

# Guide to Extended School Year Services in Pennsylvania

December 2003



PENNSYLVANIA DEPARTMENT OF EDUCATION – BUREAU OF SPECIAL EDUCATION

Dear Colleague,

I am pleased to provide consumers with this Guide to Extended School Year (ESY) services. It is intended to be a comprehensive compilation of documents that will provide direction, respond to questions, and guide parents and local education agencies in making determinations about ESY services. Many people contributed to this effort, and I would like to thank in particular the Parent Education Network and the ESY Focus Group for their contributions.

Decisions regarding a student's need for ESY services are intricately related to the progress that the student is making in their overall instructional program. Therefore, I encourage all users of this Guide to become involved in the 2003-04 Progress Monitoring Series. Information about this is available on the PDE and PaTTAN websites.

I hope that you will find this Guide useful, as we continue in the effort to provide outstanding educational programs for all students with disabilities in Pennsylvania.

Sincerely,

John J. Tommasini  
Acting Director, Bureau of Special Education

PDE website      [www.pde.state.pa.us](http://www.pde.state.pa.us)  
PaTTAN website   [www.pattan.k12.pa.us](http://www.pattan.k12.pa.us)

# TABLE OF CONTENTS

**Regulatory Requirements for ESY** ..... 2

IDEA Federal Regulations Part 300.309 and State Regulations Chapter 14.132

**Department Policy on ESY** ..... 7

April 2003 BEC Extended School Year Eligibility

**PDE Technical Assistance Documents on ESY** ..... 9

ESY Information for Parents

ESY Guide for IEP Teams

Q and A to support ESY implementation

**§14.132 ESY.**

This section sets forth the standards for determining whether a student with disabilities requires ESY as part of the student's program.

- (1) At each IEP meeting for a student with disabilities, the school districts shall determine whether the student is eligible for ESY services and if so, make subsequent determinations about the services to be provided.
- (2) In considering whether a student is eligible for ESY services, the IEP team shall consider the following factors, however, no single factor will be considered determinative:
  - (i) *Regression* – whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occurs as a result of an interruption in educational programming.
  - (ii) *Recoupment* – whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming.
  - (iii) Whether the student's difficulties with regression and recoupment make it unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives.
  - (iv) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.
  - (v) The extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers.
  - (vi) The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process.
  - (vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities.
- (3) Reliable sources of information regarding a student's educational needs, propensity to progress, recoupment potential and year-to-year progress may include the following:
  - (i) Progress on goals in consecutive IEPs.
  - (ii) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.
  - (iii) Reports by parents of negative changes in adaptive behaviors or in other skill areas.
  - (iv) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.

- (v) Observations and opinions by educators, parents and others.
  - (vi) Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.
- (4) The need for ESY services will not be based on any of the following:
- (i) The desire or need for day care or respite care services.
  - (ii) The desire or need for a summer recreation program.
  - (iii) The desire or need for other programs or services which, while they may provide educational benefit, are not required to ensure the provision of a free appropriate public education.

### **§300.309 Extended school year services.**

(a) *General.*

- (1) Each public agency shall 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 §§300.340–300.350, that the services are necessary for the provision of FAPE to the child.
- (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 –

- (1) Are provided to a child with a disability– (i) Beyond the normal school year of the public agency; (ii) In accordance with the child's IEP; and (iii) At no cost to the parents of the child; and
- (2) Meet the standards of the SEA.

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

## Basic Education Circulars (Pennsylvania Code) Extended School Year Eligibility

22 Pa. Code §14.132

22 Pa. Code §711.44

DATE OF ISSUE: April 1, 2003

DATE OF EXPIRATION: June 30, 2008

REPLACES: Extended School Year Eligibility,  
22 Pa. Code Section 14.34, February 1, 1999

This memorandum presents Department policy concerning timelines and other issues related to Extended School Year (ESY) services for children with disabilities. It is based on 22 Pa. Code Chapters 14 (14.132 ESY) and 711 (§711.44 ESY) and relevant federal regulations and court decisions. This policy is effective immediately.

### I. Background

#### Armstrong v. Kline and Other Federal Requirements

The federal court decision in Armstrong v. Kline, 476 F. Supp. 583 (E.D. Pa. 1979), established the mandate in Pennsylvania for ESY programming for children with any type or severity of disability who meet the court's eligibility standard. Local Education Agencies (LEAs), IEP teams and hearing officers should refer to the Armstrong Remedial Order No. 2 Guidelines, 22 Pa. Code Chapters 14 (§§14.102(a)(2)(ix), 14.132), Chapter 711 (§§711.3(b)(8) and 711.44), and this BEC to determine whether a student qualifies for ESY.

Federal special education regulations now include a requirement that children with disabilities receive extended school year programs in certain circumstances from their school districts or public charter schools. Specifically, those regulations provide: "Extended school year 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 FAPE to the child." 34 C.F.R. §300.309(a)(2). The regulations further state that:

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 types, amount, or duration of those services.

34 C.F.R. §300.309(a)(3).

For all students with disabilities ESY eligibility must be considered at each Individualized Education Program (IEP) meeting. This determination must be made even if the child's parents have not specifically requested that their child be evaluated for ESY programming. This consideration also applies to students who are attending Approved Private Schools (APS) or other such facilities, and

charter schools. APSs must share necessary information with the responsible LEA so that a timely decision can be made by the IEP team. However, the ultimate responsibility for timely IEP review and revision rests with the LEA.

## II. Policy on Timing and Method of ESY Determinations

### A. Timing

#### *Target Group Students*

The timing of an ESY determination is dependent on whether the student is a member of the "target group" [as defined by the Armstrong guidelines]. Students in the "target group" are those students with a severe disability, such as:

- Autism/pervasive developmental disorder
- Serious emotional disturbance
- Severe mental retardation
- Degenerative impairments with mental involvement
- Severe multiple disabilities

The parents must be notified by their LEA of the annual review meeting in order to ensure their participation. For purposes of an extended school year eligibility determination, the LEA must make the determination of the need in a timely manner so that children with disabilities who require ESY services in order to receive FAPE can receive the necessary services. The IEP review meeting must occur no later than **February 28** of each school year for the "target group" (as described above). This date may require the LEA to reschedule the annual IEP review, or conduct a separate ESY IEP meeting for this review.

Notice of Recommended Educational Placement (NOREP), containing the IEP team's determination regarding ESY eligibility, is to be issued to the parent in a timely manner. If the child has been determined to be eligible, the program specifics must be included in the IEP. This is to be done no later than **March 31** of the school year for students in the target group.

It may not be possible to meet the recommended February 28 consideration for a student in the "target group" if the student transfers into the LEA after that date. However, districts and charter schools should remember that if a student enrolls who has an ESY program listed on his/her IEP from another PA school district, that determination of eligibility and program content constitute the student's "status quo" and must continue to be provided until the parent agrees to a change, or a change is authorized through the special education hearing and appeal system. For a late enrolling student for whom an ESY determination has not been made, the decision as to ESY service eligibility or non-eligibility and program content must be determined at the IEP meeting.

### *Non-target group students*

As stated above, LEAs (including charter schools) must consider the eligibility for ESY of all children with disabilities at the IEP meeting, not just those in the "target group." ESY determinations for children other than those in the "target group" are not subject to the timelines set out above. However, these determinations must still be made in a timely manner in accordance with the requirements in Chapter 14 and Chapter 711. If the parents of those non-"target group" children disagree with the LEA's recommendation, the parents will be afforded an expedited due process hearing.

Moreover, whenever the parent of any student with a disability requests that the LEA consider a student for an extended school year program, the request must be treated as a request for a change in the provision of a free appropriate public education (FAPE), and an IEP meeting must be conducted. Following the IEP meeting, the NOREP, which indicates the team's recommendation concerning whether the student is or is not eligible, is to be issued to the parent.

## **B. Notice of Eligibility and Content of ESY Program**

LEA notice to the parent concerning ESY eligibility or ineligibility must be by NOREP. The NOREP only needs to be issued if the LEA is:

- Proposing to add ESY services to an IEP that previously did not have it.
- Proposing to delete the provision of ESY services from an IEP.
- Refusing to initiate the provision of ESY services requested by the parent.
- Proposing or refusing to change the provision of the ESY program.

When ESY services are offered by the LEA, the IEP that accompanies the NOREP must contain the following:

- Description of the type and amount of ESY service;
- Projected beginning dates and anticipated duration of service;
- Frequency;
- Location.

Of course, as with all IEP team decisions, the ESY components of the IEP must be individualized to meet a specific child's needs, and must be developed with the participation of the parents at an IEP team meeting.

## **C. Data and Other Sources of Information**

The importance of making an ESY determination based on data and other reliable sources is well established. It should be noted that quantitative "data" are only one of the types

of information that can be used to make ESY decisions. Predictive data, such as reports by parents, medical or other agency reports, observations and opinions by educators and others, can also provide a basis for an eligibility determination. Some examples of information that can be helpful in making an eligibility determination are listed in 22 Pa. Code §14.132(3) and §711.44(9). Included in the regulations are:

- Progress on goals in consecutive IEPs.
- Progress reports maintained by educators, therapists and others, such as guidance counselors or staff supervising extracurricular activities, having direct contact with the student before and after interruptions in the education program.
- Reports by parents of negative changes in adaptive behaviors or in other skill areas.
- Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.
- Observations and opinions by educators, parents and others such as guidance counselors or staff supervising extracurricular activities.
- Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

#### **D. Criteria for Eligibility and Reliance Upon "Other" Factors**

As 22 Pa. Code §14.132(2) and §711.44(4) states, ESY determinations can be based on the traditional regression/recoupment criteria as well as other factors, such as:

- Extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.
- Extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers.
- Extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process.

If these factors "make it unlikely that the student will maintain skills and behaviors relevant to IEP goals and objectives," or if the student otherwise requires ESY services to receive FAPE, the student is ESY eligible.

For a child to be found eligible for ESY, it is not necessary that the child have first experienced regression during an interruption in educational programming in order to receive ESY during the subsequent program break.

The IEP team must make its decision concerning ESY eligibility and program content at the time of the IEP meeting, and in accordance with the timelines set out in Section II of this BEC. Doing otherwise leads to indefinite delays in decision making, so that due process is no longer a meaningful procedure for the parent seeking to challenge an LEA/IEP team's determination regarding eligibility and program.

## E. Types of ESY Programming

While many ESY programs are held during the summer, children eligible for ESY services can require weekend or even virtually continuous programming. It is also important to note that ESY programs are not limited just to self-help and basic skills. Academic and vocational goals can also be part of a child's ESY IEP if appropriate. All decisions regarding types of programming must be made on an individual basis by the IEP team.

## F. Pendency

The pendency provisions of state and federal law apply to ESY eligibility determinations. Therefore, if an IEP team proposes by NOREP to change a student's ESY eligibility status or previous ESY program, and the parent requests due process, there must be no change in ESY eligibility or program from the previous year, unless agreed to by the parties, pending completion of due process procedures.

## ATTACHED RESOURCE:

### REFERENCES:

#### State Board of Education Regulations

22 Pa. Code Section 14.102(a)(2)(ix)

22 Pa. Code Section 14.132

22 Pa. Code Section 711.3(b)(8)

22 Pa. Code Section 711.44

#### Federal Statutes

20 USC Section 1400, et. seq. (IDEA)

#### Federal Regulations

34 C.F.R. Section 300.309

#### Other

Armstrong v. Kline, 476 F. Supp. 583 (E.D. Pa. 1979)

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Content Last Modified on 4/10/2003 2:17:23 PM

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# Extended School Year (ESY) Information for Parents

## What is Extended School Year?

**Extended School Year (ESY)** services are special education and related services provided to students with disabilities beyond the regular 180-day school year. The Individuals with Disabilities Education Act (IDEA), the federal special education law, says that school districts, intermediate units, and charter schools must provide extended school year services if a student needs these services to receive a *free appropriate public education (FAPE)*. In some cases, interruptions in the school schedule, such as summer break, will result in children with disabilities losing many of their basic skills and taking a long time to get those skills back once school begins again. ESY services are provided during breaks in the educational schedule to prevent this loss.

## What is not ESY?

Extended School Year services are not day care or respite services. They are not a summer recreation program or other programs or services which are not required to ensure the provision of a free, appropriate public education (FAPE) to a student – even if they provide some educational benefit.

## Who decides if a student with a disability gets ESY services?

Every student with a disability, who qualifies for special education, has an individual education program (IEP). It describes the programs and services necessary for a free appropriate public education. This plan is written at a meeting of the IEP team that is made up of the student's parents, teachers and other educational professionals. One of the issues discussed and decided upon at the IEP meeting is whether or not the student needs ESY services as part of the special education program. Extended School Year must be considered each year for every child with a disability at the IEP meeting, not just for students with certain categories of disability or those with severe disabilities. For more information see *Extended School Year: A Guide for IEP Teams*. It contains a step-by-step process for making the ESY decision.

## When will the ESY decision be made?

ESY decisions are made at the IEP meeting. There is guidance from the Pennsylvania Department of Education regarding students who are identified as severely handicapped – mentally, physically or emotionally. Decisions about ESY for this target group of students need to be made by February 28th of each year, in order to be sure that parents have sufficient time to exercise their procedural safeguards rights, if necessary. This means that the Notice of Recommended Educational Placement (NOREP) concerning the school district's, IU's, or charter school's recommendation regarding eligibility for ESY can be issued no later than March 31, in order to give parents enough time to raise concerns.

## What is the ESY decision based on?

The IEP team makes its decision about providing ESY services by looking at information about the student's performance that has been gathered all year. Some of this information measures student achievement before and after breaks from school. The team can also gather information from teachers' and parents' observations of the student's behavior and skills before and after breaks. Medical or other agency reports can also be accessed. The team needs to look at factors like:

- Will the student regress (revert to a lower level of functioning) in skills or behaviors as a result of an interruption in educational programming?
- Will the student take a long time to recoup (recover) the skills or behavior patterns that were lost during a break in educational programming?
- Will a pattern of difficulties with regression and recoupment make it unlikely that a student will maintain the skills and behaviors relevant to IEP goals and objectives?
- Will a lapse in services substantially reduce a student's chances of ever learning a critical life skill or behavior related to the IEP?
- Is the student at a crucial stage in mastering a life skill that is related to the IEP goals of self-sufficiency and independence from caregivers?
- Does the student have a severe disability such as autism/pervasive developmental disorder, a serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities?

No one factor, however, can be used to determine eligibility for ESY services.

## Which services will be provided during Extended School Year?

The IEP team will determine which services and how much of these services will be provided during the extended school year. The team may decide that the student will receive all the services received during the regular school year, or it may decide that the student will only receive one specific service. This decision is based on the need of each student.

## Where will ESY be provided?

The IEP team determines where ESY will be provided. It can be provided at many different places, like in school or at a job site. It is always provided in the least restrictive environment (LRE) that is appropriate for the student. This means that the student with disabilities is placed in the situation that allows opportunities to be with students who are not disabled. However, the school district, IU, or charter school is not required to assemble non-disabled students just to make the ESY environment less restrictive.

## Is there a charge for ESY services?

ESY services are a part of the free appropriate public education for a child with a disability who qualifies for special education and whose IEP team has determined that ESY is needed. There is no charge for these services or for needed transportation, if necessary for ESY services.

## What happens if parents and the IEP team do not agree about ESY services?

If parents and the school entity do not agree about ESY services and cannot resolve their differences, a notice (Notice of Recommended Educational Placement—NOREP) will be sent to the parents explaining the IEP team's decision. If parents still disagree, they can ask for another IEP meeting, request free mediation services, or request a due process hearing. Mediation services use a neutral, specially trained mediator, who meets with both sides and helps both parties reach an agreement. A due process hearing is held before an impartial hearing officer who listens to both sides and then makes a written decision. More information about parents' rights and due process is provided in the Procedural Safeguards Notice that is distributed with the NOREP.

### Resources:

Additional information about Extended School Year can be found in the following publications:

- *Pennsylvania Parent Guide to Special Education for School Age Children*
- *Extended School Year Programs: A Guide for IEP Teams*
- *Extended School Year Programs: Questions and Answers*

You can also contact:

- Special Education Consultline – 800-879-2301 (V/TTY)
- Parent Education Network – 800-522-5827 (V/TTY)
- Your local school district – See local telephone directory blue pages
- Your local intermediate unit – See local telephone directory blue pages

# Extended School Year Programs: A Guide for IEP Teams

## Purpose

When a student requires additional time beyond the school year to benefit from the special education program described in the Individualized Education Program (IEP) plan, Extended School Year (ESY) services may be necessary. This document provides guidance to IEP teams as they gather data and then make data-based decisions regarding the need for extended school year programs for each child with a disability. The guide includes a recommended sequence of steps for IEP teams to follow, as well as an "ESY Checklist" to be used to gather information. While this Guide provides suggested approaches, it is not mandated that an LEA adopt this particular approach. LEAs have alternative systems in place that they can continue to use as long as they conform with requirements.

## Introduction

All students with disabilities must be annually considered for ESY eligibility at an IEP meeting. The type, amount, duration or location of those services may not be pre-determined or limited based on category of disability or severity of disability.

### The basic steps in the ESY Decision Process are:

- **Step 1:** Gather information regarding student progress (especially after breaks in the school schedule).
- **Step 2:** Make the determination regarding ESY eligibility at an IEP team meeting.
- **Step 3:** Document the ESY determination on the IEP format.
- **Step 4:** Issue the Notice of Recommended Educational Placement (NOREP), if appropriate.

Specific timelines are required for a Target Group of students, identified in the Pennsylvania ESY lawsuit **Armstrong v. Kline** as students with severe disabilities such as autism, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities. IEP meetings for this target group must occur no later than **February 28** of each school year. For students in this target group, the Notice of Recommended Educational Placement (NOREP) containing the ESY decision is to be issued to parents no later than **March 31**. Timelines for other students must allow for parents to have sufficient opportunity to exercise due process rights if they disagree with the IEP team recommendation for ESY.

## The ESY Decision Making Process

### Step 1: Gather information

The first step in the ESY decision-making process is to gather the information that will be used by the IEP team to make the ESY decision. Reliable sources of information may include:

- Progress toward goals on consecutive IEPs.
- Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in education.
- Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.
- Observations and opinions by educators, parents and others.
- Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.
- Data collected while monitoring student progress.

Information on a student's progress on IEP goals and objectives should be collected all year long, especially just before and just after interruptions in educational programming. This information should also be reported to parents as part of the progress-reporting requirement. LEAs must report on progress of their students with disabilities at least as often as progress is reported for other students.

Data for the ESY determination need to provide information about the following factors:

- **Regression / Recoument** – Regression refers to how much knowledge or how many skills a student loses due to a break in educational programming. Recoument is how long it takes for the student to get that knowledge or those skills back to the level they were before the break.

*Example: Before winter break, John knew his times tables up to 5's. After break, he could only recite 2's and 3's. It took him 20 school days to relearn 4's and 5's.*

*Kind of data gathered: Progress monitoring reports on skill levels before and after breaks. Information on how long it takes for a student to relearn what was lost. Results of tests given before and after breaks.*

- **Mastery** – When a student is learning a crucial skill or series of steps necessary for the mastery of a skill, or when a student has not yet completed the number of repetitions necessary to master a skill and there is a break in the educational programming this would mean that student would have to re-learn all the necessary steps for mastery from the beginning.

*Example: Philip is learning how to dress himself. He has learned all the steps except for the final step of fastening his shirt. It has taken him all year and innumerable repetitions to learn the process up to this point. His IEP meeting is this week. It is unlikely that Phil will*

*learn the last step and have enough time to perform an adequate amount of repetitions to master this skill before the end of the school year.*

*Kind of data gathered: Progress monitoring information regarding his dressing goal. Tallies of repetitions necessary for mastery.*

- **Self-sufficiency and independence** – Which skills are necessary for students to gain appropriate levels of self-sufficiency and independence so they are not dependent on a caregiver for basic needs? How do breaks in educational programming affect the mastery of such skills? How much regression occurs and what is the recoupment rate?

*Example: In September, Serena was unable to make requests of any kind. Goals were implemented to address the initiation of requests for bathroom breaks, calming breaks, and/or snacks both in school and in Serena's work experience. In December Serena made unprompted requests 30% of the time and prompted ones 70% of the time. Following Christmas break, Serena did not return to these levels until late February.*

*Kinds of data gathered: Progress monitoring information from both settings.*

- **Successive interruptions** – The extent to which successive interruptions in educational programming and the cumulative loss of skills and knowledge suffered during those interruptions in educational programming result in a student becoming so frustrated, lost or confused that the student withdraws from the learning process

*Example: Jim is a student with multiple disabilities. His teachers and therapists have been working with Jim on toileting skills, from scheduled visits to the bathroom to self-initiated visits. During the spring break, Jim was self-initiating the need to go to the bathroom 50% of the time. After the break he regressed to 20% of the time.*

*Kinds of data gathered: Progress monitoring data on his toileting goals and objectives. Observational data on a checklist used by his teacher and his family.*

- **Severity of disability** – Is the student's disability severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities?

*Example: Jane has been identified as a student with autism and participates in an autistic support classroom. One of her goals is to learn to transition among daily routines. Progress monitoring data was collected before and after the holiday break. Jane lost 25% of her learned skills.*

*Kinds of data gathered: Information on Jane's diagnosis and its severity can be found in her Evaluation Report. Other information that indicates her level of functioning could be found in reports from her therapists and observations from parents. Progress monitoring data was used to make the determination of how much time Jane needed to recoup after a break.*

*The attached "ESY Checklist" is intended as a tool for collecting data for Step 1 and is not a required component of the IEP process.*

## Step 2: Make the determination regarding ESY eligibility

The ESY eligibility determination will be made by the IEP team at the IEP meeting. The following statements can provide guidance in making a decision:

- If after reviewing the factors listed above the IEP team considers it unlikely that the student will attain or maintain skills and behaviors relevant to IEP goals and objectives, the student is ESY eligible.
- If a child's IEP team determines, on an individual basis, that ESY services are necessary for the provision of a Free Appropriate Public Education (FAPE) as outlined in the IEP, then the child is eligible.
- The IEP team will NOT consider the desire or need for any of the following as the basis for needing ESY services:
  - Day care or respite care services
  - A summer recreation program
  - Other programs or services which, while they may provide educational benefit, are not required to ensure the provision of FAPE

## Step 3: Documenting the determination on the IEP format

The decision regarding the need for extended school year services is documented on the IEP format.

Following is the ESY section as it appears on the IEP:

### IV. SPECIAL EDUCATION/RELATED SERVICES:

- D. EXTENDED SCHOOL YEAR:** The IEP Team has considered and discussed ESY services, and determined that:

If a student has been found eligible for ESY, this statement may say:

After reviewing the seven factors outlined in Chapter 14.132(2), the IEP Team determined that Lola requires ESY based on the following factors:

1. Regression: Progress monitoring data indicate that Lola loses about 40% of her communication and articulation goals after each school break.
2. Recoupment: Progress monitoring data indicate that it will take Lola up to 30 school days to recoup (communication and articulation goals only).
3. Mastery: Progress monitoring data indicate that with the amount of regression/recoupment Lola is experiencing, she will not have the opportunity to have enough repetitions to be able to master both goals.

- **Description of the type and amount of ESY services:** Lola will receive ESY services for her communication goal with the special education teacher and speech and language services with the speech clinician.
- **Projected beginning dates and anticipated duration of service:** July 5–30, 2004, four weeks.
- **Frequency:** Three times per week for the communication goal, twice a week for the speech and language goal.
- **Location:** George Washington Elementary (neighborhood school).

If a student has *not* been found eligible for ESY, this statement might say:

*After reviewing the seven factors outlined in Chapter 14.132(2), the IEP Team determined that Lola does not require ESY.*

#### **Step 4: Issue the Notice of Recommended Educational Placement (NOREP), if appropriate**

The Local Education Agency informs parents concerning ESY eligibility or ineligibility by issuing the NOREP. The NOREP only needs to be issued if the LEA is:

- Proposing to add ESY services to an IEP that previously did not have it
- Deleting the provision of ESY services from an IEP that previously did have it
- Refusing to initiate the provision of ESY services requested by the parent

The ESY Checklist on the next few pages can be removed from this packet and reproduced for use with individual students.

If the answer selected is **BOLDED**, it is an indication of possible eligibility for ESY services. There is no minimum score for a student to qualify for ESY.

## ESY CHECKLIST

Student's Name \_\_\_\_\_

Data Collector's Name \_\_\_\_\_

1. Did the student receive **ESY services** in the past? [Review previous IEPs, section IV. (D.)]  
 **Yes**  No Dates: \_\_\_\_\_

### Progress on goals and consecutive IEPs

2. Do the present education levels between the student's **current IEP and previous IEPs** indicate progress toward goals? [Review the last and current IEPs, section II]  
 Yes  **No**
3. Do the goals and objectives between the student's **current IEP and previous IEPs** indicate progress toward the goals? [Review the last and current IEPs, section III]  
 Yes  **No**
4. Did the student **master** any of his/her goals from the **previous or current IEP**? [Review the last and current IEPs, section III]  
 Yes  **No**
5. Does the student's **IEP progress report** indicate progress made on **current goals and objectives**? [Review the current IEP, section III, or other appropriate documentation]  
 Yes  **No**
6. Has the student demonstrated self-sufficiency and independence from caretakers on any of his/her goals, if appropriate? [Review the current IEP, section III]  
 Yes  **No**  Not Applicable

### Progress reports maintained by therapists

7. If the student received **therapy**, do reports of the therapist indicate the student made progress? [Consult with therapist(s) involved and check cumulative record file for reports]  
 Yes  **No**  Not Applicable

## Reports by parents

8. Are there any reports by the parent(s) regarding negative changes in adaptive behaviors or in other skill areas? [Check files for letters or notes, assignment book, parent comment section of report cards, etc.]

\_\_\_\_\_ Yes \_\_\_\_\_ No

## Medical reports

9. Are there any medical or other agency reports indicating degenerative-type difficulties which become exacerbated during breaks in educational services? [Consult nurse and check cumulative folder]

\_\_\_\_\_ Yes \_\_\_\_\_ No

## Observation and opinions of educators

10. Has information from other school staff who work with this student been provided regarding the relevant factors (i.e., regression/recoupment, mastery, self-sufficiency, or successive interruption) that indicates any concerns in one or more of these areas? [Check report card comments, interview staff]

\_\_\_\_\_ Yes [information indicates concern]

\_\_\_\_\_ No [information indicates no concerns]

\_\_\_\_\_ NA [no information provided]

11. Is there data indicating that successive interruptions in educational programming (e.g., winter break, summer vacation, etc.) resulted in a consistent pattern of withdrawal from the learning process? [Check baseline data, anecdotal records or interview staff]

\_\_\_\_\_ Yes \_\_\_\_\_ No

## Results of tests

12. Do the student's grades and report card indicate progress? [Check grade book, report cards, interview other staff]

\_\_\_\_\_ Yes \_\_\_\_\_ No

13. Do results of tests such as criterion-referenced tests, curriculum-based assessments, ecological life skills assessments, or other equivalent measures (e.g., portfolio assessment, end of unit tests, etc.) indicate progress? [Check report cards, cumulative folders, and other staff]

\_\_\_\_\_ Yes \_\_\_\_\_ No

## Glossary of terms

**Regression** – whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occurs as a result of an interruption in educational programming.

**Recoupment** – whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming.

**Target groups** – students with severe disabilities, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental retardation involvement and severe multiple disabilities.

**Self-sufficiency** – the ability to function as independently as possible. The goal of instruction related to basic life skills is to reduce the student's reliance on caregivers.

# Determining an Individual Student's Need for Extended School Year Services Q and A

*This Q and A was developed as a technical assistance document to support the implementation of Extended School Year (ESY) services. The Basic Education Circular (BEC) 22 Pa. Code §14.132 "Extended School Year Eligibility" should be viewed as the primary source of information for determining ESY services.*

## DETERMINATION OF ELIGIBILITY

### 1. Who is eligible for ESY services?

Potentially, any student with a disability is eligible for ESY services and must be annually considered for ESY eligibility at the IEP team meeting. This annual consideration also applies to students who are attending Approved Private Schools (APS) or other such facilities. APSs must share necessary information with the responsible LEA so the IEP team can make a timely decision. Students who will regress and fail to recoup such that free appropriate public education (FAPE) will be denied unless ESY is provided will be determined to be eligible for ESY services. Eligibility for ESY services and/or the type, amount, duration or location of services cannot be limited based on the category or the degree of the child's disability.

### 2. Must a district provide ESY services to students who have been enrolled in private schools by the district in order to provide FAPE?

Yes. When a student is placed in a private school or agency setting by the LEA through a contractual agreement as the appropriate placement for provision of special education and related services, that student retains all the rights of a child with a disability who is served by a public agency (34 CFR §300.401(c) *Responsibility of state educational agencies*). If the IEP team determines that ESY services are appropriate, services must be provided.

### 3. Must a LEA provide ESY services to parentally placed private school students?

No. For students who have been placed in private schools by their parents, the policy is the same as that during the school year. There is no individual entitlement to services.

Following the established formula in the IDEA, each IDEA-B subgrantee (in Pennsylvania primarily Intermediate Units) must expend a proportional amount of their federal Part B subgrants for the provision of services to parentally placed students with disabilities enrolled in private schools. The implementing regulations at 34 CFR §300.454(b)(1) *Services determined* require that subgrantees consult with representatives of private school children with disabilities to discuss the provision of services. The results of this consultation must include:

- Determination of which students will receive services
- What services will be provided

- How and where services will be provided
- How and when services will be evaluated

Services are to be provided in accordance with the decision made by the subgrantee and input from the private schools. A subgrantee may choose to provide ESY to some parentally placed private school students, but there is no obligation to do so. Refer to [BEC §300.450](#) "Special Education Services to Nonpublic School Students" for additional information.

#### 4. How is the need for ESY services determined for students with disabilities?

All students with disabilities must be annually considered for ESY eligibility at the IEP team meeting. Determination of the need for ESY services is to ensure the provision of FAPE. This determination must be made even if the child's parents have not specifically requested that their child be evaluated for ESY programming. Parental requests for ESY services must be considered. However, if the parent requests ESY services but the IEP team does not see the provision of the requested ESY services as necessary for the provision of FAPE, then the refusal is documented on the Notice of Recommended Educational Placement (NOREP). ESY is not intended to provide education beyond that which has been determined necessary by the IEP team to ensure FAPE.

#### 5. How is FAPE defined in reference to ESY services?

When considering an individual child's need for ESY services, the IEP team must remember that the question is not whether FAPE is being provided in the extended school year program, but rather whether ESY services are necessary in order for the child to receive FAPE.

There is no special definition of FAPE in reference to ESY. However, FAPE is defined in federal regulations at 34 CFR §300.13 *Free appropriate public education* as: "...special education and related services that:

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary, or secondary school education in the State; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.340-300.350."

The implementing regulations at 34 CFR §300.121(a) *Free appropriate public education* require that each state have in effect "...a policy that ensures that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE." FAPE requires the provision of special education and related services to the extent necessary to enable the child to appropriately

progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. An important addition to the reauthorization of IDEA in 1997 included the provision that FAPE "...be made available to any individual child with a disability who needs special education and related services, even though the child is advancing from grade to grade" (34 CFR §300.121(e)). The fact that a student has made progress toward annual goals or has met annual goals during the school year also does not exclude a student from receiving ESY services.

## 6. What criteria should be used in determining ESY services?

No single criterion has been identified as the determining factor for ESY services. Decisions of eligibility for ESY services remain an IEP team decision and are not limited by a formula or single measure. The IEP team must consider the following factors; however, no single factor will be considered determinative:

- Regression
- Recoupment
- Whether student's regression and recoupment make it unlikely that the student will maintain skills and behaviors relevant to IEP goals and objectives
- The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted
- The extent to which a skill or behavior is crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers
- The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process
- Whether the disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities

## 7. What criteria are inappropriate for determining ESY services?

ESY services are required for those students with disabilities who require these services in order to receive FAPE. The need for ESY is **not** to be based on the need or desire for:

- Child care
- Respite care
- A summer recreation program
- Other programs or services which, while they may provide educational benefit, are not required to ensure the provision of FAPE

## 8. What information should be used to determine ESY eligibility?

The consideration of both formal and informal evaluations, as well as documentation of individual student performance, are valuable in assisting an IEP team in determining need and extent of ESY services for a student. Reliable sources of information may include the following:

- Progress on goals in consecutive IEPs.
- Progress reports maintained by educators, therapists and others having direct contact with the students before and after interruptions in the education program.
- Reports by parents of negative changes in adaptive behaviors or on other skills areas.
- Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.
- Observations and opinions by educators, parents and others.
- Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

## 9. Are there federal definitions of criteria for the terms “regression” and “recoupment”?

No. According to the comments and discussion of 34 CFR §300.309 *Extended school year services*, the definition of the terms “regression” and “recoupment” is at the discretion of state education agencies. Chapter 14 defines these terms in this way:

- Regression – whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors that occurs as a result of an interruption in educational programming.
- Recoupment – whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming.

## 10. Does the IDEA include specific questions that must be addressed when considering a student’s need for ESY services?

No. As previously noted, potentially any student with a disability may need ESY services. However, there is no quantifiable standard in statute or case law that is applicable to all students. It is ultimately a team decision based on the specific needs of an individual student and on the likelihood of that student receiving FAPE in the absence of ESY services.

The following guiding questions may be useful to making a determination:

- Did the student receive ESY services in the past?
- Do the present education levels between the student’s current IEP and previous IEPs indicate progress toward the goals?

- Do the goals and objectives between the student's current IEP and previous IEPs indicate progress toward the goals?
- Did the student master any of his/her goals from the previous or current IEP?
- Does the student's IEP progress report indicate progress made on current goals and objectives?
- Has the student demonstrated self-sufficiency and independence from caretakers on any of his/her goals, if appropriate?
- If the student received therapy, do reports of the therapist indicate the student made progress?
- Are there any reports by the parents regarding positive or negative changes in adaptive behaviors or in other skill areas?
- Are there any medical records addressing medical conditions that warrant concern (e.g., medications, seizures, substance abuse, etc.)?
- Has information from other school staff who work with this student been provided regarding the relevant factors, i.e., regression/recoupment, mastery, self-sufficiency, motivation and trust, or the student's progress?
- Is there data indicating that successive interruptions in educational programming (e.g., winter break, summer vacation, etc.) resulted in a consistent pattern of withdrawal from the learning process, i.e., a lack of motivation?
- Do the student's grades and report card indicate progress?
- Do results of tests such as criterion-referenced tests, curriculum-based assessments, ecological life skills assessments; other assessments (e.g., portfolio assessment, end of unit tests, etc.) indicate progress?

## 11. Are related services and transportation to be considered along with special education services when determining need for ESY services?

Yes. In its [Letter to Baugh](#), 211 IDELR 481 (OSERS, August 12, 1987), the U.S. Department of Education, Office of Special Education Programs (OSEP), stated the following in regards to the obligation of school districts to provide related services including transportation and therapy services to students who are in need of and receiving such services during the school year: "...to the extent that the extended placement differs from the regular school placement, the need for related services may also differ in the extended school year placement." The IEP team is to consider all the needs of the student when determining need for ESY services. If a student requires transportation to benefit from ESY services, then transportation must be provided.

## 12. Must ESY determination be documented in the NOREP?

If the IEP team determines that a student is eligible for ESY services and that eligibility is a

change in the provision of FAPE for the student, the determination is documented in the IEP and the NOREP is issued to the parents. If the IEP team determines that the student is not eligible for ESY services, and this determination is not a change in FAPE, the decision is documented on the IEP. If the parent requests ESY services but the IEP team does not see the provision of the requested ESY services as necessary for the provision of FAPE, the LEA documents its refusal on the NOREP.

### **13. What happens if a parent disagrees with the determination of ESY eligibility?**

The pendency provisions of state and federal law apply to ESY eligibility determinations. Therefore, if an IEP team proposes, or refuses, to change a student's eligibility status or previous program, and the parent requests mediation or a due process hearing, there should be no change in ESY eligibility or program, unless agreed to by the parties, pending completion of due process procedures.

### **14. Is it possible for a student to receive only related service(s) during the ESY period?**

Yes. The purpose of ESY services is to ensure the provision of FAPE. The IEP team reviews the student's progress on the IEP as a whole, utilizing a variety of criteria. Special education, related services, or both, may be deemed necessary. The determination of the appropriate related services is based on the IEP team's determination of what is needed to ensure the provision of FAPE during the entire year. In some cases, related services may be provided in the absence of specially designed instruction for the ESY period. Examples include the provision of physical therapy to prevent substantial regression of motor skills, or orientation and mobility services in home, school, or community settings. See [Letter to Baugh, 1987](#).

## **SERVICE DELIVERY MODELS**

### **15. How do the educational placement requirements of IDEA apply to ESY services?**

ESY services, like all other special education services, must be provided in the least restrictive environment in which the IEP can be implemented. The federal regulations comments section referencing 34 CFR§300.309 states that "...public agencies are not required to create new programs as a means of providing ESY services to students in integrated settings if the public agency does not provide services at that time for its nondisabled children." Nothing in IDEA prohibits an LEA from providing ESY in a noneducational setting if the IEP team determines that the student could receive necessary ESY services in that setting.

The educational placement for the duration of a student's ESY services may differ from the educational placement for the duration of the portion of the IEP in effect during the traditional school year. The placement decision must reflect an appropriate setting in which to address those goals targeted by the IEP team.

## 16. Is there more than one type of service delivery model that can be considered?

Yes. The IEP team must determine the appropriate service delivery model based on the needs of the individual student. However, LEAs are not required to create new programs merely to provide ESY services in integrated settings if they do not provide services at that time for non-disabled children. Some common delivery models include the following:

- "Take-home" instructional materials
- Behavioral or other training for parents or program staff
- Itinerant teacher services
- Consultation
- Tutorials
- Services contracted through community or outside agencies or APSs

## 17. May the LEA unilaterally limit the ESY service's type, amount and/or duration?

No. Federal regulations at 34 CFR §300.309(a)(3) state that, "an LEA...may not unilaterally limit the type, amount, or duration of [ESY] services." OSEP has issued a policy letter stating that limiting the duration of summer services for students with disabilities "...would violate the basic requirement that programs be designed to meet the individual needs of each child" (Letter to Baugh, 1987). Any predetermination or set policy on the amount of time ESY will be provided is contrary to the regulations. Individual determinations of the number of weeks, days per week, and minutes per day must be based on each student's unique needs.

## 18. ESY services are often provided during summer vacation. Is this the only time these services can be provided?

No, if the IEP team determines that the student needs ESY services beyond the LEA's established 180-day school year, then a plan must be developed to provide the needed services. The comments section referencing 34 CFR §300.309 states "there is nothing in the definition of ESY services... that would limit the ability of a public agency to provide ESY services to a student with a disability during times other than the summer, when school is not in session" (Fed. Reg, Vol. 64, No.48, Attachment 1, p. 12576). This may include services beyond summer school periods or even breaks shorter than summer, if evidence suggests this is necessary. The IEP team must determine the content and time period of the ESY services, based on individual student need.

## IEP REQUIREMENTS

### 19. When during the year should ESY services be considered?

The federal court decision in *Armstrong v. Kline* established the mandate in Pennsylvania for ESY programming for children with any type or severity of disability who meet the court's eligibility standard. According to court guidelines, each LEA must consider ESY programming for students in the *Armstrong* "target groups" at the time of the annual review of the IEPs. "Target groups" consist of those students with severe emotional disturbances, autism, moderate and severe levels of retardation or multi handicaps.

For purposes of ESY eligibility determination, the IEP review meeting is to occur no later than February 28 of each school year for these students. Notice of the team's determination (NOREP) is to be issued to the parent no later than March 31 of the school year. These timelines offer a way to comply with guidance in the federal regulations that states that public agencies should make determination of need in a timely manner so that a student with a disability who requires ESY services in order to receive FAPE can obtain the necessary services (Fed. Reg., Vol. 64, No. 48, Attachment 1, p. 12576). An eligibility determination would be considered timely if there were sufficient time for the parent to appeal a denial of ESY services before the break in services occurs.

ESY determinations for students who are not from a "target group" are not subject to the above timelines, but must still be made as soon as possible in accordance with the timelines in Chapter 14. If the parents of those non-target group students disagree with the LEA's recommendation, the parents will be afforded due process.

In considering the need for ESY services, the IEP team may decide to postpone a decision until a later date. In such circumstances, the LEA must ensure that the team reconvenes within a timely manner, as above.

### 20. How are ESY services to be described on the IEP?

ESY services need to be described in such a manner that all parties to the IEP process are clear about the services to be provided. Although it is not necessary to complete a new IEP form for ESY services, it is necessary to document the goals and benchmarks or short term objectives to be addressed during ESY services, including a description of the program, dates and anticipated duration, frequency and location of the educational program. "Location" for the purposes of documentation on an IEP means the type of setting in which services will be delivered (e.g., physical therapy suite, job site in the community, special education classroom).

## 21. Must separate IEP goals, including benchmarks or short term objectives, other than those from the regular school year be developed for ESY?

No. However, the goals for ESY services should be specific to the needs of the student during that period when services are to be provided. It may be that not all goals and short term objectives or benchmarks from the regular school year are pertinent for the individual student's ESY needs; this should be evident on the IEP. It is unanticipated that skills or related services that were not previously addressed on the student's IEP would be identified for ESY services. Typically, the goals, including benchmarks and short term objectives, addressed through ESY services, will be an extension of those on the current-year IEP. In some instances, however, new goals may be necessary to ensure that appropriate services are provided during the ESY period.

## 22. Are additional reports to parents on progress during the duration of services for ESY required?

Reports to parents of students with disabilities must be provided at least as often as such reports are provided to parents of nondisabled students, as required by 34 CFR §300.347(a)(7)(ii). Therefore, if ESY services are being delivered through a summer school model and nondisabled students attending summer school receive progress reports, then students receiving ESY services at this time would do so as well. In circumstances when a progress report is not required, an LEA may choose to provide information on the student's progress to parents for use in future IEP team decisions concerning ESY.

## PARENTAL FEES

### 23. Can parents be assessed a fee for ESY services?

No. ESY services are provided in order that the student receives a free appropriate public education. Therefore, ESY services, including required special education and related services such as occupational therapy, physical therapy, or transportation, must be provided at no cost to the parent.

If an LEA elects to provide ESY services in a nontraditional setting such as a community recreation program, the parent could be assessed a fee for the "recreational portion" of a program that is not required for provision of FAPE, consistent with the fee charged to the parent of any child in the program. However, a LEA would have to exercise caution that other service delivery options to provide ESY services are available for those parents who are unable or unwilling to assume the costs of the recreational program.

## REFERENCES:

State Board of Education Regulations

22 Pa. Code Section 14.102(a)(2)(ix)

22 Pa. Code Section 14.132

### Basic Education Circulars

BEC 22 Pa. Code §14.132 "Extended School Year Eligibility"

BEC 34 CFR §300.450 "Special Education Services to Nonpublic School Students"

### Federal Statutes

20 U.S.C. Section 1400 et. seq., (IDEA)

### Federal Regulations

34 CFR. Part 300

### Other

Armstrong v. Kline, 476 F. Supp. 538 (E.D. Pa. 1979)

Letter to Baugh, [211 IDELR 481] (OSERS, August 12, 1987)

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