1. A February 1, 2008 memo clarified several billing questions. View the memo.

2. Minnesota Statutes section 125A.515, Subd. 7:
   “Minimum educational services required. When a student is placed in a facility approved under this section, at a minimum, the providing district is responsible for: (1) the education necessary, including summer school services, for a student who is not performing at grade level as indicated in the education record or IEP; and (2) a school day, of the same length as the school day of the providing district, unless the unique needs of the student, as documented through the IEP or education record in consultation with treatment providers, requires an alteration in the length of the school day.”

   a. There is nothing in law defining “not performing at grade level.” MDE offers the following suggestions:
      i. The residential care and treatment education program should consult with the district in which the program resides and follow the same method used locally to determine if a student is below grade level.
      ii. The residential care and treatment education program should be using standards-based screening tools for academic assessments. Based on the outcome of these screens/assessments it could be determined if a student is functioning below grade level.

   b. There is nothing in law defining “minimal services.” MDE offers the following suggestions:
      i. The residential care and treatment education program does not have to be exactly the same as the district’s, but it must parallel the summer school offerings of the district in which it resides. If no summer school is offered for regular education students throughout the district EXCEPT in the care and treatment facility, the care and treatment facility has discretion on the level of educational services provided.
c. If the residential care and treatment education program cannot get the student’s residential district to respond to request for records, here is how MDE suggests the program proceed:
   i. Minnesota Statutes section 125A.515, Subd. 5 (a) specifies the timelines for requesting records from the resident district and when education services must begin.
   ii. If the care and treatment education program has made and documented attempts to get records, the resident district does not respond after four days have passed, and the care and treatment education program has conducted a screening for educational and safety issues, then the care and treatment education program data stands as the determination of whether a student is functioning at, above or below grade level.

d. A residential care and treatment education program MAY provide summer school services to students who are performing at or above grade level. However, the residential care and treatment education program does so at its OWN expense.

3. The “Umbrella Rule” (Minnesota Rule 2960.0080, subpart 9(A)(1)) states:

   “A. The license holder must facilitate the resident’s admission to an accredited public school or, if the resident is home-schooled or educated at a private school or school operated by the license holder, the school must meet applicable laws and rules. If the educational services are provided on the grounds of the facility, the license holder must:

   (1) arrange for educational programs that provide for instruction on a year-round basis, if required by law;

   (2) get the approval of the education services from the Department of Education; and

   (3) cooperate with the school district.”

This law states instruction must be provided on a year-round basis, if required by law. For definitions of requirements MDE refers to Minnesota Statutes section 125A.515, Subd. 7 (item #2 on this sheet) for criteria definition.
4. If you have further questions please contact:

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MEMORANDUM

TO: Directors of Special Education
FROM: Tom Melcher, Director
Division of Program Finance
Barbara L. Troolin, Director
Special Education Policy

DATE: February 1, 2008

SUBJECT: Extended School Year for Students with Disabilities, Education Programs in Care and Treatment Facilities and Special Education Services during Learning Year

Several questions were posed by the Special Education Directors at the April 17, 2007, Special Education Directors meeting regarding proposed legislation to amend M.S. 125A.14 and 125A.75 replacing references to “summer school” with references to “extended school year” to conform to IDEA. These changes were passed by the 2007 Minnesota State Legislature. Following is the Minnesota Department of Education’s (MDE) response to these questions.

Question 1
Can we still have permissive summer school for students on IEPs and enter the expenses in EDRS?

MDE Response
Permissive summer school has not been considered an eligible expenditure for federal or state special education aid since the end of summer 1996. Before 1996, permissive summer school was allowable under IDEA. State law was not amended to reflect this change at that time. Removing references to “summer school” in M.S. 125A.14 and 125A.75 and replacing them with “Extended School Year” now aligns statute with federal law.

Federal regulations (34 CFR 300.106) (2004), pursuant to the Individuals with Disabilities Education Act (IDEA), define “extended school year” (ESY) services as follows:

Sec. 300.106 Extended school year services.
(a) General. (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a) (2) of this section.
(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with Sec. Sec. 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

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(3) In implementing the requirements of this section, a public agency may not—
(i) Limit extended school year services to particular categories of disability; or
(ii) Unilaterally limit the type, amount, or duration of those services.
(b) Definition. As used in this section, the term extended school year services means special education and related services that—
(i) Are provided to a child with a disability—
(ii) Beyond the normal school year of the public agency;
(iii) In accordance with the child's IEP; and
(iv) Are at no cost to the parents of the child; and
(2) Meet the standards of the SEA.

Under this definition, ESY services must be provided only if a child's IEP Team determines, on an individual basis, that the services are necessary for the provision of a free appropriate public education (FAPE) to the child. ESY is provided beyond the school district’s regular calendar. A school may not limit ESY services to a particular category of disabilities or unilaterally limit the type, amount or duration of ESY.

Minn. Rule 3525.0755 sets out the criteria for determinations of ESY entitlement. A child is entitled to ESY if the child meets the criteria in 3525.0755.

Subp. 3. Determination of ESY entitlement. At least annually, the IEP team must determine a pupil is in need of ESY services if the pupil meets the conditions of item A, B, or C.

A. there will be significant regression of a skill or acquired knowledge from the pupil’s level of performance on an annual goal that requires more than the length of the break in instruction to recoup unless the IEP team determines a shorter time for recoupment is more appropriate;

B. services are necessary for the pupil to attain and maintain self-sufficiency because of the critical nature of the skill addressed by an annual goal, the pupil's age and level of development, and the timeliness for teaching the skill; or

C. the IEP team otherwise determines, given the pupil's unique needs, that ESY services are necessary to ensure the pupil receives a free appropriate public education.

Subp. 5. Other factors to be considered. In making its determination of ESY needs under subpart 3, item A, B, or C, the IEP team must consider the following factors, where relevant:

A. the pupil's progress and maintenance of skills during the regular school year;
B. the pupil's degree of impairment;
C. the pupil's rate of progress;
D. the pupil's behavioral or physical problems;
E. the availability of alternative resources;
F. the pupil's ability and need to interact with nondisabled peers;
G. the areas of the pupil's curriculum which need continuous attention; or
H. the pupil's vocational needs.
Related Documents:
34 CFR 300.106 (2004)
Minn. Rule 3525.0755
Minn. Stat. 125A.14 as amended by 2007 Laws, Chapter 146, Article 3, Section 6
Minn. Stat. 125A.75 as amended by 2007 Laws, Chapter 146, Article 3, Section 9

Authority and Funding for Education Services Provided Outside the Regular School Year

Question 2
Do the changes to Minn. Stat. 125A.14 and 125A.75 change the requirement for educational services provided in the summer for students (both special education and nonspecial education) placed for care and treatment?

MDE Response
No. The criteria for providing educational services outside of the regular school year for care and treatment sites approved under 125A.515 remains the same. If a student is performing at or above grade level, education services during the summer are not required although a district is not precluded from providing those services. The district, however, does not have authority to bill the resident district for the costs of providing those services. If a student with an IEP is performing at or above grade level, education services during the summer are not required, unless the IEP team determines that the student is entitled to ESY services under Minn. R. 3525.0755.

Minn. Stat. § 125A.515, subd 7 states:

Subd. 7 Minimum educational services required. When a student is placed in a facility approved under this section, at a minimum, the providing district is responsible for: 1) the education necessary, including summer school services for a student who is not performing at grade level as indicated in the education record or IEP; and 2) a school day, of the same length as the school day of the providing district, unless the unique needs of the student, as documented through the IEP or education record in consultation with treatment providers require an alteration in the length of the school day.

The following “if – then” statements should assist in determinations of whether a student should be provided ESY beyond the regular school calendar or beyond the regular school day or summer school education.

1. If a student has an IEP and the IEP requires Extended Year Services, then those services need to be provided by the care and treatment facility as noted by the IEP. The district of residence is responsible for those excess costs. The student would be entered on MARSS with State Aid Category (SAC) 46 for the time that the student receives ESY services. The expenditures would be entered on EDRS with Funding Source Code E for the appropriate fiscal year. The tuition billing system will invoice for the special education services according to the MARSS record.

2. If the student has an IEP and the IEP does not require ESY services, then no special education services need be provided in the summer time for a student in care and treatment. The resident district would not be responsible to pay for any special education services if those services would be provided without ESY services being required in the IEP. If the
student is below grade level then the student could receive general education services during
the summer and the resident district would be responsible to pay the costs of those education
services. The student would not be entered on MARSS.

3. If the student does not have an IEP and the student is at or above grade level, then the student
is not required to have a summer education program. A summer program can be provided to
the student, however, the providing district has no authority to bill the resident district for
costs incurred for the program.

4. If the student does not have an IEP and the student is below grade level, then the student
should receive general education services. The resident district is responsible for the costs of
providing the summer education program in the care and treatment facility. The student is
not entered on MARSS for the summer general education program.

Determining the Educational Status of the Student
Minnesota Statute § 125A.515 Subdivision 4(a) states “Education services must be provided to a
student beginning within three business days after the student enters the care and treatment
facility. The first four days of the student’s placement may be used to screen the student for
educational and safety issues.” During this period of time the care and treatment facility should
contact the resident district to determine the educational status of the student. The status of the
student could be (1) the student has an IEP with ESY services recommended or required, (2) the
student has an IEP with no ESY services recommended or required, (3) the student is performing
below grade level, either missing credits, lower ranking in the class, etc., (4) the student is at or
above grade level, e.g. not missing credits, high level in class ranking, etc., or (5) the student has
graduated with a diploma and is not eligible for any educational services (students with GEDs
are eligible for educational services in the summer). That statute allows the facility time to
determine the educational status of the student. If the resident district does not respond to the
request for information or does not have the information available within the timelines of this
statute, then the facility should be prepared to conduct a screening or assessment using a valid
and reliable tool(s) to determine the status of the student. If the facility does not receive the
information from the resident district and has to perform the screening, it should then inform the
resident district of the student’s educational status from the screening/assessment.

Related Documents
Minn. Stat. 125A.515
Minn. Stat. 125A.51
Authority and Funding for Education Services Provided Outside the Regular School Year

Question 3
Does this amendment have any impact on learning year programs that provide services to
students on an IEP?

MDÉ Response
The amendment does not impact learning year programs. Special education services should be
provided consistent with the student's IEP. However, effective for FY 2007, there is a
clarification in the MARSS reporting procedure for special education services provided during
the summer term of the learning year program and ESY (Extended School Year) to address
special education tuition billing requirements.
Background

- Approved learning year programs operate year round. There are two types of learning year programs:
  1. All state approved alternative programs (SAAPs) must be learning year programs.
  2. Other schools can apply to be learning year programs. (Minn. Stat. § 124D.128, subd. 2).

- Learning year status is the means by which a student can generate more than 1.0 Average Daily Membership (ADM). (Minn. Stat § 126C.05, subds. 8 & 15). Learning year is an optional program for students. The membership generated at the Learning Year Program is eligible for general education revenue.

- ESY is a required special education service per the student's IEP. The student's time spent in ESY does not generate general education revenue as it is outside the regular school year, learning year or school day. ESY provides specially designed instruction to meet the unique needs of the individual student. These services are provided over and above the services provided to the student in the regular or learning year. As mentioned above, ESY services are not eligible to generate general education revenue.

Change in MARSS Reporting Procedure

- In order to not over-bill resident districts for special education services provided during the summer term of the learning year program and services provided via ESY by a nonresident district, the MARSS learning year enrollment record should reflect the special education services received for that particular enrollment period. Typically, a learning year program in the summer is more for remedial services than special education programming that is based upon the student's IEP. Therefore, special education students attending a learning year program during the summer portion should be reported on MARSS with a MARSS Special Education Evaluation Status 4 or 6 only if they are receiving special education services during the time they are enrolled in the learning year program.

  *It is presumed that the IEP in effect for the regular school year would also be the same services provided during the summer term of the learning year. If not, then the IEP should reflect the changes in those services and the changes e.g. federal setting should be noted on a new MARSS record.*

- If the student is not receiving special education services during the summer term of the learning year program, the student should be reported on MARSS with a Special Education Evaluation Status 1.

- A student could receive special education services during the summer term of the learning year program and also receive ESY services before or after the learning year day. For example, a student attends summer term learning year in the morning and receives ESY services (if the student qualifies) before or after the learning year day. However, special education services provided during the summer term of the Learning Year Program is not considered ESY. It is considered regular year special education. It is considered ESY only if the student has been determined to need those services consistent with IDEA and Minn. Rule 3525.0755. Services provided via ESY will be reported on a separate enrollment.
record on MARSS (State Aid Category 46) and will generate a tuition bill to the resident
district based upon the serving district’s ESY hourly rate by disability.

♦ Special education services provided during the summer term of the learning year program
should be consistent with the IEP in effect for the regular school year. Any special education
service hours generated during the learning year program will generate a special education
tuition bill based upon RSY (Regular School Year) hourly rates by disability including
general education revenue if appropriate.

♦ Please note that the Special Education Funding and Data Manual indicate that all learning
year services should be reported on Funding Source Code E. The learning year generates
general education revenue and would be treated like a regular year program. Any special
education services provided during the learning year will need to be coded on EDRS to
Funding Source Code A in the same fiscal year as the MARSS learning year record. This is
a significant change from the information provided in the Special Education Funding and
Data Manual- April, 2005. All expenditures generated by learning year programs after the
end of the regular school year are attributed to the next fiscal year. For example, if the
learning year program runs from June 15, 2007 through August 8, 2007 all of the
expenditures would be reported on EDRS in the 2007-08 school year.

♦ Expenditures generated by ESY programs, are reported according to the fiscal year in which
they were incurred. For example, expenditures for FY 2007 would be services provided from
July 1, 2006 up to the beginning of the regular school year and services provided at the end
of the school year through June 30, 2007.

Related Documents
Minn. Stat. 124D.128
Authority and Funding for Education Services Provided Outside the Regular School Year

Questions relating to these topics should be directed to:

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Care & Treatment-Program
  Heather Lindstrom  651-582-8601  heather.lindstrom@state.mn.us
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Authority and Funding for Education Services Provided Outside the Regular School Year

1/28/2008

Division of Program Finance

Minnesota Department of Education
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1/28/2008

Division of Program Finance

Minneapolis Department of Education