

*What IEP Teams Should Know About*

# **Extended School Year Services (ESY)**



A Practical Resource Booklet  
for Families and Educators



**Parents Reaching Out**  
*Your One Stop Resource for a Stronger Family*

**Spring 2008**



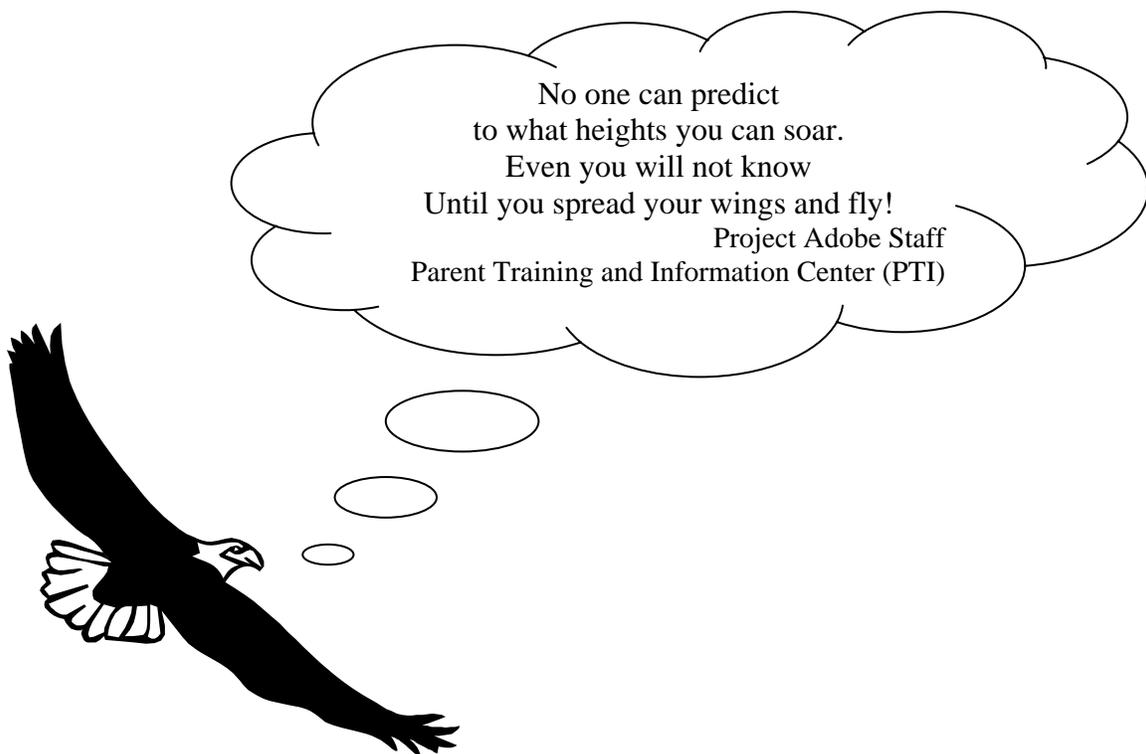
*Hold fast to dreams,  
For if dreams die  
Life is a broken-winged bird,  
That cannot fly.*

Langston Hughes  
"The Dreamkeeper & Other Poems"

# Welcome to Parents Reaching Out

This Resource Book has been compiled to help families understand Extended School Year Services that are provided by the Individuals with Disabilities Education Act (IDEA). Extended School Year or ESY services are provided to *eligible* children with disabilities as a part of the child's IEP at no cost to the parents of the child.

We have used a question and answer format with the hope that families and educators will have positive results in searching for answers to help their children. Our booklet features information developed by Mountain Plains Regional Resource Center including examples showing how Extended School Year services could be used to provide for the specific needs of an individual child. We have included the Technical Assistance document for Extended Year Services from the New Mexico Public Education Department Office of Special Education. It is important to tap every resource as we work to provide positive outcomes for our children.



Parents Reaching Out is funded through a grant from the U.S. Department of Education, Office of Special Education Programs as the Parent Training and Information Center for New Mexico. The contents of this handbook were developed under the grant. However, the contents do not necessarily represent the policy of the US Department of Education, and you should not assume endorsement by the Federal Government.

## *Acknowledgements*

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**IDEA 2004:** The reauthorized Individuals with Disabilities Education Act (IDEA) was signed into law on Dec. 3, 2004. The final regulations were published on August 14, 2006. The Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education prepared a series of documents that covers a variety of high-interest topics and brings together the statutory language related to those topics to support constituents in preparing to implement the new requirements. These documents are available at the OSERS web site: Building the Legacy IDEA 2004 <http://idea.ed.gov/explore/home>

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# Extended School Year Services

## 1. What are Extended School Year Services (ESY)?

The IDEA implementing regulations 34 C.F.R. 300.309 defines ESY as follows:

The term extended school year services means special education and related services that --

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

## 2. What Is The Eligibility Criteria for ESY?

All eligible children with disabilities must be considered for ESY, but only those who will be severely impacted by an extended break in instruction should be enrolled. The provisions of IDEA require schools to provide ESY services for those children with disabilities who require such services to ensure an appropriate educational program.

Schools may not automatically or categorically exclude, or include, any group. Rather, the decision must be made according to the individual needs of the child. The determination for eligibility must be made annually. A child that receives ESY for one school year doesn't automatically receive ESY in future years. Need must be shown each year.

There are many factors that may be used by a school in making decisions about the need for ESY. The decision must be based on whether ESY is necessary to prevent your child from losing, to a substantial degree, certain critical skills that he or she has gained during the regular school year. When considering the need for ESY, ask this question: "Does my child take significantly longer (than other children) to regain the skills she/he had at the end of last year? If the answer is yes, then the IEP team should consider the need for ESY. All students regress at times and most students need time to catch up as a natural part of learning. However, a child with a disability who takes *longer* than an average time to regain skills (recoupment) or loses skills (regression) over extended breaks in services may benefit Extended School Year services in order to make continual progress toward goals.

In our opinion, the best time to measure a child's **recoupment/regression** is at the beginning of the school year. Generally the first six to nine weeks of a school year are used to review previous year's materials for all students to insure that all students are where they were at the end of the previous year. As teachers assess the students, the information provides a comparison to determine whether or not a child has maintained skills or shows a skill loss that will affect progress. (Any extended break in services may be used to measure recoupment/regression.) The glossary defines regression and recoupment.

## 3. Who Makes the Decision Regarding ESY Eligibility?

The IEP team makes the decision to provide Extended School Year services on an individual basis. These services must be determined necessary in order for the child to receive FAPE (Free Appropriate Public Education). 34 C.F.R. 300.309(a) (2)

*As an IEP team member, you are an equal participant in making the decisions for your child.*

#### 4. Is ESY required for any student who fails to master his IEP goals?

No. Failing to master IEP goals does not automatically make the student eligible for ESY. In response to the question, OSEP has stated: "Whether a student with a disability requires ESY is a decision for that Student's IEP team. Nothing in federal law or the corresponding regulations requires students with disabilities who do or do not meet their IEP goals to participate in ESY." Letter to Kleczka, 30 IDELR 270 (OSEP 1998).

#### 5. Is Summer School the same thing as Extended School Year services?

Summer School is a voluntary program offered by the school district that is open to all students. Extended School Year services are available only to students with disabilities who meet the eligibility criteria for ESY. **It is not a "one size fits all" program.** ESY is individually designed by the IEP team to prevent substantial regression in those critical skill areas that are likely to be impacted by an extended summer recess. Critical life skills may include but are not limited to: self-help, social skills, emotional support, physical mobility, communication, assistive technology, academics and vocational skills.

Note: Some parents choose summer school rather than ESY services even when their child meets eligibility criteria if the summer school meets their child's need. A chart comparing summer school to ESY is included in the NMPED Technical Assistance document at the end of this book.

#### 6. What information can I provide to assist the IEP team in the decision making process for considering Extended School Year services. Remember that ESY services are provided when the progress made by your child during the regular school year will be *significantly jeopardized* if he or she is not supplied with an educational program during the summer months. You can assist the IEP team in its decision making process by providing information regarding your child's ability to maintain skills during extended recesses from school.

Be prepared for your child's IEP. Use the questions below as you prepare your **Parent Report** for the IEP meeting. Visit with your child's teacher, related service providers or others that work with your child to help you gather this information.

- How well did your child maintain skills last summer?
- Did your child have a structured program last summer?
  - Was it continuous?
  - How many hours per day?
  - Was your child able to maintain skills within the context of the summer program?
- What impact do weekends and holidays have on your child?
- What level of structure must you provide in order for your child to maintain skills?
- How long does it usually take your child to regain the skills he or she has lost after an extended break?
- What skills has your child learned this year that you consider critical?
- In your opinion, what will result if your child does not receive ESY services?

## **7. What questions should be asked when IEP teams discuss Extended School Year?**

The Sixth Circuit court has identified the following questions which should be addressed by the IEP Team in considering ESY services:

- What is the child's tendency to regress?
- Is there is history of prior regression (e.g. following a weekend, holiday, or previous summers)?
- What is the child's ability to recoup lost skills?
- What is the child's progress toward his/her educational goals?
- Are the skill losses of such degree and duration so as to seriously impede the student's progress toward his/her educational goals? *Cordrey v. Euckert, (6th Cir. 1990); 17 IDELR 104*

## **8. Should schools set up an ESY program that is the same for all who are eligible for ESY services?**

No. The nature and the amount of services must be determined on an individual basis by the IEP team. It is not permissible to "predetermine the specific amount of services for an individual child regardless of the child's unique needs." *Letter to Libous, 17 IDELR 419 (OSERS 1990).*

## **9. Is transportation provided as a part of ESY services?**

Yes. Transportation is a related service and must be offered if it is necessary for the student to benefit from special education. *34C.F.R.300.13*

## **10. If the IEP team determines that a child needs ESY services, can the district say they do not provide ESY services? Could the district say they don't have room for the student...or they don't have enough staff?**

No, NO, NO! Ask the district to either provide the services as determined by the IEP team or to put it in writing as to why they can not provide the services that are written in the IEP. Many times a district will provide the ESY services through a contractor, if they feel that is the only way to meet the student's needs. Either way--the services must be provided. If the district and parent can not reach agreement about this, then the parents may exercise the procedural safe guards. *34 C.F.R. 300.309*

## **11. How will ESY service providers communicate with teachers and therapists that will be working with my child the following school year?**

Members of the IEP team should include a written description about the type of communication that will take place between home and school concerning ESY services. Forms of communication may include: written reports, conferences or any other means agreed upon by the IEP team. This is recommended BEST PRACTICE for all IEP meetings!

## **12. Is ESY designed to help students make gains in their academics?**

Generally speaking ESY is not designed for that purpose. ESY should be designed to prevent regression recoupment lags. Making gains would be considered a side benefit to ESY services.



# Eligibility Factors for Extended School Year

Information adapted from "Topical Paper on Special Education: Extended School Year", Mountain Plains Regional Resource Center, 2004.

*Schools may not automatically or categorically exclude, or include, any group. Rather, the decision must be made according to the individual needs of the child. The determination for eligibility must be made annually. It should not be automatically assumed that a child who receives ESY will be eligible the following year although it is one factor to consider when making the decision. Before making a decision on Extended School Year, IEP teams should:*

**Evaluate the goals on the IEP for the school year preceding ESY.** Some of the basic self-help skills to be considered for eligibility are listed below:

- Mobility and muscular control: sitting, standing, locomotion, ambulation with aids, and orientation to physical surroundings.
- Toileting: indication of need to toilet, urinating or defecating in toilet, and appropriate toileting skills, e.g. wiping, flushing, hand-washing.
- Feeding and eating: feeding self, using utensils, drinking from a cup or glass.
- Dressing: putting on or removing simple clothing.
- Communication: receptive language skills, expressive language skills.
- Academics: reading, writing, math, including recognition of numbers and letters.

**Consider factors that relate to other basic community living skills.** These might include: impulse control, the development of stable relationships, and appropriate interaction with peers and adults. Problems in these areas might include the following:

- Aggressive behavior that threatens the physical well-being of the child or others or which damages property.
- Communication difficulties resulting in grossly impaired or absent verbal communication skills, or bizarre speech.
- Unusual or repetitive habits including self-stimulation, fetishes, or attachments to odd objects which seriously interfere with learning.
- Withdrawal or inattentive behavior including extreme withdrawal, lack of awareness of what is happening in the immediate surroundings, and demonstration of behavior not related to the situation.
- Extreme disruption of relationships with others including extreme indifference or aversion to affection, inability to communicate basic needs, extremely inappropriate or bizarre relations or communication with others, and continuing to engage in behavior that is no longer appropriate.
- Extreme reactions to the environment such as severe anxiety reactions or catastrophic reactions to changes in the environment, and extremely inappropriate reactions to environmental cues, such as inappropriate use of common objects and inappropriate responses to simple verbal or nonverbal cues or symbols.

To prove need for ESY services—a child cannot be required to fail or go for an entire year without ESY. *If data is not available to support the need for services, other factors must be considered in making the decision.*

The factors to be considered in making ESY decisions shall include, but are not limited to, those on the following list. However, it is not necessary for schools to include documentation on every factor for each child with a disability. Only those factors that apply to a particular child and on which the IEP team relies in making its decision should be identified.

- **Regression-recoupment rates**, as evidenced by past performance, including previous summer breaks, Christmas or mid-winter vacation breaks, or even shorter periods of time, such as weekends or short holidays. Schools should have general guidelines for determining what constitutes a regression-recoupment problem. This may be in the form of a broad statement or numerical guidelines. Data collection should include, but not be limited to, evaluating parental and teacher input, test results, performance data, and other evidence of progress on targeted goals and objectives.

*Example:* John's classroom teacher and speech pathologist kept data on his communication progress throughout the previous school year. They then documented his progress on the objectives that had to be repeated after summer vacation and discovered that John was unable to begin work on any new communication objectives until November 15. This information played a critical role in the determination to provide John with ESY program services the following summer.

- **Motor, communication, or social skill levels and a critical need for continuity in order to maintain those skills**

*Example:* Sara is a student with a severe disability at Desert Elementary School. During the past summer, Sara experienced severe regression in her ability to communicate with others. Instruction resumed in August, but Sara did not recoup her communication skills until November 15. Based upon these factors, Sara should be considered for ESY services in relationship to goals and objectives on communication.

- **Least restrictive environment (LRE)** consideration when ESY is determined to be necessary in order for children to maintain placement in least restrictive environment during the regular school year. (See the example below and the example for Behavioral Needs factor.) ESY services may not be subject to the same least restrictive environment considerations as during the regular school year. First, the same LRE options may not be available, and second, for some children, the appropriate LRE may be at home with other members of the family with only a very limited ESY.

PRO Note: Depending on the need of the student, there is nothing to prevent the IEP team from being creative in meeting the student's needs in the LRE.

*Example:* A student who has needs regarding social skills and needs to be around non disabled peers may benefit from participating in a summer recreation program with supports from the school, including applicable fees.



- **Behavioral needs**, particularly the need for highly structured programming to maintain behavioral controls established during the previous school year.

*Example:* Gina is a 15 year-old student in a program for students with emotional disabilities at Washington High School. During the review of her IEP, the team determined that although her academic regression over summer vacation would not be significant, the loss of behavior control would be severe, if not permanent. The team also considered Gina's placement in the school program and determined that, without ESY, it is likely that Gina would have to be placed in a more restrictive environment (e.g., a residential placement) for most of the following school year. Therefore, ESY would be necessary in order for her to remain in the least restrictive environment.

- **Physical, mental, emotional, or health factors**

*Example:* John is a high school student with a learning disability who was functioning at grade level in all subjects except reading. During the school year, he was involved in an automobile accident and suffered severe head injuries. At the annual review of his IEP, the team determined that John would not be able to maintain the skills he had learned during the school year without ESY. His physical injuries were considered only to the extent that they had caused him to be unable to maintain his end-of-the-year skill level without suffering severe regression over the summer break.

- **Critical learning stages**, particularly those related to behaviors or skills that have not yet been generalized at the time the scheduled break is to occur. If the child is unlikely to relearn the skills or information or have another opportunity to generalize them to other situations, ESY should be considered in order to avoid irreparable loss of the learning opportunity.

*Example:* Joan is a nine year-old student with multiple disabilities. Joan learned toileting skills in May and was receiving instruction on generalizing those skills to other situations. ESY was recommended in order that Joan continue to receive instruction during this critical learning stage so that 1) the new skills could be maintained; 2) those skills could be generalized to other situations while Joan was able and willing to perform them; and 3) the skills would not be lost and replaced with other, possibly inappropriate, behaviors.

- **Parental skills and abilities to monitor programming and prevent regression.** A parent or guardian may be unable to maintain a child's level of functioning during a break in programming. The program may be very complex, and the parents may not have either the time or expertise to continue the program at home. This factor is relevant to whether the child can be expected to regress. Where appropriate, parents may be given training to assist them in home teaching and maintenance of specific skills or behaviors. While the skills and abilities of the parents can be considered, the parents cannot be expected to fulfill a responsibility for the school. The school is encouraged to work with the parents for the child's benefit, but cannot abrogate its duty to provide a free appropriate public education to the child.
- **When ordered by a due process hearing officer,** ESY shall be provided. If the school chooses to appeal, the child shall be placed in ESY pending the result of the appeals process.

## **School / Parent Extended School Year Check List\***

- \_\_\_\_\_ The child has been considered for ESY at least annually.
- \_\_\_\_\_ ESY is considered for all active goals and objectives on the IEP.
- \_\_\_\_\_ The decision is made by the IEP team and not an individual.
- \_\_\_\_\_ There is a likelihood of significant regression during long interruptions of instruction and/or therapy without ESY, and the rate of probable recoupment of skills will be excessive.
- \_\_\_\_\_ Other factors were considered by the team to warrant ESY, including;
- Degree of impairment
  - Program interruption
  - Opportunities at home
  - Critical life skills
  - Physical issues
  - Interfering behaviors
  - Other factors identified by the team
- \_\_\_\_\_ The team documented the need for ESY retroactively through:
- Historical data
  - Pre-post-testing
  - Observations/charting
  - Teacher made tests
- \_\_\_\_\_ The team identified the need for ESY prospectively with the following:
- Opinions of team members—This must be documented in writing
- \_\_\_\_\_ No other services are available during the summer to prevent regression.
- \_\_\_\_\_ If the child is eligible, the parent must agree with ESY. Many parents may elect for family time, etc.
- \_\_\_\_\_ If the child qualifies, the current IEP is used for ESY.
- \_\_\_\_\_ Placement and service delivery is determined if the child qualifies. Placement could include home instruction if the parent agrees. Usually ESY services vary from the regular school year schedule.
- \_\_\_\_\_ If the child does not qualify, the receiving teacher should observe for regression and recoupment during the first quarter of the next school year.

\* From "Topical Paper on Special Education: Extended School Year", Mountain Plains Regional Resource Center, 2004.

## Quick Tips for EXTENDED SCHOOL YEAR



- Transportation is a related service and must be offered if it is necessary for the student to benefit from special education.
- All students who were not eligible for ESY services should be checked at the beginning of the new school year for severe regression. End of year performance data should be compared with September Performance data. In order to be a true measure of regression and not a reflection of new learning, the comparison should occur no later than the third week of school.
- If substantial regression has occurred, then data should be collected to determine the point where the student's performance is equal to where he/she was in the previous spring. Any recoupment that takes more than eight weeks should be considered significant.
- If it is found that severe regression occurred and the student was denied ESY services, the school should offer compensatory services to assist the student to gain back lost skills.
- If severe regression did not take place over the summer, this data could be used at the next meeting that considers ESY services.
- Although ESY is required only for those students with disabilities who have been determined eligible, the school can provide ESY programs to any or all students with disabilities. However, funding for such programs would be the responsibility of the school district.
- Qualifying for ESY one year does not guarantee services for succeeding years. ESY must be determined annually.
- Annual in-service should be provided to staff members regarding extended school year services.
- It is necessary to use certified and qualified staff for ESY services.
- The ESY teacher (and/or ESY service provider) should prepare and submit a report to next year's special education teacher regarding the student's ESY progress. As best practice, progress should be indicated on the student's IEP.



# Glossary of Terms for Extended School Year

- **Academic Year:** Standard school year of approximately 180 days of instruction with a three month summer recess.
- **Critical Life Skills:** Any skill determined by the IEP Team to be critical to the student's overall educational progress.
- **ESY:** Extended School Year - The provision of special education and related services beyond the normal school year. Specially designed instruction and or related services, based on the current IEP, to prevent substantial regression over and beyond that which is normally experienced by other students.
- **FAPE:** Free Appropriate Public Education
- **IDEA 97:** Individuals with Disabilities Education Act, Amendments of 1997, provides that all students with disabilities are entitled to a free appropriate public education.
- **IEP Team:** Parent(s), professional school staff, agency representatives and student (when appropriate), who are familiar with the student and decide collectively whether ESY services are required. This determination needs to occur at least annually.
- **LEA:** Local Education Agency
- **LRE:** Least Restrictive Environment
- **Predictive (Prospective) Decision:** The anticipation or expectation of regression occurring based upon an analysis of test data, observations, and progress made towards the IEP goals and objectives.
- **Recoupment:** The ability to recover or regain skills specified in the IEP at the level demonstrated prior to the interruption of educational programming. Any recoupment that takes more than eight weeks should be considered significant.
- **Regression:** A decline to a lower level of functioning demonstrated by a decrease of previously attained skills which occurs as a result of an interruption in educational programming. The skills must be specified in the current IEP.
- **Retrospective Data:** Collected during the school year that indicates the student does or does not need as ESY program.
- **OSEP:** Office of Special Education Programs (US Department of Education)
- **OSERS:** Office of Special Education and Rehabilitative Services

# What Is Compensatory Education?

## **1. What does Compensatory Education mean?**

Compensatory education is the provision of services to remedy for deprivations of a free appropriate public education (FAPE). If a student was not offered ESY services and experienced serious regression, a school could be obligated to offer special education and/or related services outside the normal school program to help the student recoup his/her losses.

## **2. What is the purpose of compensatory education? What services are provided?**

The purpose of compensatory education is to help the child make the progress that she or he would have made if an appropriate program had been available. The specific services provided must be tailored to the child's needs. Compensatory education can mean extra instruction or related services (such as therapies) provided during the school year or summer. In other cases, a child may be allowed to continue to attend school for a period after reaching age 21. Sometimes, too, summer camp services, special materials, or other special services tailored to the child's needs are appropriate. The amount of compensatory services provided should reflect the student's specific learning needs, and should relate to the amount of services that the student missed.

## **3. If a student has failed a class due to an inappropriate program should the student receive ESY?**

No, if the inappropriate program denied Free Appropriate Public Education (FAPE). IEP team should consider compensatory education for the student at public expense

## **4. Should a student with an appropriate IEP receive ESY if the student has failed because the IEP was not followed?**

No, however the IEP team should consider compensatory education at public expense.

## **5. Why would the school district want to provide compensatory education to a student?**

First of all, it is the right thing to do. Second, if the parent decides to file a formal complaint with the NM Public Education Department or file for a due process hearing, the resulting decision may require Compensatory Education. If the documentation shows there were errors, the district will have to provide compensatory education as part of the corrective action or hearing decision.

## **6. How does a parent obtain compensatory education services?**

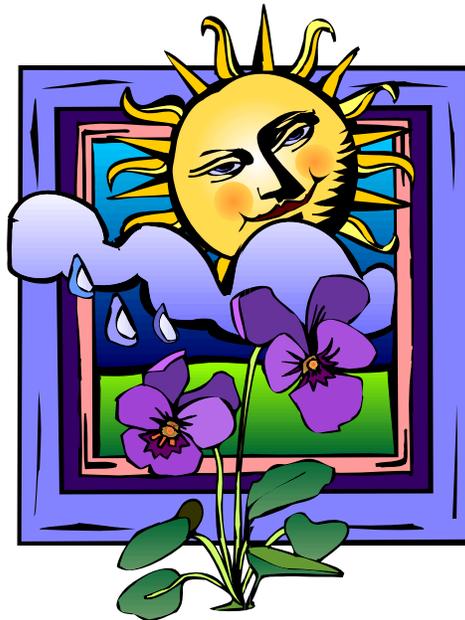
As with all concerns concerning a child with a disability, call an IEP meeting to discuss the need for compensatory education services. It is best to request this IEP meeting in writing. The IEP should take place within 10 school days of the request for an IEP meeting. You will need to convince your district that your child actually went without appropriate services not just that his or her program was less than perfect. You should bring any records or other information that you have that will show specific examples of missed services that were identified in the IEP to provide a background for your request. If the team is in agreement, then the IEP manager should make all of the appropriate arrangements. If there is no agreement, the family may exercise their rights under the procedural safeguards.



**New Mexico**  
**State Department of Education**  
**Technical Assistance Manual**

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**SCHOOL YEAR**  
**SERVICES**



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***Excellence and Equity in Education!***

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**Create and maintain a customer-focused organization that provides leadership and service to bring about improved educational results**

The New Mexico State Board of Education and the State Department of Education do not discriminate with regard to race, culture, ancestry, color, national origin, sex, age, religion or disability in their programs or hiring practices.

This manual is also available online through the Special Education link of the State Department's website at [www.ped.state.nm.us](http://www.ped.state.nm.us).

# Technical Assistance Manual Extended School Year (ESY) Services

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# Technical Assistance Manual

## Extended School Year (ESY) Services

### What is ESY?

The term Extended School Year (ESY) means the provision of special education and related services beyond the traditional 9 months or 180 school days per year.

### Why is ESY Needed?

Most students benefit from school holidays and breaks. Breaks in formal programming allow most students to rest and to generalize school-learned skills and behaviors to their home and community, thereby facilitating new learning outside of the school setting. Most students also lose skills during regular breaks from school, but regain them in a short amount of time once school resumes. However, some students with disabilities have difficulty regaining learned skills after a break and may need ESY services. ESY services are designed to maintain those skills or slow the loss caused by an interruption of learning during times when school is not in session for holidays, breaks, and summer months so that the student is reasonably ready to begin the next school session. A student will need ESY whenever he or she experiences an unacceptable loss of skills (regression) and requires more than the typical length of time to get back what was lost (recoupment).

**Some students with disabilities have difficulty regaining learned skills after a school break.**



### The Legal Requirements

The federal Individuals with Disabilities Education Act (IDEA), requires that districts provide ESY services to a student with a disability in accordance with the student's Individualized Education Program (IEP), and at no cost to the parent. Additionally, the IDEA states that each public agency shall ensure that ESY services are available as necessary to provide a student a free appropriate public education (FAPE). Districts must provide ESY services if a student's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the student. School districts may not limit ESY services to particular categories of disability or unilaterally limit the type, amount, or duration of those services. Specifically, the IDEA at 34 CFR Sec. 300.309 provides as follows:

## Subpart C—Services Free Appropriate Public Education

Sec. 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 State Education Agency (SEA).



## Who Determines Eligibility for ESY?

Although the law requires that IEP teams consider ESY for all students with disabilities, not all students with disabilities will need ESY services. Nor does the provision of ESY services mean that a student will need such services each year. IEP teams should not elect to provide ESY services to any student who is simply not showing progress in the accomplishment of IEP goals and objectives. Rather, if a student regresses in a critical academic or behavioral area and the lost skills require an unusual amount of time to regain, the student's IEP team may determine that the student is eligible for ESY services. If so, the IEP team identifies the type and length of the program that will meet the student's needs by designing a program that will maintain student mastery of critical skills and/or behavior and maintain a reasonable readiness for the student to begin the next school year.



When the IEP team determines that a student is in need of ESY services, the district must provide the service at no cost to parents. Additionally, the district provides ESY services, on an individual basis under the auspices of an IEP. Like all other special education decisions, the basis for determining the need for ESY is the individual student's unique needs, and it is not dependent on the capabilities of the district to provide those services. As a student's needs change over time, the need for ESY services may also change, and the IEP team should revise the student's IEP accordingly. The IEP team needs to review the necessity for ESY services on an annual basis.

## Factors in Considering the Need for ESY

The purpose of ESY is not to enhance or maximize the present levels of educational performance (PLEP) exhibited by students with disabilities at the end of the regular school year. Instead, the IEP team bases the need for ESY services on skill regression (loss) and a student's limited capacity for recoupment (regain). ESY services may be provided when the IEP team determines that a student might regress to such an extent in a skill and/or behavior area that recoupment of such skill loss would require an unusually long period of time, or make it unlikely or impossible to recoup the PLEP.

A significant regression/recoupment factor is the first line of inquiry for establishing criteria and eligibility standards for ESY services. The regression/recoupment factor is relative to the student's current IEP goals and objectives and his or her PLEP. It is not necessary to

continue instruction on all of the previous year's IEP goals and objectives during the ESY period. The purpose of ESY instruction is to focus on those specific goals and objectives severely impacted by extended breaks in instruction.

Regression/recoupment problems triggering the need for ESY services occur when

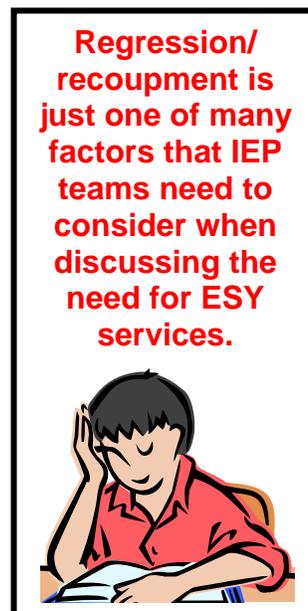
- a student suffers an inordinate or disproportionate degree of regression during that portion of the year in which the customary 180-day school year is not in session; and
- it takes an inordinate or unacceptable length of time for the student to recoup lost skills. There is no precise measure of the amount of regression and limited recoupment that would indicate a student's need for ESY programming.

Regression/recoupment is just one of many factors that IEP teams need to consider when discussing the need for ESY services. In considering a recommendation for ESY services the IEP team should also consider the following factors that might indicate a need for ESY:

- severity of the disability
- behavioral skills
- critical learning period
- learned material
- potential for generalization and maintenance
- emerging skills that are at risk for loss
- medical conditions
- family circumstances

In addition, in 1990, the 10th Circuit Court whose decisions are binding on public education agencies in New Mexico identified the following standards for determining the need for ESY services: 1

- degree of regression suffered in the past
- exact time of the regression
- ability of the parents to provide educational structure at home
- student's rate of progress
- student's behavioral and physical problems
- availability of alternative resources
- ability of the student to interact with non-disabled students
- areas of the student's curriculum that need continuous attention
- student's vocational needs



1 See Johnson v. Independent School District No. 4, 17 IDLER 170, (10th Circuit, 1990).

- whether the requested services are extraordinary for the student's disabling condition as opposed to an integral part of a program for populations of students with the same disability

Moreover, the IEP team needs to keep in mind that the length of interruption in instructional programming and/or related services, which causes a detrimental effect, may vary because the regression/recoupment cycle is an individual process. Thus, it is imperative that IEP teams consider each student's functioning level on an individual basis.

- IEP teams should consider additional standards identified from the court case mentioned above.
- IEP teams must not look solely to a student's previous experiences in making its ESY eligibility determination.
- IEP teams should consider if the student is at a critical point in his or her program and the impact of the interruption on possible future regression and/or recoupment problems.

**IEP teams must look at a wide range of factors when determining the need for ESY services.**



## Collecting Data

An IEP team may consider a student's need for ESY services at any meeting called to discuss the IEP. A discussion on the need for ESY services should occur early in the school year so that the team can begin collecting supporting data to allow for planning on the part of the IEP team, and if appropriate, any outside agencies providing special education and/or related services. Parents need to know about the possibility of ESY services early in the year to prevent conflicts with family vacations and other summer activities. School district administrators need time to plan for the provision of special education and/or related services. The IEP committee documents the need for ESY and identifies the goals for ESY services on the student's IEP. Determination of the need for ESY services requires a thorough analysis of formal and informal assessment data collected by the IEP team. In determining the need for ESY, the IEP team should review the following sources of information:

- The current IEP, especially the present levels of educational performance, annual goals, and short-term instructional objectives
- Pre- and post-testing using criterion-referenced assessment procedures
- Results of efforts on the part of educators and/or parents which specifically addressed the maintenance of learned skills while programming was interrupted

Areas of learning which are identified as an integral part of a skill area required to reach the student's assessed potential, such as social, motor, behavioral, academic, self-help, and communicative abilities

- Pertinent medical, psychological, and educational data
- Data that reflects the regression/recoupment cycle experienced by the student following interruptions of instruction services. Document periodically during the regular school year

It is important to note that the impact of previous ESY services on overall student performance is not the sole basis for determining a current need for ESY.

## **Proposed Schedule**

A schedule for collecting data regarding a student's possible regression may be one or more of the following:

- At the beginning of the school year
- After extended breaks (winter, spring) and/or illness
- After regular shorter breaks such as weekends and/or extended weekends due to holidays or illness
- At the end of the regular school year
- At the end of the ESY program

## **Documenting the Need**

The student's IEP team must use the prior written notice (PWN) to document its proposal and decision that a delay or break in the provision of special education and related services may result in a significant delay in the recoupment of academic and/or behavior skills. The need for ESY services should be based on documented evidence showing that substantial regression caused by interruption in educational programming, together with the student's limited recoupment capacity, may result in a significant delay in recoupment of critical skills. In order to provide a FAPE to a student who demonstrates a disability in one or more areas, answers to the following questions should alert the IEP team to the possible need for ESY:

Yes    No   Does the review of data show that the student experiences significant regression in adaptive behaviors or learned skills (social, motor, behavioral, academic, self-help, and communication) over regularly scheduled school breaks during the year?

Yes    No   Does the review of data show that the student requires a significant amount of time and effort to recoup previously learned behaviors and skills?

Yes    No   Does the review of data indicate that the student benefited from previous ESY services? It is important to note that the impact of previous ESY services on overall student performance is not the sole basis for determining a current need for ESY.

Yes    No   Does the review of data indicate that the benefits to be derived from an extended educational program outweigh the positive benefits of a summer vacation?

Yes    No   Did the IEP team consider other program options that would meet the needs of the student? Identify the programs considered by the \_\_\_\_\_ IEP \_\_\_\_\_ team?

Yes    No   Did the IEP team determined that ESY would best meet the needs of the student? Why or why not?

A sample IEP addendum form containing the above questions can be found on pages 22 and 23 of the appendices. Districts may reproduce the form and use it to document a student's need and eligibility for ESY services.



## Possible Service Delivery Models

ESY service delivery models may include, but are not limited to, the options and/or examples below. Districts must also provide transportation when it is necessary to ensure the implementation of ESY services.

- **Direct services** refer to special education and/or related and support services. Provision of these services may be individually or in groups, at center-based or home sites.
- **Home consultation** provides support, instructional techniques, and materials to parents so that the parent can implement the student's program to prevent regression.
- **Cooperative service arrangements** refer to the coordination of services with district programs and other agencies. Such arrangements for implementing ESY components may include local recreation programs, summer school, sheltered workshops, or other appropriate programs.
- **The traditional school-based summer program**
- **Residential placement** in a boarding facility
- **Private programs** that provide the least restrictive environment available



## ESY is Not Summer School

ESY services provide a different focus from traditional summer school programs. ESY services provide an extension of the programming from the regular school year, as identified in the IEP. The table below provides a comparison of ESY and summer school.

<b>ESY</b>	<b>Summer School</b>
<ul style="list-style-type: none"> <li>• is a required consideration by IDEA for any student with a disability who needs special education and/or related services in order to receive FAPE</li> </ul>	<ul style="list-style-type: none"> <li>• is an optional or permissive program provided beyond the school year. A school district may or may not elect to conduct summer school classes</li> </ul>
<ul style="list-style-type: none"> <li>• is determined on a case-by-case basis by an IEP team in accordance with IDEA regulations</li> </ul>	<ul style="list-style-type: none"> <li>• is determined by the school district based on its own criteria. Participation does not depend upon a team determination of the need</li> </ul>
<ul style="list-style-type: none"> <li>• assures FAPE by maintaining and preventing loss of critical learned skills. ESY services are not provided for the purpose of helping students with disabilities advance in relation to their peers</li> </ul>	<ul style="list-style-type: none"> <li>• is teaching or reviewing previously presented material and/or providing recreational activities</li> </ul>
<ul style="list-style-type: none"> <li>• is free to parents of eligible students</li> </ul>	<ul style="list-style-type: none"> <li>• often involves a fee</li> </ul>
<ul style="list-style-type: none"> <li>• schedule, setting, and extent of services designed to meet the individual student's needs in order to assure FAPE. The IEP team determines the amount and duration</li> </ul>	<ul style="list-style-type: none"> <li>• is typically operated on a predetermined set schedule</li> </ul>

## ***Frequently Asked Questions***

The following questions and answers are intended to provide school districts with an overview of some of the basic requirements for ESY programs as they proceed to implement these opportunities for children with disabilities in New Mexico.

- Question 1:** Can school districts refuse to consider ESY services?
- Question 2:** Must school districts notify parents of the availability of ESY services?
- Question 3:** Is there a separate or different IEP for ESY programs?
- Question 4:** Can districts offer one program for all ESY students?
- Question 5:** Do disciplinary rules apply to ESY programs?
- Question 6:** Are school districts required to provide related services during ESY?
- Question 7:** Is a school district required to provide transportation to an ESY program?
- Question 8:** Can a district use cut-off dates for providing preschool ESY services under Part B to three-year-olds?
- Question 9:** Are students with severe disabilities always eligible for ESY?
- Question 11:** Must ESY services be provided in the least restrictive environment (LRE)?
- Question 12:** Are students in unilaterally parentally placed private schools entitled to ESY?
- Question 13:** Can districts provide related services alone without other instructional services during ESY?
- Question 14:** Can districts provide ESY in a non-educational setting?
- Question 15:** Can districts provide ESY services during times other than the summer months?
- Question 16:** Is ESY required if a school district, pursuant to state law, uniformly offers all students with disabilities the same number of school days per year?
- Question 17:** Is a school district responsible for covering the cost of ESY if it has provided the disabled student with the round-the-clock services of a residential placement?

- Question 18:** If a school district fails to provide required ESY services to an eligible student, can a hearing officer or court order reimbursement for tuition and expenses incurred by parents in having provided such programs?
- Question 19:** When there is no documentation of past regression/recoupment problems, may a student be eligible for ESY services?
- Question 20:** Does the fact that a student received ESY services in a prior year mean that he or she needs ESY services in the current year?
- Question 21:** Must districts provide the full continuum of services for ESY?
- Question 22:** Must a district duplicate all of the services provided during the regular school in the ESY programs?
- Question 23:** At what point does a school district decide if a student with a disability is eligible for ESY programming?
- Question 24:** How can the IEP team use the concept of “recoupment” in determining the need for ESY services?
- Question 25:** How should a school district document a student’s regression?
- Question 26:** Can an IEP team enroll a student in other federally funded programs as a means to providing ESY?



**Question 1:** Can school districts refuse to consider ESY services?

**Answer: No.** School districts must provide ESY programming to IDEA eligible students when necessary to provide FAPE. This requirement applies even in situations where a school district does not ordinarily provide educational services beyond the normal school year. (See 34 CFR Sec. 300.309(a) (1) and Attachment 1 to 34 CFR Sec. 300, page 12576.)

**Question 2:** Must school districts notify parents of the availability of ESY services?

**Answer: Yes.** Just as school districts provide notice of the availability of all special education and related services, they must inform parents of the availability of ESY. (See 34 CFR 300.309 and Attachment 1 to 34 CFR Sec. 300, page 12576.)

**Question 3:** Is there a separate or different IEP for ESY programs?

**Answer: No.** Districts must provide ESY service on an individual basis, determined by the IEP team, and in accordance with the provisions of 34 CFR Secs. 300.340 through 300.350 listed below:

300.340 Definitions related to IEPs.

300.341 Responsibilities for IEPs.

300.342 When IEPs must be in effect.

300.343 IEP meetings.

300.344 IEP team.

300.345 Parent participation.

300.346 Development, review, and revision of IEP.

300.347 Content of IEP.

300.348 Responsibility for transition services.

300.349 Private school placements by public agencies.

300.350 IEP—accountability.

These IEP requirements include specifying the types and amounts of services consistent with the individual disabled student's right to FAPE.

**Question 4:** Can districts offer one program for all ESY students?

**Answer: No.** School districts cannot categorically limit the **types, amounts, or duration** of services they will provide. (See 34 Sec. CFR300.309 (a)(3)(ii).)

**Question 5:** Do disciplinary rules apply to ESY programs?

**Answer: Yes.** The IDEA's disciplinary provisions affect all students with disabilities without regard to the timing of their instruction. Therefore, they apply all year round. (See LIH ex rel. LH v. New York City Bd. Of Educ., 103 F. Supp.zd 658 (F.D.N.Y. 2000) 33 IDLER 1, applying 34 CFR Sec. 300-529 disciplinary protection in ESY services)

**Question 6:** Are school districts required to provide related services during ESY?

**Answer: Yes.** If the IEP team makes the determination that a related service is required to assist a student with a disability to benefit from special education then the district is obligated to provide the service(s). (See 34 CFR Sec. 300.24 (a).)

**Question 7:** Is a school district required to provide transportation to an ESY program?

**Answer: Yes.** The U.S. Department of Education (DOE) recognizes that ESY, including related services, may differ from the regular school year program. However, if the ESY services are part of the student's program to receive FAPE, school districts must provide transportation to and from those services. (See Letter to Baugh, 211 IDELR 481 OSERS 1987).)

**Question 8:** Can a district use cut-off dates for providing preschool ESY services under Part B to three-year-olds?

**Answer: No.** A school district may not use cut-off dates for determining eligibility if the effect would deny the provision of FAPE beginning on the child's third birthday. This includes provision of ESY services to a child who turns three during the summer months, if the IEP team determines the child needs ESY to receive FAPE. (See 34 CFR Sec.300.121 (c) (2).) This would be determined at the student's transition from Part C to Part B planning meeting. (See 34 CFR 300.132.)

**Question 9:** Are students with severe disabilities always eligible for ESY?

**Answer: No.** A student's IEP team determines, on an individual case-by-case basis, whether ESY services are necessary for the provision of FAPE. Because each student's individual need for such services is at issue, a school district may not establish categorical rules limiting eligibility to a particular type of disability. (See 34 CFR Sec. 300.309 (3) (i).)

**Question 10:** Does a school district have to provide all related services indicated on the IEP even in summer when related services providers are difficult to secure?

**Answer: Yes.** School districts are required to provide special education and related services directly, by contract, or through other arrangements. (See 34 CFR Sec. 300.341 (b) (2).)

**Question 11:** Must ESY services be provided in the least restrictive environment (LRE)?

**Answer: Yes.** Discussions accompanying the publication of the final regulations to the IDEA affirm that schools must provide ESY services in a student's LRE. (See Appendix B, pages 24-26 Attachment 1 to 34 CFR page 12577.)

**Question 12:** Are students in unilaterally parentally placed private schools entitled to ESY?

**Answer: No.** Students enrolled in private schools by their parents have no individual entitlement to FAPE. Determinations regarding the provision of services, including the types and amounts of such services, require a process of consultation between representatives of public agencies and private schools. (See 34 CFR Sec. 300.454 (a) and Attachment 1 to 34 CFR 300, page 12577.)

**Question 13:** Can districts provide related services alone without other instructional services during ESY?

**Answer: Yes.** "Special Education" in New Mexico as authorized by 34 CFR Secs. 300.7 (a) (2) (ii) and 300.26 (a) (2) (i) may include speech-language services or any other related service that meets the State Special Education regulations, Subsection (c)(15) of 6.31.2.7 NMAC.

**Question 14:** Can districts provide ESY in a non-educational setting?

**Answer: Yes.** Consistent with a school district's obligation to ensure that each disabled student receives necessary ESY services in order to receive FAPE, nothing in regulations would prohibit a public agency from providing ESY services in a non-educational setting if the student's IEP team determines that the student could receive necessary ESY services in that setting.

**Question 15:** Can districts provide ESY services during times other than the summer months?

**Answer: Yes.** Typically, districts provide ESY services during the summer months. The definition of ESY services, provided in 34 CFR Sec. 300.309 (b), does not limit the ability of a school district to provide ESY services to a student with a disability during times other than the summer. The IEP team must determine and document that the student requires ESY services during other times, when school is not in session, in order to receive FAPE.

**Question 16:** Is ESY required if a school district, pursuant to state law, uniformly offers all students with disabilities the same number of school days per year?

**Answer: Yes.** A consistent cluster of early court decisions established that a uniform number of school days per year, typically 180, violates IDEA's mandate for a FAPE.

**Question 17:** Is a school district responsible for covering the cost of ESY if it has provided the disabled student with the round-the-clock services of a residential placement?

**Answer: Yes.** Regardless of a student's placement in a residential setting, he or she is entitled to ESY, at no cost to the parents, if he or she meets the criteria for eligibility for ESY.

**Question 18:** If a school district fails to provide required ESY services to an eligible student, can a hearing officer or court order reimbursement for tuition and expenses incurred by parents in having provided such programs?

**Answer: Yes.** In following the rationale of Burlington School Committee v. Department of Education of Massachusetts, 471 U.S. 359 (1985), hearing officers and courts have issued such relief in several cases.

**Question 19:** When there is no documentation of past regression/recoupment problems, may a student be eligible for ESY services?

**Answer: Yes.** A student may be eligible for ESY services even though there is no documentation of past regression/recoupment problems. In analyzing a student's potential regression/recoupment problems, the IEP team needs to consider predictive information as well as any other appropriate factors.

**Question 20:** Does the fact that a student received ESY services in a prior year mean that he or she needs ESY services in the current year?

**Answer: No.** IEP teams must consider ESY services annually in light of the student's current needs and current skills.

**Question 21:** Must districts provide the full continuum of services for ESY?

**Answer: No.** Because ESY services are provided during a time when the full continuum of educational placements is not normally available, the district is not required to establish programs to ensure that a full continuum of educational placements is available solely for the purpose of providing ESY services.

**Question 22:** Must a district duplicate all of the services provided during the regular school in the ESY programs?

**Answer: No.** A student's ESY program may differ from the regular school year program. ESY services may include special education and/or related services. The IEP team must specify these services on the student's IEP. The IEP team should describe these differences separately on an additional IEP schedule of services that specifically outlines the proposed extended school year services and their frequency and duration. The U.S. Department of Education, Office of Special Education Programs (OSEP), has indicated the following:

*It is reasonable for an IEP to concentrate on*

- the areas in which the child may experience regression; or,
- skills or programs that are not academic but are needed so that regression does not occur in academics. (See Letter Myers, 213 IDELR 255 (OSEP 1989).)

**Question 23:** At what point does a school district decide if a student with a disability is eligible for ESY programming?

**Answer:** At least once annually the student's IEP team must consider the need for an extended school year program. The IEP team must determine the need for ESY on an individual basis and in a timely manner.

**Question 24:** How can the IEP team use the concept of “recoupment” in determining the need for ESY services?

**Answer:** The team documents recoupment difficulties by documenting areas in which the student has regressed without ESY. For example, the team may document:

- the loss of performance levels that were attained before a break in service
- the student’s limited learning rate, which lengthens the amount of time the student requires to review and/or relearn previously attained objectives
- the fact that the time for that student to accomplish such recoupment is greater than the period of time the school district allows all other students for review and/or relearning.

**Question 25:** How should a school district document a student’s regression?

**Answer:** Since proposed ESY services must take into account the probability of substantial regression, school districts should ensure that the special education service providers maintain quantitative and qualitative data regarding the student, including anecdotal records on the rates of both learning and relearning, as well as records of a student’s attainment of IEP goals and objectives.

**Question 26:** Can an IEP team enroll a student in other federally funded programs as a means to providing ESY?

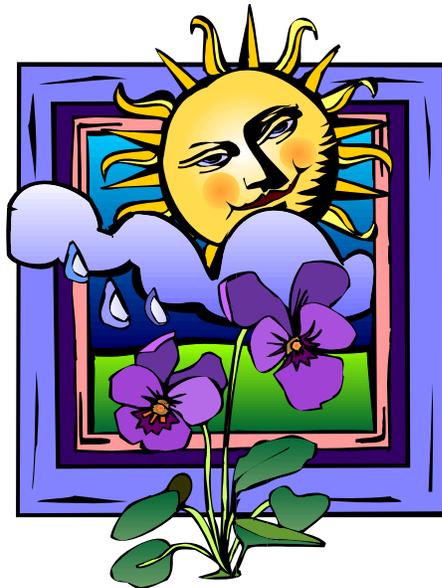
**Answer: No.** It is not allowable to write other federally-funded programs or services into a student’s IEP. Title I funds cannot be used to provide the level of services necessary to meet federal and state requirements for IDEA eligible students. However, districts may use Title I and other federally-funded programs and services to supplement a student’s services.



# *Appendices*

## **A. Extended School Year Addendum** (Revised, August 2003)

## **B. Discussion from Attachment 1**



## **Addendum for Determining Eligibility for Extended School Year Services**

A significant regression/recoupment factor is the first line of inquiry for establishing criteria and eligibility standards for ESY services. The regression/recoupment factor must relate to the student's current IEP goals, objectives, and present levels of educational performance based on multi-disciplinary team data, including information from the parent(s)/guardian(s). In addition to regression/recoupment, consider the following factors: severity of the disability, behavioral skills, critical learning period, learned material, potential for generalization and maintenance, emerging skills that are at risk for loss, medical conditions and family circumstances.

To determine eligibility for ESY services, the IEP team must:

- 1) answer the following questions and,
- 2) provide documentation indicating that the student's regression of learned skills, and his or her ability to recover lost skills (recoupment), render it unlikely that the student will attain the state of self-sufficiency that he or she would otherwise reasonably be expected to reach.

The student...

- Yes     No    Does the review of data show that the student experiences significant regression in adaptive behaviors or learned skills (social, motor, behavioral, academic, self-help and communication) over regularly scheduled school breaks during the year (i.e., holidays, weekends, between special education classes)?
- Yes     No    Does the review of data show that the student requires a significant amount of time and effort to recoup previously learned behavior and skills?
- Yes     No    Does the review of data indicate that the student benefited from previous ESY services? It is important to note that the impact of previous ESY services on overall student performance is not the sole basis for determining a current need for ESY.
- Yes     No    Does the review of data indicate that the benefits to be derived from an extended educational program outweigh the positive benefits of a summer vacation?
- Yes     No    Did the IEP team consider other program options that would meet the needs of the student? Identify the programs considered by the IEP team: \_\_\_\_\_
- Yes     No    Did the IEP team determined that ESY would best meet the needs of the student? Why or why not? \_\_\_\_\_

Page 1 of 2 Addendum for ESY Services    Name: \_\_\_\_\_

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## Extended School Year (ESY) Services (continued)

List the names of documents reviewed by the team to make this determination.

Document Name:

Document Date:

_____	_____
_____	_____
_____	_____
_____	_____

If documentation is not attached to this addendum, please indicate where it is located.

\_\_\_\_\_

The IEP team has reviewed the documentation above and has determined the following:

- The student is not eligible for ESY services.
- The student requires the following ESY services:
  - Instructional
  - Behavioral
  - Related services (Identify): \_\_\_\_\_

How will services be provided and by whom? \_\_\_\_\_

Start and ending dates: \_\_\_\_\_

Additional information is required to determine eligibility for ESY services.

- Name of person responsible for collecting additional information: \_\_\_\_\_  
\_\_\_\_\_
- Anticipated data collection dates: \_\_\_\_\_
- Anticipated IEP date for review of collected data: \_\_\_\_\_

Page 2 of 2 Addendum for ESY Services Name: \_\_\_\_\_

## ***Discussion from Attachment 1***

*The following is a summary of guidance from the U.S. Department of Education, Office of Special Education Programs (OSEP) regarding ESY services. Attachment 1 to the IDEA Regulations—Analysis of Comments and Changes, Federal Register, Vol. 64, No. 48, March 12, 1999, Page 12575, provides in relevant part as follows:*

The regulation and notes related to ESY services were not intended to create new legal standards, but to codify well-established case law in this area (and, thus, ensure that the requirements are all in one place). Since the requirement to provide ESY services to students with disabilities under this part who require such services in order to provide FAPE is not a new requirement, but merely reflects the longstanding interpretation of the IDEA by the courts and the Department, including it in these regulations will not impose any financial burden on school districts.

34 CFR Section 300.309 clarifies the obligations of public agencies to ensure that students with disabilities who require ESY services in order to receive FAPE have the necessary services available to them, and that individualized determinations about each disabled student's need for ESY services are made through the IEP process. An individual student's entitlement to FAPE is the basis for determining the student's right to ESY services. Some disabled students may not receive FAPE unless they receive necessary services during times when other student's, both disabled and nondisabled, normally would not be served. Both parents and educators have raised issues for many years about the need for making determinations about ESY services consistent with the requirements of Part B.

It is essential to ensure that public agencies do not limit eligibility for ESY services to students in particular disability categories, or the duration of these necessary services. ESY services are key to ensuring that each eligible student receives FAPE.

In the past, the U.S. Department of Education has declined to establish standards for states to use in determining whether disabled students should receive ESY services. Instead, the Department has said that states may establish state standards for use in making these determinations so long as the state's standards ensure that FAPE is provided consistent with the individually-oriented focus of the IDEA and the other requirements of Part B and do not limit eligibility for ESY services to students in particular disability categories. These regulations continue this approach.

Whatever standard state uses, to document a student's need for ESY services, must be consistent with the individually oriented focus of the IDEA and may not constitute a limitation on eligibility for ESY services to students in particular disability categories.

The provision of ESY services occurs only if a student's IEP team determines, on an individual basis, in accordance with Sections 300.340-300.350, that the services are necessary for the provision of FAPE to the child.

Section 300.309 (a) (2) specifies that the determination of whether a student with a disability needs ESY services must be made on an individual basis by the IEP team in accordance with Sections 300.340-300.350. These IEP requirements include specifying the types and amounts of services consistent with the individual disabled student's right to FAPE.

The student's IEP team makes the determination of whether an individual disabled student needs ESY. In most cases, a multi-factored determination would be appropriate, but for some students, it may be appropriate to make the determination of whether the student is eligible for ESY services based on one criterion or factor. In all instances, the student's IEP team must decide the appropriate manner for determining whether a student is eligible for ESY services in accordance with applicable state standards and Part B requirements. There is no need to specify a timeline for determining whether a student should receive ESY services. The IDEA expects school districts to make these determinations in a timely manner so that students with disabilities, who require ESY services in order to receive FAPE, can receive the necessary services.

Section 300.309 (b) (1) (i) specifies that districts provide ESY services to a student with a disability "beyond the normal school year of the public agency." For most public agencies, the normal school year is 180 school days. Typically, students receive ESY services during the summer months. The definition of ESY services, provided in 34 CFR Sec. 300.309 (b), does not limit the ability of a school district to provide ESY services to a student with a disability during times other than the summer. The IEP team must determine and document that the student requires ESY services during other times, when school is not in session, in order to receive FAPE.

Since Part B does not prescribe standards for determining eligibility for ESY services, regardless of the student's age, the issue of whether a state should establish a different standard for school-aged and preschool-aged children is a matter for state and local

authorities to decide. The IEP or Individualized Family Service Plan (IFSP) will specify whether services must be initiated on the child's third birthday for students with disabilities who transition from Part C to the Part B program, if the child turns three during the summer. This means that the child will receive ESY services in the summer if the IEP or IFSP of a child with a disability specifies that the child must receive ESY services during the summer. In any case, the IEP or IFSP must be developed and implemented in accordance with the terms of those documents by the child's third birthday. The IDEA provides clarification of these responsibilities elsewhere in these regulations.

Students enrolled in private schools by their parents have no individual entitlement to FAPE. Determinations regarding the provision of services, including the types and amounts of such services, require a process of consultation between representatives of public agencies and private schools. (See 34 CFR Sec. 300.454 (a) and Attachment 1 to 34 CFR 300 page, 12577.) Through consultation, if a determination is made that ESY services are one of the services that a public agency will offer one or more of its parentally placed disabled children, Part B funds could be used for this purpose.

The regulations remain the same regarding the application of LRE requirements to ESY services. Districts must provide ESY services in the LRE; however, public agencies are not required to create new programs as a means of providing ESY services to students with disabilities in integrated settings if the public agency does not provide services at that time for its nondisabled students.





*Your One Stop Resource for a Stronger Family*

As a statewide non-profit organization, we connect with parents, caregivers, educators and other professionals to promote healthy, positive and caring experiences for New Mexico families and children. We have served New Mexico families for over twenty five years. Our staff and Family Leadership Action Network volunteers reflect the unique diversity of the communities throughout our state.

Children do not come with instructions on how to deal with the difficult circumstances that many families experience. Parents Reaching Out believes that families' needs go beyond the bounds of formal services. *What we can offer to each other is uniquely ours. We have all been there.*

### **Our Mission**

The mission of Parents Reaching Out is to enhance positive outcomes for families and children in New Mexico through informed decision making, advocacy, education, and resources. Parents Reaching Out provides the networking opportunities for families to connect with and support each other. This mission supports *all families* including those who have children with disabilities, and others who are disenfranchised. Parents Reaching Out achieves this by:

- Developing family leadership
- Connecting families to each other
- Building collaborative partnerships
- Providing families knowledge and tools to enhance their power

### **Our Beliefs**

- Families need support where ever they are in their journey.
- All families care deeply about their children.
- Families may need tools and support to accomplish their dreams.
- All families are capable of making informed decisions that are right for their family.
- Families in the state benefit from our organization having the staff and materials that meet their diversity.
- Systems that listen carefully to the family perspective improve outcomes for our children.

We invite all families and those serving families and children in New Mexico to make *Parents Reaching Out your one stop resource for a stronger family.* Our publications, workshops, and Resource Center offer tools for informed decision-making and building partnerships in communities. Our trained staff and network of volunteers are here to serve you.

*Parents Reaching Out is the home of:*

NM Parent Information and Resource Center (NMPIRC)

NM Parent Training and Information Center (NMPTIC)

NM Family to Family Health Information Center (NMF2FHIC)

### **Parents Reaching Out**

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[www.parentsreachingout.org](http://www.parentsreachingout.org)

From I-25—take the Gibson Blvd Exit 222 and go East on Gibson. Turn left at the third stop light (Girard). Turn left on Vail. Go one block to Columbia. Turn left on Columbia. Parents Reaching Out is on the east side of the street. Welcome!

