



## EXTENDED SCHOOL YEAR SERVICES (ESY) PART B (3-20yrs)

Issued 6/10/2020

*This is a working document, which may be updated frequently due to the rapidly changing response to this pandemic emergency and ongoing state and federal guidance updates. As of the date of the issuance of this guidance, there has been an update in recommendations pertaining to in person instruction occurring over the summer. The Maine Department of Education (Maine DOE) acknowledges that it may be feasible to conduct in person Extended School Year (ESY) services following [Guidance on Summer Services](#) in counties where there is no community transmission of COVID-19. As of the date of this guidance, there are three counties that have community transmission; Androscoggin, Cumberland, and York Counties. The Maine DOE continues to recommend keeping the option for remote education through the summer months if it is the best interest of students, staff and families.*

School Administrative Units (SAUs) must provide a free appropriate public education (FAPE) consistent with the need to protect the health and safety of students, as well as those individuals providing education, specialized instruction, and related services to these students. Present exceptional circumstances may affect how special education and related services are provided. SAUs may not be able to provide all services, including ESY services, in the same manner that they are typically provided. Federal disability law allows for flexibility in determining how to meet the individualized needs of students receiving special education services.

The Maine DOE continues to recommend frequent communication between SAU staff and parents/guardians regarding the provision of FAPE during this time to promote a shared understanding of the SAU's approach to providing special education and related services and the student's ability to receive special education and related services.

It is important to distinguish special education ESY from summer school, summer programming, and summer day camps. ESY means special education and related services that are provided to a student with a disability beyond the SAU's normal school year, in accordance with the student's IEP, and at no cost to the parent. ESY decisions can only be made through a determination made by an IEP team and not the availability of an ESY program. The ESY eligibility process should not be used to determine services that may provide a remedy to the impact of COVID-19. Previous guidance has suggested looking at data prior to the end of school-based instruction (March 2020) to determine eligibility.

Some SAUs may have IEP meetings to discuss services to make up for missed opportunities that have occurred in the last three months. These services should be delineated from ESY services and documented appropriately.

The ESY eligibility process should not be utilized to determine whether or to what extent COVID-19 impact recovery services may be needed.

"COVID-19 impact recovery services" are not compensatory education and are defined as services provided to a student to remediate lost skills due to remote instruction. They may be



intended to improve outcomes for students who were not able to meaningfully engage in remote instruction or had limited progress during this period.

### **Eligibility Determination**

An individualized determination regarding each student's eligibility for ESY services must be considered annually. The Maine standard for determining if a child is eligible to receive ESY services includes both regression/recoupment criteria, maintenance of learned skills and nature/severity of the disability. MUSER X.2.A.(7), pp. 119 – 120, <https://www.maine.gov/doe/sites/maine.gov/doe/files/inline-files/State%20Regulation%20Chapter%20101MUSER.pdf>

For students who have already been determined eligible for ESY, the SAU should, to the greatest extent possible, provide the ESY services identified in the student's individualized education program (IEP). For students who have not yet been determined eligible for ESY, data collected from the beginning of the 2019-20 school year up until the March end of school-based instruction should be used to inform the eligibility determination. If current circumstances prevent access to the data/information typically used in the determination process, SAU staff with firsthand knowledge of the student's functioning while in school will need to work with the parent to make the determination using any relevant information that is readily accessible.

### **Process and Documentation**

Typically, a student's eligibility for ESY services is determined at an IEP team meeting held in early spring. Currently, many IEP meetings are being held telephonically/virtually. In cases where there is mutual agreement about ESY, the SAU and parent have the flexibility to document the decision by updating the student's IEP through an amendment on a written notice indicating an *agreement for amendment without Team meeting* MUSER IX.3.(C)(4). For students who qualify for ESY services, SAU staff with firsthand knowledge of the student's in-school functioning should provide recommendations on the student's ESY services to the parent before the amendment is completed.

Data collection during ESY will be important to understand present levels of performance as students transition to the 2020-21 school year. Continue to document participation and communication with parents regarding progress.

Timely communication with the parent regarding the outcome of the ESY determinations including required prior written notice and other documentation will allow the parent to exercise their due process rights if there is a disagreement with the IEP decision. During continued remote learning, ESY services should be provided to the student to the greatest extent possible.

### **Provision of Services**

All members of our school communities need to consider what is reasonable, appropriate, and equitable under the current circumstances and public health restrictions. In addition to the potential challenge of securing the necessary staff, and personal protective equipment to provide comprehensive in-person ESY services, local restrictions and/or guidance from other state agencies may impact a SAU's ability to provide ESY services as designed. Moreover, SAUs, parents and



students may have concerns or issues related to transportation, classroom instruction and safety requirements. As a result, ESY services may need be delivered virtually. SAUs 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 SAU placements. SAUs should follow the recommended [Guidance on Summer Services](#) offered by the Maine DOE.

SAUs may find it helpful to review [Maine Department of Education's Guidance for Pre-Kindergarten/Kindergarten Child Find Screening](#) when developing plans for the provision of in person services.

If ESY services cannot be delivered due to continued remote instruction, SAUs should document services provided over the summer in a continued educational opportunity plan as the SAU has done prior to the end of the current school year. Finally, SAUs must provide the parent with a summary of the student's progress at the conclusion of ESY.

## **Evaluations**

The Maine DOE acknowledges that it may be feasible to conduct in person evaluations following the [Guidance on Summer Services](#) in counties where there is no community transmission of COVID-19. There may also be alternative settings in counties with community transmission that SAUs and families feel comfortable accessing in order to proceed with evaluations. Safety during these activities should be prioritized and the decision may be made that it is not possible to proceed with the evaluation.

## **Special Purpose Private Schools**

Some Special Purpose Private Schools (SPPSs) may choose to provide in person services following Governor Janet Mills guidelines to re-opening the economy. They are taking great care to follow recommended guidelines for safety. *ESY is determined by the IEP team and not the SPPS.* ESY decisions can only be made through a determination made by an IEP team and not the availability of an ESY program.

Note: It's important to understand that while some SPPSs run year-round programming, others operate school year programs and implement ESY based on IEP determinations.

## **CDS guidance on ESY**

Beginning June 15, 2020, CDS will have the option to resume in-person services for ESY, as appropriate, in the 13 Maine counties with no community transmission of COVID-19 (as of 6/10/2020). ESY services are provided to students who have documented regression during prolonged absences from services or have significant needs. Due to continued community transmission, remote services continue to be recommended in Androscoggin, Cumberland, and York counties. In resuming in-person services, the health and safety of children, families, and providers must be the top priority and the precautionary measures identified in Maine DOE's [Guidance on Summer Services](#) for summer services should be followed.



Although in-person ESY services will be permitted, IEP teams must determine, on a child-by-child basis, if in-person services are *necessary*. Those students for whom tele-education has been effective, based on data, should continue to receive services remotely. Despite a determination that if in-person services are appropriate, families may opt to continue accessing services via tele-education.

ESY may be offered for students who had limited ability to access services remotely after March 16, 2020 and now are able to receive in person or hybrid services.

In counties with community transmission, an exception could be made for students who were unable to meaningfully access their program remotely.

The following steps must be taken before implementing in person services.

1. Identify students most at need for in-person summer services and communicate with families and IEP teams.
2. Service providers must identify and purchase necessary protective equipment, including but not limited to:
  - a. Cleaning supplies per CDC guidelines.
  - b. Personal Protective Equipment (PPE) for staff caring for students who cannot maintain 6-foot distancing: Face coverings or shields, gloves, gowns
  - c. Soap and paper towels for handwashing; hand sanitizer
3. Modify any existing health and safety plans and/or school protocols as needed due to COVID-19, following the [Guidance on Summer Services](#) provided by the Maine DOE.
4. Develop a training plan that includes identification of the staff needing to be trained on safety protocols, procurement of resources and trainers, and a system to confirm all necessary training is completed prior to in-person instruction.

Once these steps have been taken, in-person instruction may begin for students in a modified or limited way. In-person services might include individual or small group instruction. Related services may continue to be provided by remote means in a preschool setting assisted by preschool staff. This will be supported through CDS.

Some students who are receiving in-person services might still require some remote services. Remote services for such students should remain in place until in-person learning commences.

As in past years, services previously unavailable (SPUs) that have accrued over the academic year will be provided once the CDS academic year has concluded. SPU is not “COVID-19 Impact Recovery Service.”<sup>1</sup> SPUs may have occurred during a small gap between the cessation

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of in person services and the beginning of remote services. The determination of SPUs to be provided will be based on the accrual prior to the cessation of in-person CDS services on March 16, 2020 and is not necessarily a minute-by-minute calculation. Instead, the identified frequency and intensity will reflect what is necessary to support the student's progress toward their annual IEP goals.

For students who were *unable* to access services virtually subsequent to the March 16<sup>th</sup> cessation of in-person services, due only to lack of provider availability or connectivity, the process for determining services is the same as above: the identified frequency and intensity should reflect *what is necessary* to support the student's adequate progress toward their annual IEP goals.