



Arizona Department of Education  
Tom Horne, Superintendent of Public Instruction

# **AZ-TAS**

## **Guidelines for Extended School Year Services**

Exceptional Student Services  
February 2007

The intent of the following document is to provide guidance for school staff and parents regarding the legal provisions for extended school year services. The document provides an overview of the most commonly asked questions and answers about issues surrounding the provision of extended school year services.

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# Table of Contents

Overview ..... 1

Legal Authority for ESY ..... 2

Extended School Year Services ..... 4

Related Services ..... 13

ESY Services versus Summer School..... 13

Summer School ..... 15

Procedural Safeguards..... 16

Special Circumstances ..... 17

Appendix A ..... 19

## Overview

The Individuals with Disabilities Education Act (IDEA) gives educators the responsibility to develop and deliver a free appropriate public education (FAPE) to children with disabilities. IDEA defines FAPE as special education and related services that are provided at public expense and in conformity with an individualized education program (IEP).

A central issue to the determination of FAPE is the IEP team's decision as to what services are *appropriate*. The process of IEP development ensures that children with disabilities have *appropriate* education planning, based on *appropriate* evaluation, to accommodate their unique instructional needs. It also ensures that these needs are met in an *appropriate* learning environment. The IEP process ensures that children with disabilities receive an *appropriate* education (but not necessarily the best possible education).

Another issue regarding appropriate education is 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 child's present level of educational performance or development, as well as the child's ability to progress beyond that level if provided with an effective program. If that program results in measurable advancement toward IEP goals that are appropriate for the child, then the child 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 children with disabilities may not receive FAPE unless they receive needed services during time periods when other children, both disabled and non-disabled, normally would not be served. As part of the IEP process, the team must determine if a child needs a program of special education and related services extending beyond the normal school year. For such a child, restricting services to a standard number of school days per year or school hours per day does not allow development of an education program that is truly individualized and provides FAPE to the child.

**For the purposes of this section, “extended school year” means additional special education and related services for pupils with disabilities to supplement the normal school year which are provided as part of a free appropriate public education as defined in Public Law 108-446 [ARS 15-881 (E)].**

# Legal Authority for ESY

FAPE was first established in federal law by PL 94-142, the Education of all Handicapped Children Act. Since that time, the authority for interpreting and determining ESY requirements has come from case law. The federal regulations now include specific reference to ESY.

## Section 300.106 **Extended School Year Services**

### (a) *General.*

- (1) Each school shall ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a) (2) of this section.
- (2) Extended school year 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.
- (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 child with a disability--
  - (i) Beyond the normal school year of the public agency;
  - (ii) In accordance with the child's IEP; and
  - (iii) At no cost to the parents of the child; and
  - (iv) Meet the standards of the SEA.

The determination as to whether a child with a disability needs ESY services must be made on an individual basis as a part of the IEP process. The critical question that each IEP team must ask regarding ESY services is whether meaningful progress on critical skills related to IEP goals that occurred during the regular school year will be significantly jeopardized (thus significantly jeopardizing the provision of FAPE) if ESY is not provided.

In the state of Arizona, extended school year services are addressed in special education statutes [A.R.S. §15-881] and rules [A.A.C. R7-2-408]. The provision of extended school year applies to all public education agencies.



## What have the courts said about extended school year services?

A number of court cases have looked at the issue of ESY, however they are not from the 9<sup>th</sup> Circuit, which is the jurisdiction for Arizona and should only be used to provide insight into the thinking of the courts regarding ESY. The following case captures the points reinforced in other cases.

*Johnson v. Independent School Dist. of Bixby*, 921 F.2d 1022 (10th Cir. 1990) This court was asked to determine what information should be considered as a basis for entitlement under IDEA to a free extended year school program in addition to the traditional September through May, nine-month school program. The court determined that the issue for schools to look at is whether the benefits accrued to the child during the regular school year will be significantly jeopardized if he is not provided an educational program during the summer months. The analysis as to whether the child's level of achievement would be jeopardized by a summer break in his or her structured educational programming should proceed by applying not only retrospective data, such as past regression and rate of recoupment, but also should include predictive data, based on the opinion of professionals in consultation with the child's parents as well as circumstantial considerations of the child's individual situation at home and in his or her neighborhood and community.

The court in this case noted that the lower court and those who conducted the administrative process erred by applying a single, inflexible criterion (i.e., past regression) instead of a multifaceted inquiry (such as the degree of the child's impairment, the ability of the child's parents to provide the educational structure at home, the child's rate of progress, his or her behavioral and physical problems, the availability of alternative resources, the ability of the child to interact with non-handicapped children, the areas of the child's curriculum that need continuous attention, the child's vocational needs, and whether the requested service is "extraordinary" to the child's condition, as opposed to an integral part of a program for those with the child's condition).

Cases for additional reference include:

*JH v. Henrico Cty. School Board.*, 326 F. 3d 560 (4<sup>th</sup> Cir. 2003)

*MM v. School Dist. Of Greenville Cty.*, 303 F. 3d 523 (4<sup>th</sup> Cir. 2002)

*Cordrey v. Euckert*, 917 F. 2d 1460 (6<sup>th</sup> Cir. 1990)

*Alamo Heights Independent School Dist. V. State Bd. Of Education*, 790 F.2d 1158 (5<sup>th</sup> Cir. 1986)

# Extended School Year Services

**Extended School Year (ESY)** means special education and/or related services provided beyond the normal school year or normal hours of the school day (for the child's grade level) of the public education agency for the purpose of providing FAPE to a student with disabilities. These services are distinct from enrichment programs, summer school programs, and compensatory services and are not just an extension of time or duplication of regular school year services. ESY services are not so much a regression-recoupment issue as they are an issue of FAPE and meaningful educational benefit.

ESY services are provided to a student when the educational benefits gained during the regular school year are significantly jeopardized by a break in service. ESY is necessary to enable a student to benefit from instruction received during the regular school year when the lack of ESY services would thwart the goal of maintaining the meaningful progress gained during the regular school year.

ESY services are a result of an individual determination of the IEP team and focus on critical skills and are not based upon a category of disability. While the need for ESY services is the exception rather than the rule, it is the responsibility of the IEP team to consider the need for ESY for every student.



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

All children 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 child regardless of the child's disabilities. The federal regulations clarify that 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 children with disabilities from the ages of 3 through 21.



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

The IEP team determines the need for ESY services based on whether meaningful progress on critical skills related to IEP goals that occurred during the regular school year would be significantly jeopardized (thus significantly jeopardizing the provision of FAPE) if ESY is not provided.



## **When should an IEP team meet to determine the need for ESY services?**

The team must consider the need for ESY services at the annual IEP meeting. However, under some circumstances, the need for ESY services may not be known at the time of IEP meeting. In that case, the team may identify the date it will reconvene to determine ESY needs and services. That date must be no later than 45 calendar days from the end of the school year. The team may also plan what data should be gathered to assist them in making the later determinations. When the ESY determination is ultimately made, the IEP team must document the decision on the IEP.



## **How often must a child be considered for ESY?**

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



## **What determines the need for ESY services?**

Schools may not automatically or categorically exclude, or include, any group. Instead, decisions about ESY services must be made according to the individual needs of a student. Eligibility determinations must be made annually. It should not be automatically assumed that a child who receives ESY one year will be eligible the following year.

ESY focuses on critical skills that impact maintenance of educational benefit and loss of FAPE. Critical skills may include communication skills, self-help skills, social-emotional skills, and motor skills. Loss of a specific academic skill may not qualify the student for ESY services unless it results in loss of meaningful educational benefit.

The determination of ESY eligibility is NOT a formula-driven decision; rather it is a multi-faceted inquiry, considering both retrospective data and predictive data. The IEP team must conduct a thorough review of existing and predictive data to determine whether the child incurs skill loss of such degree and duration as to seriously impede progress toward educational goals and loss of educational benefit.



## **What is a Critical Skill?**

Critical skills are those academic, social, functional, and behavioral skills that are related to IEP goals and are critical to the student's overall school and community functioning.



## What factors should be considered when determining the need for ESY services?

The IEP team must decide the manner for determining eligibility for ESY services. In most cases, a multi-faceted determination is appropriate in determining ESY eligibility, but for some students, a determination based on only one criterion may be appropriate. The IEP team shall consider both retrospective data as well as predictive data when making a determination.

1. **Retrospective Data** is data that currently exist, which can be verified through observation, data collection and review, or written reports of performance or behavior, etc. Types of retrospective data may include:
  - a. Past Regression: data that demonstrate **significant** regression of previously learned skills during a break in service.
  - b. Rate of Recoupment: **significantly** delayed or limited recoupment of regressed skills after services resume. When the amount of time required to relearn skills or behaviors becomes so significant that it interferes with ongoing educational progress, the recoupment factor becomes significant.

While regression-recoupment measures are part of the determination process, they are not the only measures. Data that meet the standard of significant critical skill loss of such degree and duration as to seriously impede progress toward educational goals and loss of educational benefit would indicate a need for ESY services.

2. **Predictive Data** can be used when sufficient retrospective data on critical skills are not available. For example, data based on expert opinion, past history, circumstances, type and severity of disability, availability of alternate resources, and situations unique to the student may be used. Types of predictive data may include:
  - a. Expert Opinion: data based upon a professional individual assessment.
  - b. Circumstantial Considerations: information based on unique situations in the child's home, neighborhood, or community.
  - c. Anecdotal Reports: reports from teachers, parents, caregivers, and related service personnel.



## How is the need for ESY services measured?

Determination of the need for ESY cannot be based on a formula. Formulas lack the individualization that ensures that children 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 child with a disability.

Information can be gathered through a variety of informal and formal measures. These 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, outside provider reports, student work samples, etc.

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

- Retrospective information that reflects the child's performance after long weekends, short breaks, vacations, and past summer breaks, etc.
- Prior experience with regression-recoupment
- Predictive information including historical data, professional evaluations, etc.

In considering evidence of regression, a team should select information that is measurable. The minimum points of measurement are:

1. At the end of instruction (e.g., the end of the school year and prior to school year recesses);
2. At the beginning of subsequent instruction (e.g., the beginning of the next school year and after returning from school year breaks); and
3. At the time of recoupment (e.g., the date of regaining skills that had been attained last May and prior to the school year break).



### **When is the need for ESY considered significant?**

The determination as whether services beyond the regular school year/day are essential for the student to receive any educational benefit is fact and case specific. ESY services are only necessary to FAPE when the benefits that a child with a disability gains during a regular school year will be significantly jeopardized if he/she is not provided with educational services during the summer months or school year recesses.



### **Is the IEP team required to demonstrate regression before ESY services are provided?**

A showing of actual regression is not required; a child's need for ESY services may be established by predictive data. However, the mere fact of likely regression is not a sufficient basis, because all students, whether they have a disability or not, may regress to some extent during lengthy breaks from school. ESY services are required under the IDEA only when such regression will substantially thwart the goal of meaningful progress within the IEP.



### **Does involvement in ESY one summer assure involvement the following summer?**

No. A child'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.



### **If a child doesn't meet all IEP goals during the regular school year, are ESY services required?**

No. ESY services should not be granted on the basis of the child not achieving one or more IEP goals. The critical question that each IEP team must ask regarding ESY services is whether meaningful progress on critical skills related to IEP goals that occurred during the regular school year would be significantly jeopardized if ESY were not provided.



### **Should new goals and objectives or benchmarks be developed for ESY services?**

No. ESY services address the maintenance of previously learned skills, as identified in the current IEP. The purpose of providing ESY services is not to teach new skills. Therefore, new goals should not be added to a child's IEP for implementation during ESY services.



### **How does the IEP team determine the appropriate amount of ESY services for a student?**

The determination of the extent of adequate services must be made on an individual basis after a thorough review of all the retrospective and predictive data. The IEP team must determine how much time is needed to ensure that the benefits gained during the regular school year will not be significantly jeopardized.



### **How do LRE requirements relate to ESY program decisions?**

While ESY services must be provided in the least restrictive environment, a school is not required to create new programs as a means of providing ESY services to children with disabilities in integrated settings if the school does not provide services at that time for its non-disabled children. 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 according to the U.S. Department of Education/Office of Special Education Programs (USDOE/OSEP), the school is not required to create such a program for that sole purpose.



## Where can ESY services be provided?

The U.S. Department of Education/OSEP states that a school is not prohibited from providing ESY services in a non-educational setting if the child's IEP team determines that the child could receive appropriate services in that setting. The characteristics of services, including location and LRE considerations, should be based upon the unique needs of the child. The IEP team should consider a flexible service model that takes those needs into account.

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 child. Other appropriate service delivery options could include:

- School-based services that vary in length (e.g., 2 weeks, 6 weeks, 10 weeks);
- Grouping of children with similar goals and objectives or benchmarks;
- Intra-school cooperative programs (e.g., title 1);
- A cooperative program with another agency;
- Limited child contact, perhaps 3–4 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;
- Contractual arrangements;
- Community-based programs;
- Transition opportunities; or
- Services provided by the parent in the home and supported by school personnel.

Some children 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. The teacher would periodically monitor progress. Such home consultation prior to the vacation and at intervals during the vacation 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 the parents. The option of home consultation would depend upon availability of parents to provide ESY, their desire to assist, the complexity of their child's needs, as well as many other factors.



## **Who can provide ESY services?**

IDEA does not specifically require an indication of who (i.e., the position) is providing a service. To provide clarification and reduce misunderstandings, it is suggested that the IEP specify the position of the person(s) providing the service(s). This may include one or more of the following:

- Certified or licensed professionals,
- Trained and supervised paraprofessionals,
- Contracted providers through other agencies,
- Family members.



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

Yes. After the child's IEP team has completed the discussion regarding ESY, their decision must be documented on the IEP. The IEP 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 beginning of the ESY services, but no later than 45 calendar days before the end of the school year.

If the decision to provide ESY is not a part of the annual IEP meeting, a prior written notice (PWN) shall be completed to notify the parents of whatever ESY determinations have been made. Proper completion of all components of the PWN should document the justification for the ESY eligibility determination [§300.503 (2) (b)].



## **How does an IEP team document ESY services?**

Documentation of ESY services shall specify which goal(s) will be reinforced during ESY services. Documentation shall 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, and where the service will be provided.



## **What are some factors that would be inappropriate for determining the need for ESY services**

The following factors would be inappropriate in the consideration of ESY:

- The cost to the school district
- The child's need for socialization, enrichment, or supplemental instruction

- The child's readiness for next year, developing new skills, or preparing for mainstreaming
- Progress on IEP goals not met during the year
- Slow progress that is typical for the child
- Slow progress that is the result of medical problems, absenteeism, or transitional life situations (e.g., divorce or death of a family member)
- Convenience of the parent or school (e.g., summer recreation program, day care or respite care service)
- The need for additional instruction to maximize the child's educational opportunities
- The child's need for educational services beyond what is prescribed in the IEP goals and objectives



### **What questions should the IEP Team ask?**

The following sample questions may assist the IEP team in making the ESY determination. The questions for consideration are not necessarily listed in order of priority; therefore, the IEP team should determine which questions are of greatest importance in identifying critical skills for the individual student.

1. Without ESY services in the identified critical skills, will the student be unable to receive some level of benefit from his or her educational services during the regular school year?
2. Will maintaining the critical skill enable the student to maintain current LRE setting or help prevent movement to a more restrictive environment?
3. Will maintaining the critical skill allow the student to maintain current level of independent success in integrated environments (e.g., general education, community, employment)?
4. Will the interruption of instruction on identified critical skill goals prevent him/her from receiving some educational benefit from his/her educational program during the regular school year?
5. Without ESY services, will the student's behaviors (critical skill) that have been targeted by IEP goals prevent him/her from receiving some benefit from his/her educational program during the regular school year?
6. Without ESY services, are there special circumstances that will preclude the student from receiving some benefit from his/her educational program during the next school year?

7. Do the data indicate the likelihood that the student is at a crucial stage in the development of a critical skill and that a lapse in services would substantially jeopardize the student's chances of learning that skill?

8. Is maintaining the skill important to the student's continued integration with peers who are not disabled?



### **What must the IEP Team do?**

At an IEP meeting, there should be a determination if the student's IEP contains critical skills that need ESY services in order to ensure FAPE to the student. The IEP team should consider all factors in its discussion. All decisions and the basis for the decisions should be documented and communicated to the parent and student (if appropriate).

Remember, the question is: "Does the student need ESY services in order to receive FAPE"?

#### **IF YES:**

- Identify the specific goal(s) from the current IEP that require services since all goals may not be affected.
- Determine the type(s), amount(s) and duration of the special education and/or related services required based upon the goal(s) identified. The amount, type and duration may differ for each identified service if more than one service is required. Do not forget to address any needed related services which also might include transportation. Decisions regarding services must be based upon the student's need and not on existing programs.
- Determine the LRE in which the specific goal(s) will be addressed
- Determine participation with peers without disabilities.
- Determine the person(s) responsible for providing services (i.e., special education teacher, speech/language pathologist, physical therapist, etc.).
- Provide the parents with written notice as required in state and federal regulations.

Some parents will decide not to have their child participate in ESY services. School personnel should document this parental decision and have the parent sign it.

#### **IF NO:**

Provide the parents with written notice as required in state and federal regulations.

## Related Services



**Must the IEP team consider the provision of related services as ESY services?**

Yes. The IEP meeting participants must consider whether the child requires related services, including transportation, in order to prevent loss of meaningful progress gained during the year.



**Is it necessary to show regression-recoupment separately for related services for the child to receive related services during ESY?**

No. A separate showing of significant regression and poor recoupment of skills is not required to establish the need for related services. What is required is evidence that related services are needed to assist the child to benefit from special education, thus assuring FAPE.



**May a school provide related services as a sole component of ESY?**

Yes. The decision as to whether the child should be provided related services as the sole component of an extended school year program is the responsibility of the IEP team.



**Is transportation provided as part of ESY?**

Transportation is a related service and must be offered if it is necessary for the child to access ESY services. If necessary, transportation should be added as a related service for the duration of ESY services.

## ESY Services versus Summer School



**May the child'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 child 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 child and cannot be based solely on the availability of a summer school program. The amount and duration of ESY services cannot be limited arbitrarily to the district's summer school schedule and must be at no cost to the parent.

When choosing this service delivery option, it is recommended that special education personnel collaborate with summer school staff, informing them of needed modifications and accommodations based upon the child's needs. Documentation of which goals have been selected as critical skills to be addressed by ESY services and delivered through summer school programming would be included within the team's documentation.



**Must a school provide modifications and accommodations for a child who chooses to attend summer school and does not need ESY services?**

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



The following chart provides a comparison of ESY and summer school services:

<b>Summer School</b>	<b>Extended School Year</b>
<p><b>Definition:</b> An optional or permissive program provided beyond the regular school year. A school may elect to operate summer classes or not.</p>	<p><b>Definition:</b> Services required by IDEA to be provided beyond the traditional school year/day for any child with a disability who needs special education services and/or related services in order to receive a free appropriate public education (FAPE), thus maintaining meaningful educational progress.</p>
<p><b>Purpose:</b> Teaching new content or enrichment; offering recreational or academic opportunities not present during the regular school year. Children with and without disabilities benefit from additional educational opportunities.</p>	<p><b>Purpose:</b> Assuring a child's meaningful progress during the regular school year (FAPE) by preventing significant loss of critical skills. If services are not provided, the child's skills are temporarily or permanently lost, jeopardizing progress. ESY services are not provided for the purpose of helping children with disabilities advance in relation to their peers.</p>
<p><b>Cost:</b> Often on a fee basis.</p>	<p><b>Cost:</b> Free to parents.</p>
<p><b>Duration:</b> Typically operated on a set schedule for a number of weeks during the summer (e.g., 2, 6, or 10 weeks) for all those who participate.</p>	<p><b>Duration:</b> Schedule, setting, and extent of services designed to meet the individual needs of a child in order to assure FAPE. The amount and duration of services cannot be determined arbitrarily by a school's summer school schedule.</p>
<p><b>Instruction:</b> General education setting, based on needs and interests of all children.</p>	<p><b>Instruction:</b> Specially designed instruction based upon a child's individual needs provided to prevent loss of critical skills.</p>
<p><b>Eligibility:</b> A child's participation does not depend on an IEP team determination of need.</p>	<p><b>Eligibility:</b> IEP team determines need and extent of services necessary to prevent significant loss of critical skills which may lead to a loss of meaningful progress and educational gains.</p>

## Procedural Safeguards



### **What are the procedural safeguards regarding ESY?**

Parents are entitled to a meaningful opportunity to fully participate in discussion of their child's needs and the development of their child'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 written meeting notice for the annual development of the IEP constitutes adequate notice. Written meeting notice affords the parents the opportunity to participate in the determination of that decision.



### **If a parent requests ESY services or a change in services outside an IEP meeting, what process should be followed?**

If a parent requests reconsideration of the ESY decision outside of the team meeting and the team has already made a determination regarding ESY services and the extent of those services, then the school must respond in one of 2 ways:

1. If the school is going to reconvene the IEP team to consider the parent's request, a written meeting notice must be provided to the parents; or
2. If the school denies the request, then a prior written notice (PWN) must be provided to the parent stating the reasons for the denial.

It is recommended that the parties attempt to resolve any disagreements locally through informal means, working through the school administration whenever possible. In addition to informal dispute resolution processes, a parent has the right to file a complaint or to request mediation or a due process hearing when disagreeing with an IEP team's decision(s) regarding ESY.



### **What process should be followed if a parent does not agree to the child's receiving ESY services?**

Some parents will decide not to have their child participate in ESY services, even if the child qualifies. If the family chooses to reject all ESY service options, the team should document this decision and consider having the parent sign the document. 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.



## **What is the status of a child’s ESY services when there is a dispute over proposed services?**

The IEP team shall make decisions regarding the provision of ESY early enough in the school year to allow parents time to request administrative remedies when they disagree with a team’s denial of services, but no later than 45 calendar days before the end of the school year. 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 the provisions of “stay put” apply. If a hearing officer finds in favor of the parent, compensatory education services may be ordered.

## **Special Circumstances**



### **How are ESY services determined for a child turning 3 during the summer months?**

§300.101(b)(i) states that a child with a disability must receive FAPE no later than the child’s third birthday. The analysis of comments that accompanied the Federal Regulations state, “The IEP or IFSP will specify whether services must be initiated on the child’s third birthday for children with disabilities who transition from the Part C to the Part B program, if the child turns 3 during the summer.”

When a child with a disability reaches the third birthday during the summer, some necessary personnel may not be available. Therefore, personnel must ensure that a meeting is held at least 90 days prior to the third birthday while necessary personnel are available. The IEP or IFSP developed for a child who will reach age 3 during the summer must specify the child’s program upon the third birthday, including ESY services, if needed. If ESY services are not needed to provide FAPE, the date of initiation of services would be the beginning of the upcoming school year.



### **Can children with disabilities who have been placed by their parents in private schools receive ESY services?**

The analysis of comments that accompanied the implementing regulations states, “As is true for determinations regarding services for children with disabilities placed in private schools by their parents, determinations regarding the services to be provided, including types and amounts of such services and which children will be served, are made through a process of consultation between representatives of public agencies and representatives of students enrolled by their parents in private schools.

Children who are voluntarily enrolled in a private school have no entitlement to FAPE. However, if through consultation, a determination is made that services outside of the

regular school year are a services that the public agency will offer, Part B funds could be used for this purpose.

In Arizona, home-schooled children are regarded as enrolled in private schools and, as such, may be considered for services in the same manner as other unilaterally placed private school children.



### **What determines the need for ESY services?**

- The focus is on critical skills that impact maintenance of educational benefit and a loss of FAPE.
- Critical skills may include communication, self-help, social/emotional and motor skills.
- Loss of a specific academic skill may NOT qualify the student for ESY unless it results in loss of overall meaningful educational benefit.
- Determination is NOT a formula-driven decision, but rather a multi-faceted inquiry, considering both retrospective and predictive data.
- The IEP team MUST conduct a thorough review of existing and predictive data to determine whether the data meets the standards of SIGNIFICANT skill losses of such a degree and duration as to seriously impede overall progress toward educational goals and loss of educational benefit.



### **Can schools base their determination on ESY on the availability of funding from the Arizona Department of Education?**

No. While the ADE/ESS has funds to support a limited number of schools in the provision of ESY services, the availability of the supplemental funding must not be use in the determination of the eligibility of a child for ESY services. Once the IEP team has decided that a child needs ESY in order to ensure FAPE, the school must provide ESY regardless of the availability of ADE/ESS support.

The forms in Appendix A are provided to assist IEP teams in making appropriate ESY decisions. These forms would also serve as supporting documentation if the school applied for ADE/ESS ESY funding.

## **Appendix A**

### **SAMPLE FORMS**

## Review of Extended School Year (ESY) Data

<b>Student</b>	<b>DOB</b>	<b>SAIS</b>
<b>School</b>	<b>Grade</b>	<b>DATE</b>

Based upon the review of ESY data, the IEP team will determine if the student's critical skills will be significantly jeopardized if ESY services are not provided. Critical skills may include communication, motor, social/emotional, and self-help skills.

### **Critical skills from the IEP goals that impact maintenance of educational benefit and loss of FAPE:**

The IEP Team has determined the identified goal/skill to be critical to the student's overall school and community functioning for the following reason(s):

### **Review of ESY Data**

The IEP team should consider all retrospective data and predictive data when determining the need for ESY services. Information can be gathered from a variety of formal and informal measures. Provide information below and attach additional documentation, if applicable.

#### **RETROSPECTIVE DATA (data that currently exists)**

Observation:

Describe how substantial regression and lack of recoupment will impact the student's opportunity to benefit from FAPE:

Written Reports:

Assessments:

Report(s) from General Education Teacher(s):

Report(s) from Related Service Provider(s):

Student Work Samples:

Attendance:

Report from Parent(s):

Other Information:

PREDICTIVE DATA (data based on prior history, expert opinion, anecdotal reports, type and severity of disability, availability of alternate resources, and situations unique to the student)

Prior History:

Expert Opinion:

Anecdotal Reports:

Unique Circumstances:

Alternate Resources:

Other Information:

ESY ELIGIBILITY DETERMINATION (document the decision of the IEP team):

If the IEP team determines the student's critical skills will be significantly jeopardized if ESY services are not provided, identify the IEP goals to be reinforced during ESY:

Determine the extent of services based upon the review of all the retrospective and predictive data:

IEP Team Members	
Position/Relationship	Name
Parent	
Parent	
Student	
General Education Teacher	
Special Education Teacher	
LEA Representative	
Person interpreting evaluation results	
Other	

**Anywhere School District  
Regression and Recoupment Data for Extended School Year Services**

Student \_\_\_\_\_ DOB \_\_\_\_\_ SAIS \_\_\_\_\_  
 School \_\_\_\_\_ Grade \_\_\_\_\_ Data Collector \_\_\_\_\_

Documentation of regression and recoupment is one method of data collection when ESY is being considered. This form may be used to collect and report data for each identified IEP goal, that is a critical skill, for which regression and recoupment is suspected.

**Annual IEP Goal:**

<b>Performance at end of School Year or before Break</b>	<b>Performance at beginning of next School Year or after Break</b>	<b>Performance after Instruction</b>	<b>Outcome</b>
Date _____	Date _____	Date _____	<input type="checkbox"/> Maintained <input type="checkbox"/> Did not maintain <input type="checkbox"/> Recoupment after _____
Date _____	Date _____	Date _____	<input type="checkbox"/> Maintained <input type="checkbox"/> Did not maintain <input type="checkbox"/> Recoupment after _____
Date _____	Date _____	Date _____	<input type="checkbox"/> Maintained <input type="checkbox"/> Did not maintain <input type="checkbox"/> Recoupment after _____
Date _____	Date _____	Date _____	<input type="checkbox"/> Maintained <input type="checkbox"/> Did not maintain <input type="checkbox"/> Recoupment after _____