



GUIDELINES FOR THE  
PROVISION OF

**EXTENDED**

**SCHOOL YEAR**

**SERVICES**

FOR STUDENTS  
WITH DISABILITIES

## Purpose

The purpose of this document is to provide guidance for parents, educators, and administrators regarding the determination and implementation of extended school (ESY) services for eligible students with disabilities. Parents of students with disabilities should be provided information regarding ESY to better enable them to be involved in the decision for or against ESY services for their student. This document contains guidance to some of the most commonly asked questions regarding ESY services.





## Legal Authority for Extended School Year Services

Extended school year (ESY) was first established in federal law by the Individuals with Disabilities Act of 1997 (IDEA '97). Prior to that time, the basis for interpretation of ESY requirements was drawn from case law. IDEA '97 does not create new legal standards for ESY services but brings together well-established case law in this area. IDEA 2004 retained the same ESY requirements as IDEA '97.

### Federal Regulations

#### Extended School Year Services

##### A. *General.*

- (1) Each school shall ensure that extended school year services are available as necessary to provide free appropriate public education (FAPE), consistent with paragraph (a)(2) of this section.
- (2) Extended school year services must be provided only if a student's Individualized Education Program (IEP) team 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 –
  - (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 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. 1412(a)(1)

The analysis of comments that accompanied the final regulations provides clarification of responsibilities for ESY services. It is the obligation of the school to ensure that students with disabilities who require ESY services in order to receive FAPE necessary services

available to them. The individualized determination about the have need for ESY services is made through the IEP process based upon the unique needs of each student. The right of an individual student with a disability to ESY services is based on that student's entitlement to FAPE. (Federal Register, Vol. 64, No. 48, 1999, pg.12576.) Extended school year services are also authorized under State law in Minnesota.

# Minnesota Rule

Subpart 1. **Scope.** Schools districts are required to provide extended school year (ESY) services to a pupil if the IEP team determines the services are necessary during a break in instruction in order to provide a free appropriate public education.

Subpart 2. **Definitions.** For the purposes of ESY, the terms in this subpart have the meanings given them.

- A. "Level of performance" means a pupil's progress toward annual IEP goals immediately prior to a break in instruction as seen in the progress measurements required by part 3525.2810, subpart 1, item A, subitem (9).
- B. "Recoupment" means a pupil's ability to regain the performance of a skill or acquired knowledge to approximately the same level of performance just prior to the break in instruction.
- C. "Regression" means a significant decline in the performance of a skill or acquired knowledge, specified in the annual goals as stated in the pupil's IEP, that occurs during a break in instruction.
- D. "Self-sufficiency" means the functional skills necessary for a pupil to achieve a reasonable degree of personal independence as typically identified in the annual IEP goals for a pupil requiring a functional curriculum. To attain self-sufficiency, a pupil must maintain skills consistent with the pupil's IEP goals in any of these skills areas:
  - a. basic self-help, including toileting, eating, feeding, and dressing
  - b. muscular control;
  - c. physical mobility;
  - d. impulse control;
  - e. personal hygiene;
  - f. development of stable relationships with peers and adults;
  - g. basic communication; or
  - h. functional academic competency including basic reading and writing skills, concepts of time and money, and numerical or temporal relationships.

Subpart 3. **Determination of ESY entitlement.** At least annually, the IEP team must determine a pupil is in need of ESY services if the pupil meets the conditions of item A, B, or C.

- A. there will be significant regression of a skill or acquired knowledge from the pupil's level of performance on an annual goal that requires more than the length of the break in instruction to recoup unless the IEP team determines a shorter time for recoupment is more appropriate.
- B. services are necessary for the pupil to attain and maintain self-sufficiency because of the critical nature of the skill addressed by an annual goal, the pupil's age and level of development, and the timeliness for teaching the skill; or
- C. the IEP team otherwise determines, given the pupil's unique needs, that ESY services are necessary to ensure the pupil receives a free appropriate public education.

Subpart 4. **Sources of information for IEP team determination.** The IEP team must decide the basis for determining whether a pupil is eligible for ESY services using information including:

- A. prior observation of the pupil's regression and recoupment over the summer;
- B. observation of the pupil's tendency to regress over extended breaks in instruction during the school year; and
- C. experience with other pupils with similar instructional needs.

Subpart 5. **Other factors to be considered.** In making its determination of ESY needs under subpart 3, Item A, B, or C, the IEP team must consider the following factors, where relevant:

- A. the pupil's progress and maintenance of skills during the regular school year;
- B. the pupil's degree of impairment;
- C. the pupil's rate of progress;
- D. the pupil's behavioral or physical problems;
- E. the availability of alternative resources;
- F. the pupil's ability and need to interact with nondisabled peers;
- G. the areas of the pupil's curriculum which needs continuous attention; or
- H. the pupil's vocational needs.



## Why Extended School Year (ESY)?

The 2004 Amendments to the Individuals with Disabilities Education Act give educators the responsibility for development and delivery of a free appropriate public education (FAPE) to students with disabilities. IDEA 2004 defines FAPE as special education and related services that are provided at public expense and are provided in conformity with an Individualized Education Program (IEP).

### FEDERAL REGULATIONS

#### **Free appropriate public education (FAPE)**

The term free appropriate public education, or FAPE, means special education and related services that

- a) Are provided at public expense, under public supervision and direction, and without charge;
- b) Meet standards of the State;
- c) Include preschool, elementary school, or secondary school education in the State; and
- d) Are provided in conformity with the Individualized Education Program (IEP).

Authority: 20 U.S.C. 1401 (8)

A central issue in FAPE is the IEP team's determination of what services are appropriate. The process used in development of the IEP ensures that students with disabilities have appropriate education planning, based on appropriate evaluation, to accommodate their unique instructional needs and that these needs are met in an appropriate learning environment. The IEP process ensures that student with disabilities receive an appropriate education.

Another issue regarding appropriate education whether the educational program is sufficient to provide meaningful educational benefit. The concept of benefit is an integral part of the IEP process. The IEP team examines a student's present level of development or skill acquisition, as well as the student's ability to progress beyond that level if provided with an effective program. If that program results in measurable advancement toward goals that are appropriate for the student, then the student has received an appropriate education because he or she has benefited from his or her schooling. Thus progress towards goals and documentation of that progress become core concerns in the provision of FAPE.

*Some students with disabilities may not receive FAPE unless they receive needed services during time periods when other students, whether they have a disability or not, normally would not be served.*

Some students with disabilities may not receive FAPE unless they receive needed services during time periods when other students, whether they have a disability or not, normally would not be served. As part of the IEP process, the IEP team must determine if a student needs a program of special education and related services extending beyond the normal school year. For such a student, restricting services to a standard number of school days per year does not allow development of an education program that is truly individualized. A student may require ESY services in order to receive FAPE.

The critical question that each IEP team must ask regarding ESY services is whether the learning that occurred during the regular school year will be significantly jeopardized if ESY services are not provided. Reasons why ESY

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services may be needed vary from student to student, but the end result is that some students may experience severe losses of social, behavioral, communication, academic, or self-sufficiency skills during interruptions in instruction. This is particularly true during long breaks such as summer vacations. Losses suffered by a student may be so extensive that when school resumes, unreasonable amounts of time are needed to recover (recoup) lost skills. Other students may experience losses because they reach critical learning stages at the end of a school year and need ESY services to avoid irreparable loss of

learning opportunity. For some students, skills that support continued placement in the least restrictive environment (LRE) can be maintained only by ESY services.

The determination of whether a student with a disability needs ESY services must be made on an individual basis and made by the IEP team.

The remainder of these guidelines is structured in a question and answer format to assist in clarifying common ESY issues.





## **Determining Need for Extended School Year Services**

### **1. Who is eligible for ESY services?**

All students with disabilities who have a current IEP must be considered for ESY services at least annually. To ensure FAPE, the IEP team must consider and document whether ESY services are needed for each student regardless of the student's disability. A school may not limit ESY services to particular categories of disability or unilaterally limit the type, amount, or duration of those services. These requirements apply to all students with a disability between the ages of three and 21.

### **2. Who determines the need for ESY services?**

Determination of need rests with the IEP team, which must be composed of the following individuals: parent(s) of the student, the student if appropriate, general education teacher(s), special education and related service providers, administrator or school representative, and others as appropriate. All persons involved in the IEP process should be active participants. Each person fulfills an important role by bringing and sharing

### **3. What factors determine the need for ESY services?**

The primary criteria in determining a student's need for ESY services are the likelihood of significant regression of previously learned skills during a break in service and limited or delayed recoupment of these skills after services resume. The courts have found that the regression/recoupment measures are an integral part of the determination of need for ESY services although they are not the only measures.

The courts have also identified a range factors that must be considered by the student's IEP team when determining the need for services. (See the following question.) These factors, alone or in combination, increase the likelihood that a

student will experience significant regression and limited recoupment and thus require ESY services.

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The IEP team must consider regression/recoupment measures, in addition to all appropriate factors, in determining whether the learning that occurred during the regular school year will be significantly jeopardized if the student is not provided ESY services.

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**Regression**----A decline to a lower level of functioning demonstrated by a decrease of previously learned skills that occurs as a result of an interruption in education programming.

**Recoupment**----The ability to recover or regain skills at the level demonstrated prior to the interruption of educational programming.

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#### **4. What other factors should be considered when determining need for ESY services?**

Schools should use regression/recoupment criteria in determining the need a broad range of relevant factors must also be considered. The factors to be considered in making ESY placement decisions shall include, but are not limited to, the following:

- **Category of disability.** Students with disabilities requiring consistent, highly structured programs may be predisposed to regression when their services are interrupted. These students may also have limited recoupment capacity
- **Severity of disability.** Although limited recoupment capacity can occur among students with moderate disabilities, it is more likely to be a learning characteristic of students with severe disabilities. Students with the most severe emotional disturbance, for example, are more likely to revert to lower functioning levels or to exhibit inappropriate behaviors, such as extreme withdrawal or anxiety reactions, when their programs are interrupted. For many of these students, each successive interruption in programming and consequential regression also reduces the level of motivation and trust and may lead to an

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- **Parents' ability to provide an educational structure at home.** A parent or guardian may be unable to maintain a student's level of performance during a break in programming because of the complexity of the program, time constraints, lack of expertise, or other factors. This consideration is relevant to whether a student can be expected to regress. Also relevant is the student's stage of mastery of crucial skills or behavioral controls at the point of interruption in programming. When appropriate, schools should consider offering training to parents to help them maintain their student's level of performance during interruptions in programming. Schools may also consider offering support services in the home, either directly or indirectly or in cooperation with other agencies, if such services will prevent the student's regression during breaks in programming. Schools are free to use the resources of other public or private agencies in order to meet the student's needs so long as there is no cost or financial liability to the student's parents or guardians.
- **Student's rate of progress.** Just as every student's rates of learning, regression, and recoupment are different from that of other students, an individual's rate of learning specific skills or behaviors may differ from his or her rate of attaining other skills. Certain skills or behaviors are particularly essential to meeting the goals of self-sufficiency. For example, basic self-help skills, such as toileting or eating, are essential for minimal independence; stable relationships, impulse control, and appropriate peer interaction are necessary for community living. Therefore, if a student would suffer significant regression in a skill or behavior that is particularly crucial to reaching the goal of self-sufficiency and independence from caretakers, the student requires continuous education programming in that skill or behavior area.

Another relevant concern is the extent to which the student has mastered and consolidated an important skill or behavior at the point when the program is

interrupted. Since behaviors or skills that have not yet been generalized, mastered, and consolidated are more easily lost, a student is more likely to regress in that skill or behavior area if his/her programming is interrupted before mastery<sup>6</sup> and consolidation have been achieved.

Current court cases also include the following factors to be considered in determination of need for ESY services: (1) the student's behavioral and physical problems, (2) availability of alternative resources, (3) the ability of the student to interact with students who do not have disabilities, (4) the areas of curriculum that need continuous attention, and (5) the student's vocational needs.

## 5. How is the need for ESY services measured?

Determination of the need for ESY cannot be based on a formula. Formulas lack the individualization to ensure that students with disabilities have appropriate educational planning to accommodate their unique needs. Case law supports this conclusion: the determination of need for ESY services cannot be based on a policy that prohibits or inhibits full consideration of the needs of each student with a disability.

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The information that is needed by an IEP team to determine a student's need for ESY services is gathered through ongoing measurement of the student's progress toward the current IEP goals. An essential component of a student's goals is the method to measure progress. Information can be gathered through a variety of informal and formal measures. Those measures may include a record of daily performance, criterion-referenced and norm-referenced test data, anecdotal records from information collected throughout the year, behavior checklists, or student work samples.

Annual goals are a means of gauging progress and change in knowledge, skill, and behavior that can be reasonably accomplished in a 12-month period. When reviewing a student's IEP, the team must consider the student's progress in meeting goals in terms of regression and recoupment that the student may experience throughout the year. The IEP team's review determines if the learning that has

occurred will be significantly jeopardized if ESY services are not provided during an extended break in services. Progress toward meeting goals is monitored on a regular basis through periodic reports given to parents at least as often as all other parents are informed of their students' educational progress. The periodic report includes a description of the student's progress toward meeting each goal and its corresponding objectives. The review of progress uses the same measurement criteria specified in the objectives. The review clearly specifies how the student's performance at the time of review is different from performance observed at the time the IEP was written, addressing any lack of expected progress toward annual goals and possible regression/recoupment concerns.

As with all other components of the IEP process, parents must be involved in decisions regarding a student's educational progress, including progress toward annual goals. Parents must receive a periodic review of the student's progress toward annual goals and the extent to which that progress is important to the team's consideration of need for ESY services.

In addition to the valuable information already being gathered to determine progress toward annual goals, a student's IEP team should consider the following points in determining the need for ESY services:

- Consider information from a variety of sources.
- Measurement should be sensitive to small changes that may occur during short breaks in services
- Measurement information should be gathered during the student's performance after long weekends, vacations, and past summer breaks.
- The team should consider both prior experience with regression/recoupment and predictive information.

*In addition to these measures, the IEP team must consider the valuable information gathered through observations and input from the family, the child, and educators.*

In considering evidence of regression, a team should select information that is measurable, with baseline, intermediate, and ending points establishing measurements at predictable intervals. The series of measurements must embrace the time span including the interruption of services. The minimum points of measurement are (1) at the end of instruction (e.g., the end of the current school), (2) at the beginning of

subsequent instruction (e.g., the beginning of the next school year), and (3) at the time of recoupment (e.g., the date of regaining skills that had been attained by the end of the previous school year). A difference in skill attainment following an interruption in services is a measure of regression. Identifying how much time is required for regaining lost skills may require several measurements to determine when recoupment actually takes place.

In addition to these measures, the IEP team must consider the valuable information gathered through observations and input from the family, the student, and educators. This input is critical in developing an accurate and complete picture of the student's level of functioning and to supply information such as regression and recoupment history, performance in the classroom, community-based activities, family circumstances, and recent behavioral and medical problems.

**6. When is regression/recoupment considered severe or significant?**

Research shows that regression and recoupment occur in all students and will vary across skills, people, and circumstances. The concern is that for some students with disabilities, the regression is so severe and the recoupment period so long that without ESY services, the learning that occurred during the regular school year would be significantly jeopardized if ESY services are not provided. IDEA 2004 regulations and current court cases do not address the extent of regression/recoupment needed to qualify for ESY services. The determination of need for ESY is made on an Individualized basis after careful and critical analysis of the ongoing data gathered by the IEP team.

**7. Is the Individualized Education Program (IEP) team required to demonstrate regression before ESY services are provided?**

No. A student cannot be required to fail or be required to demonstrate a lack of progress for an entire ESY services. If no empirical data are available on regression, the need may be shown by expert opinion, parent input, or prospective criteria established by the IEP team.

*All students with disabilities must be considered for ESY services at least annually.*

**8. How often must a student be considered for ESY?**

All students with disabilities must be considered for ESY services at least annually.

**9. Does receipt of ESY services one summer ensure such services the following summer?**

No. A student's involvement in ESY services one year, does not automatically guarantee services in the following years. Similarly, the fact that no ESY services were provided in a prior year does not mean ESY services are not needed in the current year. The decision is made on an annual basis.

**10. If a student does not meet all of his or her IEP goals during the regular school year, does this mean ESY services are required?**

No. ESY services should not be granted solely on the basis of the student with disabilities not achieving one or more IEP goals. The critical question that each IEP team must ask regarding ESY services is whether the learning that already occurred during the regular school year will be significantly jeopardized if ESY services are not provided.

**11. Is the IEP team required to document the justification of the need for ESY services?**

Yes. After the student's IEP team has completed the discussion regarding ESY, written justification must be provided on the IEP form.





## Determining Services For Extended School Year Services

### 12. 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 characteristics of ESY services may not be known at the time of the annual IEP meeting. In that case, the team can identify the date it will reconvene to determine need and services to be provided. The team may also plan what data should be gathered to assist in making those later determinations. An addendum documenting ESY determinations would then be completed and attached to the current IEP at that later time.

The regulations do not specify a minimum timeline in terms of how many days in advance of the end of the school year that team determinations 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 the necessary services.” (Federal Register, Vol. 64, No. 48, 1999, pg. 12576.)

The IEP team meeting during which ESY needs and services are determined should be accomplished in sufficient time to permit any party to exhaust administrative remedies prior to the break in services. Thus, the IEP document will serve to notify the parents of whatever ESY determinations have been made. As part of the IEP process, the parents are fully informed of their rights and the procedures through which they may question a decision of the IEP team.

### 13. 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

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skills. Therefore, new goals should not be added to a student’s IEP for implementation of ESY services.

**14. How does the IEP team determine the amount of ESY services for each student?**

The determination of the extent of services must be made on an individual basis after a thorough review of the student’s goals. The IEP team must determine how much time is needed to ensure maintenance of previously learned skills that would be jeopardized if the student did not receive ESY services.

**15. How do the least restricted environment (LRE) requirements relate to ESY decisions?**

ESY services must be provided only if the student’s IEP team determines, on an individual basis and in accordance with IEP requirements, that the services are necessary for the provision of FAPE. “In accordance with IEP requirements” means the team must specify the types and amounts of services consistent with the needs of the individual student with a disability and that student’s right to FAPE.

The requirements regarding placement in the least restrictive environment (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 to students with disabilities in integrated settings if the school does not provide services at that time for its non-disabled students.”(Federal Register, Vol. 64, No. 48, 1999, pg. 12577). Thus, 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.

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That same source states that a school is not prohibited from providing ESY services to an individual student with a disability in a noneducational setting

if the student's IEP team determines that the student could receive necessary ESY services in that setting. The characteristics of services, including location and LRE considerations, should be based upon the unique needs of the student. The IEP team should consider a flexible service model that takes those needs into account. For some students, the appropriate LRE could be at home with the other family members, receiving only very limited ESY services.

## **16. Where can ESY services be provided?**

ESY services are intended to minimize the effects of significant regression. Therefore, it is reasonable for ESY services to concentrate on areas at risk for significant regression. Because of this focus, ESY services may differ markedly from the services provided to a student during the school term. Services would logically be modified in a way to enhance generalization and maintenance of skills. As with any IEP, the needs of the student dictate the services rather than any available services dictating what is provided to the student.

Individualized ESY services could be provided in a traditional classroom setting; however, the location and nature of service delivery can vary with the needs of the student. Other appropriate service delivery options could include the following:

- School-based programs that vary in length of schedule (e.g., art classes, drama)
- Grouping of students with similar goals
- Intra-school cooperative programs (e.g., Title 1)
- A cooperative program with another agency (e.g., wraparound services, Head Start)
- Limited student contact, perhaps three to four times during the summer to prevent regression
- A week of intensive review just prior to the beginning of the school year
- Multi-school shared programs or services
- Contractual arrangements
- Community-based programs (e.g., parks and recreation activities)

- Home-based services provided by the parent and supported by school personnel

Some students may need services provided in the home or at an alternative location. Others might benefit most by providing training to the parent in advance of long breaks in regular school schedules. The teacher and parent would work together, with materials sent home and progress periodically monitored by the teacher. Such home consultation prior to vacation and at intervals during vacation, if needed, could provide support and instruction to parents in preventing regression. It offers the additional benefit of increased opportunities for practice and generalization across settings. However, a school cannot simply choose to delegate its responsibilities for providing ESY services to parents. The option of home consultation would depend upon availability of parents throughout the ESY day, their desire to assist, and the complexity of their student's needs as well as many other factors.

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For other students and depending upon the nature of the skill to be maintained, a summer camp, recreational program, or a school's optional summer school program could provide opportunities for maintenance of skills.





## Related Services

### 17. Must the IEP team consider the provision of related services as ESY services?

The IEP meeting participants must consider whether the student requires related services, including transportation, in order to benefit from special education.

### 18. May a school provide a related service as a sole component of ESY services?

When determining eligibility for ESY services, the IEP team must also review and consider related services. While a student may not need extended school year special education, that student may need extended school year related services in order to benefit from special education when school resumes during the school term. In this instance, one or more related services may be the sole component(s) of the ESY program. The decision as to whether the student should be provided a related service as the sole component of an ESY program is the responsibility of the IEP team. The team should consider whether lack of an ESY related service would cause regression problems in the student's special education program when school resumes. If a related service is necessary for the student to benefit from special education either during the ESY or regular academic school schedule, that related service must be provided. If a student needs only a related service during ESY, it must be provided.

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### 19. If transportation provided as part of ESY?

Transportation is a related service and must be offered if it is necessary for the student to benefit from special education. If necessary, transportation should be added as a related service for the duration of ESY services.

### 20. Who can provide ESY services?

It is necessary to use certified and qualified staff for ESY services. Noncertified staff can be used if they are trained and supervised by certified staff. Staffing options might include supervised practicum students, supervised student teachers, supervised paraeducators, or contracted/purchased services from agencies.





## Summer School

### 21. Is ESY the same as summer school?

The following table provides a comparison of ESY services and summer school features.

SUMMER SCHOOL	EXTENDED SCHOOL YEAR SERVICES
<b>Definition:</b> An optional or permissive program provided beyond the regular school year. A school may elect whether to operate summer classes.	<b>Definition:</b> Services required by IDEA 2004 are to be provided beyond the traditional school year for any student with a disability who needs special education services and/or related services in order to receive FAPE.
<b>Purpose:</b> Teaching new content or enrichment and/or offering recreational or academic opportunities not present during the regular school year. Students with and without disabilities benefit from additional educational opportunities.	<b>Purpose:</b> Ensuring a student's meaningful progress during the regular school year (FAPE) by maintaining learned skills and preventing loss of critical skills. If services are not provided, student's skills are temporarily or permanently lost, jeopardizing progress. ESY services are not provide for the purpose of helping students with disabilities advance in relation to their peers.
<b>Cost:</b> Free or on a fee basis	<b>Cost:</b> Free to parents
<b>Duration:</b> Typically operated on a set schedule for a number of weeks during the summer for all those who participate.	<b>Duration:</b> Schedule, setting, and extent of services designed to meet the individual needs of a student in order to ensure FAPE. The amount and duration of services cannot be determined arbitrarily by a school's summer school schedule.
<b>Location:</b> General education setting; based on needs and interests of all students.	<b>Location:</b> Varies depending upon each student; the IEP has more flexibility regarding location of services.
<b>Eligibility:</b> A student's participation does not depend on a team determination of need.	<b>Eligibility:</b> IEP team determines need and extent of services to meet the unique needs of the student.

**22. May the student’s ESY services be provided in a school’s optional summer school program?**

Yes. 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 cannot be based solely on availability of services during the summer. The IEP documentation should provide justification of how the summer school program would address the student’s IEP needs. The amount and the duration of ESY services cannot be limited arbitrarily to the school’s summer school schedule.

It is recommended that special education personnel collaborate with summer school staff, informing them of needed modifications and accommodations based upon the student’s needs. The IEP team will determine and

*ESY services must be tailored to the unique needs of the student and cannot be based solely on availability of services during the summer*



document goals to be addressed by ESY services and delivered through summer school programming. Progress reports are required at least as often as those provided to the parents of students without disabilities.

**23. What are the responsibilities of a school for providing modifications and accommodations for a student with a disability who chooses to attend summer school and is not in need of ESY services?**

All students with IEPs are entitled to accommodations. Since these students are also eligible under Section 504 of the Rehabilitation Act of 1973, it is best practice to consult with the summer school teachers and inform them of the needed modifications and accommodations as stated in the student's IEP. Under Section 504, a school cannot discriminate against a student with a disability in any program and/or activity offered by that school. The summer school course is a program offered by the school; therefore, the school cannot discriminate against the student because of his or her disability.

**24. How does an IEP team document ESY services?**

Documentation of ESY services should specify which goal(s) will be reinforced during ESY services. Documentation should describe the type of services (such as direct instruction, specific related services, consultation, or supervision), the beginning date of services and the ending date of services, the minutes per week of each service, service provider, and where the service will be provided.



## Procedural Safeguards

### 25. What are the procedural safeguards regarding ESY?

Parents are entitled to a meaningful opportunity to fully participate in discussion of their student's needs and the development of their student's educational plan, which includes the ESY decision, and they must be fully informed of the ESY determination process.

Because consideration of ESY is a required component of every annual IEP, provision of procedural safeguards and prior written notice of the meeting for the annual development of the IEP constitutes adequate notice of contemplation of ESY services. Prior written notice affords the parents the opportunity to participate in the determination of that decision. The parents of each student with a disability must be advised at each annual IEP meeting that ESY services are available for those students who are eligible.

If the parent is not available during an IEP meeting, notice must be sent to them. A copy of the IEP constitutes that notice, documenting the team determinations.

Parents are not required to respond immediately upon receipt of the notice or upon being informed during the IEP meeting. Such notice gives the parents a chance to request reconsideration if the team had determined that ESY is not considered appropriate for their student and to exhaust administrative remedies if ESY services are not

recommended by the IEP team. A case manager would need to respond formally with a prior written notice to any team member's request for reconsideration that is made outside of the IEP meeting. That prior written notice would then provide new meeting information if the team planned to reconvene, or notice of refusal, along with reasons.

*Some parents will decide not to have their student participate in ESY services, even if they qualify. If the family chooses to reject all ESY service options, the team should document this decision.*

**26. What process should be followed if the parent does not agree to the student receiving ESY services?**

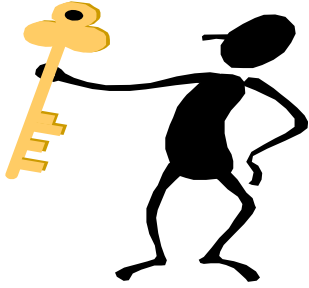
Some parents will decide not to have their student participate in ESY services, even if they qualify. If the family chooses to reject all ESY service options, the team should document this decision. Because compulsory attendance laws do not extend to days beyond the traditional school year, a school cannot compel a student to participate in ESY services.

**27. What process should be followed if the parent initiates a request for ESY services or a change in the extent of those services outside of the IEP meeting?**

If a parent requests reconsideration of need for or extent of ESY services outside of the team meeting and the team has already made a determination regarding ESY services, then the school must provide prior written notice to the parents, documenting either the date and time of a new IEP team meeting to reconsider the request, or denial of the request along with reasons for the denial.

State policy strongly recommends that the parties attempt to resolve any disagreements at the school level through informal means, working through local administration whenever possible. In addition to informal dispute resolution processes, a parent has the right to file a complaint or to request a due process hearing when disagreeing with an IEP team's decision regarding ESY.





## Special Circumstances

### **28. What is the status of a student's ESY services when there is a dispute over proposed services?**

It is important for the IEP team to make decisions regarding the provision of ESY services early enough in the school year to allow parents the time to request administrative remedies when they disagree with a team's denial of services. If the parents disagree with the decision of the IEP team not to provide ESY services and the timing of the decision does not allow sufficient time to obtain resolution of the dispute, then it is recommended that the student be provided with ESY services pending the outcome of the dispute resolution process.

Parents need to be given a reasonable amount of time after being notified to express their disagreement with the denial of ESY services. It is recommended that a school develop a policy regarding timelines that are reasonable. It is also recommended that the policy be clearly explained or made known to the parent. If the parents do not provide a timely response, then the school should not be required to provide the student with ESY services pending the outcome of the dispute resolution process or administrative proceedings.

### **29. How are ESY services determined for a student turning three over the summer months?**

A student with a disability must receive FAPE no later than his or her third birthday. The IEP or IFSP will specify whether services must be initiated on the student's third birth for students with disabilities who transition from the Part C to the Part B program if the student turns three during the summer. The IEP or IFSP developed for a student who will reach age three during the summer must specify the student's ESY services if needed by that particular student to receive FAPE. If ESY

services are not needed to provide FAPE, the date of Initiation of services would be the beginning of the upcoming school year.

Measuring the vulnerability of skills acquired by young students is difficult. It is not necessary or advisable to wait until delays occur before providing services to very young students.

When a student with disabilities reaches the third birthday during the summer, necessary personnel may not be available.

Therefore, personnel should ensure that a meeting is held at least 90 days prior to the third birthday while necessary personnel are available. The school must assume responsibility for planning and directly implementing services to be initiated on the student's third birthday.

*The IEP or IFSP developed for a student who will reach age three during the summer must specify the child's program upon the third birthday, including ESY services if needed by that particular student to receive FAPE.*

**30. Can students with disabilities who have been placed by their parents in private schools receive ESY services?**

As is true for determinations regarding services for students with disabilities placed in private schools by their parents, decisions about how students will be served are made through a consultation between representatives of public agencies and representatives of students enrolled by their parents in private schools. If a determination is made that ESY services are one of the services that a school will offer one or more of its parentally placed students with disabilities, federal funds could be used for this purpose.





# Extended School Year 15 Pointers

John Copenhaver 2005

This paper contains helpful hints and suggestions for educators and parents. Extended School Year (ESY) is the second most cited noncompliance issue in special education.

## **Point 1**

The time to address ESY is the beginning of the school year and/or when the child is found to be eligible for IDEA. This is the time to discuss regression issues and other factors. Set an early strategy to measure regression.

## **Point 2**

If the school had not addressed ESY, ask the question; be proactive-there are times the school forgets or just doesn't understand the question.

## **Point 3**

Remember, ESY services are to maintain skills already acquired, not to learn new skills that would be a nice side benefit. We want the student to remain at baseline. This will help level the playing field. Some students lose skills overnight, during weekends, or while on extended breaks.

## **Point 4**

ESY is not the same as summer school, but some summer school programs could satisfy ESY requirements. Some schools believe if they offer summer school, they are satisfying ESY requirements.

**Point 5**

ESY must be considered for all eligible students under IDEA, not just students with severe impairments. The number of students needing ESY is usually small; remember, all students regress. State monitoring data indicates that between five percent and 15 percent of students with disabilities qualify, but this can vary from school to school.

**Point 6**

Not all goals on the IEP need to be addressed during ESY—just those that are suspect for regression or other critical factors. A new IEP is not required for ESY services.

**Point 7**

Try to encourage the school to set up a measurement strategy to collect data that will help determine whether ESY is needed. There are no “formulas” to determine ESY. The most common methods to determine the need for ESY services are listed below:

- At the end of instruction (baseline)
- At the beginning of instruction (new school year)
- Measuring amounts of regression
- Measuring time to recoup skills
- Implementing instruction and measuring skills learned
- Devising a teacher-made test/observation
- Administering a post-test after interruption of instruction
- Measuring recoupment rate
  - After Weekend, Christmas break, and/or Spring break
- Teacher and parent input

**Point 8**

The most difficult issue for the IEP team is to determine when regression is significant. This needs to be determined by the IEP team. The concern is that for some students with disabilities, the regression is so severe and the recoupment period is so long that the learning that occurred during the regular school year would be significantly jeopardized if ESY services are not provided.

**Point 9**

A student's involvement in ESY services one year does not automatically guarantee services the following year. All students with disabilities must be considered for ESY services at least annually.

**Point 10**

The LRE requirements during ESY need to be considered; however, OSEP and the courts allow some flexibility on LRE because of the unique differences between LRE options during the regular school year versus the summer months.

**Point 11**

When determining eligibility for ESY services, the IEP team must also review and consider related services. While a student may not need ESY special education, that student may need ESY related services in order to benefit from special education when school resumes during the next school year.

**Point 12**

Extended school year services need to be provided by certified and qualified staff. Noncertified staff can be used to deliver ESY if they are training and supervised by certified staff.

**Point 13**

A parent can reject ESY services. the parents could decide on having their child participate in family and community activities during the summer. The school should document that ESY was offered, but the parent decided against the services (list reasons).

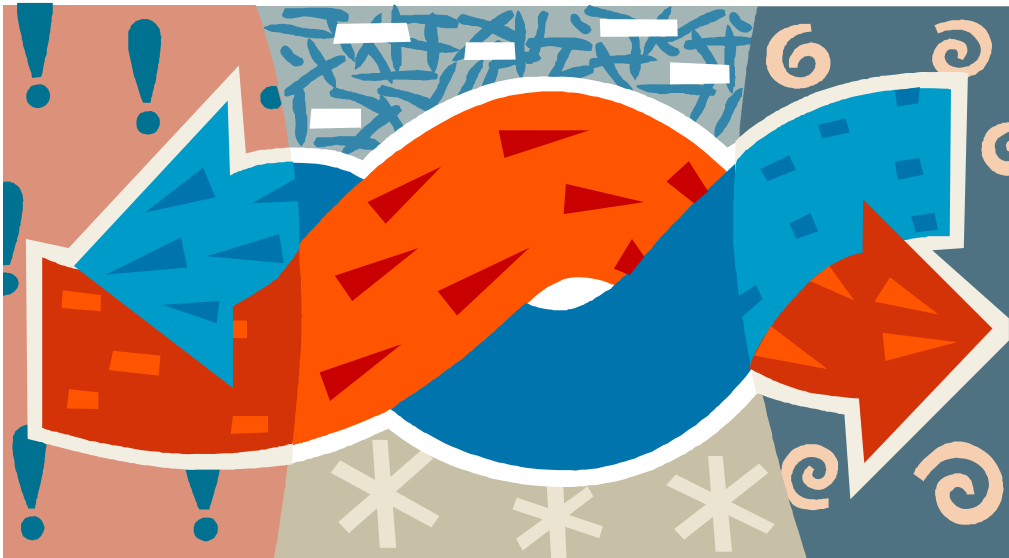
**Point 14**

There might be a situation where ESY services are implemented by the parents in the home environment. A learning packet could be prepared by the IEP team that addresses the IEP goals that are suspect for regression. Drill and practice from the parents could

help maintain skills. the related service of Parent Training could be considered by the IEP team if this option is used.

**Point 15**

If a student has been found to be eligible for Section 504 services, it would be unlikely they would qualify for ESY. If a student is so severe that they need ESY, maybe they should be considered for IDEA eligibility.





## EXAMPLES

ESY services vary in type, intensity, location, inclusion of related services, and length of time, depending upon the student's needs.

Examples of students with needs that may require ESY include the following:

- A 13-year-old student with mental retardation who has almost learned the critical life skill of crossing a street safely and, if not provided with ESY, would lose significant progress and have to begin anew in the fall.

**ESY for this student might include 45 minutes per day for 4 weeks of community-based safety instruction, aimed at maintaining the street-crossing progress.**

- A student with autism who recently has met a social/behavioral objective on his/her IEP that is designed to decrease the frequency of self-injurious behavior but is likely to resume the self-injurious behavior to the previous level unless he/she receives ESY services to maintain the target behavior.

**ESY for this student might include 3 hours per day for 4-5 weeks of instruction, aimed at maintaining the social/behavioral objective.**

- A 4-year-old student with developmental delays who, at school, is on a toileting schedule with verbal prompts and may regress significantly over the summer and require considerable retraining in the fall upon his/her return to a full-day school program.

**ESY for this student might include 2 hours per week for 4 weeks of in-home support aimed at helping the family maintain the goal in a natural setting.**

- A 10-year-old student with mental retardation and cerebral palsy who has been learning to use an augmentative communication device since last fall. Using task analysis, a six-step procedure was developed. It has taken the student six months to independently master the first two steps. Because of the critical nature of this skill and the time involved for new learning, ESY is recommended.

**ESY for this student might include 1 hour per week for 4 weeks of speech therapy, in addition to consultation with the parent.**

- A 20-year-old student with developmental disabilities who recently obtained paid, supported employment in the community and would likely lose the position at this critical transition to adult services without ESY services.

**ESY for this student might include 5 hours per week for 4 weeks of on-site monitoring and support.**

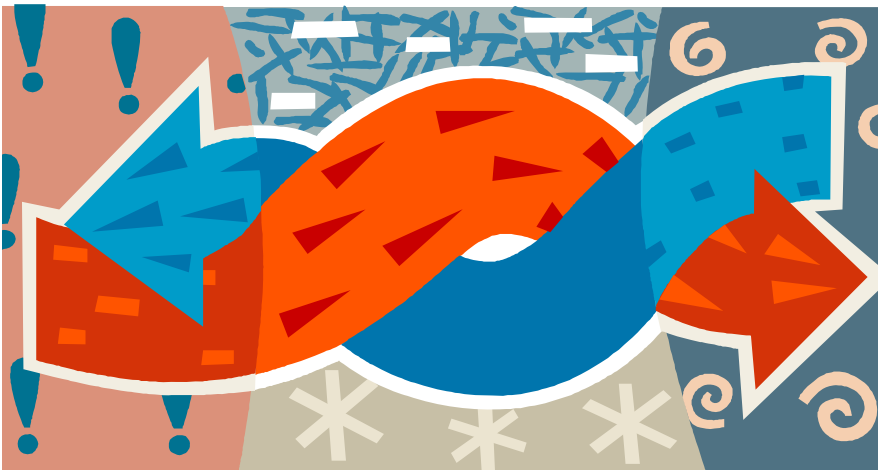
- In late spring, a fifth-grade student with a specific learning disability has a breakthrough in reading decoding skills.

**ESY for this student might include 3 hours per day, 3 times a week for 4 weeks of special education instruction to maintain the breakthrough skills.**



## Who makes the ESY decision?

ESY eligibility and services are determined at the annual review meeting, which is usually held at a student's school, to develop next year's IEP. Parents of a child with a disability are encouraged to be equal participants with school personnel in developing all parts of the IEP including the provision of ESY services. The members of the IEP team include the student's parents, the student (if appropriate), the MCPS representative, general education teacher, the student's special educator, the classroom teacher, and others who parents or school feel can contribute to the process, such as the student's speech pathologist, occupational therapist, physical therapist, vision or mobility teacher, and the like.



## APPENDIX

37. Extended School Year Screening Determination
38. Sample ESR Template for CAMPUS
39. Extended School Year Determination Document
40. Extended School Year Eligibility Profile

Regression-Recoupment Summary Form

All forms may be copied as needed



# SAMPLE ESR TEMPLATE FOR CAMPUS

IEP Page 3

Student: Moody, Test P

Extended School Year (ESY)	
Are extended year services required for this student? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> more data needed	
Date: 08/31/2007	
If yes, services are described within this IEP or in attached documentation	
ESY Considerations (Check YES or NO for each criteria below)	
<b>Criteria #1</b> <b>REGRESSION - RECOUPMENT</b> Is the amount of time required to relearn skills or behaviors so significant that it interferes with the student's ongoing educational process? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
<b>CHECK AREA(S) TO BE CONSIDERED FOR REGRESSION/RECOUPMENT EVIDENCE:</b>	
<input checked="" type="checkbox"/> Mobility & Muscular Control <input type="checkbox"/> Functional Academic <input type="checkbox"/> Toileting <input type="checkbox"/> Receptive/Expressive Communication <input type="checkbox"/> Feeding and Eating <input checked="" type="checkbox"/> Aggressive, Threatening Behavior <input type="checkbox"/> Dressing <input type="checkbox"/> Unusual or Repetitive Habits <input type="checkbox"/> Extreme Disruptions of Relationships With Others <input checked="" type="checkbox"/> Withdrawal or Inattentive Behavior <input type="checkbox"/> Extreme Reactions to the Environment	
<b>Criteria #2</b> <b>CRITICAL LEARNING STAGE</b> (recent acquisition of a skill as identified on student's IEP requiring the need for further generalization) Are ESY services required in order to avoid loss of the learning opportunity? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If yes, explain: the data tells me so	
<b>Criteria #3</b> <b>LEAST RESTRICTIVE ENVIRONMENT (LRE) CONSIDERATIONS</b> Are ESY services required in order for student to maintain placement in the LRE during the regular school year? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
<b>Criteria #4</b> <b>TEACHER AND PARENT INTERVIEWS AND RECOMMENDATIONS</b> Do teacher and parent interviews and recommendations indicate a need for ESY services? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
<b>Criteria #5</b> <b>DATA-BASED OBSERVATIONS OF THE PUPIL</b> Do data collected by school staff or other qualified observers indicate a need for ESY services? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
<b>Criteria #6</b> <b>CONSIDERATIONS OF THE PUPIL'S PREVIOUS HISTORY</b> Does the student's past history of regression or ESY services indicate a further need for ESY services? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
<b>Criteria #7</b> <b>PARENTAL SKILLS AND ABILITIES</b> Are parents unable to maintain a child's level of functioning during a break in programming? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
<b>OTHER FACTORS/COMMENTS:</b>	
<b>IS THE STUDENT ELIGIBLE FOR ESY SERVICES</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
<b>IEP GOAL (S) REQUIRING ESY SERVICES</b> LIST THE IEP GOAL NUMBER (S): 1,3,5	

## ESY DETERMINATION DECISION DOCUMENT

Use this form to assist with ESY determinations and include it with the student's IEP. The IEP Team 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 IEP Team 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 IEP Team 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 of 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?*

### Extended School Year (ESY) Eligibility Profile

Student Name \_\_\_\_\_ DOB \_\_\_\_\_ Grade \_\_\_\_\_ Home School \_\_\_\_\_

Service School \_\_\_\_\_ School Year \_\_\_\_\_ Case Manager \_\_\_\_\_

ESY Factors That Must Be Considered		YES	NO																				
Criteria #1	<p><b>Regression – Recoupment</b> Is the amount of time required to relearn skills or behaviors so significant that it interferes with the student's ongoing educational process?</p> <p>Check area(s) to be considered for regression/recoupment evidence:</p> <table style="width: 100%; border: none;"> <tr> <td style="border: none;"><input type="checkbox"/> Mobility and Muscular Control</td> <td style="border: none;"><input type="checkbox"/> Functional Academics</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Toileting</td> <td style="border: none;"><input type="checkbox"/> Receptive/Expressive Communication</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Feeding and Eating</td> <td style="border: none;"><input type="checkbox"/> Aggressive, Threatening Behavior</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Dressing</td> <td style="border: none;"><input type="checkbox"/> Unusual or Repetitive Habits</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Extreme Reactions to the Environment</td> <td style="border: none;"><input type="checkbox"/> Extreme Disruptions of Relationships with Others</td> </tr> <tr> <td style="border: none;"></td> <td style="border: none;"><input type="checkbox"/> Withdrawal or Inattentive Behavior</td> </tr> </table> <p><b>Reference Chart for <u>Average</u> Recoupment (take individual learning rate into account)</b></p> <table style="width: 100%; border: none;"> <thead> <tr> <th style="text-align: center;">Length of Break</th> <th style="text-align: center;">Approximate Average Recoupment Time</th> </tr> </thead> <tbody> <tr> <td>11-12 week break (summer)</td> <td>20 – 30 instructional days (4 – 6 weeks)</td> </tr> <tr> <td>2 weeks (winter)</td> <td>3 – 4 instructional days</td> </tr> <tr> <td>1 week (spring)</td> <td>2 days</td> </tr> </tbody> </table> <p><i>To qualify for ESY, the period of recoupment following the beginning of review and re-teaching must significantly exceed these guidelines.</i></p>	<input type="checkbox"/> Mobility and Muscular Control	<input type="checkbox"/> Functional Academics	<input type="checkbox"/> Toileting	<input type="checkbox"/> Receptive/Expressive Communication	<input type="checkbox"/> Feeding and Eating	<input type="checkbox"/> Aggressive, Threatening Behavior	<input type="checkbox"/> Dressing	<input type="checkbox"/> Unusual or Repetitive Habits	<input type="checkbox"/> Extreme Reactions to the Environment	<input type="checkbox"/> Extreme Disruptions of Relationships with Others		<input type="checkbox"/> Withdrawal or Inattentive Behavior	Length of Break	Approximate Average Recoupment Time	11-12 week break (summer)	20 – 30 instructional days (4 – 6 weeks)	2 weeks (winter)	3 – 4 instructional days	1 week (spring)	2 days		
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	<p><b>OTHER FACTORS/COMMENTS:</b> _____ _____ _____</p>																						

Student eligible for ESY services:     Yes         No

