

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

**February 2005**

**Indiana Department of Education  
Division of Exceptional Learners**

*This document replaces the "Field Study Edition of Guidelines for Determining the Need for Extended School Year Services" previously published in May 2001*

## ▪ Overview

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

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

Federal regulations do not include standards for determining when a student must be provided with ESY services in order to receive a FAPE, but permit states to establish standards for use in making these determinations, as long as the standards are not contrary to Part B of the Individuals with Disabilities Education Act (IDEA). The definition of ESY services in 511 IAC 7-17-35 requires, among other things, that ESY services meet the standards of the state educational agency. The Division of Exceptional Learners recognizes that the CCC's determination of an individual student's need for ESY services is a complex process and is a concern to educators and families. This document is intended to define and clarify issues on ESY services.

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

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

## ▪ Definitions

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

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

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

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

**Examples of types of critical skills:**

Skills designed to increase the student's independence from caretakers

Skills required across a variety of environments

Skills or behaviors that increase the student's independence in the school or community

Skills designed to allow the student to move to or remain in a less restrictive environment

Skills that permit the student to decrease or eliminate behaviors that interfere with the student's functioning at school or in the community

Skills essential for the student's maintenance of academics, behavior, communication, or self-sufficiency and independence

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

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

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

#### ▪ **ESY Services and the Case Conference Committee's Role**

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

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

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

The final regulations for IDEA '97 define "extended school year services" and set out the school's responsibility for implementing such services. Specifically:

"Extended school year services means special education and related services that

- (1) Are provided to a child with a disability
  - (i) Beyond the normal school year of the public agency;
  - (ii) In accordance with the child's IEP; and
  - (iii) At no cost to the parents of the child; and
- (2) Meet the standards of the SEA." [34 CFR §300.309(b)]

The CCC determines when, based on an individual student's needs, ESY services are necessary for the student to receive a FAPE, and the school must ensure that such ESY services are made available. The school may not "limit extended school year services to particular categories of disabilities" or "unilaterally limit the type, amount, or duration of those services." [34 CFR §300.309(a)]

Attachment 1 of 34 CFR Part 300 provides additional comments and analysis regarding these requirements, stating "[t]he regulation and notes related to ESY services were not intended to create new legal standards, but to codify well-established case law in this area... Since the requirement to provide ESY services to children with disabilities under this part who require such services in order to receive a FAPE is not a new requirement, but merely reflects the longstanding interpretation of the IDEA by the courts and the Department, including it in these regulations will not impose any additional financial burden on school districts." The discussion goes on to explain that "ESY services must be provided only if a child's IEP team determines... that the services are necessary for the provision of FAPE to the child" and points out that "there is nothing in the definition of ESY services that would limit the ability of a public agency to provide ESY services to a student with a disability during times other than the summer..." The discussion also states that "while ESY services must be provided in the LRE public agencies are not required to create new programs as a means of providing ESY services to students with disabilities in integrated settings if the public agency does not provide services at that time for its non-disabled children." [Federal Register, Vol. 64, No. 48, March 12, 1999, Attachment 1, pp. 12575-77]

Indiana's definition of ESY services, found at 511 IAC 7-17-35, mirrors the federal definition. Article 7 requires every public school to "ensure that extended school year services are available as necessary to provide free appropriate education. A public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services." [511 IAC 7-21-3(b)] The regulations further require that each IEP contain "a statement of the student's need for extended school year services." [511 IAC 7-27-6(a)(8)]

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

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

other periods during the regular school calendar when school is not in session (e.g., winter break).

The CCC's consideration of ESY services should be made in a timely manner so that the school and the parents can make necessary arrangements for the student's participation. Under some circumstances, the need for ESY services may not be known at the time the IEP is developed. In that case, the CCC can identify the date it will reconvene to determine needs and services to be provided in the IEP. The CCC may also identify the data that will be gathered to assist in making the subsequent determination and document that data collection plan in the IEP. As noted in the commentary and analysis of the federal regulations "public agencies are expected to ensure that these determinations are made in a timely manner so that children with disabilities who require ESY services in order to receive FAPE can receive the necessary services" [Federal Register, Vol. 64, No. 48, March 12, 1999, Attachment 1, p. 12576]. Decisions about ESY services may not be postponed solely on the basis that no formal regression/recoupment data currently exists. Delaying a decision through the upcoming summer to see what happens if services are not provided is not advisable. The CCC should make its determination on the best evaluative information and data currently available, including predictive data.

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

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

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

## ▪ **Determining a Student's Need for ESY Services**

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

### **General procedures:**

1. The CCC must consider a student's need for ESY services in the context of that student's IEP, individual needs, and the provision of a free appropriate public education.

2. Consideration of a student's need for ESY services must include a variety of factors (e.g., progress on IEP, history of regression or lack of recoupment of a critical skill, prediction of regression or lack of recoupment of a critical skill, loss of independence from caretakers, likelihood of more restrictive placement, break-through learning opportunity, special circumstances, etc.). However, the actual determination that a student needs ESY services may be based on a single standard.
3. The CCC must review and consider formal and informal data from a variety of sources, including information provided by the parent. The data may be historical or predictive in nature. (Note: OSEP has stated that, due to the IDEA requirement for individualized determinations by the CCC, refusing to consider information such as predictive data is not permissible if such data is relevant to the determination of a student's need for ESY services. Letter to Bradley (OSEP, 1995) 2 ECLPR 118).
4. Under some circumstances, the CCC may not be able to determine the student's need for ESY services at the time the CCC is convened (e.g. the CCC convenes in the fall and wants to wait until later in the school year to make the determination of need for ESY services). In this case, the CCC needs to include in the CCC Report/IEP the date it will reconvene to make the ESY determination, as well as the plans for collecting data or other information in the interim.
5. Decisions about the need for ESY services may not be postponed until after summer to gather data on critical skill regression and recoupment. Schools should not delay a determination on a student's need for ESY services solely to "see what happens" in the absence of providing ESY services. A determination of need for ESY services must be made on the best evaluative and other data currently available, even if some of that data is predictive, rather than historical, in nature.
6. The CCC meeting during which the determination of need for ESY services is made should be conducted sufficiently in advance to permit the school and the parent to exhaust administrative remedies (if necessary) prior to the time when ESY services would be expected to be initiated.

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

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

**PART I:**

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

In answering and considering the questions posed, the CCC should utilize a variety of information, such as current and previous IEPs, progress reports, medical reports, attendance and

discipline reports, historical or anecdotal information about the student's potential for regression and recoupment, information on the student's behavior, recent evaluative data, parent reports, and any other information relevant or necessary to the CCC's decision making.

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

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

## **PART II:**

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

### **Regression/Recoupment**

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

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

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

### **Break-Through Learning Opportunity**

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

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

The CCC should consider a student eligible for ESY services when the absence of ESY services is likely to result in the loss of “window of opportunity” for the acquisition of one or more identified critical skills.

### **Special Circumstances**

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

### **Critical Skill(s) Affected**

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

### **Completing the IEP**

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

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