

SECTION 5

EXTENDED SCHOOL YEAR (ESY)

San Joaquin County
Special Education Local Plan Area
(SELPA)

Extended School Year (ESY)
Resource Guide

With acknowledged appreciation to Riverside County SELPA,
San Luis Obispo County SELPA

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EXTENDED SCHOOL YEAR

Extended School Year (ESY) services are special education and related services that are required by an individual student beyond the regular school term/year. The services provided must be consistent with the student's individual education program so that the student will receive a free appropriate public education (FAPE). "Extended School" year services shall be provided for each individual with exceptional needs, who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have disabilities which are likely to continue indefinitely or for prolonged periods, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition. The lack of clear evidence of such factor may not be used to deny an individual an extended year program if the individualized education program (IEP) team determines the need for such a program and included extended year in the individual program pursuant to subsection (e)." (CCR-Title 5, Division 1, Chapter 3, section 3043).

The key issues for **ESY eligibility** focus on regression and recoupment. Although there are no state or federal regulations addressing when a child requires these services, there have been court cases that provide districts with guidance. It is the issues of regression and recoupment that provide a framework upon which to base discussion on the needs of the student. Please note that at the end of this resource guide, two worksheets, Regression/Recoupment Analysis Worksheet and a Worksheet for Determining Extended School Year Programming, are included to assist the IEP team in determining ESY eligibility for a student. These worksheets are also included in the SEIS document library and when changes are required to any of these documents, revisions will be provided to you through this source.

From a Sixth Circuit court decision {Cordrey v. Euckert [17EHLR 104]}, they noted that **"the school district has no purely custodial duty to provide for handicapped children while similar provision is not made for others. Therefore, begin with the proposition that providing an extended school year is the exception and not the rule..."** Therefore, districts will consider all appropriate factors in determining whether the benefits a student has been credited with during the regular school year would be at significant risk for regression if not provided with **ESY**.

If the student does not require **ESY**, the student **could** be considered for regular summer school services offered within the school district.

When should ESY be recommended?

Since the need for **ESY** is based on an unacceptable regression or recoupment as demonstrated by the student, there needs to be some discussion on what might be acceptable for most students. There was a study completed by Tilley Cox and Staybrook (1986) that found that most students experience some regression during summer break. Using standardized tests, they found the rate of regression for regular education students was 4%. They also found students with mild disabilities, hearing impairments and serious behavior disorders regressed at approximately the same rate as their regular education peers. They found that for students with moderate to severe disabilities, there was an increased rate of regression and a slower rate of recoupment. According to the study, the areas that were most impacted for those students were language, gross motor, fine motor and self-help skills. Therefore, it is reasonable for those students with moderate to severe challenges to be considered for an **ESY** program that would concentrate on skill regression and recovery.

When considering **ESY** eligibility for any student, the IEP team must consider data collected during the previous year(s) to determine the student's need based on regression and recoupment. This decision should be based on a multi-faceted measurement, although there may be rare instances where the IEP team might consider **ESY** services based on a single criterion. In either case, the IEP team must decide a child's eligibility for **ESY** services based on data collected that reflects his/her regression/recoupment capacity. It is beneficial for the IEP team to determine **ESY** eligibility for individual students in timely fashion, (ie. early in spring). This allows adequate time for the team to convene in order to resolve any disagreements in regards to a student's eligibility and to ensure the student's and parent's procedural safeguards.

ESY services are to be considered for students between the ages of three to twenty one or students who have not graduated from high school with a diploma.

Several districts have year round calendars which would require a timeline for consideration of **ESY** or a comparable program at the end of the student's track year. The timeline for year round would be to call a meeting three months prior to the end of the student's year. **ESY** services would still be provided if the team determines the services are warranted. The district would have to determine the number of days the student would require. An extended year program shall be provided for a minimum of 20 instructional days, including holidays. Extended year special education shall be the same length of time as the school day for pupils of the same age level attending summer school in the district in which the extended year program is provided. The length of the school day shall not be less than the minimum school day for that age unless otherwise specified in the IEP to meet a child's unique needs. Each district would then identify the support provided during intercession. It is important to remember that the number of days recommended for **ESY** is based on student data collected to support student need (CCR 3043, d(1),(1)).

Note: When considering ESY for any student, the IEP team must consider data collected during the previous year(s) to determine the student's need based on regression and recoupment. After a three month summer break it is reasonable to expect that, after eight weeks of instruction and re-teaching, the student should have regained or recouped last spring's performance levels. It is common that the re-teaching time be equal to the length of the break. If data shows that this is not the case, a regression/recoupment problem may exist.

How should ESY eligibility be determined?

The child's individual education program (IEP) plan should be the foundation for determining the need for **ESY**. This can be achieved through ongoing assessment/review of the goals/objectives. The IEP team meets to review the student's progress, considering a variety of measurements to provide a baseline that documents the regression and recoupment rate. Pinkerton (1990) identified four points at which data should be collected regarding student progress: 1) at the end of the school year, 2) at the end of the summer program (if applicable), 3) at the beginning of the next school year, and 4) at the end of the current school year. The assessment must be based on the IEP objectives so that progress can be matched directly to each benchmark outlined and the data can be compared to support evaluation of service effectiveness.

There have been several recent court cases, which help clarify issues of regression/recoupment. In **SS, JD, SS v. Henricoe County School Board** (38 IDELR 261, 326 F.3d 560 [4th Cir. 2003]), the Hearing Officer found that **ESY** services "were not for the purpose of achieving goals not met during the school year." In **MM v. School District of Greenville County**, (37 IDELR 183, 303 F.3d 523 [4th Cir. 2002]), the court ruled the "**ESY** services are only necessary to FAPE when the benefits accrued a disabled child during a

regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months.”

Prior access to, or lack of **ESY**, is not a factor in determining need. Each student should be considered for services based on, but not limited to, the following factors: degree of impairment, regression rate for students, rate of progress, behavioral and physical problems, curricular areas which would be adversely impacted, and vocational needs. The severity of the handicap is a primary consideration in determining eligibility for **ESY**. The IEP team should consider the following when discussing **ESY** eligibility:

- Student’s age
- Severity of the disability
- Presence of medically diagnosed health impairments
- Attainment of self-sufficiency

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

Once services are determined as necessary based on data collected and regression/recoupment rate, the IEP team must include a statement that included a description of the services required by the child’s IEP in order to receive FAPE.

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

What extended school year services should be included in a child’s IEP?

The extended school services should concentrate on the areas most impacted by regression and inadequate recoupment. These services may look markedly different in **ESY** as determined by the IEP team. (**The decision is not driven by the setting in which the student is educated during the comprehensive school year**). This may also be true for the amount of the duration of services as based on the individual child’s needs. Related services must also be considered as they relate to the child’s benefiting from special education. However, the LRE standard must be considered when determining extended school year services.

Several court cases have referred to the “availability of alternative resources” when considering **ESY** services. The LEA could consider community programs that are available to students. If there are programs which meet the needs of the student, there must be a discussion regarding whether or not **ESY** would then be required for FAPE. The LEA must be cautious when identifying services provided by community agencies such as a Parks and Recreation program. These outside agencies have no “requirement to maintain the student in their program”.

What is the difference between ESY and Summer School?

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

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

PRACTICAL IMPLICATIONS: WHAT EXTENDED SCHOOL YEAR IS AND IS NOT (Adapted from www.slc.sevier.org 2003)

Extended School Year (ESY) is:

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

Extended School Year (ESY) is not:

- It is not a mandated 12-month service for all students with disabilities.
- It is not required to function as a respite care service.
- It is not required or intended to maximize educational opportunities for any student with disabilities.
- It is not necessary to continue instruction on all the previous year's IEP goals during the ESY period.
- It is not compulsory. Participation in the program is discretionary with the parents, who may choose to refuse the ESY service. There may be personal and family concerns that take precedence over ESY.
- It is not required solely when a child fails to achieve IEP goals and objectives during the school year.
- It should not be considered in order to help students with disabilities advance in relation to their peers.
- It is not for those students who exhibit random regression solely related to transitional life situation or medical problems which result in degeneration.
- It is not a summer recreation program for students with disabilities.
- It is not to provide a child with education beyond that which is prescribed by his/her IEP goals and objectives.
- It is not for making up for poor attendance during the regular school year.
- It is not the primary means for credit recovery for classes failed during the regular school year.

EXTENDED SCHOOL YEAR (ESY) TIMELINE
 (Adapted from ESY Timeline, www.kyrene.org/resources/esy)

First 8 weeks of school:
<ul style="list-style-type: none"> • Collect data and re-teach • Compare to Spring data to determine if the student recouped his/her skills from previous year (This data should be the basis of the ESY eligibility discussion at the annual IEP) • Provide instruction and ongoing data collection • As soon as a student is found eligible for ESY at the annual review IEP, document the reasons why ESY is recommended on the summary page or on an addendum IEP • Include data supporting the recommendation for ESY • Continue instruction and document progress on progress reports
Following the first and second grading period
<p>*For new students or any student for whom you were unable to gather regression/recoupment data during the first 8 weeks of school, review data before and after any break from school (e.g. Thanksgiving, Winter or Spring break) to determine if student may have a significant regression/recoupment problem</p> <ul style="list-style-type: none"> • Use data collected as the basis for ESY eligibility discussion at the annual review IEP or addendum meeting • Re-teaching time should equal the length of the break (1 week break = 1 week re-teaching and then retest) • As soon as students are found eligible for ESY, the reasons for eligibility are documented on the IEP summary sheet or addendum • Continue instruction and document progress on progress report
Two to three months prior to the end of the school year
<ul style="list-style-type: none"> • Notify district administrator for students eligible for ESY <ul style="list-style-type: none"> ➤ Be sure to include documentation to support decision • Continue to teach and gather data for last quarter/trimester of the school year • If the data indicates the student has a need for ESY, convene an IEP team meeting <ul style="list-style-type: none"> ➤ If the team determines services are warranted, notify the district administrator as explained above
When should ESY Data Collection occur?
<ul style="list-style-type: none"> • Recommended times for data collection: <ul style="list-style-type: none"> ➤ At the end of regular school year ➤ At the end of summer program ➤ At the beginning of subsequent school year ➤ Before and after school vacations; ongoing collection of information throughout the school year ➤ Before/after student has been out of school for other reasons

Student Name _____ School _____ Age _____ Grade _____ Date _____
 Primary Disability _____ Education Placement _____ Related Services _____

Regression/Recoupment Analysis Worksheet

Current IEP: Date: _____ Assessment Area: _____	Pre-Break Present Levels of Performance Date: _____ (Describe levels based on measurable data- prior to an academic break of 2 weeks or more.) If additional space is needed, include attachments.	Post –Break Present Levels of Performance Date: _____ (Describe levels based on measurable data- after returning from break.) If additional space is needed, include attachments.	*Regression/Recoupment If regression is noted, record the time required to recoup Pre-Break levels (i.e. 4 days, 2 weeks...).	ESY Recommended Yes/No ESY is recommended in noted areas below based on regression and recoupment data.
Communication				
Reading				
Written Expression				
Math				
Behavior				
Fine Motor				
Gross Motor				
Self Help				
Social Emotional				
Other:				

* See Extended School Year Resource Guide for additional guidance.

WORKSHEET FOR DETERMINING EXTENDED SCHOOL YEAR PROGRAMMING

The form should be used as a guide for IEP team members when needed to assist in determining the need for Extended School Year Services

Student Name: _____ Date of Birth: _____

School: _____ Date: _____

DEFINITIONS:

ESY: Extended school year services are programs and services that assist the student in working toward the same goals and objectives the student works on during the school year. Utilizing the data collection process below ESY services are provided only for those areas in the current IEP where the student has demonstrated **a)** regression of skills during an extended school break and **b)** limited ability to benefit from re-teaching of skills after an extended school break.

Regression: Loss of previously attained skills documented by a review of the IEP goals, due to an extended school break.

Rate of Recoupment: Length of time required to relearn skills following an extended school break.

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

SUMMARY OF DATA USED IN DETERMINING NEED FOR EXTENDED SCHOOL YEAR

Relevant Data Reviewed:

- | | | |
|---|--|--|
| <input type="checkbox"/> IEP | <input type="checkbox"/> Work Samples | <input type="checkbox"/> Discipline |
| <input type="checkbox"/> Progress Reports | <input type="checkbox"/> Pre-Post Testing | <input type="checkbox"/> Teacher Charting |
| <input type="checkbox"/> Grades and Quizzes | <input type="checkbox"/> State Wide Assessment Results | <input type="checkbox"/> District level Assessment Results |

DEGREE OF PROGRESS TOWARDS IEP GOALS

Has there been a history of skill regression? Yes No Basis for determination (including any attachments as appropriate) _____

Has there been a history of poor recoupment of skills? Yes No Basis for determination (including any attachments as appropriate) _____

DETERMINATION/ESY PLANNING

Student is found to be in need of ESY services: Yes No
(detail target goals and needed service on IEP)

* See Extended School Year Resource Guide for Additional Guidance

Attachment B