

Primer on the Provision of

EXTENDED SCHOOL YEAR SERVICES IN SPECIAL EDUCATION

For Parents and Educators 2012



south dakota
DEPARTMENT OF EDUCATION

Learning. Leadership. Service.

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Purpose

The purpose of this document is to provide guidance for South Dakota parents, educators, and administrators regarding the determination and implementation of Extended School Year (ESY) services in special education for eligible children and youth with disabilities. It is important to note that the interpretation for extended school year might vary from one regional circuit court to another, so it is important to keep current on recent circuit court decisions. Remember, this document is for guidance only. Always refer to State and federal special education law and regulations; these are always the standards to follow. There is some content in this document that might be best practice and therefore not required in State or federal regulations. This document contains guidance to some of the most commonly asked questions regarding ESY services. The guidelines are divided into various sections pertaining to ESY services. Each section addresses the issues in a question and answer format.

*This document can be found on the South Dakota Web site at:
<http://doe.sd.gov>*

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Legal Authority for Extended School Year

1. What are Extended School Year Services?

- **A Free Appropriate Public Education (FAPE), for some children and youth with disabilities, may require a program of special education and related services in excess of the normal school year.**

The Individuals with Disabilities Education Improvement Act of 2004 (P.L. 108-446) (IDEA 2004) provides that all children and youth with disabilities are entitled to a Free Appropriate Public Education (FAPE). To have meaningful access to public education, children and youth with disabilities may require services or types of educational programs that are different from those needed by other students, since each student with a disability has unique learning needs. In general, courts have determined that, in order to receive FAPE, a student must receive an Individualized Education Program (IEP) that provides the student with some educational benefit. This document will examine the concept of FAPE as it specifically relates to Extended School Year services (ESY).

Listed below is the regulation for Extended School Year promulgated pursuant to the Individuals with Disabilities Education Act. (IDEA).

Extended School Year Services (CFR 300.106)

(a) *General.*

1. Each school shall ensure that extended school year services are available as necessary to provide free appropriate public education (FAPE).
2. Extended school year services must be provided only if a student's Individualized Education Program (IEP) team determines, on an individual basis, that the services are necessary for the provision of FAPE to the student.
3. In implementing the requirements, a school 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:

1. Are provided to a student with a disability:
 - i. Beyond the normal school year of the school;
 - ii. In accordance with the student's IEP; and
 - iii. At no cost to the parents of the student; and
2. Meet the standards of the State.

(Authority: 20 U.S.C. 1412(a)(1))

ESY services are distinct from enrichment programs, summer school programs, and compensatory services. The consideration of ESY services is a part of the IEP process. Historically, some have focused on ESY services primarily as a means to address regression and recoupment issues. Recent case law developments, however, have shown that ESY should be viewed more generally as a means to address the issue of FAPE. In other words, the focus of an IEP team should be on whether the student will receive FAPE if ESY services are not provided and not merely on

whether the student is entitled to ESY. The concept of regression may enter into the equation because unrecouped regression, over time, may be evidence that FAPE is not being provided. The IEP team must determine whether the benefits the student gained during the regular school year will be **significantly jeopardized** if the student does not receive ESY. Based on this analysis, if ESY is determined to be required, these services, at no cost to the parent, will vary in type, intensity, location, inclusion of related services, and length of time, depending on the individual needs of the student.

An IEP meeting must be held to consider if a student needs ESY services and must be conducted like any other IEP meeting with appropriate prior notice and membership. State regulation 24:05:25:26 states; “An IEP pursuant to chapter 24:05:27 shall be developed and implemented by the IEP team that addresses the need for extended school year services. The IEP team shall determine the length of the school day and duration of extended school year services based on the individual child’s needs.” Treating ESY as a separate planning process may lead to the segmentation of services for the student and may also lead to situations where ESY services are considered or open to discussion for some students, but not for all.

- **Listed below are possible factors to be considered when determining the need for**

- **ESY services:**

- ✓ regression/recoupment
- ✓ degrees of progress
- ✓ emerging skills/breakthrough opportunities
- ✓ interfering behaviors
- ✓ the nature and/or severity of the disability
- ✓ special circumstances or other factors

An examination of these factors, which are described later in this document, should lead the IEP team to answer the basic question articulated by the courts: will the benefits a child with disability eligible under IDEA gains during the regular school

year be **significantly jeopardized** if the child is not provided with the ESY program? If the answer is “yes,” then the child must receive ESY services in order to receive FAPE.

Determining Need for Extended School Year Services

2. Who is eligible for ESY services?

All children and youth with disabilities who have a current IEP must be considered for ESY services at least annually. To ensure FAPE, the IEP team must consider and document whether ESY services are needed for each student regardless of the student’s disability.

3. How often must a student be considered for ESY?

All students with disabilities must be considered for ESY services at least annually. A student’s involvement in ESY services one year *does not automatically guarantee ESY services in the following years.* Similarly, the fact that no ESY services were provided in a prior year does not mean ESY services are not needed in the current year. The decision is made on an annual basis.

4. Who determines the need for ESY services?

Determination of the need for ESY rests with the IEP team.

5. What factors should be considered for ESY Services?

When determining the need for ESY services by the IEP team, decisions should always occur retrospectively or prospectively based upon the unique needs of the student. Decisions are made by the IEP team to ensure that the student is provided FAPE. The decision is based upon current data and discussions by the IEP team and not determined solely by a single person or any formula, including a

regression/recoupment formula. Any of the below factors, alone or in combination, can trigger the need for ESY if they indicate that the benefits the student has received during the regular school year will be significantly jeopardized.

- **Regression/Recoupment**—The IEP team determines whether without these services, there is a likelihood of substantial regression of current IEP goals caused by a school break and a failure to recover those lost skills in a reasonable time following the school break. It is noted that some regression in skills typically occurs with all students during school breaks, but such losses would not be considered substantial.
- **Degree of Progress**—The IEP team reviews the student’s progress toward the IEP’s goals on critical skills and determines whether, without these services, the student’s degree or rate of progress toward those goals (or objectives or benchmarks, if required) will significantly jeopardize the student’s receipt of benefit for his/her educational placement during the regular school year.
- **Emerging Skills/ Breakthrough Opportunities**—The IEP team reviews all IEP goals targeting critical skills to determine whether any of these skills are at a breakthrough point. When skills are at this point, the IEP team needs to determine whether the interruption in services and instruction on those goals (or objectives or benchmarks, if required) by the school break is likely to significantly jeopardize the student’s receipt of benefit from his/her educational program during the regular school year without these services.
- **Interfering Behaviors**—The IEP team determines whether without ESY services any interfering behavior(s), such as ritualistic, aggressive or self-injurious behavior(s) targeted by IEP goals, have prevented the student from receiving benefit from his/her educational program during the school year. The team also determines whether the interruption of programming that addresses the interfering behavior(s) is likely to significantly jeopardize the student’s

receipt of benefit from his/her educational programming during the next school year without ESY services.

- **Nature and Severity of the Disability**—The IEP team determines whether, without ESY services, the nature and severity of the student’s disability are likely to significantly jeopardize the student’s receipt of benefit from his/her educational program during the regular school year.
- **Special Circumstances or Other Factors**—The IEP team determines whether, without ESY services, there are any special circumstances that will significantly jeopardize the student’s receipt of benefit from his/her special education program during the regular school year. Other factors cited in cases include
 - ability of the child’s parents to provide the educational structure at home,
 - ability of the child to interact with children without disabilities, and
 - areas of the child’s curriculum, which need continuous attention.

6. How is the need for ESY services measured?

The IEP must inform the parents of “When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.” 34 CFR 300.320 (a) (3) (ii)

7. When is regression/recoupment considered significant?

IDEA and court cases do not address the extent of regression/ recoupment needed to qualify for ESY services. *The determination of need for ESY is made on an individualized basis* by the IEP team after careful and critical analysis of the ongoing data gathered by the IEP team.

ESY and the IEP Team

8. If a student does not meet all of his or her IEP goals during the school year, does this mean ESY services are required?

ESY services should not be granted solely on the basis of the student with disabilities not achieving one or more IEP goals. The critical questions that each IEP team must ask regarding ESY services is whether the learning that already occurred during the regular school year will be significantly jeopardized if ESY services are not provided.

Related Services

9. Must the IEP team consider the provision of related services as ESY services?

The IEP meeting participants must consider whether the student requires related services, including transportation, in order to benefit from special education.

10. May a school provide a related service as a sole component of ESY services?

When determining eligibility for ESY services, the IEP team must also review and consider related services. While a student may not need extended school year

services, that student may need extended school year related services in order to benefit from special education when school resumes during the school term. In this instance, *one or more related services may be the sole component(s) of the extended school year program*. The decision as to whether the student should be provided a related service as a sole component of an extended school year program is the responsibility of the IEP team.

11. Is transportation provided as part of ESY?

Transportation is a related service and must be offered if it is necessary for the student to benefit from special education. If necessary, transportation should be added as a related service for the duration of ESY services.

Least Restrictive Environment

12. How do the Least Restrictive Environment (LRE) requirements relate to ESY decisions?

The requirements regarding placement in the Least Restrictive Environment (LRE) during the academic year also apply to ESY. *LRE considerations for ESY are not identical to LRE considerations that apply during the regular school year*. The full continuum of educational options is usually not available during ESY, and the school is not required to create such a program for that sole purpose.

13. Where can ESY services be provided?

Individualized ESY services could be provided in a traditional classroom setting; however, *the location and nature of service delivery can vary with the needs of the student*. Other possible service delivery options could include those listed here:

- School-based programs that vary in length of schedule, grouping of students with similar goals
- Intra-school cooperative programs
- A cooperative program with another agency
- Student contact, perhaps three to four times during the summer to prevent regression
- A week of intensive review just prior to the beginning of the school year
- Contractual arrangements and community-based programs
- Home-based services provided by the parent and supported by school personnel

Some students may need services provided in the home or at an alternative location. Others might benefit most by providing training to the parent in advance of long breaks in school schedules. The teacher and parent would work together, with materials sent home and progress periodically monitored by the teacher. Such home consultation prior to vacation and at intervals during vacation, if needed, could provide support and instruction to parents in preventing regression. However, a school cannot simply choose to delegate its responsibilities for providing ESY services to parents. The option of home consultation would depend upon availability of parents throughout the ESY period, their desire to assist, and the complexity of their student's needs, as well as many other factors.

For other students and depending upon the nature of the skill to be maintained, a summer camp, recreational program, or a school's optional summer school program could provide opportunities for maintenance of skills.

Summer School & ESY

14. May the student's ESY services be provided in a school's summer school program?

The summer school setting could offer unique and appropriate opportunities for a student to enhance generalization of skills in a setting very similar to that of the regular school year, as well as provide frequent practice for maintenance of skills. However, ESY services must be tailored to the unique needs of the student and cannot be based solely on availability of services during the summer.

15. How are ESY services determined for a student turning three over the summer months?

A student with a disability must receive FAPE no later than his or her third birthday. The IEP will specify whether services must be initiated on the student's third birthday for students with disabilities who transition from the Part C to the Part B program, if the student turns three during the summer. The IEP developed for a student who will reach age three during the summer must specify the student's program upon the third birthday, including ESY services if needed by that particular student to receive FAPE. If ESY services are not needed to provide FAPE, the date of initiation of services would be the beginning of the upcoming school year.

Extended School Year (ESY) Consideration *(Optional use)*

Student: _____ Date: _____

A. Discussion of ESY data and information _____

B. Eligible for ESY _____ Yes _____ No

C. Reason: (Check)

- | | |
|-----------------------------|-----------------------------|
| _____ Serious regression | _____ Time to recoup skills |
| _____ Degree of impairment | _____ Program interruption |
| _____ Opportunities at home | _____ Interfering behavior |
| _____ Physical issues | _____ Critical life skills |
| _____ _____ | _____ Other _____ |

D. Justification for ESY _____

E. List Maintenance of which IEP Goals _____

F. Location of ESY services _____

