

**NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION**

**SUPPLEMENT #3 - PROVISION OF SERVICES TO STUDENTS WITH DISABILITIES
DURING STATEWIDE SCHOOL CLOSURES DUE TO
NOVEL CORONAVIRUS (COVID-19) OUTBREAK IN NEW YORK STATE**

Questions and Answers June 20, 2020

The following is a continuation and supplement to the questions and answers contained in the [March 27, 2020 guidance \(#1-21\)](#), [April 27, 2020 guidance \(#22-38\)](#), and [June 20, 2020 guidance \(#39-51\)](#) on the provision of services to students with disabilities during the COVID-19 outbreak in New York State.

On June 5, 2020 the Governor issued [Executive Order 202.37](#) that included the following language, “[n]otwithstanding any prior Executive Order to the contrary, special education services and instruction required under Federal, state or local laws, rules, or regulations, may be provided in person for the summer term in school districts. Any district providing such services in person must follow State and Federal guidance.” Further guidance was issued on June 9, 2020 by the New York State (NYS) Department of Health (DOH) titled [Interim Advisory for In-Person Special Education Services and Instruction During the COVID-19 Public Health Emergency](#) and [Interim Guidance for Child Care and Day Camp Programs During the COVID-19 Public Health Emergency](#).

The New York State Education Department (NYSED), has received numerous questions from the field including parents, school districts, Board of Cooperative Education Services (BOCES), and approved private programs and providers serving school-age and preschool students with disabilities. The information below represents NYSED’s guidance in response to Executive Order 202.37 and the corresponding DOH documents.

52. The Executive Order (EO) 202.37 was issued for the period of June 5, 2020 to July 5, 2020 but summer programs do not begin until after July 1

EO 202.37 is applicable to the 2020 extended school year (ESY) programs and services which are approved to operate during July and August. It is anticipated that the EO will be in effect for the 2020 ESY program.

53. The EO identifies special education services and instruction provided by school districts while the DOH guidance is directed at school districts and approved private “independent schools,” both school-age and preschool (e.g., 853 schools, 4201 schools, 4410 schools). What specific programs and services are authorized by the EO?

EO 202.37 is applicable to approved ESY programs and services operated by authorized entities. Approved ESY programs and services include school-age special class, integrated co-t

For ESY 2020, students with disabilities

basis. Committees on Special Education/Committees on Preschool Special Education must maintain documentation regarding its communication with the parent regarding the offer of in-person programs and services and the parent's decision to decline the in-person services that are offered. Parents may decline some in-person services but not others if multiple in-person services are offered. For example, a parent may decline in-person special education itinerant services but elect to receive in-person related services.

62. Which DOH guidance document is applicable to approved preschool special class and special class in an integrated setting programs licensed by the Office of Children and Family Services (OCFS) or New York City Department of Health and Mental Hygiene (DOHMH)?

Both DOH guidance documents, [Interim Advisory for In-Person Special Education Services and Instruction During the COVID-19 Public Health Emergency](#) and [Interim Guidance for Child Care and Day Camp Programs During the COVID-19 Public Health Emergency](#), are applicable to those preschool special education programs that are

65. Is there any flexibility regarding the July and August calendar? Can providers amend their start date to a later date to allow for more planning time? Can

69. Who is responsible for the provision of 2020 ESY programs/services in the event the private provider or BOCES is not able to offer 2020 ESY?

If a private provider or BOCES is not able to operate 2020 ESY programs/services either in-person, remotely, or a combination of both, tuition should not be charged for those students. The school district is ultimately responsible for ensuring the provision of FAPE to its resident students with disabilities (see Questions #30 and #31 in [Supplement #1 - Provision of Services to Students with Disabilities During Statewide School Closures Due to Novel Coronavirus \(COVID-](#)