



Angélica Infante-Green
Commissioner

State of Rhode Island
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Shepard Building
255 Westminister Street
Providence, Rhode Island 02903-3400

July 16, 2020

By Electronic Mail

Dear Superintendents and School Leaders,

Thank you for all your work on the plans submitted to RIDE at the end of May for Extended School Year (ESY) services. I know that your teachers have been working hard for many months through distance learning to support students. I am writing today to clarify your legal obligation to an especially vulnerable cohort of students who may not have been able to reach expected learning objectives during distance learning due to their disabilities. Much has changed in the six weeks since plans were submitted for ESY and it is important that we continue to adapt our approaches to emerging conditions. At the same time, I recognize the unique and difficult challenges posed by the pandemic.

Some students with disabilities receiving special education services have not been able to fully access all of the services described in their IEPs and have not been able to demonstrate progress on their goals in the absence of direct in-person instruction and related services during ESY. However, many of you are not providing such in-person instruction and related services, even though the Governor relaxed some of the COVID-19-related restrictions during the Phase III Re-Opening that began on June 29. Some of you have informed us that you have concerns about safety as well as potential liability, in addition to not being comfortable with the adequacy of the relevant health and safety guidance that has been provided to date by the Rhode Island Department of Health (“RIDOH”).

It is not my intention here to adjudicate all your concerns relating to health and safety. There obviously are a number of individualized, fact-specific issues that would have to be considered, and the specific assistance that would be required varies. Rather, my intention here is simply to ensure that you are aware that, whatever the reasons you have not provided in-person ESY:

- (1) In-person ESY services are not *per se* excluded during the Phase III Re-Opening initiated on June 29;
- (2) Guidance from RIDOH is evidence that some or all in-person services specified in an IEP may now be provided in-person. Thus, if you have not done so, now is the time for parents and school officials to meet and review the availability of such services, and if appropriate, to amend a

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child's IEP for ESY to enable the delivery of such services. If services can safely be delivered by a qualified third party, the LEA should contract directly with such entity if the LEA is unable to provide those services. Reimbursement for previously provided third-party services needs to be discussed and decisions made based on the COVID-19-related conditions that existed at the time the services were provided. Disagreements about reimbursement can be resolved through RIDE's dispute resolution procedures; and

- (3) If, due to the global pandemic and resulting closures of schools, there has been a delay in providing ESY or other services – or even in making decisions about how to provide such services – IEP teams (or appropriate personnel under Section 504) must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.

Finally, a concerted effort should be made to immediately inform parents, including those who have already declined ESY services, as to (1) - (3) above, as it appears that many parents have simply been misinformed that in-person services are precluded during Phase III and/or simply are unaware that compensatory services may be available. Outreach and additional determinations should be completed no later than July 30, 2020 to ensure time for services during August.

Thank you for your continued efforts to support our students, and please advise me, in writing, no later than Friday, July 24, 2020, what efforts have been made to comply with this guidance.

Sincerely,



Angélica Infante-Green,
Commissioner