

## **A PRIMER FOR EXTENDED SCHOOL YEAR SERVICES**

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It is never too early for parents to start thinking about Extended School Year Services - or ESY for their child or children. ESY services are provided when a student's skills are likely to regress over the summer unless the school district extends the provision special education and related services beyond the end of the regular school year. There is no requirement that a student has actually regressed, only a reasonable basis that the student is likely to regress without the provision of ESY services.

Parents can request a PPT to consider the provision ESY services and share their own data or information that the student's progress during the school year was impeded during prolonged absences from school due to school vacations, long holiday weekends, or when school has been closed due to inclement weather; and that information demonstrates that it took their child a prolonged period to regain or recoup the lost skills upon the child's return to school.

ESY services are part of the IDEA. According to a *Topic Brief* available on the State Department of Education's website, (ct.gov), ESY services should be provided when a PPT has determined that the student's skills are likely to regress over the summer and the student will spend a significant amount of time during the next school year working to recoup those lost skills. The so-called *regression/recoupment* analysis cannot be used as the "sole criteria" for determining whether or not ESY services are required. The decision by a PPT on whether or not to provide ESY services must be made on case by case basis based upon the student's unique and individualized needs. *Letter to Anonymous*, 22 IDELR (OSEP 1995).

School districts may assert that they only have to provide "maintenance" skills over the summer in order to prevent regression. That is not the law. The Free Appropriate Public Education (FAPE) requirements for the regular school year apply equally to ESY services, such services are part of a child's IEP; however, the ESY program itself can focus on a subset of the goals in the student's IEP such as areas where the child has experienced regression in the past and/or to focus on skills that may be non-academic but are likely to impact the academic of academic skills. *Letter to Myers* (OSEP 1989). There is no requirement that ESY has to maximize a student's educational benefit over the summer. The corollary to that is school districts cannot minimize such services.

ESY services cannot be limited to student with only certain types of disabilities or needs. *Letter to Given* (OSEP 2003). A school district cannot unilaterally decide to place an arbitrary limit the amount, type, or duration of ESY services. 34 C.F.R. §300.106 (a). Instead ESY services must be provided in a manner that are tailored to the student's unique and individual needs. School districts are prohibited from making categorical decisions on whether or not that only certain students require ESY services. Similarly, a school district cannot limit the amount of ESY services. In a Connecticut case entitled

*In re: Student with a Disability*, State Department of Education Case No. 94-24 (1914) a Due Process Hearing Officer found that a school district's ESY program denied the student FAPE when it unilaterally decided to provide the same level of ESY services that were provided to all the student's in the school district. Instead, the school district should have provided ESY services based upon the student's unique needs. The Hearing Officer ordered to school district to reimburse the parents for the costs of related services that were incurred over the summer. The parents also recovered an award of attorney's fees because they prevailed at the Due Process hearing.

ESY services are supposed to be provided in the least restrictive environment or LRE, that is, children with disabilities should be educated with children without disabilities. *T.M. v. Cornwall Cent. Sch. Dist.*, 752 F. 3d 145 (2d. Cir. 2014). School districts have some discretion to allow ESY to be provided at a recreational program if that placement is designed to assist the student with generalizing IEP goals, such as social skills or communication skills.

Parents should be proactive and request a PPT meeting if they know or have a reasonable basis to believe that their child's skills will regress over the summer without the provision of ESY services. Parents can share their own experiences when their child is not in school and the amount of time it takes for their child to regain lost skills due to a prolonged absence from school. If a school district only offers ESY for part of the summer vacation period, such as four weeks, ask the school district to be creative with the remaining weeks if your child requires ESY for the entire summer. The IDEA has been interpreted to provide at least a basic floor of educational opportunity, which means there is not any ceiling on the amount of services that can be provided for ESY, to ensure the provision of FAPE.

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