
MEMORANDUM

TO: Directors of Special Education
FROM: Agency of Education
SUBJECT: Extended School Year (ESY) Services Summer 2020
DATE: May 29, 2020

Purpose

This memo expands on the guidance described in the AOE's [Memo: Initial Considerations for Compensatory Education and Extended School Year Services](#) memo dated May 8, 2020. It provides additional guidance on:

- Considerations for local school systems and Individualized Education Program (IEP) teams to use when making student-level ESY determinations re: student eligibility, the identification of services, and where and how services will be provided;
- Expectations for LEA and school communication with parents about ESY services; and
- Requirements for the documentation of ESY services.

Background

Extended School Year Services (ESY) are defined in both federal and state special education regulations as “special education and related services that are provided to a child with a disability beyond the normal school year of the public agency in accordance with the child’s IEP and at no cost to the parents of the child” (34 C.F.R. § 300.106(b); State Board of Education Rule 2363.7(h)). ESY must be provided only if an IEP team determines, on an individual basis when developing, revising, or reviewing the IEP, that the services are necessary for the provision of FAPE to the child with a disability (34 C.F.R. § 300.106(a)(2)).

Unlike compensatory services, the need for ESY is not triggered by an interruption or gap in providing IEP services. Rather, the purpose of ESY is to provide special education and related services beyond the duration of a school year or school day to a child with a disability who would be likely to significantly regress when school is not in session. Typically, a child’s IEP team determines whether ESY services should be included in the IEP during an annual IEP review meeting.

Extended School Year services are not day care or respite services. They are not a summer recreation program or other programs or services that are not required to ensure the provision

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of a free, appropriate public education (FAPE) to a student — even if they provide some educational benefit.

As stated in the AOE May 8, 2020, [Memo: Initial Considerations for Compensatory Education and Extended School Year \(ESY\) Services](#), if a student was previously determined to need ESY services prior to school closure on March 18, 2020, then the student would continue to need ESY and eligibility should continue without the need to make a new determination of eligibility. IEP Teams that were unable to make ESY determinations prior to school closure for the 2019-2020 school year may consider students who have been eligible in prior years and continue that eligibility for ESY in summer 2020.

Considerations for the Provision of ESY Services

In addition to the potential challenge of providing the necessary staff and personal protective equipment to facilitate comprehensive in-person ESY services, local restrictions and/or guidance from other state agencies may impact a district's ability to provide ESY services as currently planned or previously designed. Moreover, parents and students may have concerns or issues related to transportation, classroom instruction and safety requirements. These are all understandable factors in the current public health context.

As a result, ESY services may need to be delivered virtually or as a hybrid of in-person and virtual services as conditions permit. The AOE allows for remote learning as a viable option for delivering ESY services as appropriate given the individual needs of the student. Districts should collaborate with contracted service providers to determine the best option for delivering ESY services to eligible students receiving special education services in out of district placements, whether the services are to be remote, in-person or a hybrid.

The IEP team faces many challenges related to planning for ESY. Solutions to these issues require flexibility, ongoing communication, and adjustments as conditions change. Above all, school communities need to consider what is reasonable, appropriate and equitable under the current circumstances and public health restrictions.

Additional ideas for LEAs to consider in ESY may include combinations of distance learning and in-person scheduled appointments exercising appropriate social distancing, cleaning and safety protocols such as:

- Remote learning given the needs and abilities of the eligible student and the extent to which the student has been successful in accessing remote learning opportunities during the Continuity of Learning phase.
- Individualized instruction in carefully controlled school facilities meeting VDOH required safety protocols.
- Provision of one-on-one instruction or therapies such as speech therapy, occupational therapy and other related services, in carefully controlled school facilities meeting VDOH required safety protocols.

- Community-based instructional activities in the areas of pre-employment skills, career exploration, job shadowing and other career development activities, as permitted during the State's reopening phases.
- Practice of functional life skills in community-based settings as permitted during the State's reopening phases.
- Community-based exploratory learning activities as permitted during the State's reopening phases.

The IEP team determines where ESY will be provided subject to rules about gathering size from the Vermont Department of Health, and any local decisions on in-person school activities. ESY can be provided at many different places, i.e., in school or at a job site, as appropriate and if safety measures are followed per VDH/CDC guidelines. ESY services may be provided in a non-educational setting if the IEP team determines that the student can receive appropriate ESY services in that setting.

Parent Communication and Engagement

As the State's response to the pandemic emergency continues to evolve, districts should provide regular updates to parents regarding the provision of ESY services.

If parents and the school entity do not agree about ESY services, the LEA must convene an IEP team meeting to discuss the issue. If the IEP team cannot resolve differences and reach a consensus in the IEP meeting, then the LEA representative will make the decision regarding ESY services and shall provide the parents with prior written notice (PWN) explaining the decision. If parents still disagree, they have dispute resolution options which continue to be available. More information about parents' rights and due process is provided in the Procedural Safeguards Notice that is distributed with the PWN.

Finally, districts must provide the parent with a summary of the student's progress at the conclusion of ESY.

Documenting ESY Services

With respect to documentation, all service detail information that is normally found in an IEP would also have to be in a Distance Learning Plan (DLP) for any and every ESY service for which an LEA intends to bill Medicaid. There needs to be a clear delineation between service details for ESY in-person services, and service details for ESY remote services written into the IEP or DLP ESY plan.

The DLP requirements for ESY are the same as during the school year. (See: [Memo: IDEA Requirements for Educational Placement and Amendments to IEPs in the Context of COVID-19 \(3/27\)](#) and [Memo: Initial Considerations for Compensatory Education and Extended School Year Services \(5/8\)](#)) It must include the educational placement, mode of delivery of services, service description, frequency, duration, service provider and group size. Parental agreement must also be documented.

For your convenience, the AOE has provided a sample DLP template which may be utilized to document ESY services accordingly in both [PDF](#) and [Word](#) formats.