# Guidance for One-year High School Extensions for Certain Students with Disabilities Frequently Asked Questions

In May 2021, the Virginia Department of Education (VDOE) issued [Superintendent's Memo #124-21](https://www.doe.virginia.gov/administrators/superintendents_memos/2021/124-21.pdf) to address the provision in the *2021 Appropriations Act* that provides for an extension of services for certain high school students who have reached the maximum age of eligibility under the *Individuals with Disabilities Education Improvement Act* (IDEA 2004). Subsequently, the General Assembly made changes to this legislation in its August 2021 special session. This document will address some of the changes made and issues raised by the August 2021 amendments. The VDOE developed these frequently asked questions (FAQs) in direct response to questions that were received from local educational agencies (LEAs), adult students and/or parents, private school administrators, other stakeholders, and the public.

As enacted, the *2021 Appropriation Act* (Item 146.d) provided $6.5 million from federal *Elementary and Secondary School Emergency Relief Act* (ESSER) funds to “support the state’s share of costs for school divisions to provide one additional year of high school attendance” for certain students with disabilities. The appropriation language specified that those students with disabilities reaching age 22 after September 30, 2020, and who were scheduled to complete high school in spring of 2021 shall be given the “option for an extension to attend high school for the duration of the 2021–22 school year.” Localities were to match the appropriated funds based on the composite index of local ability-to-pay.

Following the enactment of this initiative, questions arose as to its implementation. During Special Session II, the General Assembly proposed additional budget amendments (HB 7001; 479.20.D.2) that provided $3.5 million in ESSER funds to support special education private day school costs for students electing the additional high school year option under Item 146.d. This budget item also (i) described the additional year option as a “temporary extension of special education eligibility” and (ii) specified that students electing this option are to receive a “free appropriate public education” (FAPE) “notwithstanding such students’ age or school setting.”

1. **How were school divisions, adult students with disabilities, and parents made aware of information pertaining to one-year high school extensions for certain students with disabilities?**

Initially, Superintendent’s Memo #124-21 was disseminated on May 7, 2021, and VDOE staff met with and briefed Special Education Directors on May 20, 2021.

Additionally, Superintendent’s Memo #124-21 was issued through GovDelivery and Teacher Direct releases. As noted above, the subsequent budget amendment necessitates the further clarification provided in this document.

1. **How did the Virginia General Assembly’s adopted budget finalized during the Special Session II in 2021 impact the provision of services to eligible students?**

All students who are provided the temporary extension of special education

eligibility must be provided FAPE consistent with the federal IDEA for the duration of the 2021-2022 school year, notwithstanding such students’ age or school setting.

1. **Does this initiative apply to students found eligible under Section 504?**

While unlikely, there may be a small number of students who were served under Section 504 Plans during the 2020-2021 school year who meet the criteria set forth in the appropriation language. Specifically, the appropriation language applies to a student who “... reaches age 22 after September 30, 2020, and is scheduled to complete high school in the spring of 2021.” If there are such students with disabilities who received special education and related services through their Section 504 Plan, then they should also be given the opportunity to avail themselves of this option.

1. **Is an Individualized Education Program (IEP) or a Post Secondary Advancement Plan (PSAP) required for certain adult students with disabilities returning for a one-year high school extension of eligibility?**

Due to the FAPE requirement, local school divisions will need to develop and implement an IEP that outlines services and the least restrictive environment (LRE) during the extended eligibility period. Information developed as a result of a PSAP could be used to inform the development of the IEP.

1. **What are examples of potential services associated with the option for extended eligibility?**

As with any IEP, IEP Teams should utilize data to determine requirements to ensure FAPE, and the IEP should include special education and related services specific to a student’s individualized needs.

1. **Are adult students and/or parents (as applicable) able to access the dispute resolution processes if the IEP Team cannot reach a consensus?**

Because the legislation provides for extended eligibility for the student under IDEA, all dispute resolution processes remain available to the adult student and/or parent. These include the options to request mediation, file a state complaint, and initiate a due process hearing.

1. **When should diplomas be awarded for students that were eligible under IDEA and reached the maximum age of eligibility, and are participating in the option for extended eligibility provided?**

A diploma should be awarded during the final/exiting year that the adult student completed the extended period of eligibility.

1. **How does the new language from the Virginia General Assembly Special Session impact the provision of a FAPE for eligible students with disabilities?**

The new language requires that all students who are provided the temporary extension of special education eligibility be provided FAPE consistent with the federal IDEA for the duration of the [2021-2022](http://law.lis.virginia.gov/vacode/2021-2022) school year, notwithstanding such students’ age or school setting.

1. **Can students that elect to take advantage of the one-year extension of eligibility attend a private day school?**

The specific language from the August budget amendment provides funding to support services in a private day school if the IEP team determines that such a setting constitutes the student’s LRE.

1. **Would the *Comprehensive Services Act* (CSA) funding pay the local school divisions to staff for transition needs or are LEAs responsible for paying private day schools?**

LEAs cannot access the CSA state pool of funds to cover the cost of services to be provided. Rather, the ESSER funds and a local match based on the composite index of local ability-to-pay have been designated for services. There is nothing in the legislation that prohibits a LEA from using the ESSER funds to “contract” with private providers. LEAs must follow proper procurement procedures.

1. **If an adult student requires a separate regional public program, a private day school, or a residential facility, but no local facility is licensed to serve students over age 22, how should the school division handle that situation?**

For students whose IEP Team determines the least restrictive environment in which they will receive these services to be a private day school or residential facility, the language from the General Assembly provides a temporary exemption to private schools for students with disabilities that serve students beyond the age of 22 during the 2021-2022 school year.

1. **Can ESSER funding be used for contractual services?**

There is nothing in the legislation that prohibits a LEA from using the ESSER funds to “contract” with private providers. LEAs must follow proper procurement procedures and ensure all contractors hold appropriate licensure, if required. The LEA must maintain adequate documentation supporting the use of federal funds.

1. **Can school divisions use IDEA and/or CSA funding for certain students with disabilities that qualify for a one-year extension of high school?**

IDEA and/or CSA funds are not appropriate funding options for this initiative.

1. **How will funding be determined?**

The amendment provides $6.5 million from federal ESSER funds authorized in the *Coronavirus Response and Relief Supplemental Appropriations Act of 2021* to address the state share of per-pupil costs and costs that do not qualify under the federal *IDEA*. During the special session, the Virginia General Assembly also allocated $3.5 million additional funding to support students in private day placements. Each participating LEA must submit an application that outlines and describes service or program needs and the number of students being served. The actual per-pupil amount made available to LEAs will be determined based on the availability of funds once the criteria for participation are met. School divisions are encouraged to use federal ESSER Funds to meet the local share of costs for students in private school placements who take this option. A local match requirement is still applicable to students in public school placements.

1. **Will adult students with disabilities returning for the one-year high school extension be captured on the December 1 Child Count data collection?**

Adult students eligible for the one-year high school extension will be included on the December 1 Child Count if they continue to have a current evaluation or re-evaluation, a valid IEP or Individual Services Plan (ISP) on December 1, 2021, and are receiving special education and related services on December 1, 2021.