school district that contains the equivalent content as required in OAR 581-015-2228(6).

- ❑ Where the IEP team does not reach agreement regarding the need for Individualized COVID-19 Recovery Services, the parent and/or district may request a Facilitated IEP meeting (see [Reaching Agreement on the Need for Individualized COVID-19 Recovery Services](#)). If the parent and district choose to participate in a Facilitated IEP meeting, the district shall notify the ODE via an email to [ode.disputeresolution@ode.state.or.us](mailto:ode.disputeresolution@ode.state.or.us).
- ❑ The provision of Individualized COVID-19 Recovery Services to a student does not preclude parents from pursuing relief through dispute resolution mechanisms or other applicable Procedural Safeguards. Such procedures may result in a requirement that a school district provide compensatory education in addition to, and distinct from, Individualized COVID-19 Recovery Services.

### Suggested Practices

- ⇒ Individualized COVID-19 Recovery Services should be unique, specific to the student, and determined by the IEP Team. Individualized COVID-19 Recovery Services should be considered based on the totality of student circumstances and do not need to be a minute for minute replacement for services. ODE has developed [Possible Guiding Questions for IEP Teams to Consider Individualized COVID-19 Recovery Services](#) to serve as a helpful resource.
- ⇒ Make decisions in an IEP meeting rather than through a written agreement (as allowed under 34 CFR § 300.324(4) and [OAR 581-015-2225\(2\)\(a\)](#)). Though it can be appropriate for IEP teams to update an IEP without holding a meeting, the complexities associated with determining appropriate Individualized COVID-19 Recovery Services are easier to navigate in a meeting than through the asynchronous communication often associated with IEP changes without meetings.
- ⇒ Take all practicable measures to ensure the parent is able to participate in these important decisions. Bolster district efforts to ensure meaningful parent participation. Parents are essential members of the IEP team.
- ⇒ Document all communication attempts.
- ⇒ Avoid predetermination. Having a productive and efficient conversation is going to require significant advance preparation; however, IEP team members should be reminded of the importance of avoiding predetermination and that IEP team decisions cannot be made prior to the IEP meeting.
- ⇒ Carefully consider the initiation and duration dates for Individualized COVID-19 Recovery Services. These services can be provided over an extended period of time, not only in the first few weeks of the 2021-22 school year. IEP teams may also wish to delay the initiation of some Individualized COVID-19 Recovery Services to provide a period of time for a student to reacclimate to school expectations and/or for the IEP team to gather relevant data.
- ⇒ Be aware when scheduling Individualized COVID-19 Recovery Services during the student's school day. This may result in a more restrictive placement for the student or contribute to additional general education instruction being missed.

- ⇒ Within the IEP, delineate the different types of services being provided to the student (e.g., special education and related services, Extended School Year (ESY) Services, Individualized COVID-19 Recovery Services) to establish a clear record for future IEP team discussions.
- ⇒ IEP teams should document the plan for delivering Individualized COVID-19 Recovery Services. Educators and related service providers (if applicable) should also document the Individualized COVID-19 Recovery Services provided to students experiencing disability, and monitor and track individual student progress.

### Reaching Agreement on the Need for Individualized COVID-19 Recovery Services

IEP teams have options when they are not in agreement with the Individualized COVID-19 Recovery Services determination. As required in OAR 581-015-2228(7), the ODE is now offering Facilitated IEP meetings as an alternative dispute resolution option. To learn more about options for building agreement, please see [Reaching Agreement on the Need for Individualized COVID-19 Recovery Services](#).

### Resources

- [Reaching Agreement on the Need for Individualized COVID-19 Recovery Services](#)
- [Student Learning: Unfinished, Not Lost](#)
- [Summer Learning Best Practice Guide](#)
- [Individualized COVID-19 Recovery Services Parent Letter](#)
- [Sample Individualized COVID-19 Recovery Services IEP Meeting Agenda](#)
- [Data Sources for IEP Teams to Use When Considering Individualized COVID-19 Recovery Services](#)
- [Possible Guiding Questions for IEP Teams to Consider Individualized COVID-19 Recovery Services](#)
- [Utilizing Progress Monitoring Data to Make Decisions for Individualized COVID-19 Recovery Services](#)
- [Individualized COVID-19 Recovery Services Review Form](#)
- [Procedural Safeguards](#)
- [Questions and Answers \(Q&A\) on U. S. Supreme Court Case Decision \*Endrew F. v. Douglas County School District Re-1\*](#)
- Facilitated IEP Information:
  - [Considering IEP Facilitation: A School Administrator's Perspective](#)
  - [IEP Facilitation Parent Guide and Companion Video](#)
- [Dispute Resolution Information](#)
  - [IDEA Dispute Resolution Process Comparison Chart](#)
  - [IDEA Dispute Resolution Parent Guides and Companion Videos](#)
  - [Considering Mediation for Special Education Disputes: A School Administrator's Perspective](#)