



STATE OF NEW JERSEY  
**DEPARTMENT OF EDUCATION**

A Memo from the New Jersey Department of Education

Date: May 26, 2021  
To: Chief School Administrators, Charter School and Renaissance School Project Leads, Administrators of Approved Private Schools for Students with Disabilities, Nonpublic School Administrators  
Route To: Directors of Special Education  
From: Kathy Ehling, Acting Assistant Commissioner  
Division of Student Services

### **Guidance for Extended School Year Services for Students with Disabilities as a Result of COVID-19**

The purpose of this memorandum is to provide school districts and parents with guidance and information regarding 2021 Extended School Year (ESY) services for students with disabilities. It is the role of the student's Individualized Education Program (IEP) team, which includes school district officials and the student's parent(s)/guardian(s), to determine the need for and the type of ESY services based on the needs of the individual student. While there are variations, district ESY programs typically begin on or after July 1, continue through the month of August and conclude prior to September. However, due to the COVID-19 pandemic, districts may choose to extend the duration of their ESY programs to ensure that students are prepared to return to full-time in-person instruction in September.

Based on the public health guidance from the Centers for Disease Control and Prevention (CDC), United States Department of Education, (USED), and/or the New Jersey Department of Health (NJDOH) available to date, school districts may offer and deliver special education and related services to students with disabilities through any one or combination of the following methods:

- **In-person instruction in accordance with applicable state and local health guidelines;**
- **Hybrid programs consisting of in-person instruction and virtual instruction; or**
- **Fully virtual instruction delivered through remote platforms.**

The NJDOE will continue to share up-to-date public health guidance prior to and during the 2021 ESY period.

#### **Extended School Year (ESY) Services**

The federal Individuals with Disabilities Education Act (IDEA) and New Jersey's state special education regulations define ESY services as **"special education and related services provided to a student with a disability beyond the normal school year in accordance with the student's IEP at no cost to the parent."** ESY services are intended to support the maintenance of skills and prevent regression over the summer break. School districts may not limit ESY services to students in particular disability categories and may not limit the type, amount, or duration of ESY services provided to students.

#### **Use of Federal Funds for ESY Services**

Districts may use funds awarded under the CARES Act Elementary and Secondary School Emergency Relief Fund (ESSER Fund), the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act ESSER II Fund, or the American Rescue Plan Act (ARP) ESSER Fund to provide ESY services to students with disabilities. Additional information on allowable uses is available at [ESSER Fund Guidance](#).

### **Determining the Need for ESY Services**

ESY services are considered appropriate if a student's IEP team determines that an interruption in educational programming during the school year caused a decline in the student's performance that cannot be improved within a reasonable length of time.<sup>1</sup> Determinations about the need for ESY services may be based in part on individual student data collected prior to, during, and/or after the period of interruption in educational programming.

### **Summer Programs to Address Learning Loss as a Result of COVID-19**

IEP teams should consider whether critical skills have been lost during the period in which virtual or remote instruction was being provided to students due to COVID-19. IEP teams must examine the effects of the disruption to in-person instruction as well as the operation of hybrid instruction programs on the student's progress toward IEP goals. Student data regarding progress toward IEP goals that was collected prior to school closures and/or during the period when districts were operating in a hybrid instruction program can assist IEP teams in determining whether there has been regression that requires compensatory services. In some cases, the assessment of a student's progress was not possible until school buildings reopened. In those cases, IEP teams should use prior assessment methods to determine a student's progress toward IEP goals and whether the student has regressed and will require compensatory services to recoup lost skills. Those compensatory services may be provided during ESY or other programming provided to students during the summer. **It is important to note that summer programming options offered to all students, such as enrichment programs to address learning loss during COVID-19, must also be made available to students with disabilities. Questions about participation in a district's summer learning program should be addressed by the student's IEP team because depending on the nature and type of programming, participation in a summer program may need to be included in the student's IEP.**

### **IEP Team Meetings**

IEP teams may convene virtual or in-person meetings to determine the need for ESY services. Alternatively, the IEP team may agree to forego an IEP team meeting, and instead, address the provision of ESY services by developing a written document to amend or modify the student's IEP in accordance with existing regulations. Districts must obtain written parental consent if a student's IEP is amended without a meeting of the IEP team. Whether or not the IEP team convenes a meeting, districts must ensure that proper written notice is provided to the student's parent(s)/guardian(s) if the IEP team has proposed changes to the student's IEP, including changes to the type and frequency of ESY services.

### **Disagreements about ESY Determinations**

If a student's parent(s)/guardian(s) disagrees with the IEP team's proposed type or frequency of ESY services, the parent(s)/guardian(s) may pursue dispute resolution options, such as mediation conferences and/or due process hearings in order to resolve the disagreement. Additionally, a student's parent(s)/guardian(s) may seek dispute resolution if the student's IEP team determines the student does not require ESY services and the parent(s)/guardian(s) do not agree.

Information about the impact of COVID-19 on students with disabilities is available on the NJDOE's [COVID-19 webpage](#). Additionally, staff from the NJDOE Office of Special Education and the Office of Special Education Policy and Dispute Resolution are available as resources to support districts, educators, and families. More information is available on the NJDOE [Special Education webpage](#).

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<sup>1</sup> The information contained in this memorandum is not intended to provide legal advice to school districts or to make determinations about the educational programs for students with disabilities. It is the role of the student's IEP team, which includes school district officials, the student, and the student's parents/guardians, to develop, review and revise the student's IEP annually or more often if necessary.

c: Members, State Board of Education  
Angelica Allen-McMillan, Ed.D., Acting Commissioner of Education  
NJDOE Staff  
Statewide Parent Advocacy Network  
Garden State Coalition of Schools  
NJ LEE Group