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INTRODUCTION

The purpose of this document is to provide guidance for all BIE funded schools in the determination of Extended School Year (ESY) special education services. The intended audience for this guidance document is administrators, special education coordinators, special and general education educators, related services personnel, parents, BIE – DPA staff members, and special education specialists from the Education Resource Offices (ERCs) across the country (upon completion of reorganization).

This document contains guidance related to some of the most critical questions regarding ESY services that are compliant, individualized and beneficial for students.

Overriding themes related to ESY eligibility included in this document are:

- A distinct and detailed ESY process should be in place at all schools in order to assure a free and appropriate public education (FAPE) for students with disabilities.
- Documentation regarding the ESY determination, service delivery description, provision of services, and progress monitoring and reporting is a necessity in order to assure a free and appropriate education (FAPE).
- Communication between general and special education, ESY providers and parents is critical in the ESY process.
- There is a multitude of case law regarding extended school year services. Most of these cases involved students not being provided ESY services when they clearly needed the service in order to receive FAPE.
- With guidance from Federal and State Special Education departments and from case law, a broader set of factors for determining eligibility for ESY must be

considered. Factors other than regression and recruitment include emerging skills, interfering behaviors and special circumstances such as the need for transition services, and risk of a more restrictive placement if ESY services are not provided.

How does IDEA define Extended School Year Services (CFR 300.106)

(a) General.

1. Each school shall ensure that extended school year services are available as necessary to provide free appropriate public education (FAPE).
2. Extended school year services must be provided only if a student's Individualized Education Program (IEP) determines, on an individual basis, that the services are necessary for the provision of FAPE to the student.
3. In implementing the requirements, a school may not –
 - Limit extended school year services to particular categories of disability; or
 - 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 services and related services that:

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

(Authority: 20 U.S.C. 11412 (a)(1))

Who is eligible for ESY services?

All students who have a current IEP must be considered for ESY services on an annual or more frequent basis if determined by the IEP team. The IEP team must consider and document whether ESY services are needed for each student regardless of their disability.

What are common mistakes made by schools in addressing ESY?

- ❌ Failure to address ESY as an IEP team.
- ❌ Failure to distinguish the difference between ESY and summer school.
- ❌ Failure to identify, collect, analyze and document data in the determination for ESY.
- ❌ Failure to consider ESY eligibility for all students with IEPs.
- ❌ Failure to consider all educational needs including academics, behavior/social-emotional, transition, and daily living.
- ❌ Failure to develop ESY services that are based upon individualized student needs.
- ❌ Failure to document progress regarding ESY services and summary information upon completion of ESY services.
- ❌ Failure to determine the need for ESY services in a timely fashion.
- ❌ Failure to train staff on ESY requirements.

What is the relationship of FAPE to ESY services?

It is the obligation of the BIE funded school to ensure that students who are eligible to receive special education services are provided a free and appropriate public education (FAPE).

A central issue in FAPE is the determination of appropriate ESY services by an IEP team. Some students with disabilities may not receive FAPE unless they receive needed services during time periods when other students normally would not be in school. The IEP team must determine if a student needs special education and/or related services extending beyond the normal school year. A student with disabilities may require ESY services in order to receive FAPE.

What specific factors determine the need for ESY services?

1. The IEP team determines it is likely that a normally occurring school break will lead to a substantial regression and recoupment of critical life skills and a failure to recover those lost skills in a reasonable time following the break.
 - Regression – A decline to a lower level of functioning demonstrated by a decrease of previously learned skills that occur as a result of an interruption in educational programming.
 - Recoupment – The ability to recover or regain skills at a level demonstrated prior to the interruption of educational programming.
2. If the student has not yet experienced regression, the team must consider whether the student has serious potential for regression.
3. Emerging skills/breakthrough opportunities – IEP team determines that a student is at a breakthrough point on critical skills targeted in the IEP

and that an interruption in services and instruction on these goals would jeopardize progress made during the regular school year.

4. If continuous or year-round treatment is an integral part of the methodology deemed appropriate for the student, the team must consider ESY services.
5. Interfering behaviors – IEP team makes a two-part determination. First, interfering behaviors (e.g. ritualistic, aggressive or self-injurious actions) hampered a student from receiving educational benefit during the school year. Second, without ESY it is likely the student will not receive educational benefit during the next school year.
6. Nature and/or severity of the disability – IEP team determines that the nature and severity of the disability significantly jeopardizes a student’s ability to benefit from their education program during the regular school year without ESY.
7. Unique circumstances or other factors – IEP team determines that there are circumstances (dynamics in the home or community, need for vocational and/or transition services, etc.) that would significantly jeopardize the student’s ability to benefit from their educational program during the regular school year without ESY.

What are additional factors in making the ESY determination?

A variety of case law and administrative law judge rulings related to extended school year services and FAPE have identified the following factors to be considered:

1. The student’s behavioral and physical problems.
2. The ability of the student to interact with students who do not have disabilities.
3. The student’s vocational and transition needs. An example: a student just received a supported employment job, and may likely lose the

position without continued transition services during the summer via ESY.

What data should the IEP team collect and review for an ESY determination?

As in all IEP decisions, the IEP team must base ESY decisions on data that is collected, reviewed and analyzed by all members of the IEP team. Data sources may include (but are not limited to):

1. Progress monitoring data on IEP goals and related services including regression and recoupment measurements.
2. Data provided by parents.
3. Data from another school the student attended.
4. Interviews with present and past teachers, service provider, parents and the student.
5. Medical records indicating that the student has experienced significant trauma making the need for services immediate.
6. Data that indicate continuous or year-round programming is an integral part of the teaching methodology used with the student.
7. Vocational activities, transition assessments, and transition plans and services.
8. Data that indicate loss of access to transition and vocational services will potentially result in significant delays in mastering critical vocational or transition skills.
9. Professional peer-reviewed literature in the goal area(s) of concern that provides research substantiating a critical stage in learning and that this learning must occur without delay.
10. Developmental standards within the goal area(s) of concern that indicate the student is at a critical stage of learning.

11. All school based data, e.g., curriculum based measurements, grades, formative assessments and school-wide testing.

What is IEP progress monitoring?

Progress monitoring is a method of formative assessment used to measure student's progress toward meeting a goal or succeeding in transition activities, and is critical in making ESY decisions based on regression and recoupment. It is important to note that progress monitoring must be done on all IEP goals in order to make appropriate instructional decisions, e.g. added time, different strategies, in addition to making ESY determinations.

Progress monitoring procedures guide how data will be collected in order to make instructional decisions about the progress of the student. Effective progress monitoring helps the service providers make ongoing decisions about the instructional strategies being used, when changes are needed and if ESY services are needed. It is critical that IEP goals are measurable, include a baseline (noted in the present level of academic achievement and functional performance statement (PLAAFP) and/or goal) and can be monitored on a regular basis. Monitoring procedures must be clearly described in the student's IEP and include:

- How progress will be measured.
- How often progress will be monitored? (A minimum of every two weeks is recommended for academic goals, and one time a week for behavior goals).
- Who is responsible for measuring the progress.
- When changes in instruction will be considered based on collected and reviewed data.

Progress monitoring for ESY purposes includes a comparison of data prior to and after breaks in the school year, which helps teams clearly determine regression and recoupment data. Detailed procedures and progress monitoring tools must be

noted in the IEP. Graphing of data or charting of probes and data are highly recommended methods of collecting and analyzing monitoring data.

A process for determining regression requires:

- Progress monitoring collection and data review from the end of the school session or prior to a lengthy break, e.g., holiday break, extensive absence, or summer.
- Progress monitoring and data review at the beginning of the next school session or the next school year.
- A measurement of the recoupment time (the date the student regains skills that have been attained prior to the break in school).

Progress monitoring for ESY requires a structured process, distinct roles and responsibilities, tools, timetable, and evaluation procedures.

It is important to note that progress, lack of progress, need for continued intensive emphasis on a particular skill and/or potential need for ESY may be related to a goal, related service and/or the student's transition plan.

What are examples of how and where ESY services can be provided?

As with any IEP, the individual needs of the student dictate the services and setting rather than any available services dictating what is provided to the student. The IEP team should consider a flexible service model when planning for ESY services for the student. All related services and supplemental aids and services must be considered, as well as instructional programming when developing a plan for ESY services. Ways that ESY services can be provided include (but are not limited to):

- A traditional classroom setting.
- School-based programs that vary in length of schedule.

- Daily instruction in specific goal areas or related services.
- Small group instruction.
- Community based programs.
- Intensive short-term instruction at various points in the summer months to prevent regression.
- A week of intensive review just prior to the beginning of the school year.
- Home-based programs that include parent training and supports by school staff.

What are some items to consider if ESY services are home-based?

A home-based setting for ESY services may be the most appropriate environment for some students. The option of providing services in the home would depend upon the parent's willingness, their availability throughout the ESY timeframe, the complexity of the specific services, e.g., could this service be provided in the home? It could be that a special educator provides services in the home, modeling strategies and activities that the parent may do in addition to the ESY plan and services provided by the professional.

The school staff and parents should collaborate and coordinate the delivery of services. Collaborating with families for the delivery of ESY services can be an appropriate strategy for short-term intervals, e.g., winter break, spring break, and preventing significant regression of the student.

Who can provide ESY services?

- Certified or licensed educational professionals.
- Trained and supervised paraprofessionals with oversight by special educators.
- Appropriate personnel from community-based agencies, e.g., job coach.

- Family members can provide support for ESY by reinforcing goals in the home setting.
- Other providers based on the unique needs of the student.

Should the provision of related services be considered as ESY services?

The IEP meeting participants must consider whether the student requires related services, including transportation, in order to benefit from special education. If a student requires related services in order to benefit from special education when school resumes after the break, they should be provided. Related services could be the sole component of the ESY program for a student.

If a student doesn't meet all IEP goals, is ESY required?

- No - ESY services should not be granted solely on the basis of IEP goal mastery.
- The critical questions that each IEP team must ask regarding ESY are whether the learning that already occurred during the regular school year will be significantly jeopardized if ESY services are not provided.
- Also, a student's involvement in ESY services one year does not automatically guarantee ESY services the following years. This decision is made on an annual basis by the IEP team

When should the IEP team meet to determine ESY services?

The team must consider the needs for ESY services at the annual IEP meeting. However, under some circumstances, the need for ESY services and the specific type of services may not be known during the time of the annual IEP meeting. In this case, the team should identify the date it will reconvene to determine the need and services to be provided. The IEP team must also identify what data should be

gathered in order to assist in making the ESY determination and who should be responsible for this task. An IEP amendment documenting the ESY determinations and services would then be completed and attached to the current IEP.

The Federal regulations do not specify a minimum timeline in terms of how many days in advance of the end of the school year or upcoming school break that team decisions regarding ESY must be finalized. According to the analysis of IDEA final regulations, “public agencies are expected to ensure that these determinations are made in a timely manner so that students with disabilities who require ESY services in order to receive FAPE can receive necessary services.” (Federal Register, Vol. 64, No. 48, 1999, pg. 12576.) If the ESY services are to occur during the summer break, the decision is typically determined during the spring of the school year allowing school administration ample opportunity to plan for these services.

The IEP team meeting in which ESY needs are determined should be accomplished in sufficient time to permit parents or school members to utilize administrative complaint resolution processes, i.e., complaint, mediation, and due process, prior to the break in services. The IEP document (including addendums, meeting notes, etc.) must serve as a notification for parents regarding the ESY determination. As part of this notification, the parents must be informed of their rights and the procedures through which they may question a decision of the IEP team and must also be provided with written prior notice.

Is the IEP team required to document eligibility for ESY services?

After the student’s IEP team has completed the discussion regarding ESY, their decision must be documented in the IEP. The documentation of ESY services shall specify which goal(s) and/or transition activities will be addressed during ESY services. Documentation should describe the type of services (such as direct instruction, specific related services, consultation, or supervision), the beginning

date and ending date of services, the minutes per week of each service, where the service will be provided and who will provide the service, e.g., occupational therapist, special education teacher or transition specialist.

Should new goals be developed for ESY services?

No. ESY services address the maintenance of previously learned skills, as identified in the current IEP. The intent of ESY services is not to teach new skills. The specific methodology/strategies used to maintain the targeted skill for ESY services and the amount of time and setting may be different than those provided during the regular school year.

Can ESY services be provided in a school's summer school program?

It is important to note that ESY and a school's summer school program are two distinct and different programs/services. ESY services could be provided to a student in addition to their involvement in the summer school, but the summer school, alone, can't serve as the total ESY program. The summer school setting could offer unique and appropriate opportunities for a student to enhance generalization of skills in a setting very similar to that of the regular school year as well as provide frequent practice for maintenance of skills. However, ESY services must be tailored to the unique needs of the student and must be over and above what is offered during summer school, e.g., assistance with maintaining skills, behavioral supports, etc. The IEP team must determine goals and services to be addressed in the student's ESY program. Special education personnel must collaborate with the summer school staff to assure all ESY services are provided and progress monitoring activities are complete

How do least restrictive environment (LRE) regulations relate to ESY?

The requirements regarding LRE during the academic year also apply to ESY. However, “while ESY services must be provided in the LRE, a school is not required to create new programs as a means of providing ESY services in integrated settings if the school does not provide services at that time for its non-disabled student.” (Federal Register, Vol. 64, No. 48, 1999, pg. 12577). LRE considerations for ESY are not identical to LRE considerations that apply during the regular school year. The full continuum of educational options is usually not available during ESY, and the school is not required to create such a program for that sole purpose. However, if ESY services can be “in addition” to the school’s regular summer school or recreation program, opportunities for participation with peers can be maximized.

A school is allowed to provide ESY services for a student in a non-educational setting if the student’s IEP team determines that the student could receive necessary ESY services in that setting. For example, a student could receive needed physical therapy services during a community recreational program, or a student could receive needed vocational training in a summer job experience with job coach support. The characteristics of services, including location and LRE considerations, should be based upon the unique needs of the student. The IEP team, in making the ESY decision and services, must take all of the student’s needs into account.

What if parents refuse ESY services?

Parents can decline ESY services for their child even if the IEP team determines that ESY services are needed. A student with disabilities who is 18 or older (and considered an adult) can also decline ESY services. The IEP team should document the refusal of ESY services if the parents and/or student decline to participate.

APPENDICES

1. Steps in Extended School Year: A Guide for IEP Teams
2. Extended School Year (ESY) Determination Worksheet
3. Extended School Year Program Description Form
4. Extended School Year Services Progress Monitoring and Program Summary Form

Steps in Extended School Year: A Guide for IEP Teams

All students with disabilities, with an IEP, must be considered for ESY eligibility at all IEP meetings. The type, duration, or location of these services must be individualized.

- **Step 1:** Gather information regarding student progress (with extra focus on performance after breaks in the school schedule). Sources may include:
 - 1) Progress toward goals on the last 2 – 3 IEPs.
 - 2) Progress reports before and after breaks.
 - 3) Reports indicating medical type issues which increase during breaks in IEP services.
 - 4) Observations and opinions of school personnel and parents.
 - 5) School testing data.
 - 6) Progress monitoring data.

NOTE: See question “What data should the IEP team collect and review for an ESY determination?” on page 6 of the *BIE ESY Guidance Document*.

NOTE: Data collected and reviewed should be related to numerous factors or reasons for ESY service provision. See question “What specific factors determine the need for ESY services?” on page 4 of the *BIE ESY Guidance Document*.

- **Step 2:** Make the determination regarding ESY eligibility at an IEP meeting.
- **Step 3:** Document the ESY determination within the IEP making sure to note the names of documents or type of information reviewed by the team to make the determination. This information must be documented in the ESY section of the student’s IEP.

- **Step 4:** In addition to the documentation in the ESY section of the IEP, IEP meeting notes should also state the particular goal(s), which are to be emphasized during the ESY services.

- **Step 5:** If the ESY determination cannot be made during the IEP team meeting:
 - Determine the additional data to be collected and a timeframe and note in IEP and in meeting notes.
 - Note the person responsible for collecting the data and note in meeting notes.
 - Determine an end-point for ESY data collection and note the anticipated date for the IEP team to reconvene and determine ESY eligibility. Note: it is recommended that the IEP team reconvene early in the spring of the year or a substantial amount of time prior to a break in order to allow school staff to prepare and organize the determined services.
 - If determined eligible, determine which goal(s) are to be addressed by the ESY program and note this in meeting notes. Note: a related service (related to an annual goal) may be the only ESY service needed.
 - Document the ESY decision in an IEP amendment.

- **Step 6:** Provide parents with written prior notice related to the ESY determination. Written prior notice must be given when:
 - A student has been determined to be eligible for ESY.
 - ESY services are not warranted at this time.

NOTE: If the ESY decision is made during the regular annual review and new IEP team meeting, the written prior notice provided after that meeting will include the intent to implement the new IEP and to provide ESY services.

- **Step 7:** IEP team finalizes the ESY services plan (recommended in the spring of the school year or prior to the break allowing a reasonable period of time to organize services). Develop a detailed program description noting the following:
 - ESY service(s) to be provided.
 - Service provider(s).
 - Location.
 - Frequency & duration.

- Start and end date.
- Transportation information, if applicable.
- **Step 8:** Provide this description to the ESY service provider(s) and upload this description into the student's NASIS IEP file. The *Extended School Year Services Program Description Form* is recommended for this use.
- **Step 9:** The student's ESY program is implemented and progress monitoring is conducted and documented. The *Extended School Year Progress Monitoring and Summary Report* is a recommended form for this documentation. All service providers must also maintain service logs during the course of the ESY service program.
- **Step 10:** The ESY service provider(s) summarizes in writing the student's ESY program. The summary report portion of the *Extended School Year Services Progress Monitoring and Summary Report Form* is recommended for this purpose.
- **Step 11:** The ESY service provider(s) shares the ESY progress monitoring data and ESY summary report information with the IEP team in a timely manner – prior to the beginning of the next school session. This meeting should be documented with the *BIE NASIS IEP meeting note form* and uploaded into the student's NASIS IEP file. Documentation should include meeting date, participants, brief ESY program summary, next steps, needed IEP changes, etc.

Extended School Year (ESY) Determination Worksheet

Student:

Student Number:

DOB:

Date:

Extended school year (ESY) services are required if the IEP team has reason to believe that the provision of a free appropriate public education (FAPE) for an individual student would be jeopardized without such services. The following questions are intended to assist IEP teams in making decision regarding the necessity for ESY services. For each question, provide the rationale for determining Yes/No for each. Note NA (not applicable) if the student has no goals in this area. If “Yes” is indicated for one or more questions, ESY services may be needed. The IEP team makes the ESY determination decision based on critical review of data.

1. Do the data indicate the likelihood that significant regression will occur in critical skills related to academics, communication and/or related services, and that those skills cannot be recouped within a reasonable amount of time without ESY services? Yes No

Data Reviewed:

Rationale:

2. Do the data indicate the likelihood that significant regression will occur in critical life skills related to independent functioning and self-sufficiency, and that those skills cannot be recouped within a reasonable amount of time without ESY services?

Yes No

Data Reviewed:

Rationale:

3. Do the data indicate the likelihood that significant regression will occur in critical life skills related to social/emotional development or behavior such as aggressive or self-injurious, and that those skills cannot be recouped within a reasonable amount of time without ESY services?

Yes No

Data Reviewed:

Rationale:

4. Do the data indicate the likelihood that the student is at a crucial stage in the development of emerging skills/breakthrough opportunities, and that a lapse in services would substantially jeopardize the student's chances of learning that skill?

Yes No

Data Reviewed:

Rationale:

5. Is the nature or severity of the student's disability such that the student would be unlikely to benefit from education without the provision of ESY services?

Yes No

Data Reviewed:

Rationale:

6. Are there unique circumstances or other factors that indicate the likelihood that FAPE would not be provided without ESY services? Examples of students who may require ESY services under this criterion include, but are not limited to, the following:

- A student who is receiving vocational or transition services
- A student who requires ESY services in order to remain in his or her existing LRE and prevent movement to a more restrictive setting
- A student whose frequent health-related absences have significantly impeded progress on goals related to critical life skills.

Yes No

Data Reviewed:

Rationale:

Extended School Year Services Program Description

Student Name:

Student Number:

DOB:

Service Provider(s):

The annual goals, and when appropriate, short-term objectives from the student’s IEP that are to be addressed in the ESY program are:

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

ESY Service to be provided	Service Provider Title	Location	Frequency	Start Date	End Date

Describe other factors, which need to be addressed within the student’s ESY program such as accommodations and modifications, special factors such as assistive technology, communication needs, or behavior:

Extended School Year Services Progress Monitoring and Program Summary

Student:
Student Number:

DOB:
Service Provider(s):

Extended School Year Services (ESY) is an individualized instructional program for eligible students with disabilities that is provided beyond the regular school year to minimize the loss of skills for students who have difficulty retaining skills during long school holidays and/or summer. The focus of ESY is maintenance of skills, not enrichment or new skill development. Listed below are the goals and/or objectives from the student's current IEP, which are targeted for intervention and support during ESY.

Directions: Complete progress updates regularly; copy and paste the table below in order to have additional goals and/or progress reporting dates if needed. Note: Each of the data & progress remark cells will expand vertically depending on the size of the entry.

Annual Goal & and ESY Service Description:	Date & Progress Remarks			
	Date & Progress Remarks			

End of ESY student program summary (regression, maintenance, mastery, etc.):

This data form must be shared with the student's IEP team prior to the beginning of the regular school session following the ESY services. The *BIE Meeting Notes* form should be utilized for documentation, which should include date meeting, was held, participants, and next steps or needed IEP changes.