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TO: BOCES District Superintendents
School District Superintendents
Superintendents, Special Act School Districts
Superintendents, State-Operated Schools
Superintendents, State-Supported Schools
School Principals
School District Business Officers
Charter School Leaders
Special Education Directors
Directors of Pupil Personnel Services
Chairpersons of Committees on Special Education
Chairpersons of Committees on Preschool Special Education
Administrators of Nonpublic Schools with Approved Special Education Programs
Organizations, Parents and Individuals Concerned with Special Education
Preschool Providers of Special Education Programs and Services
Section 4410 Municipality Representatives

FROM: Christopher Suriano

SUBJECT: Extended School Year Programs During Summer 2022

This guidance is to inform the provision of the Summer 2022 Extended School Year special education programs (ESY programs) which, pursuant to New York State (NYS) Education Law section 4408, are approved to operate during July and August for six weeks and funded for 30 days of service. Approved ESY programs include school-age special class, integrated co-teaching, related services only, specialized instruction only, specialized instruction with related services, home/hospital instruction, preschool special class, special class in an integrated setting, special education itinerant services, and preschool related services only. Providers of ESY programs include those entities that have been approved by the New York State Education Department (NYSED) to operate one or more ESY programs, including school districts, Board of Cooperative Educational Services (BOCES), nonpublic schools with an approved special education program (853 Schools), State-Supported Schools (4201), State-Operated Schools, approved preschool special education programs (4410), related service providers authorized pursuant to NYS Education Law section 4410, and education programs operated pursuant to NYS Education Law section 112.

ESY programs are provided at no cost to parents on a year-round basis for students determined to be eligible in accordance with sections 200.6(k)(1) or 200.16(i)(3)(v) of Commissioner's Regulations whose disabilities require a structured learning environment of up to 12 months duration to prevent substantial regression. Substantial regression means a student's inability to maintain developmental levels due to a loss of skill or knowledge over the summer months of such severity as to require an inordinate period of review at the beginning of the school year (e.g., eight weeks or more) in order to reestablish and maintain individualized education program (IEP) goals and objectives mastered at the end of the previous school year. A student's need for services during the months of July and August must be made by the Committee on Special Education or Committee on Preschool Special Education on an individual basis. Although the eligibility criteria for ESY programs have not changed from prior school years, some students who may not have been eligible for ESY programs in the past may now meet the eligibility criteria due to the impact of COVID-19 on their ability to learn and demonstrate progress.

ESY programs offer an opportunity to respond to students' social, emotional, and academic needs following the impact of COVID-19. In addition to addressing the measurable annual goals and objectives identified and required in each student's IEP, providers of ESY programs are also encouraged to take into account students' social-emotional wellness, as appropriate (for more information, see the [2022 Handbook for Summer School](#), *Promising Practices for Summer Learning*, for guidance and resources relating to social and emotional learning and opportunities to build and reinforce student and adult social emotional competencies before the return to school in the fall).

NYS Education Law section 4408 states that "programs shall be funded for thirty days of service, provided, however, that the observance of the legal holiday for Independence Day may constitute a day of service." There is nothing in law that says that this provision is contingent on the program beginning its 30 days of operation prior to the legal holiday. Although students will not be in attendance on Independence Day, if July 4, 2022 is the program's start date of their approved calendar, this date can count toward the 30 days and the System to Track and Account for Children (STAC) should indicate that as the start date of the services (for more information, see [2022-2023 School Year Program Service Dates for STAC Online Reimbursement \(nysed.gov\)](#)).

During Summer 2022, providers of ESY programs are encouraged and urged to offer in-person programs and services and prioritize in-person instruction to students with disabilities. Regardless of the manner of instruction, students with disabilities must continue to receive a free appropriate public education (FAPE). Remote and/or hybrid ESY programs must meet the calendar requirements as outlined above. In addition, when instruction is being provided online, schools that operate ESY programs:

- must provide regular and substantive interaction between students and a certified teacher or licensed professional, as applicable, per the IEP recommended programs and services;

- must ensure teachers engage with students synchronously to the greatest extent possible and should provide students with ample opportunities to build relationships while engaging with the content and their classmates. In an online environment, most of the program should be synchronous instruction involving interactive student-focused activities; and
- must ensure the combined synchronous instruction and asynchronous instructional experiences equal the frequency and duration for the programs and services as indicated on students' IEPs.

If a student receiving in-person services must be quarantined, and the student has a contingency plan in place, that plan must be implemented. If the student does not have a contingency plan, the school district must still ensure the provision of FAPE as the student transitions temporarily to a remote environment.

For those special education programs and services delivered via a contract with a school district or county, the provision of instruction and related services must continue to be documented by the student's contracting school district program, BOCES program, nonpublic school with an approved special education program, Special Act School District, State-Operated School, State-Supported School, preschool special class or preschool special class in an integrated setting program, preschool special education itinerant service provider, or related service provider, as applicable, so that these activities may be communicated to the school district responsible for developing students' IEPs. This documentation is necessary for consideration when making individualized determinations as to whether changes to the IEP recommendation or compensatory services are needed, under applicable standards and requirements. Successful and continued partnerships between program providers and school districts will reflect coordinated efforts necessary to best respond to student needs.

For ESY programs offered in-person, counties and school districts must provide transportation, which, for preschool special education, may include parents transporting their child at public expense.

Reimbursement rates are the same regardless of whether 2022 ESY programs are delivered in-person, remotely, or in a hybrid model. For purposes of 2022 ESY programs and services, days where programs and services are provided remotely count toward the 30 days of service requirement.

ESY programs operating special class (both school-age and preschool), integrated co-teaching programs or preschool special class in an integrated setting programs should continue to bill their authorized tuition rate (including 1:1 aide rate if applicable) or per pupil charge, as applicable, for enrolled students for July and August 2022. When available, interim 2-month rates for the 2022-23 school year will be published on the [NYSED Rate Setting Unit's Rates and Methodology webpage](#).

Reimbursement for school-age related services only, specialized instruction only, specialized instruction with related services, home/hospital instruction, and preschool

special education itinerant services and related services only are fee for services and programs and providers must ensure they are only billing for the services actually delivered. When available, authorized 2022-23 rates for these programs will be published on the [NYSED Rate Setting Rates and Methodology webpage](#).

Additional information about ESY programs and the application for approval to operate ESY programs are available on the Office of Special Education's [Frequently Used Special Education Applications](#) webpage. Questions regarding ESY programs may be directed to the Office of Special Education at (518) 473-4818 or speced@nysed.gov.

Attachment