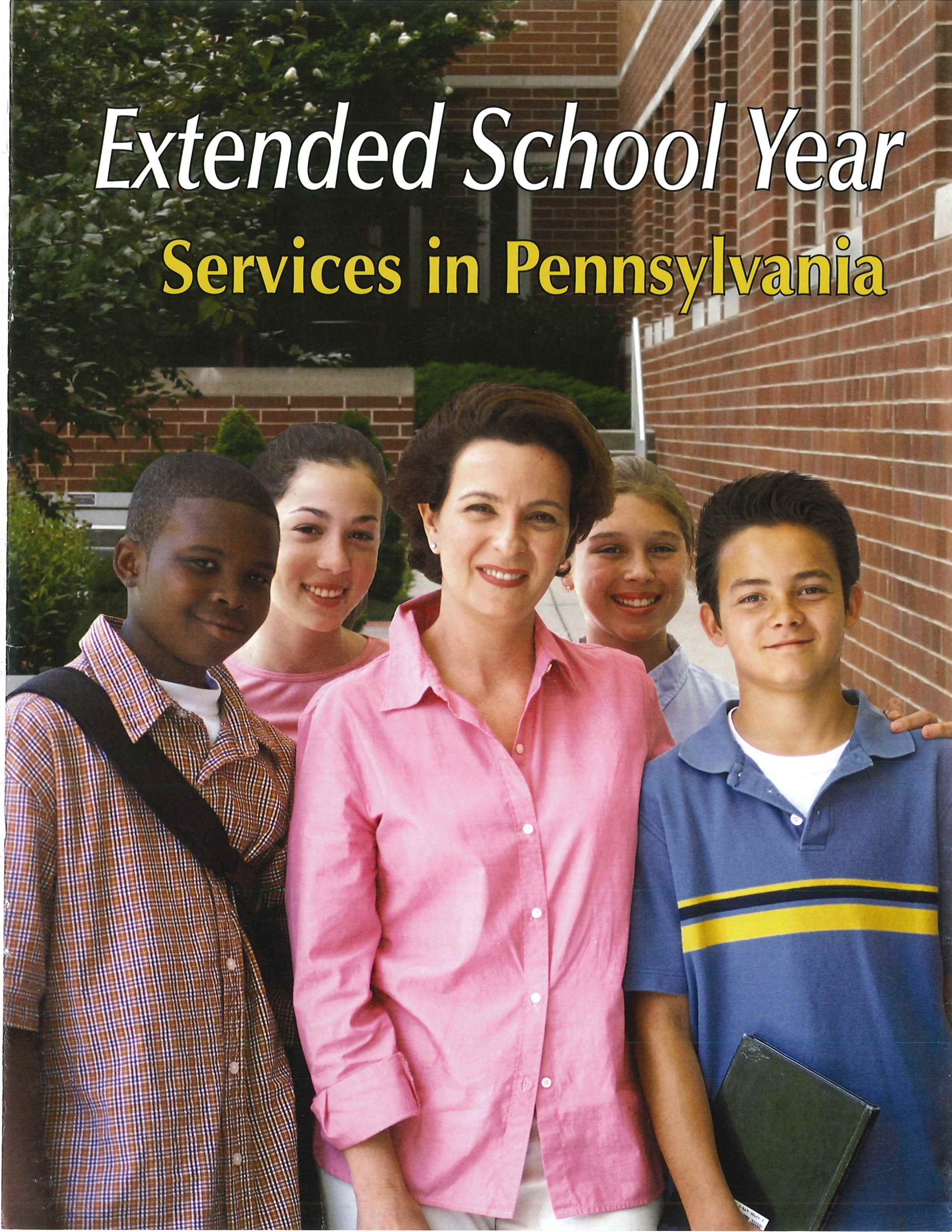
Extended School Year

Services in Pennsylvania

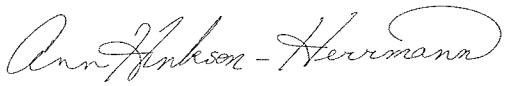


Message from the Director of the Bureau of Special Education

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.

Decisions regarding a student's need for ESY services are intricately related to the progress that the student is making in his or her overall instructional program. Information about progress monitoring is available on the Pennsylvania Training and Technical Assistance Network (PaTTAN) website (www.pattan.net). Additional information is available on the Pennsylvania Department of Education (PDE) website (www.education.pa.gov).

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.



Ann Hinkson-Herrmann
Director, Bureau of Special Education

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§ 300.106 Extended school year services.

(a) *General.*

(1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§ 300.320 through 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 extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

(a) *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.

§14.132 ESY.

(a) In addition to the requirements incorporated by reference in 34 CFR 300.106 (relating to extended school year services), school entities shall use the following standards for determining whether a student with disabilities requires ESY as part of the student's program:

(1) At each Individualized Education Program (IEP) meeting for a student with disabilities, the school entity 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) 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 (Regression).

(ii) 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 (Recoupment).

(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 intellectual disability, degenerative impairments with mental involvement and severe multiple disabilities.

(b) Reliable sources of information regarding a student's educational needs, propensity to progress, recoupment potential and year-to-year progress may include the following:

(1) Progress on goals in consecutive IEPs.

(2) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.

(3) Reports by parents of negative changes in adaptive behaviors or in other skill areas.

(4) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.

(5) Observations and opinions by educators, parents and others.

(6) Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

(c) The need for ESY services will not be based on any of the following:

(1) The desire or need for day care or respite care services.

(2) The desire or need for a summer recreation program.

(3) The desire or need for other programs or services that, while they may provide educational benefit, are not required to ensure the provision of a free appropriate public education.

(d) Students with severe disabilities such as autism/pervasive developmental disorder, serious emotional disturbance; severe intellectual disability; degenerative impairments with mental involvement; and severe multiple disabilities require expeditious determinations of eligibility for extended school year services to be provided as follows:

(1) Parents of students with severe disabilities shall be notified by the school entity of the annual review meeting to encourage their participation.

(2) The IEP review meeting must occur no later than February 28 of each school year for students with severe disabilities.

(3) The Notice of Recommended Educational Placement shall be issued to the parent no later than March 31 of the school year for students with severe disabilities.

(4) If a student with a severe disability transfers into a school entity after the dates in paragraphs (2) and (3), and the ESY eligibility decision has not been made, the eligibility and program content must be determined at the IEP meeting.

(e) School entities shall consider the eligibility for ESY services of all students with disabilities at the IEP meeting. ESY determinations for students other than those described in subsection (d) are not subject to the time lines in subsection (d). However, these determinations shall still be made in a timely manner. If the parents disagree with the school entity's recommendation on ESY, the parents will be afforded an expedited due process hearing.

§ 711.44 ESY

(a) In addition to the requirements incorporated by reference in 34 CFR 300.106 (relating to extended school year services), charter schools and cyber charter schools shall use the following 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 charter school or cyber charter school 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) 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 (Regression).

(ii) 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 (Recoupment).

(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 intellectual disability, degenerative impairments with mental involvement and severe multiple disabilities.

(b) Reliable sources of information regarding a student's educational needs, propensity to progress, recoupment potential and year to year progress may include the following:

(1) Progress on goals in consecutive IEPs.

(2) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.

(3) Reports by parents of negative changes in adaptive behaviors or in other skill areas.

(4) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.

(5) Observations and opinions by educators, parents and others.

(6) Results of tests, including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

(c) The need for ESY services will not be based on any of the following:

(1) The desire or need for day care or respite care services.

(2) The desire or need for a summer recreation program.

(3) The desire or need for other programs or services that while they may provide educational benefit, are not required to ensure the provision of a FAPE.

(d) Students with severe disabilities such as autism/pervasive developmental disorder, serious emotional disturbance; severe intellectual disability; degernerative impairments with mental involvement; and severe multiple disabilities require expeditious determinations of eligibility for ESY services to be provided as follows:

(1) Parents of students with severe disabilities shall be notified by the charter school or cyber charter school of the annual review meeting to ensure their participation.

(2) An IEP review meeting must occur no later than February 28 of each school year or students with severe disabilities.

(3) The notice of recommended educational placement (NOREP) shall be issued to the parent no later than March 31 of the school year for students with severe disabilities.

(4) If a student with a severe disability transfers into a charter school or cyber charter school after the dates in paragraphs (2) and (3), and the ESY eligibility decision has not been made, the eligibility and program content must be determined at the IEP meeting.

(e) Charter schools and cyber charter schools shall consider the eligibility for ESY services of all students with disabilities at the IEP meeting. ESY determinations for students other than those described in subsection (d) are not subject to the time lines in subsection (d). However, these determinations shall still be made in a timely manner. If the parents disagree with the charter school's or cyber charter school's recommendation on ESY, the parents will be afforded an expedited due process hearing.

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, requires school districts, intermediate units, and charter schools to provide ESY 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, weekends, and holidays, 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 that 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 receives ESY services?

Every student with a disability, who qualifies for special education, has an Individualized Education Program (IEP). It describes the programs and services necessary for FAPE. This plan is written at a meeting of the IEP team, which 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. ESY 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 a step-by-step process for making ESY decisions, see *Extended School Year: A Guide for IEP Teams,* on page 8.

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 disabled — mentally, physically or emotionally. Decisions about ESY for this target group of students need to be made by February 28 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/ Prior Written Notice (NOREP/PWN) concerning the school district's, intermediate unit'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.

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 group at the time of the annual review of the IEPs. The target group consists of those students with severe emotional disturbances, autism, moderate and severe levels of intellectual disability, or multiple disabilities.

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/ PWN) 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 in the target group are not subject to the above timelines, but must still be made as soon as possible in accordance with the timelines in Chapters 14 and 711. 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.

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 these seven factors:

- 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?
- Will successive interruptions in educational programming result in the student's withdrawal from learning?
- Does the student have a severe disability such as autism/pervasive developmental disorder, a serious emotional disturbance, severe intellectual disability, degenerative impairments with mental involvement, or severe multiple disabilities?

There are seven factors, and no single factor can be used to determine eligibility for ESY services. The IEP team must consider all seven factors when determining eligibility. The student may be eligible by meeting just one of the criteria, but all seven factors must be considered by the IEP team.

Which services will be provided during the 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 continue all the services received during the regular school year, or it may decide that the student will only receive a portion of services or one specific service. This decision is based on the needs 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 a 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 nondisabled students just to make the ESY environment less restrictive. ESY services can be provided in a noneducational setting if the IEP team determines that the student can receive appropriate ESY services in that setting.

Is there a charge 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, an 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.

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 in the IEP meeting, a notice (NOREP/PWN) 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 parties and helps them 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. If the parent requests mediation or a due process hearing, the pendency provisions of state and federal law apply, and there should be no change in ESY eligibility or program, unless agreed to by the parties, pending completion of due process proceedings. More information about parents' rights and due process is provided in the Procedural Safeguards Notice that is distributed with the NOREP/PWN.

For more information about ESY contact:

- Special Education ConsultLine — 800-879-2301 (V/TTY)
- Parent Education and Advocacy Leadership Center — 866-950-1040 (V/TTY)
- Your local school district
- Your local intermediate unit

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), 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 ESY 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 may have alternative systems in place that they can continue to use, as long as they conform with requirements.

Introduction

All students with disabilities, who qualify for special education services, must be considered for ESY eligibility at each IEP meeting. The type, amount, duration or location of those services may not be predetermined or limited based on category of disability or severity of disability.

The basic steps in the ESY decision-making 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.

Step 4: Issue the Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN), 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 intellectual disability, 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 NOREP/PWN 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 eligibility 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 increase or become more extreme 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.

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

- **Regression/Recoupment** — Regression refers to how much knowledge or how many skills a student loses due to a break in educational programming. Recoupment 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.

  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. The student would have to relearn 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.

  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 percent of the time and prompted ones 70 percent of the time. Following Christmas break, Serena did not return to these levels until late February.

  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 percent of the time. After the break he regressed to 20 percent of the time.

  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 intellectual disability, degenerative impairments with mental involvement or 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 were collected before and after the holiday break. Jane lost 25 percent of her acquired skills.

  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 can be found in reports from her therapists and observations from parents. Progress monitoring data were used to make the determination of how much time Jane needed to recoup after a break.

An "ESY Checklist" can be found on page 15. It 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 eligible for ESY services.
- 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: Document the determination on the IEP (see Figures 1, 2, and 3 on the following pages)

Step 4: Issue the Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN), if appropriate

The local education agency (LEA) informs parents concerning ESY eligibility or ineligibility by issuing the NOREP/PWN. The NOREP/PWN 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

Figure 1. The decision regarding the need for ESY services is documented on the IEP format. Following is the ESY section as it appears on the IEP:

VI. SPECIAL EDUCATION/RELATED SERVICES/SUPPLEMENTARY AIDS AND SERVICES/PROGRAM MODIFICATIONS:

E. EXTENDED SCHOOL YEAR (ESY): The IEP Team has considered and discussed ESY services, and determined that:

Student IS eligible for ESY based on the following information or data reviewed by the IEP team:

_____

☐

OR

As of the date of this IEP, student is NOT eligible for ESY based on the following information or data reviewed by the IEP team:

_____

☐

The Annual Goals and, when appropriate, Short-term Objectives from this IEP that are to be addressed in the student's ESY Program are:

If the IEP team has determined ESY is appropriate, complete the following.

ESY Service to be Provided	*Location*	*Frequency*	*Projected Beginning Date*	*Anticipated Duration*

Figure 2. If a student has been found eligible for ESY, this section may say:

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

☒ Student IS eligible for ESY based on the following information or data reviewed by the IEP team:
progress monitoring data on communication and articulation goals

OR

☐ As of the date of this IEP, student is NOT eligible for ESY based on the following information or data reviewed by the IEP team:

The Annual Goals, when appropriate, Short-term Objectives from this IEP that are to be addressed in the student's ESY Program are:

communication goal articulation goal (speech and language)

If the IEP team has determined ESY is appropriate, complete the following.

ESY Service to be Provided	*Location*	*Frequency*	*Projected Beginning Date*	*Anticipated Duration*
special education teacher	George Washington Elementary (neighborhood school)	three times/week	July 5, 2012	4 weeks
speech clinician	George Washington Elementary	two times/week	July 5, 2012	4 weeks

Figure 3. If a student has not been found eligible for ESY, this section may say:

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

Student IS eligible for ESY based on the following information or data reviewed by the IEP team:

☐

OR

As of the date of this IEP, student is NOT eligible for ESY based on the following information or data reviewed by the IEP team:

☒ progress monitoring data does not indicate regression/recoupment or mastery issues

The Annual Goals, when appropriate, Short-term Objectives from this IEP that are to be addressed in the student's ESY Program are:

If the IEP team has determined ESY is appropriate, complete the following.

ESY Service to be Provided	*Location*	*Frequency*	*Projected Beginning Date*	*Anticipated Duration*

The ESY Checklist on the following 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 short-term objectives between the student's current IEP and previous IEPs indicate progress toward the goals? [Review the last and current IEPs, section V]
   _____ 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 V]
   _____ Yes _____ **No**

5. Does the student's IEP progress report indicate progress made on current goals and objectives? [Review the current IEP, section V, 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 V]
   _____ 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 increase or become more extreme 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]

    _____ Not Applicable [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**

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. For the most recent BEC, visit the PDE website at www.education.pa.gov – go to View, Basic Education Circulars.

Determination of Eligibility

1. Who is eligible for ESY services?

Potentially, any student with a disability is eligible for ESY services and must be considered for ESY eligibility at each 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 §300.146(c) *Responsibility of State Educational Agency (SEA)*]. If the IEP team determines that ESY services are appropriate, services must be provided.

3. Must an 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 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 §300.137(b)(1) *Equitable 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 §300.403 "Special Education Services to Nonpublic School Students" for additional information.

4. 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 ESY program, but 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 §300.17 *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 State Education Agency, including the requirements of this part;

(c) Include an appropriate preschool, elementary school, or secondary school education in the State that is involved; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320-300.324."

The implementing regulations at 34 CFR §300.101(a) *Free appropriate public education* require that "a free appropriate public education must be available to all children residing in the State, between the ages of 3 and 21, inclusive." 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. FAPE must be made available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade. 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.

5. 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 these seven factors:

- 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 intellectual disability, degenerative impairments with mental involvement and severe multiple disabilities

The student may be eligible by meeting just one of the factors, but all seven factors must be considered by the IEP team.

6. 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

7. 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 skill areas
- Medical or other agency reports indicating degenerative-type difficulties, which increase or become more extreme 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

8. Are there federal definitions of criteria for the terms "regression" and "recoupment"?

No. According to the comments and discussion of 34 CFR §300.106 *Extended school year services*, the definition of the terms "regression" and "recoupment" is at the discretion of state education agencies. Chapters 14 and 711 define 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

9. 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 the therapist's reports indicate that 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)?
- 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) 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) indicate progress?

10. 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 pertaining 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.

11. Must ESY determination be documented in the NOREP/PWN?

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/PWN 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/PWN.

12. 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

13. 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 nondisabled 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

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

No. Federal regulations at 34 CFR §300.106(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.

15. 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 §300.106 states "there is nothing in §300.106 that would limit the public agency from providing ESY services to a child with a disability during times other than the summer such as before and after school hours or during school vacations, if the IEP Team determines that the child requires ESY services during those time periods in order to receive FAPE." *(Fed. Reg, Vol. 71, No.156, p. 46582).* 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

16. 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 short-term objectives (when appropriate) 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).

17. 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.

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

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 should 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.

REFERENCES

State Board of Education Regulations

22 Pa. Code Section 14.132

22 Pa. Code Section 711.44

Basic Education Circulars

(For the most recent BECs, visit the PDE website at www.education.pa.gov and select Basic Education Circulars (BECS).

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)

Commonwealth of Pennsylvania

Tom Wolf
Governor



Bureau of Special Education
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