

Technical Assistance Document: Determining the Need for Extended School Year Services

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**INDIANA
DEPARTMENT *of*
EDUCATION**

**Indiana Department of
Education Office of Special
Education**

This document replaces the “Field Study Edition of Guidelines for Determining the Need for Extended School Year Services” previously published in May 2001, and updates the February 2005 Technical Assistance Document.

Overview

This technical assistance document has been prepared to assist the case conference committee (CCC) in understanding extended school year (ESY) services and provide guidance in determining the need for ESY services for students with disabilities. The document was completed through collaboration among the Office of Special Education, the Indiana Council of Administrators of Special Education (ICASE), and the Indiana Resource Center for Families with Special Needs (IN*SOURCE). The final document represents a culmination of the review and reconciliation of the differences and reflects the joint efforts of the participants. This document replaces the Field Study Edition of Guidelines for Determining the Need for Extended School Year Services dated May 2001. This technical assistance document was first developed in February 2005. This latest version updates references to the language and citations to current state and federal regulations.

While appearing simplistic on the surface, the determination of ESY services and its documentation are both complex and elusive, not lending well to objective and quantifiable definitions. Some of this complexity stems from ambiguity in both law and regulation, while other compounding factors are the result of contemporary beliefs and practice. Although the federal statute does not specifically reference ESY services, ESY services have been incorporated into the federal regulations as part of the requirements for ensuring the provision of a free appropriate public education (FAPE).

Federal regulations do not include standards for determining when a student must be provided with ESY services in order to receive a FAPE, but permit states to establish standards for use in making these determinations, as long as the standards are not contrary to Part B of the Individuals with Disabilities Education Act (IDEA). The definition of ESY services in 511 IAC 7-32-39 requires, among other things, that ESY services meet the standards of the state educational agency. The Office of Special Education recognizes that the CCC's determination of an individual student's need for ESY services is a complex process and is a concern to educators and families. This document is intended to define and clarify issues on ESY services.

ESY services are funded with existing revenue sources for special education and related services. The existing sources include: (1) Part B, IDEA pass-through funds for students from ages three through 21, (2) Section 619 IDEA funds for preschool aged children, (3) Adjusted Pupil Count (APC) State funds, and (4) State Preschool Funds. There is no separate category allocated in the budget for ESY services.

Until ESY standards are formally promulgated, this technical assistance document provides guidelines for the CCC when determining a student's need for ESY services. In addition, it offers procedures to assist the CCC in making such a determination.

Definitions

For purposes of ESY services, the terms in this document have the following meaning:

“Break-Through Learning Opportunities” means learning situations in which critical skill development will be lost or greatly reduced if not addressed in a timely fashion.

“Critical Skills” means academic, social, functional, and behavioral skills that:

- Are linked to the IEP goals; and
- Are critical to the student's school and community functioning.

Examples of types of critical skills:

Skills designed to increase the student's independence from caretakers;
 Skills required across a variety of environments;
 Skills or behaviors that increase the student's independence in the school or community;
 Skills designed to allow the student to move to or remain in a less-restrictive environment;
 Skills that permit the student to decrease or eliminate behaviors that interfere with the student's functioning at school or in the community; and
 Skills essential for the student's maintenance of academics, behavior, communication, or self sufficiency and independence.

“Recoupment” refers to the student's ability to regain or recover the level of critical skills attained prior to a break in school services within a reasonable amount of time following that school break.

“Regression” means a significant decline in the performance level of a critical skill that occurs during a break in instruction.

“Predictive Data” means information and data used by the CCC to analyze the child's potential regression-recoupment problems in the absence of formal regression-recoupment data. This information and data may include, but is not limited to, other service provider reports, past experiences with recoupment and regression, parallel tasks of the student, and professional judgment in consultation with the child's parent.

ESY Services and the Case Conference Committee's Role

ESY services were not defined in the federal regulations until the promulgation of the final regulations implementing IDEA '97. Prior to that time, case law from various jurisdictions and federal policy letters provided much of the guidance regarding the factors to be considered by the CCC in determining a student's need for ESY services. Some of these factors identified by the courts include:

- (a) Critical learning needs;
- (b) Degree of progress on IEP goals;
- (c) Least restrictive environment (LRE);
- (d) Independence from caretakers;
- (e) Emerging needs and/or break-through learning opportunities;
- (f) Regression and recoupment;
- (g) Interfering behavior;
- (h) Severity of the disability; and
- (i) Special circumstances.

Frequently, contemporary practice has focused singularly, and often in depth, on the regression/recoupment variable to the exclusion of other factors or variables. Using the likelihood of severe regression of ability with marginal or limited recoupment of the same as the sole criterion for determining a student's need for ESY services results in an incomplete analysis of the student's needs.

The final regulations for IDEA '04 define “extended school year services” and set out the school’s responsibility for implementing such services. Specifically:

“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;
 - (iii) At no cost to the parents of the child; and
- (2) Meet the standards of the SEA.” [34 CFR §300.106(b)]

The CCC determines when, based on an individual student’s needs, ESY services are necessary for the student to receive FAPE, and the school must ensure that such ESY services are made available. The school may not “limit extended school year services to particular categories of disabilities” or “unilaterally limit the type, amount, or duration of those services.” [34 CFR §300.106(a)]

The comments of the Office of Special Education and Rehabilitation Services (OSERS), U.S. Department of Education to the final regulations at 34 CFR Part 300 provide additional guidance concerning ESY. “The requirement to provide ESY services to children with disabilities who require such services in order to receive FAPE reflects a longstanding interpretation of the Act by the courts and the Department. The right of an individual child with a disability to receive ESY services is based on that child’s entitlement to FAPE under section 612(a)(1) of the act. Some children with disabilities may not receive FAPE unless they receive necessary services during times when other children, both disabled and non-disabled, normally would not be served.” The discussion goes on to explain that “ESY services must be provided ‘only’ if a child’s IEP team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.” Further, “there is nothing in §300.106 that would limit a public agency from providing ESY services to a child with a disability during times other than the summer, such as before and after regular school hours or during school vacations, if the IEP team determines that the child requires ESY services during those time periods in order to receive FAPE. The regulations give the IEP team the flexibility to determine when ESY services are appropriate, depending on the circumstances of the individual child.” [Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46582.]

Indiana’s definition of ESY services, found at 511 IAC 7-32-39, mirrors the federal definition. Article 7 requires every public school to “ensure that extended school year services are available as necessary to provide free appropriate education. A public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.” [511 IAC 7-36-4(d)] The regulations further require that each IEP contain “a statement of the student’s need for extended school year services.” [511 IAC 7-42-6(d)(8)]

To meet their obligation to provide FAPE to students with disabilities, schools must ensure that all students with disabilities receive special education and related services consistent with their IEPs. Some students with disabilities may not be afforded FAPE unless they receive services during a break in instruction when other students normally do not receive educational services. Special education and related services provided through the IEP, in excess of the standard school year, are ESY services.

Federal and state special education regulations do not require all students with disabilities to receive ESY services. However, a determination of the need for ESY services must be made for every student with a disability. Such determination is made by the CCC on an individual basis and must be reviewed at least annually. The CCC's determination of the student's need for ESY services cannot be limited to summer months when school is not in session, but may include other periods during the regular school calendar when school is not in session (e.g., winter break).

The CCC's consideration of ESY services should be made in a timely manner so that the school and the parents can make necessary arrangements for the student's participation. Under some circumstances, the need for ESY services may not be known at the time the IEP is developed. In that case, the CCC can identify the date it will reconvene to determine needs and services to be provided in the IEP. The CCC may also identify the data that will be gathered to assist in making the subsequent determination and document that data collection plan in the IEP. Delaying a decision through the upcoming summer to see what happens if services are not provided is not advisable. The CCC should make its determination on the best evaluative information and data currently available, including predictive data.

ESY services often are provided during a time when the full continuum of educational placements is not normally available. The school 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. ESY services may look different from the student's regular school year services. ESY services may be provided in various locations and through various service delivery options as determined by the CCC. If the CCC determines that interaction with non-disabled peers is required, the school may provide the student with services in an integrated, non-school setting.

Summer school is not the same as ESY services. Summer school is a discretionary program that is typically operated on a set schedule for a number of weeks during the summer. While participation in discretionary summer school is available to students with disabilities, if the identified ESY services for the student include participation in summer school, it (summer school) must be included as part of the student's IEP.

ESY services may be delivered through the summer school program, provided the recommended summer services are consistent with the implementation of the student's IEP goals and benchmarks, and the personnel who teach summer school classes hold appropriate licensure. In addition, the amount and duration of ESY services cannot be limited arbitrarily to the school's summer school schedule. Summer school should not be the only option considered or available when addressing the student's individual needs.

Determining a Student's Need for ESY Services

The following procedures and *Extended School Year Services Decision-Making Guide* are intended to assist the CCC in determining a student's need for ESY services.

General Procedures:

1. The CCC must consider a student's need for ESY services in the context of that student's IEP, individual needs, and the provision of a free, appropriate public education.
2. Consideration of a student's need for ESY services must include a variety of factors (e.g., progress on their IEP, history of regression or lack of recoupment of a critical skill,

prediction of regression or lack of recoupment of a critical skill, loss of independence from caretakers, likelihood of more-restrictive placement, breakthrough learning opportunities, special circumstances, etc.). However, the actual determination that a student needs ESY services may be based on a single standard.

3. The CCC must review and consider formal and informal data from a variety of sources, including information provided by the parent. The data may be historical or predictive in nature. (Note: The Office of Special Education Programs (OSEP) has stated that, due to the IDEA requirement for individualized determinations by the CCC, refusing to consider information such as predictive data is not permissible if such data is relevant to the determination of a student's need for ESY services. *Letter to Bradley* (OSEP, 1995) 22 IDELR 975, 22 LRP 3113.
4. Under some circumstances, the CCC may not be able to determine the student's need for ESY services at the time the CCC is convened (e.g. the CCC convenes in the fall and wants to wait until later in the school year to make the determination of need for ESY services). In this case, the CCC must include in the CCC report/IEP the date it will reconvene to make the ESY determination, as well as the plans for collecting data or other information in the interim.
5. Decisions about the need for ESY services may not be postponed until after summer to gather data on critical skill regression and recoupment. Schools should not delay a determination on a student's need for ESY services solely to "see what occurs" in the absence of providing ESY services. A determination of need for ESY services must be made on the best evaluative and other data currently available, even if some of the data is predictive, rather than historical, in nature.
6. The CCC meeting during which the determination of need for ESY services is made should be conducted sufficiently in advance to permit the school and the parent to exhaust administrative remedies (if necessary) prior to the time when ESY services would be expected to be initiated.

Using the *Extended School Year Services Decision-Making Guide*

The CCC may use this form to determine a student's need for ESY services.

PART I:

The CCC should review and consider the questions posed as the first step in determining a student's need for ESY services. These questions do not need to be addressed in any particular order and are designed to assist the CCC in looking at the type of critical skills the student is working on, the student's progress or lack thereof, any expectation of regression or difficulty with recoupment, any opportunities for learning that may be lost or significantly delayed, special circumstances unique to the student, and other factors that may impact the student's need for ESY services. The questions in italics have been provided merely as a means of helping the CCC frame its responses to the original question and are not exhaustive.

In answering and considering the questions posed, the CCC should utilize a variety of information, such as current and previous IEPs, progress reports, medical reports, attendance and discipline reports, historical or anecdotal information about the student's potential for regression and recoupment, information on the student's behavior, recent evaluative data, parent reports, and any

other information relevant or necessary to the CCC's decision making.

Examples of supporting documentation and information the CCC may review include, but are not limited to:

- The student's current and previous IEPs;
- Progress reports on IEP goals;
- Other reports (e.g., attendance, pre- and post-test data of student's progress, observations and anecdotes of student's experience before and after interruptions in service; nature or severity of student's disability, regression and recoupment analysis, medical/other agency reports, etc.);
- Behavioral information (e.g., behavior plans, logs, discipline reports, etc.);
- Information from parents on student's maintenance of skill level or behaviors or effect of interruption of services;
- Observations and opinions by educators, parents, and others who work with or have contact with the student; and/or
- Test results, including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments, and other equivalent measures.

PART II:

The CCC should utilize the information resulting from answering the questions in Part I, as well as any other relevant information, to determine: (1) if the student will or is likely to experience a regression in the mastery of one or more critical skills, as well as difficulty in recouping that level of mastery within a reasonable period of time; (2) if the student is at a critical point or window of opportunity for acquiring a skill; or (3) if there are special circumstances that make ESY services necessary to the provision of a FAPE to the student.

Regression/Recoupment

If the CCC determines that the student **will or is likely to** experience a regression in his or her level of mastery of one or more critical skills, the first box should be checked.

If the CCC determines that the student **will or is likely to** experience difficulty in recouping that level of mastery within a reasonable amount of time when services resume, the second box should be checked.

The CCC should consider a student who will or is likely to experience both a regression and difficulty in recouping one or more identified critical skills in need of ESY services.

Break-Through Learning Opportunity

If the CCC determines that the student is at a critical point (a "window of opportunity") for acquiring a skill that would be lost or significantly reduced if services are not extended, the first box should be checked.

If the CCC determines the student is at a critical point of acquiring a skill because behaviors that previously interfered with the student's acquisition of that skill have been diminished to a point that a "window of opportunity" is available to the student to acquire the skill, the second box should be checked.

The CCC should consider a student eligible for ESY services when the absence of ESY services

is likely to result in the loss of “window of opportunity” for the acquisition of one or more identified critical skills.

Special Circumstances

There may be special circumstances or factors, unique to an individual student, which the CCC needs to consider in determining a student’s need for ESY services as part of the provision of FAPE. There is no exhaustive list of these circumstances or factors, although a number of them are listed in Part II of the *Decision-Making Guide*. It is impossible to list all of the potential special or unique circumstances or factors that may impact a student’s need for ESY services. Therefore, the CCC should consider those circumstances and factors unique to the student, regardless of whether it is included as one of the items in Part I or Part II of the *Decision-Making Guide*. The CCC may make a determination that the student is in need of ESY services by identifying the special circumstances or factors that went into the committee’s decision.

Critical Skill(s) Affected

If the CCC determines the student requires ESY services as part of a free appropriate public education, it should identify the critical skill or skills to be addressed by the ESY services.

Completing the IEP

The CCC should complete the IEP to indicate whether the student is in need of ESY services. Attaching the *Extended School Year Services Decision-Making Guide* form to the IEP will help to document the factors the CCC considered in determining whether the student required ESY services.

If the student is to receive ESY services, the CCC should identify the goals and objectives that will be the focus of the ESY services and indicate the initiation and duration dates, as well as the length, frequency, and location of the special education and related services to be provided.

EXTENDED SCHOOL YEAR SERVICES DECISION-MAKING GUIDE

Use this form to assist with ESY determinations and include it with the student's IEP. The CCC must document its determination of the Student's need for ESY services on the IEP, including length, frequency, duration, and location of any ESY special education and related services to be provided.

Student _____

Date _____

Part I: The CCC should gather and review information in response to the following questions as the first step in determining a student's need for ESY services. Because the list of factors and questions is not exhaustive, the CCC should also gather, review, and consider all other information it deems relevant or necessary for its decision making.

What critical skills is the student working on?

- *Does the student's IEP have annual goals with skills essential for the student's maintenance of academics (for preschool children – maintenance of appropriate activities), behavior, communication, or self-sufficiency and independence?*
- *Is the student working on skills that are required across a variety of environments?*
- *Is the student working on decreasing behaviors that interfere with the student's functioning at school or in the community?*
- *Is the student working to develop behaviors to increase the student's independence or functioning at school or in the community?*
- *Is the student working on skills designed to increase the student's independence, such that if the student cannot perform the skills, assistance from another person will be necessary (e.g., daily living skills, academic skills, behavioral skills)?*

Were any IEP goals unmet?

Are there any barriers to the student meeting the IEP goals? If so, what are they?

- *Has the student had frequent health-related absences that have impeded the student's progress on his or her IEP goals?*
- *Has the student experienced behaviors that have interfered with the student's ability to progress toward achievement of his or her IEP goals?*

Are there other reasons for the student not meeting one or more of the IEP goals?

What is impacting the student's rate of progress?

- *Is the student's rate of progress or lack thereof likely to prevent the student from receiving educational benefit during the school year? [Note: lack of progress on goals and objectives is NOT a prerequisite to ESY services.]*

Is there anything unique about the student's present level of performance or the nature or severity of the student's disability that would indicate the need for ESY services?

Is there historical or predictive data that the student has or will experience skill regression during an interruption of educational services or that the student has or will experience difficulty recouping lost skills?

- *Do the student's difficulties with regression and recoupment make it unlikely that the student will maintain the critical skills and behaviors relevant to the student's IEP?*

Is there a likelihood of the student being placed in a more restrictive placement?

- *Is the student working on skills designed to allow the student to move to a less restrictive environment or to prevent placement in a more restrictive environment?*

Are continuous or year-round services an integral part of the student's ability to acquire or retain a skill or behavior?

- *Is the student at the point of readiness for acquiring a critical skill such that an interruption of services will result in the loss or significant reduction of the student's ability to acquire the skill?*

Are there special circumstances unique to this student's situation and not addressed by the other factors that will have an impact on the student's need for ESY services or the provision of a free appropriate public education

- *Is the student at a critical point of meeting an IEP goal related to self-sufficiency and independence?*
- *If a student's behaviors have previously interfered with the student's ability to acquire a critical skill, is there a window of opportunity for assisting the student to acquire that skill because the previously interfering behavior is currently under control or otherwise diminished?*

Part II: Using the information gathered in Part I, identify which of the following are applicable to the student’s situation (check all that apply).

1. REGRESSION/RECOUPMENT

- D The student experiences or is expected to experience regression for mastered and partially mastered critical skills. That is, the student is expected to revert to a lower level functioning – evidenced by a measurable decrease in the level of behaviors or skills – as a result of an interruption in educational programming.
and
- D It is not expected that the student will recover the level of mastery of behaviors or skills within a reasonable amount of time after the interruption of educational services.

2. BREAK-THROUGH LEARNING OPPORTUNITY

- D The student is at a critical point of skill acquisition or readiness, and the student’s ability to acquire the skill will be lost or greatly reduced as a result of an interruption of services.
and/or
- D The student is at a critical point of skill acquisition or readiness, and the student’s ability to acquire the skill will be lost or greatly reduced by an escalation of previously diminished behaviors (i.e. the student is able to take advantage of a break-through learning opportunity because behaviors that previously interfered with the student’s learning and skill acquisition have currently been diminished)

3. SPECIAL CIRCUMSTANCES OR FACTORS

The CCC must consider whether special circumstances or factors are indicative of the student’s need for ESY services. Because the following list is not exhaustive, nor is it intended to be, the CCC should identify any other special circumstances or factors that are indicative of the student’s need for ESY services as part of a free appropriate public education.

- D The degree, nature, or severity of the student’s disability
- D The ability of the student’s parents to provide educational structure at home
- D Behavioral or physical challenges
- D The lack of availability of alternate resources
- D The student’s ability to interact with children without disabilities
- D The area of the student’s curriculum that needs attention
- D The student’s vocational needs
- D The likelihood of a loss of independence from caretakers
- D The likelihood of a more restrictive placement
- D Interfering behavior
- D The degree or rate of progress on annual goals
- D Continuous or year-round services are an integral part of the student’s ability to acquire or retain a skill or behavior
- D Other: _____

Based on the CCC’s review and consideration of all relevant information, the CCC determines that the student:

- _____ needs ESY services in order to receive a free appropriate public education.
- _____ does not need ESY services in order to receive a free appropriate public education.

If the student needs ESY services, identify the **critical skill(s)** to be addressed by those services:

The CCC should complete the IEP, identify the goals and objectives that will be the focus of the ESY services and indicate the initiation and duration dates, as well as the length, frequency, and location of the special education and related services to be provided. The *Extended School Year Services Decision-Making Guide* should be attached to the IEP.