



Guidelines for Determining Extended School Year (ESY)

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PRACTICAL IMPLICATIONS: WHAT ESY IS AND IS NOT

(Adapted from www.slc.sevier.org 2003)

Extended School Year (ESY) Is:

- An exception, not a rule.
- Based only on the individual student's specific unique needs that are critical to his /her overall education progress as determined by the IEP team.
- Designed to maintain student mastery of critical skills and objectives represented on the IEP and achieved during the regular school year.
- Designed to maintain a reasonable readiness to begin the next year.
- Focused on specific critical skills where regression coupled with limited recoupment due to extended time off, may occur.
- Based on multi-criteria and not on a single factor.
- Considered as a strategy for minimizing the regression of skill, in order to shorten the time required to gain the same level of skill proficiency that the child exited with at the end of the school year.

Extended School Year (ESY) Is Not:

- A mandated 12-month service for all students with disabilities.
- Required to function as a respite care service.
- Required or intended to maximize educational opportunities for any student with disabilities.
- Necessary to continue instruction on all the previous year's IEP goals during the ESY period.
- Compulsory. Participation in the program is discretionary with the parents, who may choose to refuse the ESY service. There may be personal and family concerns that take precedence over ESY.
- Required solely when a child fails to achieve IEP goals and objectives during the school year.
- Considered in order to help students with disabilities advance in relation to their peers.
- For those students who exhibit random regression solely related to transitional life situation or medical problems which result in degeneration.
- Subject to the same LRE environment considerations as during the regular school year as the same LRE options are not available. Additionally, LRE for some students may be home with family members.
- A summer recreation program for students with disabilities.
- To provide a child with education beyond that which is prescribed in his/her IEP goals and objectives.
- For making up for poor attendance during regular school year.
- The primary means for credit recovery for classes failed during the regular school year.
- Denied due to a lack of evidence.

I. Guidelines for IEP Teams

WHO RECOMMENDS ESY SERVICES?

Both federal and state regulations make it clear that it is the responsibility of the IEP team to determine a child's need for ESY services. The IEP team membership must include a person knowledgeable about the range of services available, the parent, a special education teacher and administrator/designee. The IEP team membership may also include a general education teacher, related services providers, assessment personnel, and/or the student.

WHAT IS THE DIFFERENCE BETWEEN ESY & SUMMER SCHOOL?

ESY services are special education and related services that are required by an individual with exceptional needs beyond the regular school year. Such individuals shall have handicaps which are likely to continue indefinitely or for prolonged periods, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. It is the issues of regression and recoupment that provide a framework upon which to base discussion on the needs of the student.

If the student does not require ESY, in some instances the student could be considered for regular summer school or regular summer intervention program services offered within the school district. Summer school classes are not special education, and therefore are not required. Summer school classes are not based upon a child's individual needs and do not require an IEP. Summer school classes are not required in order for a child to receive FAPE which is in contrast with those services provided in ESY. In addition, a school district can choose not to provide summer school. While summer school usually focuses on opportunities for secondary students to recover credits, summer intervention programs generally focus on the development of skills which students at risk of retention need in order to progress. Given that, summer intervention classes, when available, may very well be appropriate for students with disabilities who are working toward grade level standards.

Court cases have referred to the "availability of alternative resources" when considering ESY services. The LEA could consider community programs that are available to students. The LEA must be cautious when identifying services provided by community agencies. There may be no requirement to maintain the student in that program.

WHEN SHOULD ESY BE RECOMMENDED?

Since the need for ESY is primarily based on an unacceptable regression or recoupment as demonstrated by the student, it is important to understand what might be acceptable for most students. Tilley, Cox, and Staybrook (1986) found that most students experience some regression during summer break. Using standardized tests, they found the rate of regression for regular education students was 4%. Students with

mild handicaps, hearing impairments, and serious behavior disorders regressed at approximately the same rate as their regular education peers. For students with moderate to severe handicaps, there was an increased rate of regression and a slower rate of recoupment. According to the study, the areas that were most impacted for those students were language, gross motor, fine motor, and self-help skills. Therefore, it is reasonable for students with moderate to severe challenges to be considered for an ESY program that would concentrate on minimizing regression and recovery time.

When considering ESY for any student, the IEP must consider data collected during the previous year(s) to determine the student's need based on regression and recoupment. This decision should be based on a multi-faceted measurement, although there may be rare instances where the IEP team might consider ESY services based on a single criterion. In either case, the IEP team must decide a child's eligibility for ESY services based on data collected that reflects his/her regression/recoupment capacity. To help understand this process, the following chart adapted from www.kyrene.org/resource/esy is included:

Data Collection Guide
At or before the first progress report of school year
<ul style="list-style-type: none"> • Collect data and re-teach • Compare to Spring data to determine if the student recouped his/her skills from previous year (This data should be the basis of the ESY eligibility discussion at the annual IEP) • Instruction and ongoing data collection • As soon as a student is found eligible for ESY, document the reasons why ESY is recommended on the IEP summary page or on an addendum IEP • Include data supporting the recommendation for ESY • Continue instruction and document progress on progress reports
Following the first and second grading period
<ul style="list-style-type: none"> • For new students or any student for whom you were unable to gather regression/recoupment data during the first 8 weeks of school, review data before and after any break from school (e.g. Thanksgiving, Winter or Spring break) to determine if student may have a significant regression/recoupment problem • Use data collected as the basis for ESY eligibility discussion at the annual review IEP or addendum meeting • Data collection will also be used for progress reporting • Re-teaching time should equal the length of the break (1 week break = 1 week re-teaching; retest) • As soon as students are found eligible for ESY, the reasons for eligibility are documented on the IEP summary sheet or addendum • Continue instruction and document progress on progress report
Two to three months prior to the end of the school year
<ul style="list-style-type: none"> • Notify district administrator for students requiring ESY <ul style="list-style-type: none"> ➤ Be sure to include documentation to support decision • Continue to teach and gather data for last quarter/trimester of the school year • If the data indicates the student has a need for ESY and this has not yet been addressed, convene an IEP team meeting <ul style="list-style-type: none"> ➤ If the team determines services are warranted, notify the district administrator as explained above
When should ESY data collection occur?
<ul style="list-style-type: none"> • Recommended times for data collection: <ul style="list-style-type: none"> ➤ At the end of regular school year ➤ At the end of summer program ➤ At the beginning of subsequent school year ➤ Before and after school vacations; if student has been out of school for other reasons ➤ Ongoing collection of information throughout the school year for progress reporting

WHY SHOULD ESY BE DOCUMENTED IN A CHILD'S IEP?

The ESY services provided must be consistent with the student's IEP so that the student receives a FAPE. ESY services should concentrate on the areas most impacted by regression and inadequate recoupment. These services may look markedly different in ESY than services provided during the regular school year as determined by the IEP team. The decision is not driven by the setting in which the student is educated during the comprehensive school year. This may also be true for the frequency and/or the duration of services as based on the individual child's needs. Related services must also be considered as they relate to the child's benefiting from special education. Therefore, it is very important that the offer of FAPE be clearly documented within the IEP. ESY services are to be considered for students between the ages of three to 21 or students who have not graduated from high school with a diploma.

HOW SHOULD ESY NEED/ELIGIBILITY BE DETERMINED?

The child's IEP plan should be the foundation for determining the need for ESY. This can be achieved through ongoing assessment and/or review of progress toward goals/objectives. The IEP team meets to review the student's progress, considering a variety of measurements to provide a baseline that documents the regression and recoupment rate.

The IEP team for an initial IEP will not be able to make this determination until after the student has been receiving the special education services and data has been collected. It is recommended that the IEP team reconvene after 3-6 months to review progress data and compare work from before and after break. Similarly, preschool students are another group that the IEP teams need to individually determine the need for ESY based on data collected after the student has participated in the special education program.

Since many districts have already implemented multiple measures to assess progress toward standards, the district's assessments may be applicable to the IEP team determination of need for ESY. The assessment must be based on the IEP goals and/or objectives so that progress can be matched directly to each benchmark outlined and the data can be compared to support evaluation of service effectiveness. The team also needs to determine and document if the student will take the local measures with or without accommodations, with or without modifications, or take alternative measures.

The severity of the handicap is a primary consideration in determining need for ESY. Based on the Reusch v. Fountain case, the IEP team should consider the following: student's age, severity of the disability, presence of medically diagnosed health impairments, attainment of self-sufficiency, and development of an emerging, critical skill that will be lost due to interruption. Other factors to consider are regression rate and recoupment time in relation to normal rates, behavioral and physical problems, curricular areas which would be adversely impacted, and vocational needs.

Younger students with medically diagnosed health impairments are more likely to be referred for ESY due to degenerative diseases and/or high absenteeism as a result of the health impairment. The ability to maintain self-sufficiency skills of the more mentally and physically challenged students will continue to be a key issue in the need for ESY.

Once services are determined as necessary based on data collected and regression-recoupment rate, the IEP team must include a description of the services required by the child's IEP in order to receive FAPE during the provision of ESY.

Determination of Need for ESY Services Worksheet: This worksheet assists IEP team members in the ESY decision making process. The case manager begins the worksheet by identifying the student's name, date of birth, grade, school, district, and Regular School Year Special Education Services. Various people (e.g., special education teacher, general education teacher, related services personnel, parent, administrator) may provide information to complete the multiple criteria considerations in all areas of need. These should include:

- ✓ Teacher observations
- ✓ Running records
- ✓ Benchmark measures
- ✓ Progress toward goals/objectives
- ✓ Evidence of regression following break
- ✓ Evidence of difficulty recouping information following break
- ✓ Consideration of other options available, and
- ✓ Other factors

With the above information in hand, the IEP team can proceed to answering the series of questions on the ESY Worksheet to assist the team in making a determination of need for ESY. The worksheet is signed, dated, and attached to the student's IEP.

Note: Determination of need for ESY services needs to be completed annually. Eligibility one year does not mean that eligibility continues the next.



EXTENDED SCHOOL YEAR (ESY) NEED WORKSHEET

Student Name _____

Date of Birth ____/____/____

IEP Date ____/____/____

Age _____

Grade _____

Gender _____

Definitions

ESY: Extended School Year services are programs and services that assist the student in working toward the same goals and objectives that the student works on during the school year. ESY services are only provided for those areas on the current IEP where the student has demonstrated a) regression of skills during an extended school break and b) limited ability to benefit from re-teaching of skills after an extended school break. Regression Loss of previously attained skills documented by a review of the IEP goals, due to an extended school break.

Rate of Recoupment: Length of time required to re-learn skills following an extended school break.

Regression and Recoupment: Some students have disabilities that are likely to continue indefinitely or for a prolonged period. In this situation, interruption of the student's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the student will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition. (5 C.C.R. Section 3043.)

The IEP Team shall determine the following in order to designate a student as requiring ESY as part of FAPE

Using input from staff and parents, answer the following questions

1. At the start of the school year, with a review period equal to that of general education students, was the student unable to regain skills lost over the break that would otherwise be expected in view of the student's disabling condition?

☐ Yes ☐ No If yes, specify what area(s)

2. Does this student display a loss of previously taught skills and an inability to regain those skills following interruptions in instruction during the regular school year, i.e., Thanksgiving break, Winter Break, and Spring Break?

☐ Yes ☐ No If yes, specify what area(s)

3. Is the current student at a crucial stage in learning a skill(s), such that an interruption in school program might cause loss of a skill(s) that the student would not be able to re-learn in a reasonable period of time, in view of the student's disabling condition?

☐ Yes ☐ No If yes, specify what essential skill(s)

4. Is the student able to maintain the skills identified without Extended School Year?

☐ Yes ☐ No If no, specify what skill(s)

5. Does the student require ESY to continue to achieve at the level of independence that is expected in view of the student's disabling condition?

☐ Yes ☐ No

Note: refer to criteria specified on the ESY Worksheet pg. 2 if answer is "yes" on #5 above



EXTENDED SCHOOL YEAR (ESY) NEED WORKSHEET

Page 2

6. The student demonstrates a pattern of past regression in skills as evidenced by breaks of more than four weeks:

☐ Yes ☐ No ☐ Unknown

Comments (describe the degree (minimal or serious) of actual or likely regression following a school break _____

7. What is the estimated amount of time it takes or it may take the student to regain the prior level of knowledge skills, benefits or functioning following a school break: ☐ One Month or less ☐ Up to 3 months ☐ 4 to 6 months ☐ Other

Comments _____

8. Describe the student's rate of learning (as compared with the student's ability to recoup after a break):

9. Does the IEP team feel the student's disability will continue indefinitely or for a prolonged period of time?

☐ Yes ☐ No ☐ Unknown

Comments (describe the degree (minimal or serious) of actual or likely regression following a school break _____

Describe the degree, nature and severity of the student's disability _____

10. Does the IEP team feel it will be impossible or unlikely the student will attain self-sufficiency and independence expected in view of the student's disability following a break? ☐ Yes ☐ No ☐ Unsure

Comments (describe the degree (minimal or serious) of actual or likely regression following a school break: _____

11. Is the student at a critical point of skill acquisition or readiness where their ability to acquire the skills will be lost or greatly reduced as a result of an interruption of services? ☐ Yes ☐ No ☐ Unsure

If yes, describe _____

12. Are there any other issues concerning the student's physical, medical condition, emotional, social, behavioral, mental health, academic and/or vocational issues, and his/her ability to be with typically developing peers that may be adversely impacted if the student does not receive ESY services? ☐ Yes ☐ No ☐ Unsure

If yes, describe _____

II. Planning for ESY

Sample A PARENT INFORMATION SHEET

Dear Parent/Guardian:

Your child is eligible to attend our special education Extended School Year (ESY) Services.

The dates for the Extended School Year classes are **INSERT DATE**. There will be no classes on **INSERT DATE**. The ESY services will operate Monday through Friday and will operate on a **INSERT TIME** schedule for these **INSERT WEEKS**.

Additionally, your child may be assigned and transported to a school other than the one he/she attends during the regular school year.

Please complete this form and return it to your child's current teacher as soon as possible – **NO LATER THAN INSERT DATE HERE**.

Student Name _____

Current Grade (**INSERT SCHOOL YEAR**) _____

School of Attendance _____ Teacher _____

Parent Name _____ Daytime Phone _____

(check one box)

☐

My child **will** attend Extended School Year.

☐

My child **will not** attend Extended School Year.



If your child is currently taking daily or “as needed” medication, or has a specialized physical health need, it is the parent’s responsibility to notify the ESY school health office. Parents must also transport all medication and necessary paperwork to the ESY school site.

Parent/Guardian Signature

Date

- ✓ **EVEN IF YOUR CHILD IS NOT ATTENDING** ESY, please complete this registration form as an indication of your receipt of this opportunity.
- ✓ ESY registration forms received after **INSERT DATE** will be put on a waiting list. These students will be allowed to attend after the first week of class, **if** space is available. Our office will contact you by mail no later than **INSERT DATE** with information on your student’s ESY class assignment.

Sincerely,

Special Education/Student Services Offices
INSERT ADMINISTRATOR NAME HERE

SAMPLE B

INSERT YOUR SCHOOL DISTRICT ESY Registration

Dear parents/guardians,

Extended School Year (ESY) is scheduled to have two sessions. The first session will occur from **INSERT DATE** through **INSERT DATE**. The second session will occur from **INSERT DATE** through **INSERT DATE**. School hours will be from **INSERT TIME**. Breakfast will be available but lunch will not be served. Extended School Year will be held at **INSERT LOCATION**.

All transportation arrangements will be made by the **INSERT CONTACT INFORMATION** per the registration information you provide. The bus company will inform you of pick-up and drop off times.

Your child's participation in Extended School Year Services are determined by his/her IEP.

To enroll, you need to:

- Complete the enclosed registration form including an **updated** emergency card. **Forms will not be accepted unless complete with working emergency phone numbers.** Your signature must be on the registration form.
- ESY Registration Form/Emergency Card must be received by **INSERT DATE**. No phone registration will be accepted.

Early registration is being required this year in order to insure adequate staffing and emergency contact information for your child. If your child's IEP states that he/she requires Extended School Year, you need to fill out the attached ESY Registration Form/Emergency Card and return it to the classroom teacher by **INSERT DATE**.

Thank you for your prompt response.

Sincerely,

INSERT ADMINISTRATOR NAME HERE

Enclosure: ESY Registration Form/Emergency Card

Sample ESY Registration Form/Emergency Card

Please return this form to your student's teacher no later than **INSERT DATE**.

Student's Name: _____ **School Site:** _____ **Grade:** _____ **Current Teacher:** _____

☐ **NO**, my student **will not attend** ESY. I will contact the teacher regarding an IEP meeting.

☐ **YES**, my student **will attend** ESY. Please complete all that applies to your student:

☐ **Attends a Modified Day** from _____ to _____ ☐ **Has a Bus Aide** _____

☐ **Has a 1:1 Para-educator** _____ **If Yes: Health Care** ☐ Yes ☐ No
Name

Bus pick up and drop off will continue with your current pick up and drop off unless any changes are indicated below.

New Pick up address: _____

New Drop off address: _____

Contact Person: _____ **Phone:** _____

PLEASE FILL OUT COMPLETELY

School Year

HOME PHONE					
STUDENTS LEGAL LAST NAME	FIRST	MIDDLE	M	F	PAGER
HOME ADDRESS	ZIP	BIRTHDATE			BIRTHPLACE
SCHOOL DISTRICT ENROLLMENT AND EMERGENCY INFORMATION					SOCIAL SECURITY #

Dear Parents,

For the protection and welfare of your child, the following information must be on file in the school office. Should this information be incomplete or not up to date, it may become necessary for the school to enlist the aid of the Los Angeles Sheriff Department in the event of an emergency. Students will only be released from school to those persons authorized by this card.

(FOR OFFICE USE ONLY)

Please complete the following information for parent/guardian student LIVES WITH

MOTHER'S NAME	MAIDEN	LEGAL	STEP	FOSTER	OTHER
MOTHER'S EMPLOYER	ADDRESS			BUSINESS PHONE	
FATHER'S NAME		LEGAL	STEP	FOSTER	OTHER
FATHER'S EMPLOYER	ADDRESS			BUSINESS PHONE	

ALTERNATE PERSONS IN EMERGENCY: These persons are authorized to take my child from school (Noncustodial parents must be listed here if they have permission to remove the student from school)

NAME 1.	ADDRESS	PHONE
NAME 2.	ADDRESS	PHONE
NAME 3.	ADDRESS	PHONE

ID
SCHOOL
ATTENDANCE ZONE
GRADE
TEACHER/ROOM
BD VERIFY
ENTERED
LEFT
SPECIAL PROGRAM

Doctor: _____ **Phone** _____

Second Choice: _____ **Phone** _____

Parent/Caregiver authorize transportation to AV Hospital Medical Center and emergency medical treatment as required. Parent/caregiver will meet the child at the hospital and will assume all financial responsibility as necessary.

Parent/Guardian Signature: _____ **Date:** _____

I checked this Registration Form for completeness _____
Teacher Signature

Sample EXTENDED SCHOOL YEAR GOAL/INFORMATION SHEET
(See Reverse Side For Directions)

Student Name:	Age:	Grade:	Site:
Disability:	Services:		
Behavior Intervention Plan?	<input type="checkbox"/> No	<input type="checkbox"/> Yes (please attach)	

Skill/Goal	1	Pre ESY Performance: Post ESY Performance:
Skill/Goal	2	Pre ESY Performance: Post ESY Performance:
Skill/Goal	3	Pre ESY Performance: Post ESY Performance:
Skill/Goal	4	Pre ESY Performance: Post ESY Performance:
Skill/Goal	5	Pre ESY Performance: Post ESY Performance:
Skill/Goal	6	Pre ESY Performance: Post ESY Performance:

Health/Medical Concerns:

Other (Specialized Equipment, Accommodations, important information):

Parent Communication method(s)/plan:

Behavior Supports Used (contracts in place, goals, etc.)

EXTENDED SCHOOL YEAR GOAL/INFORMATION SHEET Directions:

Directions to complete the sample ESY GOAL/INFORMATION sheet:

Case Managers collect the student's most recent complete IEP, any subsequent IEP addendums, most recent multiple measures results, latest report card and progress report to share with the ESY teacher and service providers. Case Managers can also complete an "ESY Goal/Information Sheet" such as the following, which specifies the goals to be targeted for ESY.

ESY staff should complete the sections labeled "Post ESY Performance."

Pre-Post assessment measures may be employed to evaluate student's progress during the ESY instructional services. By working closely with the Student Services personnel, it may be possible for the special education students to take the same evaluation measure as other students, with or without accommodations or modifications, or alternative measure(s) may need to be identified. Selecting the measure(s) and clearly communicating with staff members how and when to administer these are also important considerations in planning for successful programs.

III. “Just Prior” Communications

To facilitate understanding of everyone involved, there are often “just prior” communications to administrators, teachers, related services staff, and parents.

TO TEACHERS AND RELATED SERVICES STAFF

Providing clear direction to teachers on expectations for completing pre-post assessments and/or progress reporting is also critical. If formal report cards and/or grades will be reported for credits, this information needs to go to the site administrator, counselor, and/or Registrar. Staff members should also be advised on what to do with the student information once the session is over. For example, a letter to teachers might include the following statements:

At the end of the session, please complete a Progress Report for each student. Send a copy of such home to the parent and place a copy in the binder or folder for each student enrolled. Then, send the binder/folder to the Special Education Office before you depart for the summer.

The Special Education Office will forward these records to the appropriate site so all Case Managers have a copy of their students’ performance for ESY.

TO PARENTS

Since parents typically complete the ESY Registration Form many weeks before the start of the summer program, it may be important to send a “just prior” letter out to them. A sample letter follows:

Date: _____

Parent’s Name: _____

Re: Extended School Year (ESY) for (Student’s Name)

As determined by the IEP team on (date of IEP meeting), a need was found for (student’s name) to attend ESY for the following services: (List out the services).

ESY services are provided beyond the normal school year in accordance with the child’s IEP and at no cost to the parents of the child. These services will be offered at (name of location) from (list dates of ESY). School will be in session from (insert start time) to (insert end time). Your child’s teacher will be (name of teacher) and class will be held in (room number).

Please contact _____ at (phone number) if you have any questions regarding ESY services.

Sincerely,

Name

Title

APPENDIX

Understanding Extended School Year (ESY): The Legal and Practical Aspects

FEDERAL REGULATIONS

The Individuals with Disabilities Education Act (34 CFR Part 300 §300.106) states:

- (a) General.
 - (1) Each public agency shall ensure that ESY services are available as necessary to provide a free appropriate public education (FAPE).
 - (2) ESY services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §300.320-300.324, 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 ESY 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 State Education Agency.

CALIFORNIA CODE OF REGULATIONS

The California Code of Regulations (CCR §3043) states:

Extended school year services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the IEP team determines the need for such a program and includes extended school year in the IEP pursuant to subsection (f).

- (a) Extended year special education and related services shall be provided by a school district, special education local plan area, or county office offering programs during the regular academic year.
- (b) Individuals with exceptional needs who may require an extended school year are those who:
- (1) Are placed in special classes or centers; or
 - (2) Are individuals with exceptional needs whose IEPs specify an extended year program as determined by the individualized education program team.
- (c) The term “extended year” as used in this section means the period of time between the close of one academic year and the beginning of the succeeding academic year. The term “academic year” as used in this section means that portion of the school year during which the regular day school is maintained, which period must include less than the number of days required to entitle the district, special education services region, or county office to apportionments of state funds.
- (d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays. For reimbursement purposes:
- (1) A maximum of 55 instructional days excluding holidays shall be allowed for individuals in special classes or centers for the severely handicapped; and
 - (2) A maximum of 30 instructional days excluding holidays shall be allowed for all other eligible pupils needing extended year.
- (e) A local governing board may increase the number of instructional days during the extended year period, but shall not claim revenue for average daily attendance generated beyond the maximum instructional days allowed in subsection (d)(1) and (2).
- (f) An extended year program, when needed, as determined by the individualized education program team, shall be included in the pupil’s IEP.
- (g) In order to qualify for average daily attendance revenue for extended year pupils, all of the following conditions must be met:
- (1) Extended year special education shall be the same length of time as the school day for pupils of the same age level attending summer school in the district in which the extended year program is provided, but not less than the minimum school day for that age unless otherwise specified in the IEP program to meet a pupil’s unique needs.
 - (2) The special education and related services offered during the extended year period are comparable in standards, scope and quality to the special education program offered during the regular academic year.
- (h) If during the regular academic year an individual’s IEP specifies integration in the regular classroom, a public education agency is not required to meet that component of the individualized program if no regular summer school programs are being offered by that agency.
- (i) This section shall not apply to schools which are operating a continuous school program pursuant to Chapter 5 (commencing with Section 37600) of Part 22, Division 3, Title 2, of the Education Code.

[Authority cited: Section 56100(a) and (j), Education Code. Reference: Sections 37600, 41976.5 and 56345, Education Code; 34 C.F.R. 300.346]

CASE LAW

No single criterion can be used as a sole qualifying factor (Johnson v. Independent School District No. 4, 1990).

LEAs are required to consider more than just the regression/recoupment analysis and consider other factors relevant in determining ESY. One factor to be considered is the critical stage of developing a skill which has great potential for increasing self-sufficiency. For such skill, if not completely acquired and mastered, it is likely that the current level of acquisition will be lost due to the interruption of summer vacation (Reusch v. Fountain, 1994).

LEAs are not required to create programs in order to provide ESY services. An example would be a student who requires an integrated setting. If the LEA does not provide summer services for non-disabled students, the LEA is not required to create a new program (Tuscaloosa County Board of Education, 35 IDELR 172 [SEA AL 2001]).

There have been some court cases which help clarify issues of regression/recoupment.

- In Cordrey v. Euckert (17EHLR 104 [6th Cir 1990]), the court noted that “the school district has no purely custodial duty to provide for handicapped children while similar provision is not made for others. Therefore, begin with the proposition that providing an extended school year is the exception and not the rule...” Therefore, districts will consider all appropriate factors in determining whether the benefits a student has been credited with during the regular school year would be at significant risk for regression if not provided with ESY.
- In MM v. School District of Greenville County, (37 IDELR 183, 303 F.3d 523 [4th Cir. 2002]), the court ruled the “ESY services are only necessary to FAPE when the benefits accrued a disabled child during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months.”
- In SS, JD, SS v. Henricoe County School Board (38 IDELR 261, 326 F.3d 560 [4th Cir. 2003]), the Hearing Officer found that ESY services “were not for the purpose of achieving goals not met during the school year.”