



200 West Baltimore Street, Baltimore, Maryland 21201

# Technical Assistance Bulletin

MarylandPublicSchools.org



Division of Early Intervention and Special Education Services | **Bulletin #20-09**

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Date: June 9, 2020

## Recovery Efforts: Addressing the Provision of FAPE through Alternative Service Delivery Models for Students with Disabilities during the Re-Opening of Schools

This document has been developed in alignment with Technical Assistance Bulletin (TAB) #20-01, *Serving Children with Disabilities under IDEA during School Closures due to the COVID-19 Pandemic* and TAB #20-03, *Providing Continuity of Learning to Students with Disabilities during COVID-19*.

### Introduction

On March 12, 2020, the State Superintendent of Schools closed Maryland schools for in-person student instruction and extracurricular activities in response to the COVID-19 pandemic. Subsequent orders extended the physical closure through the end of the 2019-2020 school year. As Maryland begins recovery efforts for the reopening of school buildings, the Maryland State Department of Education (MSDE) released a draft of the *Maryland Together: Maryland's Recovery Plan for Education* (Recovery Plan) to help guide local school systems and public agencies (LSSs/PAs) in their planning. The MSDE Recovery Plan, aligned with the Governor's *Maryland Strong: Roadmap to Recovery*, continues to be a fluid document, shaped by information as it becomes available and through ongoing stakeholder input and feedback. The MSDE, Division of Early Intervention and Special Education Services (DEI/SES) recognizes that serving students with disabilities requires additional considerations to comply with the Individuals with Disabilities Education Act (IDEA): including ensuring continued access to the general education curriculum, and an IEP designed/implemented to allow the student to make progress on their Individualized Education Program (IEP) goals through changing service delivery models as school re-open.

This bulletin provides decision-making guidance to support LSSs/PAs in addressing individual student needs arising from the transition(s) to different alternative service delivery models (e.g., virtual and/or distance learning, blended, or face-to-face instruction); determining compensatory education/recovery services, as appropriate, due to the COVID-19 pandemic; and documenting those decisions in local recovery efforts. A recovery flowchart (Appendix A) is included to provide a visual representation of this process.

It is important to note that the COVID-19 outbreak has resulted in unique challenges never faced by our nation's schools. The MSDE, DEI/SES recognizes the challenges associated with serving students with disabilities during a time of heightened health and safety needs and continues to reaffirm that special education is driven by a child-specific approach. We recognize the significant efforts that each LSS/PA is making to allow for continuity of learning during this unprecedented time and that a variety of methods are being used to support students with disabilities in the delivery of specially designed instruction and related services.

*Appendix B is a flowchart developed to aid in the planning for transportation during recovery from the COVID-19 pandemic. It includes considerations for the provision of transportation for students with disabilities who had transportation included as a related service on their IEP before the pandemic and considerations for students who now require transportation as a related service as a result from COVID-19.*

The provision of education during the pandemic continues to be an evolving situation. This document is the MSDE, DEI/SES's interpretation of applicable IDEA statutory and regulatory requirements in the context of LSS/PA recovery efforts, based on the most recent guidance from the United States Department of Education (DOE). If further DOE guidance is released, or as other relevant information becomes available, this bulletin may be revised. Each LSS/PA is encouraged to consult with their legal counsel on specific issues that arise because of this pandemic.

### Recursive Process to Address FAPE during Recovery Efforts

During Maryland's response to the COVID-19 pandemic, a continuum of teaching and learning is in place (see Figure 1). Throughout the closure and re-opening process, continuity of learning models implemented in each LSS/PA has and will continue to change for both general and special education (as illustrated in green and blue respectively in Figure 1), driven by the health and safety needs of teachers, service providers, and students under the direction of the governor and State Superintendent of Schools. Each LSS/PA was required to develop a districtwide Continuity of Learning Plan for all students, including students with disabilities. Additionally, for students with disabilities, Individualized Education Programs (IEPs) were reviewed and amended/revised as appropriate to provide FAPE consistent with the districtwide continuity of learning plan and changing service delivery model.

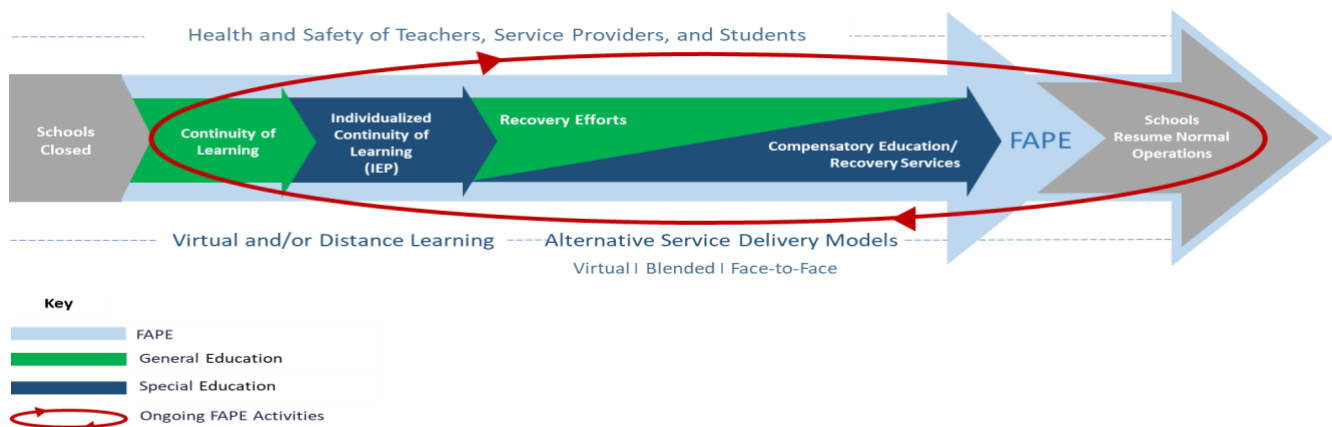


Figure 1. Continuum of Teaching and Learning during the Extended School Closure and Beyond.

Now, as Maryland moves forward in recovery operations, each LSS/PA is required to develop a districtwide Recovery Plan for education. This Plan necessitates a recursive process for conducting Free Appropriate Public Education (FAPE) activities for students with disabilities, including:

- the ongoing progress monitoring of the student;
- the ongoing communication with families, teachers, and services providers; and
- the ongoing documentation of the student progress and services delivered.

Performing these important activities will help to support that student-specific needs arising from the transition back into school buildings, may require that additional, new, or different services and accommodations, be addressed. Each LSS/PA must also address any loss of FAPE experienced by the student and provide the necessary compensatory education/recovery services, when appropriate.

The MSDE, DEI/SES has developed a recovery flowchart (Figure 2/Appendix A) to illustrate the decision-making process each LSS/PA should follow to provide a FAPE to students with disabilities as school buildings re-open. The MSDE, DEI/SES understands that the process of re-opening schools will be dependent on the health and safety needs of the LSS/PA; therefore, there may be multiple stages of re-opening that include a variety of alternative service delivery models (e.g., virtual and/or distance learning, blended, or face-to-face instruction). No matter what the districtwide re-opening process looks like, the locally controlled Recovery Plan for education developed by each LSS/PA must continue to evaluate whether each student with a disability is being provided with a FAPE, consistent with the health and safety needs of the student and the student's service providers.

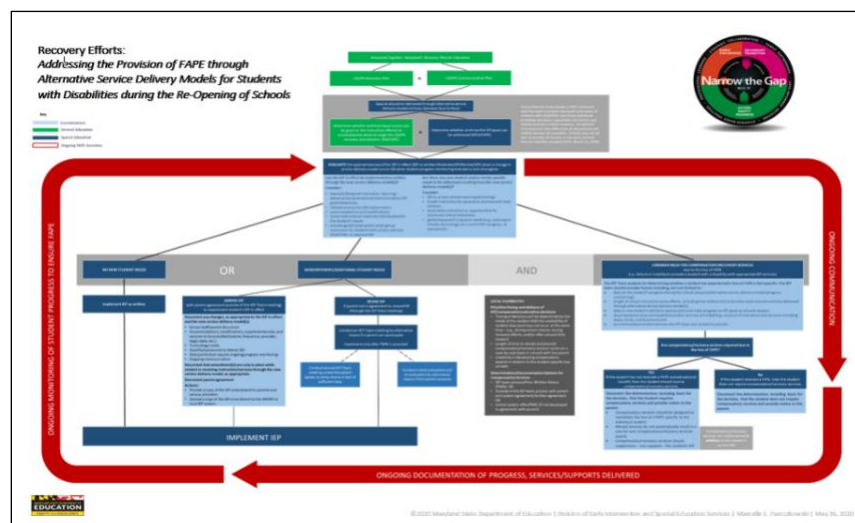


Figure 2. *Recovery Efforts: Addressing the Provision of FAPE through Alternative Service Delivery Models for Students with Disabilities during the Re-Opening of Schools.* [Click here](#) for a downloadable Word document that will allow for increased readability of the flowchart using the zoom function.

## Questions and Answers

**Q1. What is the obligation of the LSS/PA under IDEA in transitioning students back to school buildings?**

- A1. Under the IDEA, the LSS/PA is responsible for providing a student with a Free Appropriate Public Education (FAPE).<sup>1</sup> During this period of extended school closure and re-opening, the FAPE obligation includes: (1) reviewing the appropriateness of the IEP in effect when a change in service delivery model occurs or when student progress monitoring indicates a lack of progress, AND (2) addressing the need for compensatory education/recovery services if there is a loss of FAPE. Depending on the process adopted by the LSS/PA to re-open school buildings, these responsibilities may need to be revisited multiple times.

As a reminder, this is a student-centered process, driven by data and the goal of continued learning for the student. All services should begin as soon as possible to prevent the student from falling behind and ensure continued progress on their IEP goals.

**Q2. How should the LSS/PA prepare to make determinations about the appropriateness of the IEP in effect and the need for compensatory education/recovery services?**

- A2. Special education under the IDEA is centered on the individual strengths and needs of the student with a disability. All decisions related to the special education programming for the student should be driven by data. This means that before an LSS/PA can make a determination about whether the IEP in effect is appropriately written (or needs to be amended/revised), or if the student may be entitled to compensatory education/recovery services, the LSS/PA should review data on the student.

The LSS/PA should look at data prior to the extended school closure, from the period of extended school closure, and during the re-opening of schools. Data may take the form of grades, progress reports, classwork, informal/formal evaluation tools, teacher/service provider observation(s), parent feedback, comparison to the progress of all students, and interdisciplinary consults.

The LSS/PA is encouraged to work with their instructional specialists to identify assessment tools that will be used for all students as they return to the building and tools that more appropriately capture changes over shorter periods of time.

In some circumstances, it may be appropriate for the student to receive an updated formal evaluation. The LSS/PA should follow standard procedures for obtaining and documenting parent consent to perform these evaluations.

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<sup>1</sup> A FAPE means special education and related services that are: (a) provided at public expense; (b) meet the standards of the State Education Agency; (c) include an appropriate education; and (d) are provided in conformity with an IEP that meets the student's needs that result from the disability to enable the student to be involved in and make progress in the general education curriculum. (34 CFR §300.17). For more information on FAPE and educational standards, please see the [Office of Special Education and Rehabilitative Services Dear Colleague Letter from November 16, 2015](#).

**Q3. How does the LSS/PA determine whether the IEP in effect is appropriate?**

A3. The LSS/PA is responsible for ensuring that the student's IEP in effect is written and implemented to enable the student to make progress in the general education curriculum and on their IEP goals. In making this determination, the LSS/PA should consider the following two questions:

1. Can the IEP in effect be implemented as written through the new service delivery model(s)?
2. Are there any new student and/or family-specific needs to be addressed resulting from the new service delivery model(s)?

If the LSS/PA service delivery model changes, then the LSS/PA must ensure the student's IEP remains appropriate and can be implemented as written. If the IEP cannot be implemented as written, then the LSS/PA should amend or revise the IEP in effect. This continues the process that the LSS/PA followed in the initial move from face-to-face instruction to complete virtual and/or distance learning.

As under normal circumstances, the LSS/PA must review and revise, as appropriate, the IEP to address any lack of expected progress or information about the student's needs. Each LSS/PA is responsible for ensuring that progress monitoring continues throughout this evolving situation. If the student data indicates that the student has new, additional, or different needs as a result of the extended school closure and changing service delivery model, then the IEP should be amended/revised to address those needs.

For example, a student on the Autism Spectrum may engage in escalating behaviors when their schedule changes drastically. For that student, the IEP should contemplate whether there are new, additional, or different services necessary to address those behaviors when the student re-enters the school building. Similarly, a student with an emotional disability may be experiencing an increase in anxiety attacks related to the pandemic; the IEP should contemplate how to address that anxiety in the educational context.

**Q4. What are compensatory education/recovery services?**

A4. Compensatory education/recovery services are a remedy available under the IDEA for a loss of a FAPE. While compensatory education/recovery services are traditionally awarded when an LSS/PA has failed to meet their legal obligations, these services are not intended as a punishment for the LSS/PA. The purpose of compensatory education/recovery services is to remediate the negative impact experienced by the student due to the loss of FAPE.

The MSDE, DEI/SES recognizes that during this period of extended school closure and heightened health and safety needs, an LSS/PA may not have been able to provide some specially designed instruction, related services, and supplementary aids and supports. While this may have occurred through no fault of the LSS/PA, the obligation to provide a student with a FAPE remains, and the student may be entitled to remedial services. The MSDE,

DEI/SES has chosen to refer to these services as “compensatory education/recovery services” to both acknowledge the uniqueness of the situation, but also to remind the LSS/PA that the determination process remains the same.

**Q5. How does the LSS/PA determine if compensatory education/recovery services are required?**

- A5. As was shared at the outset of the closure of school buildings, the IDEA does not provide for a waiver of a FAPE during the COVID-19 pandemic. The [United States Department of Education](#) and the MSDE, DEI/SES have shared that if there is a delay in determining or providing appropriate services during extended school closure resulting from the COVID-19 pandemic, individualized determinations must be made about whether, and to what extent, compensatory education/recovery services may be needed.

During these exceptional times, a FAPE must be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing education services to these students. Therefore, LSSs/PAs were instructed to provide a FAPE to the maximum extent possible during the period of virtual and/or distance learning (and should continue to do so as schools re-open) to mitigate the need for compensatory education/recovery services. This is NOT a waiver of the FAPE requirement under IDEA.<sup>2</sup>

While a student is not guaranteed a specific educational outcome, the law requires that the student receive an appropriate educational program. Therefore, LSSs/PAs will need to determine whether the educational services provided to the student during the period of school closure and re-opening, pursuant to the IEP (or Amended/Revised IEP), were reasonable to allow the student to be involved in and make progress in the general education curriculum and on their IEP goals.

In situations where a FAPE (i.e., instruction, related services, and supplementary aids and supports) was not or could not be provided, and the student was negatively impacted (i.e., a regression of skills or lack of progress in the curriculum or on IEP goals), the student will require compensatory education/recovery services.

The decision about whether the student is owed compensatory education/recovery services is driven by information and data collected from a variety of sources. This information will guide the IEP decision-making process. Important information for the LSS/PA to collect and consider, includes:

- Data on the student’s progress prior to and during the school closure to assess academic and/or behavioral progress in the general education curriculum and on the student’s IEP goal(s). Data may take the form of grades, progress reports, classwork, informal/formal

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<sup>2</sup> Blanket policies adopted by LSSs/PAs during the school closure to not provide certain special education and related services is NOT an individualized determination about what a student requires for a FAPE; therefore, the LSS/PA will need to address whether the student requires compensatory/recovery services due to this LSS/PA decision.

evaluation tools, teacher/service provider observation(s), parent feedback, comparison to the progress of all students, and interdisciplinary consults.

- Data on the student's ability to recoup skills and make progress on IEP goals upon the return to school.
- Documentation of accommodations and/or services provided (e.g., amount of instruction and services including dates, times, and duration), as well as accommodations and/or services the LSS/PA was unable to provide during the extended school closure and re-opening of school.
- Length of school closure (e.g., time without any instruction, time with virtual and/or distance learning, etc.), including information related to the general education curriculum provided to all students and the student's ability to access virtual and/or distance learning opportunities.

The LSS/PA must consider what compensatory education/recovery services can be provided to the student to help recoup the lack of progress due to a loss of a FAPE. They must be individualized to each student's needs and designed to remediate the loss of skills.

The compensatory education/recovery services award will not always reflect the same services (nature, amount, frequency) that were missed. Decisions about the individual student's compensatory education/recovery services award should be made collaboratively with the parent. Creativity in identifying compensatory education/recovery services will be necessary and may include the scheduling and delivery of services through an extended school day, weekends, and/or summer. It is important for the IEP team to remember that awarded services should supplement, and not supplant, the student's IEP.

**Q6. How must the determination of the need for compensatory education/recovery services be documented?**

A6. LSS/PAs may use the same documentation processes they have traditionally employed to capture determinations of compensatory education/recovery services. However, it is important to ensure that there is documentation that the parent and those responsible for implementing the compensatory/recovery services have been informed of the decision so that it will be implemented. Documentation may include:

- holding an IEP team meeting to make the determination and documenting in the Prior Written Notice (PWN);
- discussing with the parent outside of the IEP team meeting and, with parent agreement, documenting in writing; or
- discussing with the parent outside of the IEP team meeting and, if the parent disagrees, documenting in the PWN.

If an agreement cannot be reached, either inside or outside of the IEP team meeting, the parent must be provided with Prior Written Notice, so the parent has the opportunity to exercise the procedural safeguards to resolve any dispute.

**Q7. How long does the LSS/PA have to consider the need for and to provide compensatory education/recovery services?**

- A7. Decisions about compensatory education/recovery services should be made as soon as reasonably possible based on the availability of data. As valid data on student performance is necessary to make determinations regarding whether compensatory education/recovery services are owed to a student, the MSDE, DEI/SES recognizes that the timing of these determinations may vary. Each LSS/PA should exercise its discretion in ensuring there is both appropriate data to make thoughtful decisions and *no unreasonable delay in serving students*.<sup>3</sup>

The DOE has informed States that, in carrying out the responsibility for general supervision of the LSS/PA, when noncompliance is identified, it must be corrected within one (1) year from the date of identification of noncompliance. Therefore, during this evolving situation, as information arises that a student has experienced a loss of FAPE requiring compensatory/recovery services, the LSS/PA should generally provide those services within one (1) year of the determination of the services.

However, in some circumstances, providing a remedy could take more than one (1) year to complete. For example, there may be an insufficient amount of time in a school day to provide a student with the compensatory education/recovery services within one (1) year while providing ongoing IEP services, and the student may not be available for services outside of school hours. If it is anticipated that the services will need to be provided over a length of time that exceeds one (1) year, this decision and the basis for the decision should be included as part of the documentation of the compensatory education/recovery services determination.

As with the provision of compensatory education/recovery services for the loss of a FAPE under normal circumstances, an individualized decision must be made for each student with respect to the period of time over which the services will be provided. That decision, like all decisions regarding a FAPE, should be based on the student's needs and not administrative convenience.

**Q8. Can students be provided with Extended School Year (ESY) services to satisfy the requirement for compensatory/recovery services?**

- A8. No. The purpose of ESY services and compensatory/recovery services differ. The purpose of compensatory/recovery services is to address the loss of a FAPE during the extended closure of school buildings due to the COVID-19 outbreak. The purpose of ESY services is to ensure that the student maintains the critical life skills growth achieved during the regular school year in the following school year.

The standards used to determine the need for ESY and compensatory/recovery services also differ. When determining the need for compensatory/recovery services, an IEP team must

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<sup>3</sup> The LSS/PA must ensure that the IEP team considers any information or concerns provided by the parent in a timely manner.



determine whether the loss of a FAPE resulted in the student not receiving the educational benefit.

When addressing ESY services, the IEP team must determine whether the benefits a student gains during the regular school year will be significantly jeopardized if the student does not continue to be provided with the educational program during the school break. When making that determination, the IEP team must consider several specific factors, which are indicators of whether a student is working on critical life skills and will be able to recoup any regression of those skills experienced during the break in the school year within a reasonable amount of time after the next school year begins.

Local school systems/public agencies may choose to offer compensatory education/recovery services, when appropriate, using the ESY services model. In such cases, compensatory/recovery services provided during the summer may supplement – but not supplant – the provision of ESY services for students who require ESY services as a part of their IEP. Therefore, it is important to carefully document the services provided through the summer program that are ESY services in nature, and those that are compensatory/recovery services in nature. Additional information about ESY services can be found in the MSDE supplement to Technical Assistance Bulletins #20-01 and #20-03, entitled, *Extended School Year (ESY) Services during the COVID-19-Pandemic* (see Appendix C).

**Q9. What happens if a parent disagrees with an offer of compensatory education/recovery services?**

A9. If an agreement cannot be reached with the parent regarding compensatory education/recovery services, the IEP team must document the determination, and the parent must be provided with PWN of the decision so that the parent has the opportunity to exercise the procedural safeguards to resolve any dispute.

**Q10. Can parents require the LSS/PA to enroll students who received a Maryland High School Diploma at the end of the 2019-2020 school year or who will turn 21 before the start of the 2020-2021 school year in another year of school because they experienced a loss of FAPE during the extended closure of school buildings?**

A10. A parent cannot require the LSS/PA to re-enroll a student who has graduated with a Maryland High School Diploma or “aged out” of special education. A student’s eligibility for FAPE under the IDEA terminates if a Maryland High School Diploma is awarded or the student exceeds the age for provision of IDEA services, which in Maryland is the end of the school year in which the student turns 21.

If there has been a loss of FAPE for such a student, then the LSS/PA should consider whether the student needs compensatory education/recovery services. However, compensatory education/recovery services must be designed to remediate what was lost and is not simply a repeat of the last year of school with the same services that were required prior to the end of the 2019-2020 school year.

**Q11. What happens if a student graduated with a Maryland Certificate of Completion at the end of the 2019-2020 school year, but experienced a loss of FAPE during the extended closure of school buildings during the year?**

A11. So long as the student will not reach the age of 21 before the start of the 2020-2021 school year, the student is entitled to re-enroll for next school year, regardless of whether the student experienced a loss of FAPE during the 2019-2020 school.

Alternatively, compensatory/recovery services can be considered for the student without re-enrolling the student in school for another year. As with a student who is awarded a Maryland High School Diploma, consideration of compensatory/recovery services is also an option if the student's eligibility for FAPE will terminate upon reaching the age of 21 prior to the start of the 2020-2021 school year.

**Q12. Can LSSs/PAs use funding available under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in providing compensatory education/recovery services?**

A12. Yes. In addition to traditional special education funding sources, additional monies included in the Elementary and Secondary School Emergency Relief Fund (ESSERF) component of the CARES ACT (P.L. 116-136) may also be used for special education costs incurred to prevent, prepare for, and respond to the coronavirus. Local school systems and public agencies (LSSs/PAs) may use these funds for the following expenses:

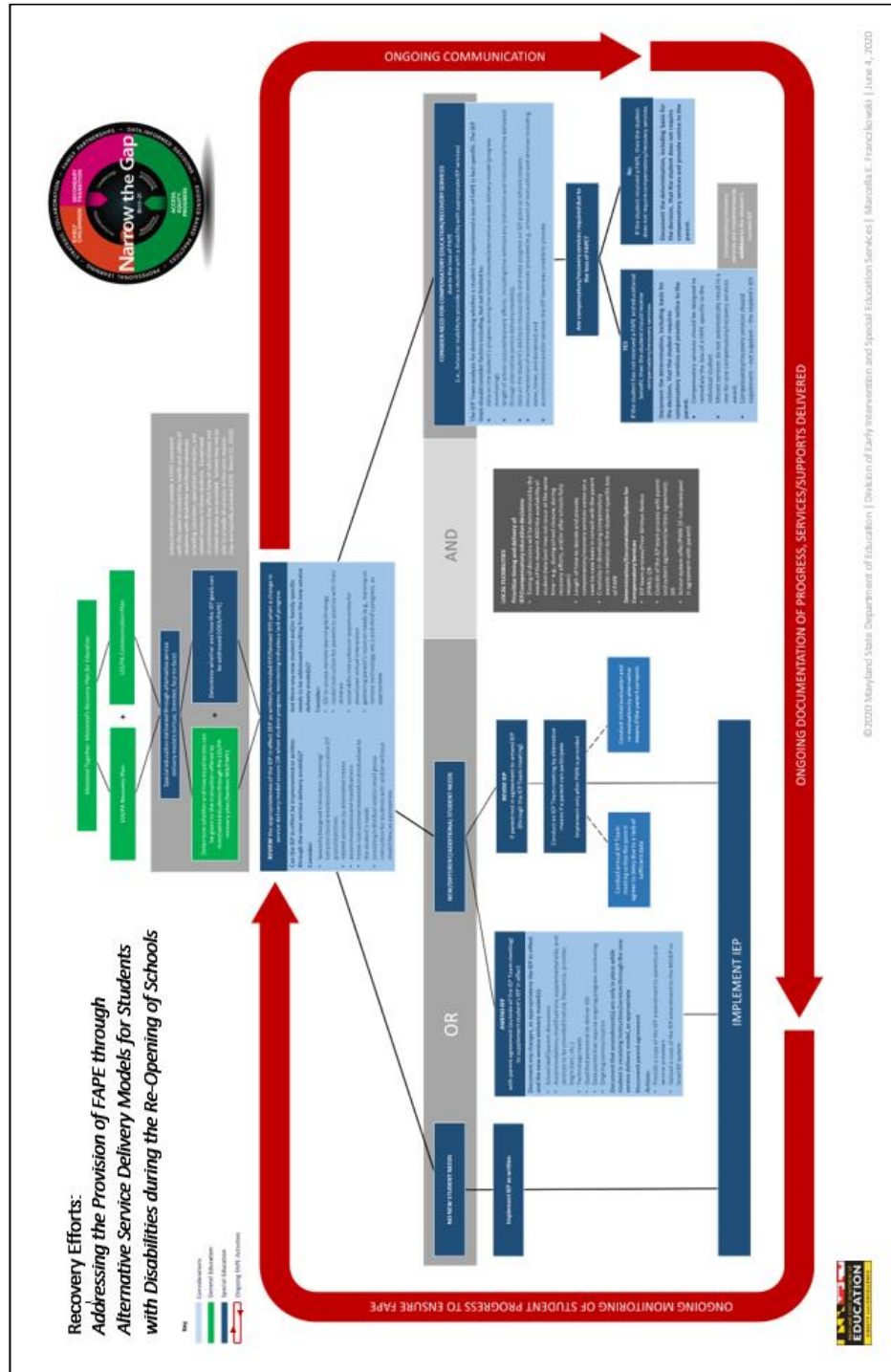
- Activities to address the unique outreach and service delivery needs of students with disabilities. (P.L. 116-136 § 18003[d][4]).
- Planning for and coordinating during long-term closure to ensure special education services continue to be provided consistent with Federal, State, and local requirements. (P.L. 116-136 § 18003[d][8]).
- Educational technology (including hardware, software, and connectivity) for students with disabilities who are served by the LEA that supports regular and substantive education interaction between students and instructors (which may include assistive technology or adaptive equipment). (P.L. 116-136 § 18003[d][9]).
- Planning and implementing activities related to summer learning and supplemental after school programs, including providing classroom instruction or online learning during the summer months to address the needs of students with disabilities. (P.L. 116-136 § 18003[d][11]).

Please refer to the *Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Supplement* distributed on 6/4/2020 for additional ESSERF information/guidance (Appendix D). Funding made available to LSSs/PAs through the ESSERF will remain available through September 30, 2021. Local school systems and public agencies (LSSs/PAs) may use these funds any time prior to September 30, 2021, including when school would not normally be in session, such as during evenings, weekends, summer months, or other breaks.

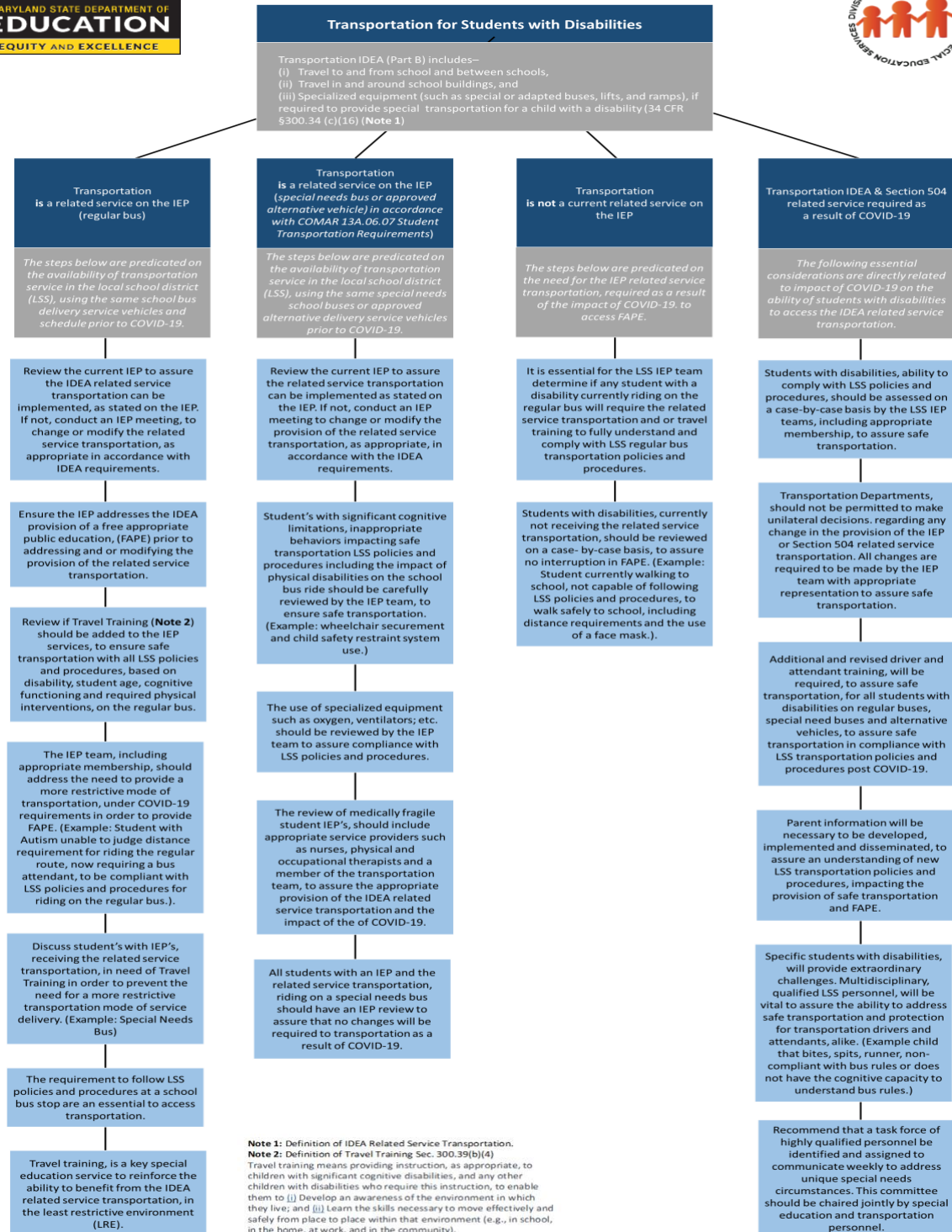
## Appendix A

### Recovery Efforts: Addressing the Provision of FAPE through Alternative Service Delivery Models for Students with Disabilities during the Re-Opening of Schools

[Click here](#) for a downloadable Word document that will allow for increased readability of the flowchart using the zoom function.



## Appendix B



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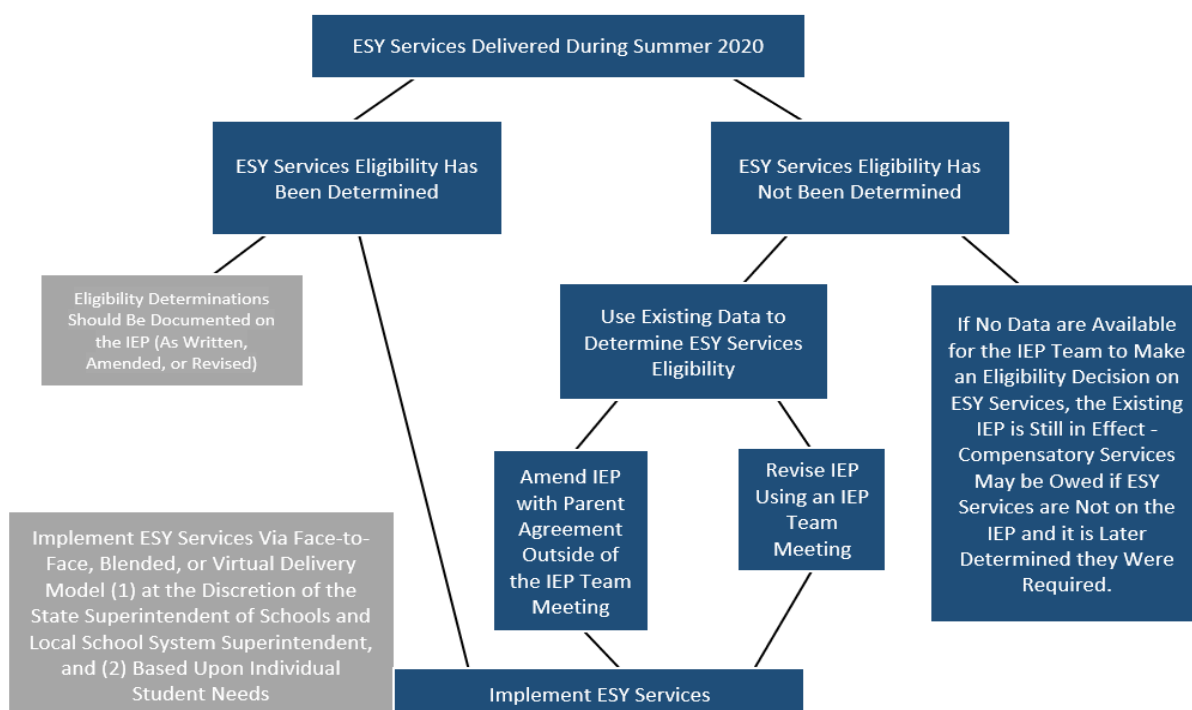
## Appendix C

### Extended School Year (ESY) Services during the COVID-19 Pandemic

This document has been created as a supplement to Technical Assistance Bulletin (TAB) #20-01, Serving Children with Disabilities under IDEA during school closures due to the COVID-19 Pandemic and TAB #20-03: Providing Continuity of Learning to Students with Disabilities during COVID-19. Please refer to these TABs for additional information and guidance on the provision of special education services to students with disabilities during this unprecedented time.

A flowchart to support the local school system or public agency (LSSs/PAs) in determining Extended School Year (ESY) services due to the extended school closure in response to the COVID-19 pandemic is included. This document also contains questions and answers that highlight the eligibility decision-making and documentation requirements for ESY services. Most students should already have an ESY services eligibility determination made by the IEP team for Summer 2020. However, there may be some circumstances related to the extended school closure in which the team has not made an ESY services eligibility determination. For these students, the LSS/PA should address ESY eligibility as soon as possible.

### Extended School Year (ESY) Services during the COVID-19 Pandemic



*Figure 3.* A flowchart to support LSSs/PAs in determining Extended School Year (ESY) Services during extended school closure due to the COVID-19 pandemic.

## Questions and Answers

**Q. What are Extended School Year (ESY) services and what is the difference between making the ESY determination and determining recovery opportunities to be provided because of the closure of school buildings due to the national COVID-19 pandemic?**

**A.** Most students experience some regression of skill development made during the regular school year after extended breaks in the school year, such as during the summer months. Many of these students will recoup, within a reasonable amount of time, what they lost during the extended break in school once school resumes.

Some students with disabilities will not be able to recoup the skills lost during the extended break in school within a reasonable amount of time after school resumes. In order to ensure that these students maintain the skills growth they achieved during the regular school year, Extended School Year (ESY) services are provided to address specific areas of the IEP during extended periods of time that school is not in session, such as the summer months.

The determination of the need for ESY services is different than the decision that the student requires recovery opportunities as a result of the closure of school buildings during the national COVID-19 pandemic. The recovery opportunities should be designed to address the loss of skills or lack of progress that a student was expected to obtain during the regular school year, but did not obtain because the instruction was provided through virtual learning since the third quarter of the 2019-2020 school year.

**Q. Will all students with disabilities be provided ESY services?**

**A.** No. The ESY determination is individualized to the student.

**Q. What is the LSS's/PA's obligation if the IEP team has not yet determined the student's need for ESY services during the summer of 2020?**

**A.** If the IEP team has not made an ESY decision, and the parties are able to reach agreement with respect to whether the student requires these services, the IEP should be amended and the agreement documented. Amendment to the IEP occurs outside of the IEP team meeting.

If the IEP team has not made an ESY decision, and there is no agreement between the LSS/PA and the parent with respect to whether the student requires these services, the LSS/PA must attempt to convene the IEP team by alternative means, such as by teleconference, as soon as possible following the standard decision-making and documentation requirements. This includes providing the parent with Prior Written Notice (PWN) of the ESY determination.

If the IEP team is unable to meet, the existing IEP must be implemented. If the existing IEP requires ESY services, those services must be provided.

If the existing IEP does not require ESY services, the IEP team must meet as soon as possible following the reopening of school buildings to make the determination. If the IEP team determines that the student requires ESY services, it must also determine the recovery opportunities that can be provided to the student during the regular school year to redress the loss of ESY services.

**Q. What are the legal requirements for the IEP team when determining the need for ESY services?**

- A.** When considering the need for ESY services, the IEP team must consider the following factors: 1. Whether the student's Individualized Education Program (IEP) include annual goals related to critical life skills; 2. Whether there is a likelihood of substantial regression of critical life skills caused by the normal school break in the regular school year and an inability to recover those lost skills in a reasonable amount of time when school resumes; 3. The presence of emerging skills or breakthrough opportunities; 4. Interfering behaviors; 5. The nature and severity of the disability; and 6. Special circumstances.

The IEP team must document the consideration of each of these factors, describing the data used as a basis for decisions made with respect to each factor.

Following the consideration of the above factors, the IEP team must determine whether the benefits the student gains during the regular school year will be significantly jeopardized if the student is not provided with an educational program during a normal break in the regular school year. If the answer is yes, the student requires ESY services. If the answer is no, the student does not require ESY services.

**Q. Will the legal requirements for the provision of ESY services differ during the extended closure of school buildings due to the national COVID-19 pandemic?**

- A.** No. Since Maryland resumed instruction after the initial couple of weeks of the national COVID-19 pandemic through virtual learning, the school year continues. Therefore, any student whose IEP requires ESY services must be provided with those services, to the greatest extent possible, through the service delivery method (e.g., face-to-face instruction, virtual or other distance learning strategies, etc.) under the discretion of the State and local Superintendents, consistent with health and safety needs. Even if the student's ESY services plan was developed prior to the extended school closure, it is recommended that school staff review the existing plan and consult with parents on the service delivery model for Summer 2020.

**Q. May some students require both ESY services and recovery opportunities due to the COVID-19 pandemic during the summer of 2020?**

**A.** Yes; however, it is important to note that ESY services and recovery services are separate and distinct. These services serve different purposes and require separate eligibility analyses. Therefore, LSSs/PAs must follow the eligibility criteria and documentation for ESY services as outlined above. The DEI/SES will issue guidance on recovery services separately.



**Appendix D**  
**Maryland State Department of Education, Division of Early Intervention and**  
**Special Education Services**

CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT  
SUPPLEMENT DOCUMENT to CARES ACT document issued on 5/26/2020

*Adapted from the New Jersey Department of Education*

CARES Act Sec 18003 - Uses of Funds	Examples of specific activities which could be implemented (This is not an exhaustive list)
<ul style="list-style-type: none"> <li>• Any activity authorized by: <ul style="list-style-type: none"> <li>○ ESEA</li> <li>○ IDEA</li> <li>○ CTE (Perkins)</li> <li>○ McKinney-Vento (Title VII-B)</li> </ul> </li> <li>• Coordination of preparedness and response efforts of local educational agencies with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.</li> <li>• Providing principals and other school leaders with the resources necessary to address the needs of their individual schools.</li> <li>• Developing and implementing procedures and systems to improve the preparedness and response efforts of LSSs.</li> <li>• Other activities that are necessary to maintain the operation of and continuity of services in LSSs and continuing to employ existing staff of the LSS.</li> </ul>	<ul style="list-style-type: none"> <li>• Convene local leadership teams to review and revise, as necessary, continuity of learning plans and emergency preparedness plans to ensure the needs of all students.</li> <li>• Work with community-based organizations to identify needs and provide support for students experiencing homelessness during coronavirus including, but not limited to, immunizations, food, medical &amp; dental services (as appropriate), eyeglasses and hearing aids, counseling services to address anxiety, and mental health issues.</li> <li>• Provide professional development to teachers and staff members on the use of technology and delivering virtual instruction and services to support students, including students with disabilities and/or language needs.</li> <li>• Offer training to parents and families on how to provide and/or support instruction in the home.</li> <li>• Survey the technology needs for students to ensure access to virtual instruction as appropriate.</li> <li>• Provide professional development for teachers on using universal screening or benchmark assessments, specially designed instruction, and the delivery of skill specific interventions.</li> <li>• Provide experienced coaches to guide teachers in the delivery of content.</li> <li>• Partner with the community experts to provide access to college and career options via virtual tours, discussions, and other means.</li> <li>• Establish mentoring and/or tutoring program for students.</li> </ul>

	<ul style="list-style-type: none"> <li>• Train teachers to prepare themselves and students for re-entry to the classroom after an extended absence.</li> <li>• Provide virtual supports to enhance career exploration (via career information systems such as Maryland Digital Portfolio) for students and their parents/guardians.</li> <li>• Develop employability skill development tutorials for students. Hire consultants to transform/upgrade CTE programs to meet industry standards.</li> <li>• Support the development of sector partnerships for CTE programs.</li> <li>• Support evaluations of local CTE programs.</li> </ul>
CARES Act Sec 18003 - Uses of Funds	Examples of specific activities which could be implemented (This is not an exhaustive list)
<ul style="list-style-type: none"> <li>• Activities to address the unique needs of: <ul style="list-style-type: none"> <li>○ low-income children or students,</li> <li>○ Students with disabilities,</li> <li>○ English learners,</li> <li>○ Students of racial or ethnic minorities,</li> <li>○ Students experiencing homelessness, and</li> <li>○ Foster care youth.</li> </ul> </li> <li>• Planning for and coordinating during long-term closures, including: <ul style="list-style-type: none"> <li>○ Providing meals to eligible students,</li> <li>○ Providing technology for online learning to all students,</li> <li>○ Providing guidance for carrying out requirements under the IDEA</li> <li>○ Ensuring other educational services can continue to be provided consistent with all Federal, State, and local requirements.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Develop local school system action plans to address the local-identified priority issues impacting all students including specific activities that may meet the needs of a specific demographic group.</li> <li>• Implement local level plans that include the following components for all students: <ul style="list-style-type: none"> <li>○ Ensuring students have access to full-functioning technology and assistive technology;</li> <li>○ Providing consultation, coaching, and support to parents and families of students, including students with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children in foster care;</li> <li>○ Adopting best practices in instruction, academic, and behavioral support of students with disabilities;</li> <li>○ Adopting best practices in remote/virtual instructional practices;</li> <li>○ Coordinating the delivery of instruction and services throughout the system; and</li> <li>○ Timely notifications to parents such as a change in policy when school will resume and with what restrictions.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• Review local school system plans to ensure issues facing students experiencing homelessness are addressed such as access to virtual instructional, internet access, and technology.</li> <li>• Purchase supplies such as backpacks and school supplies necessary for remote instruction, including notebooks, pens/pencils, paper for students experiencing homelessness.</li> <li>• Provide compensatory education services and compensatory related services through contracts with related service providers.</li> <li>• Increase budgets beyond contractual obligations for related service providers employed by the local school system.</li> <li>• Provide additional instructional and academic opportunities, such as summer academies, tutoring, enrichment programs, online intervention programs, or extension activities offered to students in addition to the services included in a student's IEP.</li> <li>• Purchase assistive technology devices to ensure student access to content and instruction.</li> <li>• Provide training for parents/families and staff on the use of technology devices during periods of virtual instruction.</li> <li>• Ensure access to technology during periods of virtual learning by contracting with internet service providers.</li> <li>• Deliver ongoing professional development for teachers and staff on effective instructional practices, including implementation of student IEPs during periods of virtual learning.</li> <li>• Offer after-school hours or summer programs to provide supplemental instruction.</li> <li>• Establish a collaborative team of system personnel and stakeholders to create, implement, and review action plans around system preparedness.</li> <li>• Provide professional development for local school system staff on the unique needs of students experiencing homelessness.</li> <li>• Provide additional instructional services to address gaps in learning.</li> </ul>
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	<ul style="list-style-type: none"> <li>• Provide professional development on coordinating resources to accommodate high needs interventions.</li> <li>• Increase the number of contracted staff members to provide services to students.</li> <li>• Deliver training and professional development on best practices in delivering instruction, academic, and behavioral supports.</li> <li>• Provide increased outreach through community-based organizations and district personnel to address issues such as food insecurity and medical needs.</li> <li>• Contract additional staff or outside vendors to provide counseling to address anxiety and mental health for at-risk students.</li> <li>• Provide professional development for teachers to explain to parents, guardians and students good work habits (e.g., independent work, self-motivation, organizational skills, self-care, educational and health-related resources, etc.)</li> <li>• Support mentors for students, especially from special populations.</li> <li>• Invest in technology and partner with industry partners that may be able to allow work-based learning coordinators to conduct virtual/remote observations of students.</li> </ul>
CARES Act Sec 18003 - Uses of Funds	Examples of specific activities which could be implemented (This is not an exhaustive list)
<ul style="list-style-type: none"> <li>• Training and professional development for LSS staff on sanitation and minimizing the spread of infectious diseases.</li> <li>• Purchase of supplies to sanitize and clean LSS facilities.</li> </ul>	<ul style="list-style-type: none"> <li>• Purchase cleaning supplies, and/or sanitizing stations and supplies for schools and administrative buildings, as well as for staff.</li> <li>• Provide brochures and/or training for families on best practices for social distancing and limiting the spread of the virus in multiple languages.</li> <li>• Provide training to paraprofessionals and classroom/teacher aides on how to support students with hygiene best practices.</li> <li>• Contract with agencies and/or hire staff to assist with training students to utilize and maintain hygiene best practices.</li> <li>• Provide professional development for staff in developing tiered interventions and supports for students to maintain best</li> </ul>

	<p>hygiene practices and social distancing recommendations.</p> <ul style="list-style-type: none"> <li>• Provide items of clothing or hygiene products for students in need; e.g. students experiencing homelessness.</li> <li>• Hire staff to clean and sanitize buildings, grounds, and classrooms.</li> <li>• Install sanitization stations in the schools.</li> <li>• Purchase disinfectant materials needed specifically for CTE lab equipment and supplies.</li> </ul>
CARES Act Sec 18003 - Uses of Funds	Examples of specific activities which could be implemented (This is not an exhaustive list)
<ul style="list-style-type: none"> <li>• Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the LSS that supports regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities (which may include assistive technology or adaptive equipment).</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure access to technology and the internet during periods of virtual learning by contracting with internet service providers; e.g. mobile hotspots and chrome books.</li> <li>• Deliver ongoing professional development for teachers and staff on effective instructional practices, including implementation of student IEPs during periods of virtual learning.</li> <li>• Offer after-school hours or summer programs to provide supplemental instruction for at-risk students.</li> <li>• Provide parent training and ongoing consultation to facilitate effective support of students in the home during periods of virtual and remote learning.</li> <li>• Establish a collaborative team of local school system personnel and stakeholders to create, implement, and review action plans around system preparedness.</li> <li>• Purchase assistive technology devices (AT) and/or related components to ensure student devices can be provided, repaired, and replaced.</li> <li>• Deliver training and technical assistance to teachers, staff, students, and parents/families on the use of AT devices.</li> <li>• Purchase licenses for online programs or downloadable content for use by students with disabilities, at-risk students, and English language learners.</li> <li>• Purchase software applications that support academic instruction, licenses for online learning platforms, subscriptions, or</li> </ul>

	<p>downloadable content for use by students with disabilities or at-risk students.</p> <ul style="list-style-type: none"> <li>• Ensure accessibility of all programs, devices, and content for instruction for students.</li> <li>• Review system level plans to ensure issues facing students experiencing homelessness are addressed such as access to virtual instructional, internet access, and technology.</li> <li>• Contract directly with internet providers to ensure internet access for students.</li> <li>• Provide professional development to all staff on delivering intervention services remotely.</li> <li>• Deliver ongoing professional development for teachers and staff on effective instructional practices, including implementation of student IEPs during periods of virtual learning.</li> <li>• Purchase supplies necessary for remote instruction in the home, such as flash drives, ink, notebooks, pens/pencils, paper, and binders, as well as postage to mail these materials when necessary.</li> <li>• Evaluate the needs of individual courses for specific needs such as printers, microscopes, health monitoring equipment and determine appropriate ways to share or access the equipment.</li> </ul>
CARES Act Sec 18003 - Uses of Funds	Examples of specific activities which could be implemented (This is not an exhaustive list)
<ul style="list-style-type: none"> <li>• Providing mental health services and supports.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide professional development for staff regarding mental health impacts of COVID 19 and aggressive social distancing on students.</li> <li>• Hire contracted staff to provide direct mental health or support services to students.</li> <li>• Acquire licenses for online or downloadable content that supports the mental health needs of students.</li> <li>• Acquire HIPAA/FERPA compliant virtual and remote platforms for the delivery of counseling services.</li> <li>• Contract with community mental partners and agencies to provide assessment and evaluation services to determine mental health needs of students and their families. -</li> </ul>

	<ul style="list-style-type: none"> <li>• Provide counseling, telehealth, mentoring, and therapeutic services and supports, to address non-academic skills that impact learning, such as anxiety, behavioral supports, drug abuse, suicide prevention, and bullying strategies.</li> <li>• Provide professional development for staff on providing tiered mental health supports to students.</li> <li>• Contract with community partners to enhance tiered mental health supports and interventions for students.</li> <li>• Hire counseling staff to implement tiered mental health supports and interventions for students.</li> <li>• Provide training and resources to parents, students, community members on the recognition and prevention of coercion, violence, abuse, human trafficking and abuse.</li> </ul>
Sec 18003 ESSR Uses of Funds	Examples of specific activities which could be implemented (This is not an exhaustive list)
<ul style="list-style-type: none"> <li>• Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of: <ul style="list-style-type: none"> <li>○ Students living in poverty</li> <li>○ Students with disabilities</li> <li>○ English learners</li> <li>○ Migrant students</li> <li>○ Students experiencing homelessness</li> <li>○ Foster care youth</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Deliver services during extended school year programs and/or summer enrichment programs for all students.</li> <li>• Provide tutoring programs outside normal school hours to address student needs.</li> <li>• Provide compensatory educational services to students with disabilities.</li> <li>• Deliver extension activities outside normal school hours to support a successful return to school.</li> <li>• Provide extra supports aligned to the local school system's regular education program, which may include services to assist preschool children in the transition from early childhood education programs to elementary school programs (also, the transition from elementary to middle school and middle school to high school).</li> <li>• Offer career and technical education services to prepare all students for postsecondary education and the workforce (e.g., virtual job-shadowing, resume writing, interview skills, etc.).</li> <li>• Provide basic instruction on trouble-shooting and the maintenance of technology,</li> </ul>

	<p>connectivity, file-sharing, remote tech support, etc.</p> <ul style="list-style-type: none"> <li>• Create CTE summer bridge program for students who are transitioning from Middle School to High School.</li> </ul>
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