New Jersey Special Education Compliance and Best Practices

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Frequently Asked Questions:
Extended School Year

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Who is eligible to receive extended school year services ("ESY")?

Regulations to the Individuals With Disabilities in Education Improvement Act (IDEA) defines ESY as “special education and related services that are provided to a child with a disability beyond the normal school year in accordance with the child’s Individualized Educational Plan (IEP), and at no cost to the parents.” 34 CFR 300.309(b).

In New Jersey, a student is entitled to ESY if the IEP Team determines that:

(1) an interruption in educational programming causes the student’s performance to revert to a lower level of functioning, and
(2) recoupment cannot be expected in a reasonable length of time.

N.J.A.C. 6A:14-4.4(c). Aside from this analysis of regression and recoupment, N.J.A.C. 6A:14-4.4(c) further requires that the IEP Team consider “all relevant factors” in determining the need for ESY.

For example, ESY may be indicated for a student who might become socially withdrawn or depressed during the summer such that returning to school is difficult in the fall. Or, a student may simply require additional, continued instructional time to master important skills.

Other criteria to determine a student’s eligibility for ESY may include:

- nature and severity of the student's disability;
- ability of the child's parents to provide educational structure in the home;
- behavioral and physical impairments;
- student’s ability to interact with nondisabled peers;
- student's vocational needs;
- availability of alternative resources; and
- whether the requested services are "extraordinary" for the student's condition, "emerging skills" and "breakthrough opportunities," as when a student is on the brink of learning to read.

Best Practice Tips:

* Districts cannot limit the type of extended school year services to particular categories of disabilities or limit the type, amount or duration of ESY.
* Districts should take data during the delivery of ESY to enable subsequent IEP Teams to make knowledgeable decisions with regard to subsequent ESY needs.

What factors should be considered when determining a student’s eligibility for ESY?

Determinations about regression and recoupment can be either retrospective (looking back at documentation of a student's previous rates of regression and recoupment) or prospective (looking forward at the potential rate of regression and recoupment based on such information as CST/expert opinion and observations regarding the student's performance after very short breaks such as regular school holidays and long weekends).

But it is not necessary for a student to demonstrate previous regression in order to be eligible for ESY, since N.J.A.C. 6A:14-4.4(c) compels IEP Teams to consider all relevant factors. However, as with all special education decisions, the determination should be based on objective data from a variety of sources.
As noted above, examples of specific factors recommended by the New Jersey Office of Special Education Programs for ESY consideration include:

- Degree of the student’s impairment;
- Degree of the regression;
- Recovery time from the regression;
- Ability of the child’s parent to provide the educational structure at home;
- Child’s rate of progress;
- Child’s behavioral and physical needs;
- Availability of alternative resources;
- Ability of the child to interact with nondisabled children;
- Areas of the child’s curriculum which need continuous attention;
- Child’s vocational needs; and
- Whether the requested services are extraordinary for the child’s condition as opposed to the IEP goals and of the program for those with the child’s condition.

What types of ESY models are available?

ESY, just like special education and related services, are individualized services based on specific student need; ESY does not follow a rigid, “cookie cutter” formula for all students, as such services can take a variety of forms. Once a student has been deemed eligible for ESY, the IEP Team is responsible for determining the type, duration and frequency of the services. Regardless of the specifics of those services, goals and objectives should be a continuation of all or part of the school year IEP (although ESY may be modified to provide maintenance of acquired skills during periods of interruption during the regular school year).

ESY options may include the following:
- Support services for maintenance of skills, such as math or reading;
- Home instruction or consultation to provide parents with support to prevent regression;
- Individual or group instruction in a specific IEP goal area;
- Recreational services to provide for the maintenance of identified IEP skills;
- Traditional classroom-based instruction;
- One or more related services;
- Cooperative programs with other agencies; or
- Intensive, limited services provided just prior to the beginning of the school year.

Best Practice Tip:
* All students eligible for ESY may not benefit from an in-District summer program; Districts may need to consider outside programs to develop appropriate ESY services. In addition, ESY services may not necessarily be provided in a classroom or school setting; the location and delivery of ESY services may be provided in the home or at an alternative location. IEP teams must make an individual determination regarding the level and frequency of specific services for each student, including the need for related services, transportation and the student’s behavioral, social, and emotional needs.
Are ESY services only available to students during summer vacation?

State regulations state that “an extended school year program provides for the extension of special education and related services beyond the regular school year (emphasis added).” N.J.A.C. 6A:14-4.4(c). The statement “beyond the regular school year” has been interpreted broadly, granting IEP Teams the flexibility to develop ESY services during any period of time beyond the 180 day regular school year, including beyond the regular school day. ESY is not just available during summer vacation, but also during other school breaks if required based on the student’s individual needs. Further, some students may require services before or after the regular school day.

The Office of Special Education and Rehabilitative Services, Department of Education, stated in the comments section to the final regulations of the IDEA that, although ESY services are typically provided during the summer months, there is nothing in federal regulations: [t]hat would limit a public agency from providing ESY services to a child with a disability during times other than the summer, such as before or after regular school hours or during school vacations, if the IEP Team determines that the child requires ESY services during those periods in order to receive FAPE. The regulations give the IEP Team the flexibility to determine when ESY services are appropriate, depending on the circumstances of the individual child.


Once a student is deemed ESY eligible, is the District required to provide the “same” special education and related services identified in the IEP during the ESY program?

Not necessarily; ESY services are not automatically a continuation of the student's entire special education program. Some students may need only certain special education and/or related services (such as reading instruction or speech/language therapy) outside of the normal school year. The purpose of extended school year services is to provide maintenance of acquired skills during interruptions from school, not to teach new skills. Therefore, Districts should not develop new goals and objectives for a student’s ESY program; the goals and objectives should be a continuation of those developed for the regular school year.

But as noted above, such determinations are entirely individualized and should be based on individual need. Some students with significant difficulties may require twelve month, continuous programming. Current, accurate data is crucial for effective ESY decision-making.
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