

Twelve-month special service and/or program, also referred to as Extended School Year (ESY) programs, are appropriate for some preschool or school-age students with disabilities who require a structured learning environment to prevent substantial regression.¹ The committee on special education (CSE) or committee on preschool special education (CPSE) is responsible for determining a student's eligibility for an ESY program and to recommend the appropriate July and August special education program and/or related services needed to prevent substantial regression.

1. Who is eligible for an extended school year (ESY) program?

The CSE/CPSE must determine annually on an individual basis if a student requires an ESY program (sometimes also referred to as 2-month, 12-month, or July and August programs). A child's entitlement to ESY programs as part of a free appropriate public education (FAPE) continues to apply even if public schools do not provide other educational services during summer school breaks. It is important to remember that CSE/CPSE determinations regarding ESY programs are prospective and not intended to make up for past denials of FAPE.

In accordance with sections [200.6\(k\)\(1\)](#) and [200.16\(i\)\(3\)\(v\)](#) of the Regulations of the Commissioner of Education, students must be considered for ESY programs to prevent substantial regression if they are students:

- whose management needs are determined to be highly intensive and require a high degree of individualized attention and intervention and who are placed in special classes;
- with severe multiple disabilities, whose programs consist primarily of habilitation and treatment and are placed in special classes;
- who are recommended for home and/or hospital instruction whose special education needs are determined to be highly intensive and require a high degree of individualized attention and intervention or who have severe multiple disabilities and require primarily habilitation and treatment;
- whose needs are so severe that they can be met only in a seven-day residential program; or
- who are receiving other special education services and who, because of their disabilities, exhibit the need for a 12-month special service and/or program provided in a structured learning environment of up to 12-months' duration in order to prevent substantial regression.

¹ Section 200.1(eee) Twelve-month special service and/or program means a special education service and/or program provided on a year-round basis, for students determined to be eligible in accordance with sections 200.6(k)(1) and 200.16(i)(3)(v) of this Part whose disabilities require a structured learning environment of up to 12 months duration to prevent substantial regression. A special service and/or program shall operate for at least 30 school days during the months of July and August, inclusive of legal holidays, except that a program consisting solely of related service(s) shall be provided with the frequency and duration specified in the student's individualized education program.

2. What is substantial regression?

Pursuant to [section 200.1\(aaa\)](#), *substantial regression* means a student's inability to maintain developmental levels due to a loss of skill or knowledge during the months of July and August of such severity as to require an inordinate period of review at the beginning of the school year to reestablish and maintain individualized education program (IEP) goals and objectives mastered at the end of the previous school year. Substantial regression is indicated by a student's inability to maintain developmental levels due to a loss of skill, set of skill competencies, or knowledge during the months of July and August. Both quantitative and qualitative information should be reviewed by the CSE/CPSE to substantiate the need for providing ESY programs. A student is eligible for an ESY program when the period of review or reteaching required to recoup the skill or knowledge level attained by the end of the prior school year is beyond the time ordinarily reserved for that purpose at the beginning of the school year.

The typical period of review or reteaching, for any student who at the beginning of the school year after not having programs or services during the summer, ranges *between 20 and 40 school days*. As a guideline for determining eligibility for an ESY program, a review period of *eight weeks or more upon return to school* would indicate that substantial regression has occurred.

While regression is considered when recommending an ESY program, there is no requirement that a child *actually demonstrate* 8 weeks of regression in order to recommend an ESY program. Rather, it is a CSE/CPSE determination that an ESY program is required to *prevent* substantial regression. Regression data should be collected any time throughout the 10-month program and reported to the CSE/CPSE for the consideration of recommending an ESY program (e.g., if a child has speech therapy on Monday and Wednesday and on the following Monday, they do not demonstrate the skills they had on Wednesday that could be considered regression and could be considered substantial depending on the length of time it takes for the child to recoup that skill). It is the CSE/CPSE's responsibility to determine whether an ESY program is needed to ensure the student's regular school year progress toward IEP goals will not be impacted by substantial regression.

3. Must the IEP for the ESY program be identical to the IEP developed for the 10-month school year program?

No. An IEP developed for an ESY program may differ from the IEP developed for the 10-month school year program. Based on a student's needs, the CSE/CPSE determines the type and amount of special service and/or program that must be provided in the student's ESY program. The IEP developed for the ESY program should focus on the areas in which the student is expected to experience regression.

ESY programs may, at the recommendation of the CSE/CPSE, be provided in a location that differs from the one in which the student attends during the 10-month school year,

provided that the CSE/CPSE determines that the setting is appropriate for the student to benefit from the special education services and meet the IEP goals and objectives.

4. What special education programs and services can be recommended as an ESY program?

The IEP for the ESY program should indicate those areas where the student needs services to prevent substantial regression and the programs and services determined appropriate to meet these needs. While some students with disabilities require a continuation of their full-day 10-month programs, others may only require services in specified areas of development to prevent substantial regression.

School-Age ESY Programs

A CSE may recommend any one of the following special education programs and services as determined appropriate to meet the individual needs of a school-age student with a disability:

- related services at a site determined by the CSE. Sites may include, but are not limited to, an approved summer school program² recreational program, or the student's home; or
- specialized instruction which may include instructional services provided by a certified special education teacher through consultant teacher services and/or a resource room services, in combination with related services, as appropriate, at a site determined by the CSE. Sites may include, but are not limited to, an approved summer school program, a community recreational or educational program, or the student's home; or
- full-day or half-day³ daily instruction in special class programs which may include related services; or
- integrated co-teaching services at a site determined by the CSE.

Preschool ESY Programs

A CPSE may recommend any one of the following special education programs and services as determined appropriate to meet the individual needs of a preschool student with a disability:

- related services at a site determined by the CPSE. Sites may include, but are not limited to, an approved or licensed prekindergarten, head start, or childcare program; the work site of the provider; the student's home; a hospital; or a state facility; or
- special education itinerant services to provide specialized individual or group

² *Approved summer school programs* are those elementary, secondary, and BOCES general education programs approved in accordance with Part 110 of the Regulations of the Commissioner of Education.

³ STAC forms for school-age students enrolled in a special class on a *half-day basis* should indicate *half time* in item 11b. Summer claims are submitted electronically in EFRT. Only placements requiring Special Education Quality Assurance Nondistrict Unit approval are submitted on paper STAC-1 forms.

instruction and/or indirect services to preschool students with disabilities by a certified special education teacher of an approved program on an itinerant basis at a site determined by the CPSE. Sites may include, but not limited to, an approved or licensed prekindergarten, head start, or childcare program; the student's home; a hospital; a state facility; or

- related services in addition to special education itinerant services; or
- special class in an integrated setting programs employing a special education teacher and one or more supplementary school personnel in a classroom made up of no more than twelve preschool students with and without disabilities, or a classroom that is made up of no more than twelve preschool students with disabilities staffed by a special education teacher and one or more supplementary school personnel that is housed in the same physical space as a preschool class of students without disabilities taught by a nonspecial education teacher; or
- special class programs provided on a half-day or full-day basis with the maximum class size not exceeding 12 preschool students with at least one teacher and one or more supplementary school personnel assigned to each class; or
- in-state residential special education programs and services.

5. What are ESY programs consisting of integrated co-teaching services?

ESY programs consisting of integrated co-teaching services are the same as integrated co-teaching services provided during the school year. As defined in section [200.6\(g\)](#) of the Regulations of the Commissioner of Education, integrated co-teaching services, means the provision of specially designed instruction and academic instruction provided to a group of students with disabilities and nondisabled students. School personnel assigned to each class must minimally include a special education and a general education teacher. The maximum number of students with disabilities receiving integrated co-teaching services in a class cannot exceed 12 students, unless a variance is provided pursuant to section 200.6(g)(1)(i)-(ii) of the Regulations of the Commissioner of Education. For additional information on integrated co-teaching services see [Continuum of Special Education Services for School-Age Students with Disabilities - Revised November 2013 \(Questions 32 – 44\)](#)

6. What is the obligation of school districts to provide a continuum of placement options during the months of July and August?

Placement decisions for ESY programs must be developed consistent with federal and New York State least restrictive environment requirements. Therefore, school districts must ensure that a continuum of placement options is available in the area to meet the needs of all students recommended for ESY programs. The continuum must include at least “Instruction in regular classes, special classes, special schools, and instruction in hospitals and institutions” 34 CFR Section 300.115(b)(1).

7. What is the CSE's obligation to provide integrated ESY programs for school-age students whose IEPs must be implemented in integrated settings for the student to benefit from the special education services?

If a student's IEP specifies that the ESY program must be provided in a setting that includes students without disabilities for the student to benefit from special education services, and the school district operates summer learning programs for students without disabilities, then the school district must provide methods for meeting the LRE requirements. These include:

- locating programs and services in settings where students without disabilities attend during the summer; and
- having students with disabilities interact with students without disabilities to the greatest extent possible during noninstructional parts of the school day.

If a student's IEP specifies that the ESY program must be provided in a setting that includes students without disabilities for the student to benefit from the special education services, and the school district does not operate summer programs for students without disabilities, then the school district must provide alternative methods for meeting LRE requirements. These include:

- providing opportunities for participation (even part-time) in other summer learning programs operated by a neighboring school district or in programs operated by a Board of Cooperative Educational Services (BOCES);
- locating special classes in settings where students without disabilities attend during the summer, including an approved private school serving students with disabilities (853 School) that has approval to operate an ESY program consisting of integrated co-teaching service ⁴; and
- providing special education services to students in settings that the parent has arranged and pays for the child to attend. The CSE must determine whether the student's IEP goals can be appropriately met at the setting identified by the parent, and the school district must ensure that such programs are approved by a governmental agency to operate a summer program and are approved by local authorities for fire, health, and safety requirements.

8. If the CSE recommends an ESY program consisting of specialized instruction only or specialized instruction with related services to be provided at a summer recreational or educational program in which the parent has enrolled the student, who is responsible for the fees to enroll the student in the program?

Camping and recreational programs are not to be construed as special education ESY programs. While special education services identified in a student's IEP must be made available as part of FAPE requirements, school districts are not required to pay for the

⁴ A nonpublic school with an approved special education program seeking to operate an ESY program consisting of integrated co-teaching services must contact the Office of Special Education Preschool Policy Unit at (518) 473-6108.

enrollment and other fees at summer recreational or nonapproved educational programs in which the parents have enrolled their school-aged child. FAPE is defined as special educational and/or related services that are provided at public expense in conformity with a student's IEP.

9. If the CSE recommends an ESY program consisting of integrated co-teaching services for a student with a disability and the parent unilaterally places the student in another setting such as a summer camp program, must the school district make services available at the other setting?

No, the school district is not required to make the service available at the same site where the parent unilaterally placed the student. However, the school district would have the *option* of providing the recommended ESY program, or making the services available at another setting.

10. What is the required length of time that ESY programs must be provided?

An approved ESY program providing half-day or full-day special class instruction must operate for at least 30 days, five days/week, during the months of July and August, inclusive of legal holidays, except that a program consisting solely of related service(s), specialized instruction, integrated co-teaching services, or special education itinerant services shall be provided with the frequency and duration specified in the student's IEP.

The length of the school day for a full-day special class program shall be not less than 5 hours of instruction for preschool students with disabilities and students whose chronological ages are equivalent to those of students in Kindergarten through grade 6, and not less than 5½ hours of instruction for students whose chronological ages are equivalent to those of students in grades 7 through 12.

The length of the school day for a half-day special class program shall be not less than 2½ hours of instruction for students whose chronological ages are equivalent to those of students in Kindergarten through grade 6, and not less than 3 hours of instruction for students whose chronological ages are equivalent to those of students in grades 7 through 12.

For school-age students the school day shall include instructional activities and related services but does not include lunch and transportation [8 NYCRR section 200.7(b)(4) and section 200.1(q) and (v)]. For preschool students with disabilities, instructional mealtime may be included as part of instructional time in accordance with the [Guidelines for Determining if Mealtime May be Included When Calculating Instructional Time for Preschool Special Education Programs](#).

11. Can a special class ESY program period include Independence Day?

New York State (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. Pursuant to NYS General Construction Law Section 24, if a legal holiday falls on a Sunday, the next day becomes a legal holiday. Although students will not be in attendance on Independence Day, if July 4th 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. The 30 days must be provided during July and August.

12. Does a school district, BOCES or approved private program need approval to operate an ESY program?

Yes. Providers can only provide ESY programs that are consistent with their approval from the New York State Education Department (NYSED). The STAC reimbursement records for students will not be processed if the services provided are not consistent with IEP recommendations and the conditions of NYSED approval.

13. What entities are authorized to provide ESY programs?

Authorized entities include those entities that have been approved by NYSED to operate one or more ESY programs including school districts, BOCES, nonpublic schools with an approved special education program (853 Schools), approved preschool special education programs (4410), related service providers authorized pursuant to NYS Education Law section 4410, State-Supported Schools (4201) authorized pursuant to NYS Education Law article 85, State-Operated Schools authorized pursuant to NYS Education Law articles 87 and 88, and education programs operated pursuant to NYS Education Law section 112.

14. Who can provide specialized instruction-only programs to students in an ESY program?

Specialized instruction must be provided by an appropriately certified special education teacher of an approved ESY program.

15. What entities can apply to provide ESY programs consisting of integrated co-teaching services?

A school district, BOCES, or nonpublic school with an approved special education program (853 School) may apply to provide ESY programs consisting of integrated co-teaching services.

16. Must transition services be provided as part of an ESY program?

If transition services are needed for a student with a disability who is age 15 or older (or

younger if determined appropriate) and who is determined to need an ESY program, then such transition services must be provided as recommended in the IEP as part of the ESY program. These activities may include instruction, community experiences, related services, preparation for employment or other post-school living objectives and, when appropriate, the acquisition of adult daily living skills or functional vocational evaluation.

17. What is the role of the supplementary school personnel (i.e., teaching assistants and teacher aides) in an ESY program?

For students enrolled in a summer school program, summer camp, or community recreation program, a teaching assistant may provide direct instructional teaching services under the general supervision of a licensed or certified teacher. The teaching assistant can assist in the delivery of special education services but cannot serve in place of a special education teacher. Direct instructional services may include, but are not limited to, working with individual students or groups of students on special instructional projects, providing the teacher with information about students, which will assist the teacher in the development of appropriate learning and behavioral experiences, and assisting in the development of instructional materials.

Teacher aides may perform only noninstructional duties under the general supervision of the special education teacher. These noninstructional duties may include, but are not limited to, assisting students with physical care tasks, health-related activities and behavior management needs, as well as supporting teachers in managing records, materials and equipment. Teacher aides work under supervision as determined by the school district in accordance with Civil Service Law.

18. Can the school district apply for reimbursement of the cost of a general education teacher employed by a school district or BOCES as a special education cost for services provided in an integrated setting?

No. The school district will receive reimbursement only for the cost of special education services provided by appropriately licensed or certified staff to a student during the months of July and August. For students attending approved summer school programs pursuant to Part 110 of the Regulations of the Commissioner of Education, the school district operating the program may include the student's attendance for purposes of State Aid.

19. How can the school district apply for State Aid reimbursement for the provision of related services only or specialized instruction provided during ESY programs?

NYSED is authorized to approve programs and to establish rates for all special education programs and services provided during the months of July and August, both public and private. Therefore, any school district that plans to operate an ESY program must first apply to NYSED for approval. Applications for programs serving school-age students can

be obtained by going to the Office of Special Education [Frequently Used Special Education Applications](#) webpage. For additional technical assistance regarding the ESY program application process, please call the Office of Special Education at (518) 473-6108.

Funding approval must be granted through STAC for each eligible student who is to receive an ESY program during July and August in order for school districts to receive the correct amount of State Aid under section 4408 of the New York State Education Law. Questions regarding the filing of STAC forms may be directed to the STAC/Medicaid Unit at (518) 474-7116.

20. How are ESY programs compensated for provision of related services only?

Programs must ensure that they are only providing and billing for related services actually provided consistent with the frequency and duration as indicated in the students' IEPs. Related services sessions provided in groups of two or more must be prorated.

21. How would reimbursement rates be established for ESY programs consisting of integrated co-teaching services?

To establish the program's tuition rate for ESY programs consisting of integrated co-teaching services, NYSED will assign a regional rate for the first two years of operation. BOCES and 853 schools must submit an annual Consolidated Fiscal Report (CFR) in accordance with the directions provided on the Rate Setting [Manuals and Forms](#) webpage.

Nonpublic school applicants must participate in CFR training – see Rate Setting [Training](#) webpage. Public schools operating ESY programs consisting of integrated co-teaching services would submit ST-3 supplemental schedules SS-10-16.

22. What happens if a school district or BOCES approved ESY program does not operate?

School districts or BOCES are not obligated to operate an approved ESY program every school year. If a program will not be operating for a given summer, the school district or BOCES **must** update the program to the "Not Operating" status in the EFRT online system. For any school district or BOCES ESY program that has not submitted STAC reimbursement records showing that the program(s) operated for three or more years, NYSED will remove the program code(s) from the EFRT online system and RSU would confirm with the school district or BOCES that they didn't operate the program(s). If the school district or BOCES did not operate the program(s), RSU would update their records to indicate it did not operate. If the school informs RSU that they no longer intend to operate the 2-month program, RSU would update their records that the program closed. The update to the EFRT and RSU records does not remove the program's approval to operate an ESY program. However, the school district or BOCES would need to inform

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the STAC Unit and Rate Setting Unit (via the email addresses omsstac@nysed.gov and rateweb@nysed.gov) if it reinitiates operations in order for the school district to receive reimbursement for the program(s).

For questions regarding reimbursement policy, please contact the STAC and Medicaid Unit at omsstac@nysed.gov. Questions regarding school district or BOCES ESY program rates should be directed to the Rate Setting Unit at (518) 474-3227 or rateweb@nysed.gov.